



The problem of unpaid internships

Legal guide to complaints under the European Social Charter

About the clinic

The EU Public Interest Clinic is the result of a partnership between New York University School of Law and HEC Paris (Ecole des Hautes Etudes Commerciales de Paris). Clinic instructors (Alberto Alemanno and Paige Morrow) and selected students from both universities work together with leading NGOs, academics and practitioners. We support organisations that advocate for underrepresented interests before EU institutions on a wide range of matters, including transparency of EU institutions, human rights, consumer rights, and environmental law.

More information at <http://euclinic.eu>.

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Legal guide to collective complaints

The European Youth Forum (YFJ) is a platform of over 100 youth organisations in Europe. YFJ requested the assistance of the EU Public Interest Clinic to prepare and submit a collective complaint to the European Committee of Social Rights with the Council of Europe on unpaid internships in Belgium. The complaint aims to challenge and ultimately change Belgian legislation, seeking a legal decision that will set a precedent across Europe and beyond to end this unfair and discriminatory practice.¹

Currently Belgium has the highest percentage of unpaid interns in the EU, with only 1 in 5 (18%) being paid for work. A central focus of the complaint is on the “stage bénévolat” or voluntary internship offered to young people in Belgium after their studies, which is often used to replace an entry-level job. The complaint argues that unpaid internships are in violation of the right to fair remuneration as well as the right of children and young persons to protection as defined in the European Social Charter.

This legal guide provides background information to explain the process for filing a collective complaint, followed by the draft complaint prepared by the EU Public Interest Clinic, and a list of relevant resources and organisations. It should be noted that the YFJ made a number of modifications to the draft complaint before it was filed, focusing on Articles 2 and 7 of the Charter; the final version may be accessed online.²

As of September 2017, the Government of Belgium has filed ‘observations on admissibility’ advising that it does not object to the admissibility of the complaint and providing preliminary notes on the substantive arguments.³ It appears that Belgium will oppose the complaint on a number of grounds, including that interns are not remunerated because they do not hold an employment contract and the main purpose of the internship is not to provide work in exchange for remuneration but rather to gain professional experience.⁴ The status of the complaint remains pending, including both respect to its admissibility and on the merits.⁵

The legal guide and draft complaint are made publicly available for the purposes of legal information, and their contents should not be considered legal advice. Non-profit organisations may contact the EU Public Interest Clinic for further guidance

¹ The press release and further information about YFJ’s efforts to secure quality standards and decent pay for internships, including the YFJ European Quality Charter for Internships and Apprenticeships, may be found at: <http://www.youthforum.org/pressrelease/belgium-youth-forum-takes-legal-step-to-ban-unpaid-internships/>.

² The complaint is viewable at the YFJ website http://www.youthforum.org/assets/2017/05/YFJ_CollectiveComplaint_2017.pdf as well as at the Council of Europe <https://rm.coe.int/cc150casedoc1-en-complaint/1680725337>.

³ <https://rm.coe.int/cc150casedoc1-en-complaint/1680725337>

⁴ *Ibid*, at pp. 7-8.

⁵ [http://www.coe.int/en/web/turin-european-social-charter/collective-complaints-procedure#{"13417396": \[1\]}](http://www.coe.int/en/web/turin-european-social-charter/collective-complaints-procedure#{)

and a possible referral to external counsel. Unfortunately, due to resource constraints, the EU Public Interest Clinic cannot assist private individuals.

European Social Charter

The European Social Charter⁶ is a Council of Europe treaty guaranteeing fundamental social and economic rights. The Charter was adopted in 1961 and revised in 1996. The revised version of the Charter⁷ has been ratified by 33 countries that belong to the Council of Europe, 24 of which are in the EU, including Belgium.

Complementing the European Convention on Human Rights (ECHR), which is focused on civil and political rights, the Charter protects a spectrum of economic and social rights, both individual and collective, related to employment, housing, education, social protection and welfare. Unlike the ECHR, there is no court to supervise implementation by State parties.

Collective Complaints Procedure

Implementation of the Charter is monitored by the European Committee of Social Rights. Until 1995, the Committee received only national reports prepared by State parties and the Committee reviewed whether these reports conformed to the social rights protected by the Charter. Under the Additional Protocol adopted in 1995, the Committee also began to receive collective complaints lodged by social partners and other non-governmental organisations (NGOs). To date, only 15 of the 47 Council of Europe member States – including Belgium – have ratified the Charter's collective complaint mechanism.

The collective complaint mechanism strengthens the role of the Committee by giving them a 'quasi-judicial' status that has allowed for the development of jurisprudence.⁸ The mechanism also reinforces the role of social partners and NGOs by granting them the power to apply directly to the Committee for rulings on possible non-implementation of the Charter in countries that have accepted the provisions of the Charter and the complaints procedure. To date, only 15 of the 47 Council of Europe member States – including Belgium – have ratified the Charter's collective complaint mechanism.

⁶ European Social Charter, Oct. 18, 1961, 35 E.T.S., *available at* <http://www.conventions.coe.int/Treaty/en/Treaties/Html/035.htm>. European Social Charter (revised), May 3, 1996, 163 E.T.S. *available at* <http://www.conventions.coe.int/Treaty/en/Treaties/Html/163.htm>

⁷ Hereinafter the terms 'article' and 'Charter' without further specification will refer to the revised version of the Social Charter.

⁸ Cullen, H. (2009). The Collective Complaints System of the European Social Charter: Interpretative Methods of the European Committee of Social Rights. *Human rights law review*, 9(1), 61-93.

Criteria for admissibility:⁹

The following organisations have the right to submit a collective complaint:¹⁰

1. Designated international organisations of employers and trade unions;¹¹
2. Other international NGOs holding consultative status with the Council of Europe and on the official list of the Governmental Committee; and
3. Representative national organisations of employers and trade unions within the jurisdiction of the state party against which they have launched a complaint.

Additionally, states may declare that they will also accept complaints from national NGOs but only Finland has done this so far.

Below are the key requirements that must be satisfied by a complaint to the Committee:

- Be lodged in writing by an organisation having the locus standi (standing) to do so, as set out above.¹²
- Relate to a provision of the Charter that was accepted by the State in question upon its ratification, and indicate its grounds (making reference to relevant arguments and supporting documents).
- Be signed by an authorized representative of the complainant organization.

Unless the Committee determines that a complaint is manifestly admissible or inadmissible, the State party will be invited to make written submissions on the admissibility of the complaint. The Committee may then invite the complainant organisation to reply to the State's submissions. YFJ has been entitled to lodge collective complaints since 2014.¹³

Unlike with applications filed before the European Court of Human Rights (ECtHR), the ECSR will only consider collective complaints (i.e. by social partners and other non-governmental organisations (NGOs)) not individual applications. Complaints must therefore only address non-compliance of a State's law or practice with a provision of the Charter. That being said, collective complaints may contain, in

⁹ Part VIII of the Rules of the European Committee of Social addresses the Collective Complaint procedure. A collective complaint by an INGO must be submitted in one of the official languages of the Council of Europe (French and English). An explanation of the admissibility conditions for complaints may be accessed at: <http://www.coe.int/en/web/turin-european-social-charter/collective-complaints-procedure1>

¹⁰ Revised European Social Charter, CETS No. 163, adopted 3 May 1996, article 1. See <http://www.coe.int/en/web/turin-european-social-charter/collective-complaints-procedure1>

¹¹ Pursuant to Article 27, para. 2, the Council of Europe has designated the following organisations: the European Trade Union Confederation (ETUC), the International Organisation of Employers (IOE), and Business Europe.

¹² See <http://coe-ngo.org/#/ingo/56a682bd7f63c229362a2fbf>

¹³ See *Id.*

additional to statistical data and general information, reference to specific examples of individuals or organisations that have suffered violations of the relevant rights.¹⁴ The NGO does not need to be victim of the relevant violation. Another major difference with the procedure before the ECtHR is that the collective complaints procedure is not conditional upon the exhaustion of domestic remedies.

Moreover, a complaint may be admissible by the ECSR even if the same or a similar case has been submitted to any national or international tribunal or other body, including the ECtHR. There has been no known complaint declared inadmissible by the ECSR because of the same substance being before the ECHR system. Article 35(2)(b) ECHR allows the Court to declare inadmissible any application which '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. However, both the ECSR and the ECtHR have at various stages noted the differences between the way rights are drafted and defined in the two instruments, so it is unlikely that a complaint would be declared inadmissible because of a similar matter being before the ECHR, say as the result of an individual taking the case to Strasbourg following exhaustion of domestic remedies in Belgium.¹⁵

Procedure

In practice, the ECSR throws out very few complaints at the admissibility stage.¹⁶ Once the Committee has ascertained that a complaint is admissible, the Committee will invite the State party to provide written submissions on the merits and the complainant organisation will then have an opportunity to respond, and the Committee will invite the State to provide a further response.¹⁷ The entire process is typically conducted on the basis of written evidence and the ECSR does not itself investigate or substantiate the claims put forward. The Committee may decide to hold a hearing if requested by the parties (and the Committee deems it appropriate), or on its own initiative.¹⁸

Since the adoption of the Protocol, the system of collective complaints has been critiqued for its weakness, especially due to the inability of the Committee to grant

¹⁴ Harris, D., *The European Social Charter and the Challenges of the 21st century*, Council of Europe, Papazissi Ed., Athens 2000.

¹⁵ Conversation with H. Cullen, 3 January 2017.

¹⁶ *Id.*

¹⁷ The Committee asks the State concerned to make its observations on the merits of the complaint within a prescribed time limit. The President then invites the organisation that lodged the complaint to respond to these observations, on the same conditions, and to submit all relevant written explanations or information to the Committee. The States party to the Protocol, as well as the States that ratified the revised Social Charter, and that have made a declaration under Article D paragraph 2 of the Charter, are invited to make comments within the same time limit. These observations are communicated to the organisation that lodged the complaint and to the State concerned. (Article 7 of the Protocol and Rules 28-32 of the ECSR Rules of Procedure).

¹⁸ Article 7 § 4 of the Protocol and Rule 33 of the ECSR Rules of Procedure.

remedies.¹⁹ The Committee may issue declaratory decisions that set out the relevant law and declares whether States party are in conformity with the Charter. Article (81) of the Protocol refers to the 'report' of the Committee, rather than the term 'decision' or 'ruling' – although it should be noted that the ECSR itself tends to use the word 'decision'. The reports may be consulted online via the European Social Charter Database HUDOC.²⁰

The ECSR lacks the mandate to award remedies; rather, it issues declaratory decisions. An interesting recent development is the introduction of 'immediate measures'. After the adoption of the decision on the admissibility of a collective complaint or at any subsequent time during the proceedings before or after the adoption of the decision on the merits, the Committee may "indicate to the parties any immediate measure the adoption of which seems necessary with a view to avoiding the risk of a serious irreparable injury and to ensuring the effective respect for the rights recognised in the European Social Charter."²¹

After the Committee has decided on the merits of the complaint, the ECSR report must not be immediately made publicly available. The report is then passed to the Committee of Ministers of the Council of Europe for the issuance of a resolution. Article 9(1) stipulates that if the ECSR has found unsatisfactory application of the Charter, the Committee of Ministers 'shall adopt, by a majority of two-thirds of those voting, a recommendation addressed to the Contracting Party concerned.' The Committee of Ministers has four months to review and adopt a resolution regarding the complaint, which is not legally binding on the State found in default.²² If the Committee of Ministers fails to act, the report of the ECSR is published and communicated to the Council of Europe's Parliamentary Assembly. Although article 9(1) uses the mandatory language of 'shall', the Committee of Ministers does not systematically issue resolutions.²³

States must respect the decisions of the ECSR and take steps to give them effect under domestic law. If the Committee concludes that there has been a Charter, States are required to report back on the measures that have been taken in every

¹⁹ Churchill, R. R., & Khaliq, U. (2004). The Collective Complaints System of the European Social Charter: an effective mechanism for ensuring compliance with economic and social rights?. *European Journal of International Law*, 15(3), 417-456.

²⁰ <http://hudoc.esc.coe.int/>

²¹ In the case of a request for immediate measures made by a complainant organisation, the request must specify why it is being made, the possible consequences if it is not granted and the measures requested. A copy of the request is transmitted forthwith to the respondent State. The President of the European Committee of Social Rights sets a date for the respondent State to make written submissions on the request for immediate measures. The Committee's decision on immediate measures gives reasons and is signed by the President, the Rapporteur and the Executive Secretary. It is notified to the parties. The European Committee of Social Rights may request information from the parties on the implementation of the indicated measures. Rule 36 of the ECSR Rules of Procedure.

²² Article 9, Additional Protocol.

²³ Cullen, *supra*.

subsequent report.²⁴ While decisions themselves are not enforceable in domestic courts, domestic courts may declare invalid or set aside domestic legislation that has been ruled by the Committee to be in non-compliance with the Charter.

²⁴ Rule 40 of the ECSR Rules of Procedure.

Draft collective complaint

I. EXECUTIVE SUMMARY

Young people entering the job market are in a precarious economic position. Across Europe, and in Belgium in particular, those who wish to enter into the professional world are faced with the de facto mandate that in order to gain experience and build the connections that will enable them to find paid professional work in the future, they must complete several internships.²⁵ Yet many of these internships are unpaid or underpaid, forcing some young people to rely on their savings or their parents and shutting others out of the process entirely.²⁶

This Complaint asks the Committee to consider the legal situation of unpaid interns in Belgium in light of the European Social Charter and find that Belgium is not in conformity with the Charter. Specifically, the provisions in Belgian law that enable unpaid internships, and the lack of enforcement of provisions that aim to curtail them, violate Articles 4, 7, and 10 of the Charter, which provide for fair remuneration, the protection of young people, and financial assistance for vocational training, respectively.

II. ADMISSIBILITY

A. The European Youth Forum's standing

Name and contact details

European Youth Forum

Rue de l'Industrie 10

1000 Brussels

Belgium

Tel: + 32 2 793 75 20 | Fax: + 32 2 893 25 80

Web: www.youthforum.org | Email: youthforum@youthforum.org

1. The European Youth Forum (*hereinafter* "YFJ") is an international non-profit association registered in Belgium²⁷ that has held participatory status with the Council of Europe since 2009.²⁸ YFJ has had standing with the Revised European Social Charter (*hereinafter* "the Social Charter") collective complaint mechanism since 2014 and is entitled to submit collective complaints for the period 1 July 2014 – 30 June 2018.²⁹ Under Part IV, Article D of the second

²⁵ European Youth Forum, "Interns Revealed", p. 27 ("80% [of post-studies interns] listed improving their CV and future job prospects as a motivation for taking up the internship.").

http://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-brussels/documents/genericdocument/wcms_175791.pdf.

²⁶ European Youth Forum, "Interns Revealed", p. 29.

²⁷ European Youth Forum, Statutes: http://www.youthforum.org/assets/2013/05/0010-14_European_Youth_Forum_statutes_ENG_FINAL_APRIL2014.pdf

²⁸ Council of Europe, NGOs Database: <http://coe-ngo.org/#/ingo/56a682bd7f63c229362a2fbf>

²⁹ Council of Europe, "International Non-Governmental Organisations (INGOs) entitled to submit collective complaints":

additional protocol, international non-governmental organisations which have consultative status with the Council of Europe and are listed as having standing before the ESC/RESC mechanism have the right to submit collective complaints to the European Committee of Social Rights.

2. In addition, under Article 3 of the Additional Protocol of 1995, the international non-governmental organisations referred to in Article 1(b) may submit complaints with respect to those matters regarding which they have been recognised as having particular competence.³⁰
3. YFJ is an umbrella of 103 youth organisations – National Youth Councils and International Youth NGOs – representing and advocating for the rights and interests of young people in Europe and those of their organisations. Since its establishment in 1996, YFJ has carried out numerous campaigns and research studies and developed partnerships with various stakeholders to promote young people's rights. Youth employment is a long-standing priority of YFJ, and in this context YFJ actively promotes quality internships. Together with youth organisations, trade unions, members of the European Parliament and other civil society actors, YFJ developed the European Quality Charter on Internships and Apprenticeships (hereafter "Quality Charter"),³¹ which sets out the basic minimum standards internship providers should ensure. Over 40 employers, as well as 35 Members of the European Parliament, have signed the Quality Charter. In addition to the Quality Charter, YFJ worked with employers to develop an Employer's Guide to Quality Internships,³² which aims to support employers in implementing quality internships in accordance with the Quality Charter. In 2011, YFJ published the results of a survey of over 3,000 young people who were or had recently been interns,³³ and a 2013 publication on quality jobs dealt with the topic of internships and apprenticeships.³⁴ Furthermore, in cooperation with intern and youth organisations, YFJ organised the International Interns Day 2015, running activities that empowered young people to develop ideas to ensure quality internships and present them to decision-makers. YFJ continues to work on quality internships and quality jobs for young people.³⁵

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806d4ba0>

³⁰ <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cdad>

³¹ European Youth Forum, European Quality Charter on Internships and Apprenticeships:

http://www.youthforum.org/assets/2014/04/internship_charter_EN.pdf

³² European Youth Forum, Employer's Guide to Quality Internships:

<http://www.youthforum.org/assets/2015/03/Employers-Guide- Quality-internships1.pdf>

³³ European Youth Forum, "Interns Revealed: a survey on internship quality in Europe":

http://www.youthforum.org/assets/2013/11/YFJ_InternsRevealed_WEB.pdf

³⁴ European Youth Forum, "Quality jobs for young people":

https://issuu.com/yomag/docs/yfj_qualityjobs_en_issuu

³⁵ Further information on our work in these areas is available at www.youthforum.org/quality-internships/ and <http://www.youthforum.org/quality-jobs/>

B. Belgium's standing

1. Belgium ratified the Social Charter on 2 March 1996. The document entered into force on 1 May 2004.
2. Belgium ratified the additional protocol to the Social Charter providing for a system of collective complaints on 23 June 2003. This entered into force on 1 August 2003.
3. This complaint is submitted in writing under Article 4 of the Additional Protocol and relates to Articles 4, 7 and 10 of the Social Charter. These provisions were accepted by the Respondent Government upon the ratification of the Social Charter.

III. SUBJECT MATTER OF THE COMPLAINT

This section will present the problems with unpaid internships and the statistics that provide evidence of these problems, followed by a discussion of the Belgian legislation that enables the practice of unpaid internships to take place.

A. The problem with unpaid internships

Missed opportunities

1. Internships, also referred to as traineeships,³⁶ can provide young people with valuable work experience and exposure to different career paths and opportunities. For a young person who has only known school and perhaps some part-time, low-skilled work, an internship at an NGO, a bank, an art gallery or a government office is a way to learn how to comport oneself in an office environment, find and develop one's professional strengths, and build connections that lead to future employment. In fact, internships are increasingly becoming de facto necessary experiences for gaining full-time employment. Citing EOC research, a European Commission study on traineeships reported that study-related work experience increases the chance of being employed after graduation by 44%.³⁷ And there is wide consensus that internships are becoming a standard feature of young people's transition from education and training to the labour market as they have also become increasingly commonplace in EU member states.³⁸ Given the huge demand for jobs at a time of economic uncertainty in Europe, many employers will not even grant interviews to young candidates unless they have extensive work experience.

³⁶ European Commission, The Experience of Traineeships in the EU, p. 3.

http://ec.europa.eu/public_opinion/flash/fl_378_en.pdf.

³⁷ <http://ec.europa.eu/social/BlobServlet?docId=11348&langId=en>

³⁸ <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2017578%202012%20ADD%201>, p. 11

2. Yet many young people are prevented from accessing such experience, and many others cannot benefit fully from the internships they have because so many internships are unpaid. For young people who do not come from families with the means to support them in paying for rent, food, and transport, an unpaid internship—which can last several months—is untenable. For those who may be able to find paid work in addition to their internships, the demands of working many more hours than their wealthier peers can take away from their ability to be fully present for the internship.
3. In a recent Eurobarometer survey,³⁹ 59% of interns across the EU reported that their last internship was without any financial compensation. Belgium has the highest percentage of unpaid interns in the EU, with only 18% being paid for their services. Unpaid internships are especially inaccessible or even harmful to young job seekers because they are in especially precarious positions. According to the European Commission, youth unemployment rates are significantly higher than unemployment rates for all ages.⁴⁰ Young people have been especially hit hard by the financial crisis of 2008, with youth unemployment rates spiking in the years following the crisis⁴¹ and the number of young people neither in employment nor in education or training reaching record highs.⁴² As of December 2016, the youth unemployment rate in Belgium was 20.4%.⁴³ In many Member States, transitions from education to work have become increasingly longer, more unstable and uncertain.⁴⁴
4. With so many young people out of school and struggling to find employment, internships are critical to bridging the gap between the world of education and the world of work. Yet the widespread practice of unpaid internships effectively restricts access to gainful employment in certain sectors of the economy to only those privileged enough to be able to afford to undertake them. Additionally, interns are often recruited through closed networks rather than on the basis of merit. And the problems of cost and unfair recruitment are magnified in countries where jobs are concentrated in major cities. Young people from outside these metropolitan areas are additionally challenged with housing expenses and are less likely to have the social capital to find out about these internships opportunities in the first place.
5. Non-payment of interns results in discrimination against those young people who are unable to afford to work for several months without pay. Indeed, the European Ombudsman has recently called on an EU body, the European External Action Service, to pay all of its trainees under the principle of non-

³⁹ http://ec.europa.eu/public_opinion/flash/fl_378_en.pdf

⁴⁰ http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics

⁴¹ *Id.*

⁴² http://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics_on_young_people_neither_in_employment_nor_in_education_or_training#Young_people_neither_in_employment_nor_in_education_or_training

⁴³ <https://www.statista.com/statistics/266228/youth-unemployment-rate-in-eu-countries/>

⁴⁴ <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2017578%202012%20ADD%201>, p. 5

discrimination.⁴⁵ Further, there are indications of a gender ‘pay gap’ in internships with a larger proportion of women in unpaid or low paid positions.⁴⁶

Exploitation

1. It is crucial that internships provide a quality learning experience and do not consist of merely doing photocopying and getting coffee. YFJ, along with other civil society organizations and 31 MEPS, has published a *Quality Charter on Internships and Apprenticeships*.⁴⁷ The Charter underlines that internships should be primarily a learning experience and should not replace jobs; that a traineeship should be based on a written contract and should be limited in time; that a mentor/supervisor should provide guidance throughout the traineeship; that the trainee should receive reimbursement of costs or should have the right to receive food, housing, and public transportation tickets instead; that decent remuneration should be provided for work carried out additional to the requirements outlined in the contract; and that clear evaluation criteria of the traineeship period is needed.
2. Yet many internships fall well short of these standards. The European Commission has estimated that under certain assumptions, approximately 50% of unpaid internships lack satisfactory learning content.⁴⁸ and organizations are increasingly relying on unpaid interns to fill roles that might otherwise be entry-level jobs.⁴⁹ That unpaid interns make up significant parts of some organisations’ workforces, and those organisations could not function without them, suggests that interns are being exploited as free labour.⁵⁰ The European Commission’s Traineeship Study found that using internships as free labour is a growing phenomenon, and the risk of substituting regular employment with internships is greater in Member States with high unemployment and/or unfavourable labour market conditions for young people.⁵¹
3. Additionally, young people are not only more likely to be unemployed but they are also hit harder by the effects of short-term unemployment. Without work experience on a CV, it becomes that much more difficult to break into the job market. Thus, young people unable to find permanent jobs are “scarred” by short-term unemployment that can have a long-term effect on their lifetime earnings, representing a huge economic cost in lost potential.

⁴⁵ <https://www.ombudsman.europa.eu/cases/recommendation.faces/en/76079/html.bookmark>

⁴⁶ <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2017578%202012%20ADD%201>, p. 17

⁴⁷ [http://www.youthforum.org/assets/2013/10/0595-](http://www.youthforum.org/assets/2013/10/0595-10_European_Quality_Charter_Internships_Apprenticeships_FINAL.pdf)

[10_European_Quality_Charter_Internships_Apprenticeships_FINAL.pdf](http://www.youthforum.org/assets/2013/10/0595-10_European_Quality_Charter_Internships_Apprenticeships_FINAL.pdf)

⁴⁸ <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2017578%202012%20ADD%201>, p. 23

⁴⁹ Nolan, Freedman, “The human rights sector must stop exploiting unpaid interns.”

<http://theconversation.com/the-human-rights-sector-must-stop-exploiting-unpaid-interns-34994>

⁵⁰ <http://www.politico.eu/article/watchdog-tells-eu-diplomatic-corps-to-pay-interns/>

⁵¹ <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2017578%202012%20ADD%201>, p. 17

B. Relevant Belgian legislation

1. The Belgian government has issued legislation on internships specifically. The current framework describes several types of internships and covers many forms of volunteer work, which are described below.
2. This complaint is concerned with the many internships that fall through gaps in this legislation or are shoehorned into inappropriate types of agreement under the existing legislation, which Belgium is failing to correct and enforce. These are what the complaint will refer to as “unpaid internships,” which are unpaid placements (although certain, minimal expenses incurred by the intern may be covered by the employer or intern coordinator) undertaken outside of secondary or post-secondary education. While several internship categories are governed by specific legislative frameworks, the unpaid internship is not an official legal category but has instead evolved through hiring practices in the sector.
3. The relevant contracts provided for by Belgian law are as follows:
 - a. *Contrat de travail conclu pour une durée déterminée*,⁵² or fixed-length contract
 - i. For young people who are lucky enough to find an organization offering this contract, the benefits include payment of at least the minimum wage (1.531,93€ per month⁵³) and accrual of social security. The fixed end date provides certainty for the intern and enables the employer to “try out” the person without committing to hiring him or her long-term.
 - b. *Convention d’immersion professionnelle*,⁵⁴ or professional immersion agreement
 - i. Professional immersion internships require any NGO hiring a person over the age of 21 to pay him or her a stipend of at least €751 per month. The contract must clearly specify the objectives of the internship as well as the tasks to be carried out by the trainee. Additionally, the NGO should obtain prior permission from “Bruxelles Formation,” the public body officially responsible for professional training of French-speakers in the Brussels region, before offering the internships.
 - ii. If these conditions are not respected, the internship contract could be reclassified as an employment contract, according to which the 1.531,93€ gross minimum wage would be applicable retroactively. Public employment agencies, such as Actiris in the Brussels-Capital region, are charged with monitoring the placement of interns and ensuring that hiring organizations comply with any applicable regulations. The regional legislation

⁵² Belgium, Service public federal - Emploi, Travail et Concertation Sociale.

<http://www.emploi.belgique.be/defaultTab.aspx?id=41992>

⁵³ *Id.* at <http://www.emploi.belgique.be/defaultTab.aspx?id=39004>

⁵⁴ <http://www.actiris.be/emp/tabid/185/language/fr-BE/Convention-d-immersion-professionnelle.aspx>

in Brussels-Capital states that immersion programs should provide interns with preliminary professional experiences, thereby surmounting any barriers young people face in entering the labor market. The formal requirements of the internship support this objective. For instance, to be classified as immersion internships, programs must last from three to six months and be full-time. While an internship contract must be concluded between the intern, Actiris, and the hiring organization, a support and guidance document must complete the contract, specifying the oversight the intern will receive. Interns under this agreement receive between 615,80€ (18 year olds) and 766€ (those who are 21 or older).⁵⁵ If the organization does not follow or comply with the immersion contract, the “plan d’accompagnement,” or the insurance requirements, Actiris will end the internship and find the intern a new placement. To this end, the agency requires the intern to fill out an evaluation form and, on the basis of this document, provides an individualized assessment for the intern going forward. The specificities of this regulatory framework not only allow the candidate to foresee the nature of the immersion training, but also assists the Belgian government in easing the transition to the formal labor market.

c. *Convention de volontariat*, or volunteer agreement

- i. To qualify as volunteer work within the meaning of the law, an activity must be uncompensated, uncoerced, and intended to benefit nonprofit entities or society at large.⁵⁶ Work performed in the context of a voluntary internship cannot be performed by or for an organization as part of an employment or service contract.⁵⁷ Organizations employing volunteers may bear very limited costs of certain expenses incurred in the course of the internship, up to an amount prescribed by law. The current limit is fixed at 1.334,55 € per year.⁵⁸
- ii. Organizations employing volunteers are required by law to inform them about working conditions and the objectives of the work, insurance arrangements, and allowances for certain expenses.⁵⁹ Their insurance also covers the volunteers’ work.⁶⁰

⁵⁵ <http://www.actiris.be/ce/tabid/197/language/fr-BE/Convention-d-immersion-professionnelle.aspx>.

⁵⁶ <http://www.levolontariat.be/definition-du-volontariat>.

⁵⁷ Art. 3. *Loi relative aux droits des volontaires*. (Belgium, 2005-07-03/59, 3 Juillet 2005).
http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2005070359&table_name=loi.

⁵⁸ <http://www.levolontariat.be/indemnites-ou-defraiment-des-benevoles>.

⁵⁹ Art. 10. *Loi relative aux droits des volontaires*.
http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2005070359&table_name=loi.

⁶⁰ Art. 4. *Loi relative aux droits des volontaires*.
http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2005070359&table_name=loi.

4. According to the “Just Pay” campaign run by Brussels Interns NGO (“BINGO”), many interns are either not engaged in formal agreements at all or are being shoehorned into volunteer agreements that are inappropriate for the nature of the work they are undertaking.⁶¹ The intern who undertakes an informal volunteer position does not benefit from the material benefits provided for in the other categories and by design enjoys little, if any, structure and oversight. These unpaid internships should be brought under the rubric of professional immersion internships or paid contractual positions.
5. The 80% of young people who receive no compensation for their traineeships in Belgium⁶² implies a gross abuse of the Belgian internship categories by certain organizations, and failure of enforcement by Belgian authorities. To properly comply with its own law as well as the requirements of the European Social Charter, the Belgian government must both enforce the existing legislation and apply a narrower interpretation to the categorization of volunteer work.

IV. LEGAL DISCUSSION

A. Article 4 - The right to a fair remuneration

1. Under Article 4 of the European Social Charter, signatory states “recognise the right of workers to a remuneration such as will give them and their families a decent standard of living.” The Committee’s 2010 Statement of Interpretation on Article 4 § 1 specifies the standard government should use in determining a “fair remuneration” across national contexts (60% of the net average wage, subject to exceptions. It must also be above the poverty line). However, Belgian law distinguishes between “voluntary” workers and employees, indicating that certain benefits and rights guaranteed to workers, including the 60% threshold, may not apply to those who occupy unpaid positions.

Unpaid interns in Belgium qualify as “workers” within the meaning of the Charter and thus possess a right to a decent wage.

1. Though recent committee decisions do not provide an explicit definition of “worker,” they do imply that “unpaid interns” would come under that category. For example, in 2012 the Social Committee found that the labor situation in Austria did not comply with the Charter, because a collective bargaining agreement applied an insufficient wage for full-time workers. Here the gross monthly wage specified in the collective bargaining agreement (1200 to 1400 Euros) fell below the Charter’s standard of 60% of the net national average wage. In its reasoning, the Committee recognized and approved the test applied by the Austrian courts. The test evaluated a wage for fairness by

⁶¹ Just Pay campaign. <http://justpay.strikingly.com/>.

⁶² Flash Eurobarometer 378, “The Experience of Traineeships in the EU” p. 48. http://ec.europa.eu/public_opinion/flash/fl_378_en.pdf.

evaluating “comparable activities” such as wages in neighboring towns, the size of the company-employer, and the number of workers the company employs. In other words, the Committee found that Austria was not in conformity on the ground that a specific group of laborers performed work “comparable” to that undertaken by similarly situated groups receiving a higher wage. The Committee thus implied that below-standard remuneration for work meriting higher compensation, even established in a freely-undertaken collective agreement, would not withstand scrutiny under the 60% threshold.

2. Following this line of reasoning, the Committee should look at the quality and nature of work undertaken by Belgian interns, work that more often than not includes entry-level assignments and tasks. Under Belgian law, such internships would meet the standards of either professional immersion placements or normal employment contracts, the former requiring a stipend, the latter a base salary. As paid positions involving “workers” within the meaning of the Charter, they would be evaluated for fairness under this 60% standard.
3. Furthermore, the Committee referenced its Statement of Interpretation to support its reasoning: “Article 4 § 1 guarantees the right to a fair remuneration such as to ensure a decent standard of living. The concept of ‘decent standard of living’ goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities.”⁶³ In sum, the Committee has decided that fair wages are to be determined by referencing applicable remuneration for comparable work, the ultimate objective being to guarantee young people an above-average standard of living. It is thus clear that, since unpaid interns assume the professional responsibilities and hourly requirements of workers in standard contractual positions, they should be treated as “workers” within the meaning of the Charter. Belgian employers would need to recharacterize unpaid internships as professional immersion or work contracts under the domestic law applicable to them.
4. Other decisions echo these same principles. In 2014, the Committee found that Ireland was not in conformity with the Charter because it could not establish that the Irish government compensated employees for overtime work (though this is a guarantee for all workers under the Charter). The Committee was careful to point out that, under Article 4, granting leave is a permissible form of remuneration for overtime work, but, in such cases, leave must be longer than overtime worked. Exceptions only apply to state employees and management executives, not entry-level workers in non-governmental organizations.⁶⁴ If the Committee has previously established the right to overtime pay for work not formally contemplated by a contract (including intern work for hours over the regular internship constraints), it

⁶³ Conclusions 2010, Statement of Interpretation on Article 4§1.

⁶⁴ Conclusions X-2 (1991), Ireland.

would follow that interns performing standard work have a right to remuneration.⁶⁵ The Committee's November 21 decision, *Confédération Française de l'Encadrement CFE-CGC v. France, Complaint No. 9/2000*, on the merits of 16 November 2001, § 45, finding that exceptions to the overtime reimbursement rule should be limited, highlights the overarching policy favoring remuneration.⁶⁶ That is, if the Committee is scrupulous about compensating employees for the work they undertake outside contractually mandated working hours and on the basis of fair remuneration principles, it should apply the same analysis when scrutinizing unpaid internships. A close look at the requirements, length, and nature of the intern's tasks indicates that the work should be compensated. This treatment should lead to a reclassification of internships that is consistent with a narrower interpretation of Belgian law, and thus one that would conform to the Charter's dictates.

5. Many unpaid interns in Belgium are performing work of a similar nature to that at issue in the French and Irish decisions. While this work is normally remunerated at a decent wage rate, a high percentage of interns do not receive compensation because they lack the legal formalities, or happen to be young novices on the job market. The inconsistency is patent. Applying the same fair wage principle to interns would be logically consistent with the other fundamental rights guaranteed in the charter, such as the right to social security, vocational guidance, the right to work, and the right to fair working conditions. This constellation of rights permits states to achieve the objectives articulated in the preamble of the Charter, namely "to secure to their populations the social rights specified therein in order to improve their standard of living and their social well-being."⁶⁷ In the absence of a practice of fair remuneration that adheres to Article 4 standards, Belgian youth are effectively precluded from achieving a decent standard of living, and thus from effectively exercising their rights.

Unpaid internships are detrimental to youth mobility and the exercise of the right to work

1. A February 2009 decision by the International Labor Organization's Administrative tribunal (Judgment No. 2797), provides some clarity in this regard. Here, the complainant, who worked for ILO's Madrid office and brought an action for wrongful dismissal, adopted similar arguments to contend that his unpaid internship (2000-2001) and external collaboration contracts should be replaced by fixed term contracts. More specifically, he claimed that "the Organization violated Circular No. 630, series 6, on inappropriate use of employment contracts in the Office, in that "external collaboration' contractual arrangements" were used "for a purpose other than that for which they were designed, for a lengthy period of over four years,"

⁶⁵ See also Lithuania 2016 (4-2).

⁶⁶ *Confédération Française de l'Encadrement CFE-CGC v. France, Complaint No. 9/2000* on the (November 16, 2001).

⁶⁷ European Social Charter (revised), May 3, 1996, 163 E.T.S. available at <http://www.conventions.coe.int/Treaty/en/Treaties/Html/163.htm>.

which gave rise to a situation of “precarious employment.”⁶⁸ In sum, he claimed to have performed tasks typically reserved for “officials” and thus outside the scope of the terms of the internship as well as his external collaboration contracts. If he performed the same work as officials of the Madrid office even as part of an unpaid engagement, he was a *de facto*, though not a *de jure*, official and should have been appropriately compensated.⁶⁹

2. Though the Social Charter was not applicable, the ILO’s Declaration on Fundamental Principles and Rights at Work echoes the Charter’s principles. Tellingly, the Complainant noted that the ILO Madrid’s office use of an intern and then external collaboration employee to keep up with a heavier workload during the time of the Spanish Presidency of the European Union, violated the right to decent work enshrined in the Declaration. In addition, the complainant continued to work without being paid between two contracts, which recalls in many ways the position of the intern. The nature of the work, a series of temporary contracts, paints less a picture of youth mobility, than uncertainty. To the extent that unpaid interns in Belgium often find themselves performing tasks normally undertaken by entry-level employees, but not legally designated as such, their situation resembles the complainant’s. The ambiguity in the way in which Belgian legislation is enforced suffers from the same defects and produces similarly detrimental results.
3. Here, the mistaken classification of both tasks performed as an unpaid intern not only led to confusion and uncertainty, but also gave rise to significant opportunity costs. Indeed, only after five years did the complainant come to understand the insecurity of his situation, significantly delaying any real professional advancement and depriving him of legal protection in the event any claims would become time-barred. It was due to this delay that the ILO challenged the claims brought against it as inadmissible. Stating in the complaint that “he was in a situation without any legal protection whatsoever” because of the Administrative Tribunal’s timing rules, the Complainant initiated parallel proceedings in the Spanish courts.⁷⁰ It is interesting to note that the Tribunal agreed to hear the Complainant, reasoning that the inadmissibility of the complaint was related to the merits. It was thus clear that the ambiguity surrounding his legal status as an intern or employee for the ILO affected his ability to bring his grievance before the Tribunal. Similarly, unpaid interns are put at a disadvantage when they undertake unpaid work for extended periods of time without resources and ignorant of their status. Employers could avoid these situations by properly distinguishing unpaid internships (meeting the less burdensome strictures of the *convention de volontariat*), professional immersion positions, and standard contractual positions that mandate the minimum wage.

⁶⁸ International Labor Organization, Administrative Tribunal. 106th Session) (Judgment No. 2797, February 4, 2009).

⁶⁹ ILO, Judgment No. 2797, p. 3.

⁷⁰ *Id.*, p. 6.

State implementation of the Charter

1. The Charter further stipulates that states party to the agreement may use means “appropriate to national conditions” to “achieve the exercise of this right.”⁷¹ This language implies that governments may tailor efforts to comply with the Charter provisions to their domestic circumstances. For example, the government of Belgium may invoke several factors that make the promotion of unpaid voluntary internships a pragmatic policy choice: the recent financial crisis, the costs of labor on Belgian companies and organizations, the encouragement of youth entry into the workplace, which employers might be unable to shoulder if certain wage or labor standards applied, etc. The costs of violating Article 4, including negatively affecting the wellbeing of Belgian youth and the vitality of the Belgian labor market, outweigh any benefits of unpaid internships.

Inadequate Remuneration is Unfair

1. In *GENOP-DEI ADEDY c. Grèce*, the Committee found that wages below a national poverty line are unfair within the meaning of the Charter. The case centered around a lowering of the minimum wage by 32%, a measure which the Greek government had pursued to stimulate employment in the wake of the 2008 financial crisis.⁷² Normally European governments may apply different minimum wage requirements to young workers within reason, owing to their temporary status and inexperience. Yet in the Greek case, this otherwise legal reduction in the rate would have placed young people’s wages below the poverty level, in violation of the Charter.⁷³
2. The Committee employed the same reasoning in two 2014 decisions and more clearly delineated the factors it considers when assessing wages for fairness. Applying the *GENOPI* proportionality test, the Committee found that a reduced statutory wage applied to workers 18-22 years old in Netherlands was not in conformity with Article 4.⁷⁴ It dismissed the Dutch government’s position that low wages “purport to foster young persons’ choice to qualify further,” and “reflect young workers’ reduced productivity and increased need for supervision.”⁷⁵ The Committee furthermore noted that differentiated wage rates contravened the principle of equal remuneration for work of equal value, dismissing “stereotypical ideas about youth and low productivity.” (ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), (Convention No. 131 on Minimum Wage Fixing (1970) Observation, adopted in 2012, published at the 102nd ILC session (2013)). It is thus clear that any contention that lack of remuneration is

⁷¹ European Social Charter (revised), May 3, 1996.

⁷² Ministerial Council Act “Act 6 of 28-2-2012.; “...Application of article 1§6 of Law No 4046/2012”, article 1§1 stipulates that “from 14-2-2012 onwards, the minimum wage and daily wage set by the National General Labour Collective Agreement...”

⁷³ “Reduction of wages for young people in temporary positions is permissible, but it cannot fall below the poverty level.”

⁷⁴ Conclusions. The Netherlands-Article 4-1 (2014).

⁷⁵ *Id.*

appropriate for young interns due to their inexperience should not stand scrutiny under Article 4 of the Charter.

3. In the Dutch case, the Committee also looked to whether holiday allowances and other benefits could, in conjunction with a reduced wage, still ensure a decent standard of living or permit participation in social, cultural, and educational activities. This indicates that the Committee does not exclusively rely on the 60% minimum threshold test in assessing a wage for fairness, but will also look to the broader objectives of the Social Charter. The case of unremunerated interns in Belgium is a simple one: lacking even the nominal wages that the Committee found to be unfair in the 2014 Dutch decision, these young workers cannot feasibly attain a decent standard of living and thus meaningfully participate in their communities.⁷⁶
4. In the same year, the Committee issued a nonconformity decision regarding unfair wages applicable to Belgian workers under the age of 21, which had been determined by certain Collective Labour Agreements. It thus cited an Interprofessional Collective Agreement which specified a gross monthly average minimum wage of €1,501.82 for a worker having reached the age of 21; €1,541.67 for a worker aged 21 and a half with six months of service; and €1,559.38 for a worker aged 22 with 12 months of service. Because the minimum average wages imposed by a certain collective agreement did not satisfy the minimum threshold test, the Committee found that the wages were unfair within the meaning of Article 4. Just as in the Dutch decision, the Committee reiterated the second prong of the fairness test--whether or not the reduced wage, though falling below the minimum threshold wage nevertheless was “sufficient enough to ensure a decent standard of living.”
5. It is important to note that the Committee found Belgium and the Netherlands to not be in conformity with Article 4 even though these workers received a wage. Voluntary interns, on the other hand, do not receive any remuneration. In passing, the Committee noted that certain temporary, or “atypical” positions were not covered even under these deficient collective agreements (“some atypical jobs are not covered by Interprofessional Collective Agreement No. 43: student jobs; employment experience jobs; socio-professional integration jobs; “beroepsinlevingsovereenkomst”; and work/study jobs).⁷⁷ Appropriately, however, it requested wage levels for workers employed in these positions. Unpaid internships resemble such “atypical jobs” and should thus draw the Committee’s attention in a similar way. Because unpaid internships are unaccounted for in Belgian legislation, young people undertaking them go unaccounted for. These decisions indicate that minimum wages failing a

⁷⁶ The Committee thus dismissed the Dutch provision of a holiday allowance to young workers as insufficient, reasoning that “the information on available supplements and benefits provided in the report does not establish that the statutory minimum wage ensures a decent standard of living within the meaning of Article 4 of the Charter.”

⁷⁷ “Defined by the French Community Decree of 5 March 2009 approving the framework co-operation agreement on work/study programmes, concluded in Brussels on 24 October 2008 between the French Community, the Walloon Region and the French Community Commission.”

quantitative threshold will not stand legal scrutiny under the Social Charter. It goes without saying that the lack of any wage puts young people in an even more precarious and uncertain position. The Committee should thus find that signatory states violate their commitments under the Charter by allowing the frequent practice of unpaid internships, where such positions should properly come under the scope of contractual or immersion positions under domestic law.

The discriminatory nature of unpaid internships

1. Unpaid voluntary internships may also raise a presumption of discrimination. This is consistent with the Committee's reasoning in *GENOP*.⁷⁸ There, the Committee interpreted Article 4 § 1 in light of the 1961 Preamble's anti-discrimination clause, which reads: "[...] Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, color, sex, religion, political opinion, national extraction or social origin; [...]"⁷⁹
2. In *GENOP*, the complainant Greek trade unions contended both direct and indirect discrimination, reading Article 4 in conjunction with the Committee's interpretation of Article 1. By signing the Charter, states undertake to ensure citizens both the right to a fair wage and the right to work. Discrimination can include the failure to take into account differences in circumstances or characteristics that may hinder the effective exercise of these rights. (see judgment of 17 July 1963, Case 13-63, *Italian Republic v. Commission of the European Economic Community*, CJEC 1963, p.335; judgment of 6 April 2000, *Thlimmenos v. Greece*, no. 3469/97, ECHR 2000-IV, § 44).
3. The Unions thus argued that the Greek government "failed to take due and positive account of all relevant differences" by applying the same exceptional apprenticeship regime to all young workers (see *Autism-Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 52). The exceptional regime for apprenticeship contracts exempts employers hiring workers under the age of 25 from Greek labor laws without regard to personal circumstances. The Committee thus found discrimination.
4. While the Committee acknowledged the Greek government's efforts to stimulate youth employment by depressing wages and minimizing the cost of labor, it rejected the notion that extenuating circumstances could release signatories from their obligations under the Charter. In its 2009 Conclusions XIX-2 on the economic crisis and social rights, the Committee noted that while the "increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increase while tax and social security contribution revenues decline," by

⁷⁸ Fédération générale des employés des compagnies publiques d'électricité (*GENOP-DEI*) et Confédération des syndicats des fonctionnaires publics (*ADEDY*) c. Grèce (*Réclamation n 66/2011*) [hereinafter *GENOP-DEI*].

⁷⁹ European Social Charter, Oct. 18, 1961, Preamble, available at <http://www.conventions.coe.int/Treaty/en/Treaties/Html/035.htm>.

acceding to the 1961 Charter, the Parties “have accepted to pursue by all appropriate means the attainment of conditions in which inter alia the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realised.”⁸⁰ On these same grounds, the Committee dismissed the government’s argument that lower wages encouraged employers to hire younger workers who would otherwise have difficulty finding jobs. It also dismissed the government’s justification that younger workers “incur lower expenditure on average than other categories of workers when it comes to housing, family support and other living costs.” More specifically, the government applied a strict proportionality test, under which a discriminatory wage practice must further “a legitimate aim of employment policy” and be proportionate to the objective of economic stimulus to be permissible. While the Committee agreed that the integration of younger workers into the post-2008 job market was legitimate, it found that the dramatic wage reduction, applied strictly to workers under the age of 25, overstepped the government’s prerogative.

5. In reaching its conclusion, the Committee cited a statement issued by the Greek National Commission for Human Rights. The latter voiced “deep concern...about the lack of prospects for the young, who are either unemployed or employed under detrimental and precarious conditions.”⁸¹ This often-cited issue of precarity, echoing the grievances of the ILO worker cited above, attests to the perilous and uncertain existence young, unremunerated interns face in today’s labor market.
6. By denying young people the right to fair wages while guaranteeing this right to other groups or categories of workers, the Government of Belgium may be discriminating on the basis of age or another category. The European Youth Forum believes that the Committee’s decision to reject the Greek government’s defense is sound and should apply in the Belgian context. Austerity measures, though legitimately aimed at reducing the cost of labor, cannot proceed on discriminatory grounds to infringe on the fundamental rights of European youth.

B. Article 7 - The right of children and young persons to protection

1. Article 7 of the Social Charter provides that: “With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake: [...] 5. to recognize the right of young workers and apprentices to a fair wage or other appropriate allowances.” Essentially, Paragraph 5 provides for the protection of young people from exploitative employment situations that deprive them of remuneration or fair benefits. Unpaid internships in Belgium for those not receiving academic credit do not meet this standard.

⁸⁰ GENOP-DEI, 5.

⁸¹ GENOP-DEI, 5, 8 December 2011.

2. The Committee recently analyzed Article 7 § 5 conformity in Belgium for young people in apprenticeships in 2011,⁸² taking into account family allowances payable to apprentices up to the age of 25. The implication is that Article 7 § 5 protects not only youths under the age of 18 but also young people such as those undertaking unpaid internships. In that decision, the Committee concluded that monthly allowances paid to apprentices under various Belgian legislation were inadequate and thus not in conformity with Article 7 § 5 of the Charter, noting that “vocational training is the responsibility of Belgium’s federated entities.”⁸³ Additionally, the participation rate in higher education among young people in Europe has increased significantly since 1961, when the European Social Charter was drafted, supporting the notion that Article 7 § 5 should be interpreted to apply to young people above the age of 18. The OECD reported that Belgium was among the countries with the lowest rate of attainment of upper secondary education 50 years ago, but that rate has increased significantly (about 50%) since then.⁸⁴ Other EU countries, including France, Greece, Hungary, and Spain have followed a similar trajectory. Because young people now start working full-time at a much later age than they did a half century ago, the protections for them envisioned by Article 7 should be extended to those over the age of 18.

3. In Belgium, the minimum wage for gainfully employed people is determined by the National Labour Council and laid down in collective agreements. This minimum wage is scaled lower for workers under the age of 22. The Committee has concluded that apprentices must be granted an allowance which must equal at least one third of the adult minimum or starting wage at the beginning of the apprenticeship and at least two thirds at the end.⁸⁵ Allowances paid to apprentices can be below an adult’s starting or minimum wage because apprenticeships are meant to impart valuable skills onto the young people who undertake them. Yet many unpaid internships impart little to no skills, requiring only the completion of tedious chores for the exclusive benefit of the organization, all while paying nothing to interns. If paid apprenticeships can be found to be in violation of Article 7 § 5, then so should the practice of non-academic unpaid internships.

4. Unpaid internships directly contravene the protections for young workers envisioned by the Social Charter by denying young persons their right to “a fair wage or other appropriate allowances.” Small stipends and reimbursements are unfair compensation for the work performed by young people in unpaid internships. And when such internships become so commonplace that they become a per se necessary step in the process to

⁸² [http://hudoc.esc.coe.int/eng#{"ESCArticle":\["07-05-000"\],"ESCDcIdentifier":\["2011/def/BEL/7/5/EN"\]}](http://hudoc.esc.coe.int/eng#{)

⁸³ *Id.*

⁸⁴ <https://www.oecd.org/education/skills-beyond-school/48642586.pdf>

⁸⁵ *Id.*

gaining full-time paid employment, then they should no longer be considered volunteer work.

5. The entrenchment of unpaid internships in Belgium creates the risks of serious consequences to not only the young people in internships positions directly affected but also the wider economy. The widespread practice of voluntary internships inhibits social mobility in Belgium because they are a disproportionately bigger burden on young people from lower socioeconomic classes. Taking on unpaid internships often requires poorer students to take on part-time work or additional loans.⁸⁶ Those who are unable to secure full-time paid employment after completion of their internships are burdened by the cascading effects of a large debt load. Meanwhile, more privileged young people from higher socioeconomic classes are free to take on unpaid internships, allowing them to gain an upper hand over their less privileged peers.⁸⁷ Additionally, the availability of unpaid internships may indirectly contribute to unemployment by displacing adult wage earners with young interns.⁸⁸
6. The Committee came to its conclusion on apprenticeships in Belgium even while noting the objection that an increase in minimum allowances would make it impossible to find employers willing to take on young people as apprentices.⁸⁹ Similarly, it should reject assertions that requiring pay for internships will make organizations unwilling to hire young people as interns. The possibility that unpaid internships may have some value for young people as a tool for career-building does not preclude the fact that they perpetuate inequality by only being accessible to those who can afford to undertake them. On a larger scale, the possibility that some internships may be lost if unpaid internships for non-college students are banned is a price worth the reward of decreasing social inequality. In any case, the impact is likely to not be severe. Those hiring for entry-level positions will simply have to shift their metrics for evaluating the qualifications of candidates. Organizations may have to innovate to do so, such as by offering paid trial employment periods, but they will find themselves rewarded with a more diverse employee pool.
7. The fact that unpaid internships have become de facto requirements for gaining full-time employment and their role in entrenching inequality by impeding social mobility makes it clear that such internships are not in compliance with Article 7 § 5 of the Social Charter.
8. In *International Commission of Jurists v. Portugal* (1999), the Social Committee confronted the risk that legislative ambiguity and weak

⁸⁶ Jessica L. Curiale, Note, America's New Glass Ceiling: Unpaid Internships, the Fair Labor Standards Act, and the Urgent Need for Change, 61 Hastings L.J. 1531, 1551–60 (2010).

⁸⁷ Steven Greenhouse, The Unpaid Intern, Legal or Not, N.Y. Times, Apr. 2, 2010, available at <http://www.nytimes.com/2010/04/03/business/03intern.html>.

⁸⁸ Curiale, *supra* note 16, at 1534.

⁸⁹ [http://hudoc.esc.coe.int/eng#{"ESCArticle":\["07-05-000"\],"ESCDIdentifier":\["2011/def/BEL/7/5/EN"\]}](http://hudoc.esc.coe.int/eng#{)

enforcement poses in the context of Article 7 and labor rights. In that case, the International Commission of Jurists (ICJ) had lodged a complaint alleging that nearly 200,000 children in Portugal worked under unsanitary and poor conditions. It thus claimed that Portugal failed to meet its obligations under article 7(1) of the European Social Charter for not properly supervising child labour. The Portuguese government contested the Commission's findings and argued in its defense that it had properly taken measures to prevent child labour. It also defended the Portuguese Labour Inspectorate's efforts in dealing with this segment of the workforce. Despite these contentions, the Committee ultimately found that the Portuguese situation was not in conformity with the Charter, relying on factual circumstances analogous to those in the Belgian case. The Committee thus approved of the strict Portuguese labor laws, which prohibited all work by children under 15. The Belgian legislative framework, though not as strict, is similarly rights-oriented in that it provides a system to properly account for various types of employment situations and the remuneration schemes applicable to them. However, just as Belgian employers and labor authorities have failed to police the use of unpaid internships, the Portuguese government failed to comply with its own national labor laws, since several thousand children performed work, a considerable number of children performed unpaid "heavy types of work" in labor-intensive sectors, and that "the duration of the work was frequently excessive." The factual similarities between the situation Belgian case of unpaid interns and Portuguese unpaid child workers are striking. In both cases, the "duration" and nature of the work performed was not in keeping with what was legally appropriate for the workers in question. In sum, *International Commission of Jurists v Portugal* indicates that inaction on the part of governments, the abuse of unpaid work, and the mischaracterization of employment schemes are a *prima facie* violation of the Charter. Applying such a rule to the Belgian case before it, the Committee should come to the same conclusion.⁹⁰

C. Article 10 - The right to vocational training

1. Article 10 does not depend on interns being found to be 'workers,' but applies both to workers and to others not defined as workers, including "all persons" and "young boys and girls" as well as "workers."⁹¹ Article 10 therefore provides for interns' protection even if interns are not found to be 'workers'.
2. Article 10 states:
With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

⁹⁰ *International Commission of Jurists v Portugal*, No. 1/1998. <https://www.escribnet.org/caselaw/2006/international-commission-jurists-v-portugal-no-11998>.

⁹¹ European Social Charter, Article 10.
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007cf93>.

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.*⁹²

3. The Charter does not define "vocational training." However, the European Commission provides a definition in its presentation of Skills and vocational training under the Human development section of its website. It explains that "Vocational Education and Training (VET) refers to 'learning pathways which aim to equip people with knowledge, know-how, skills and/or competences required in particular occupations or more broadly in the labour market' for the jobs of today and tomorrow. VET includes non-formal Skills Development programs which may be delivered in the workplace and which do not lead to formal qualifications."⁹³

⁹² Emphasis added. European Social Charter, Article 10, paragraph 5d.

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007cf93>.

⁹³ http://ec.europa.eu/europeaid/sectors/human-development/skills-and-vocational-training-policy_en

4. In dismissing a claim based on Article 10 in *Associazione sindacale "La Voce dei Giusti" v. Italy*, the Committee found that the claimant made "no arguments with regard to the right to vocational training in relation to technical and higher education; to apprenticeship or the training of young boys and girls; to the long-term unemployed; or to measures of financial assistance or to training taken at the request of the employer."⁹⁴ Here, by contrast, the Complaint argues that, in enabling unpaid internships to take place, Belgium is denying financial assistance to young people who aim to engage in vocational training through internships.
5. While Belgian residents and citizens may receive some financial assistance from the government, the Committee found again in 2016 that Belgium is in violation of Article 10, paragraph 5 for discriminating against nationals of other States Parties "on the ground that the non-EEA nationals are subject to a length of residence requirement of two years to be eligible for financial aid for education."⁹⁵ The Committee stated that the Charter "requires that nationals of other States Parties who already have a resident status in the State Party concerned, receive equal treatment with nationals in the matters of both access to vocational education (Article 10 § 1) and financial aid for education (Article 10 § 5)."⁹⁶
6. In sum, Article 10 requires that states provide access to such training to both young people and adults, providing financial assistance where appropriate and ensuring that young people are not exploited. Where appropriate should be interpreted to require that interns gaining professional experience—vocational training—be paid, particularly for those positions lasting for several months. This financial assistance is a key component in preventing the exploitation of young trainees.
7. Further, Article 10's aspirations to provide "efficiency of apprenticeship and other training arrangements for young workers"⁹⁷ implies that individuals participating in apprenticeships are considered "young workers" by definition, and therefore Article 4 should apply to them.

V. CONCLUSION

The practice of unpaid internships, which Belgium enables to a great extent through its broad definition of "volunteer" work and its failure to enforce the existing protections for interns under its categories for *Contrat de travail conclu pour une durée déterminée* and *Convention d'immersion professionnelle*, puts many young

⁹⁴ Decision on the merits: *Associazione sindacale "La Voce dei Giusti" v. Italy*, Complaint No. 105/2014, paragraph 38. <http://hudoc.esc.coe.int/fre/?i=cc-105-2014-dmerits-en>.

⁹⁵ Conclusions 2016 - Belgium - Article 10-5. <http://hudoc.esc.coe.int/fre/?i=2016/def/BEL/10/5/EN>.

⁹⁶ *Id.*

⁹⁷ European Social Charter, Article 10.

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007cf93>.

people in a difficult position. With the importance of obtaining foundational professional experiences, young people cannot afford to forgo internships--and yet many cannot afford to do them, either. This, in turn, results in discrimination against those young people who have no external financial support that would enable them to work for free.

The situation in Belgium violates the European Social Charter's provision for fair remuneration, the protection of young people, and access to vocational training.

References and resources

Below are resources that may be helpful to refer to when preparing a collective complaint.

Literature

Listed from most general to most specific:

Khaliq, K. and Churchill, R. 'The Protection of Economic and Social Rights: A Particular Challenge?' in H Keller and G Ulfstein (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge, Cambridge University Press, 2012) 199

De Schutter, O. (2015). The European Social Charter in a Time of Crisis. Introductory Report, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c5d1a>.

De Schutter, O. (2016). The European Social Charter in the Context of Implementation of the EU Charter of Fundamental Rights. Study for the AFCO Committee of European Parliament, available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536488/IPOL_STU\(2016\)536488_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536488/IPOL_STU(2016)536488_EN.pdf). Optional.

Cullen, H. (2009). The Collective Complaints System of the European Social Charter: Interpretative Methods of the European Committee of Social Rights. *Human rights law review*, 9(1), 61-93.

Churchill, R., & Khaliq, U. (2007). Violations of economic, social and cultural rights: the current use and future potential of the collective complaints mechanism of the European Social Charter.

Churchill, Robin R. and Khaliq, Urfan. 'The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic Social Rights?' (2004) 15(3) EJIL 417

Langford, Malcolm. *Gathering Steam? A Review of Recent Cases from the European Committee on Social Rights*. Housing & ESC Rights Law Quarterly, Vol. 2, n. 2, 2005, pp. 4-6. Available at http://www.escr-net.org/usr_doc/Vol2-No2-Quarterly.pdf.

Harris, D.J. 'Collective Complaints under the European Social Charter: Encouraging Progress?' in K.H. Kaikobad and M. Bohlander (eds), *International Law and Power: Perspectives on Legal Order and Justice. Essays in Honour of Colin Warbrick* (Koninklijke Brill NV. 2009). Available at <https://www.nottingham.ac.uk/hrlc/documents/publications/ehrl/europeansocialcharte/rharris.pdf>.

Relevant literature about labour/employment law, & unpaid internships

Fisher, Clifford, and Cara Putman. "European Union labor law-a comparison between the labor laws of the United States and the European Union." *The Business & Management Review* 7.5 (2016): 43. Available at http://www.abrmr.com/myfile/conference_proceedings/Con_Pro_20588/conference_18127.pdf.

Burke, Debra D., and Robert Carton. "The pedagogical, legal, and ethical implications of unpaid internships." *Journal of Legal Studies Education* 30.1 (2013): 99-130.

Yamada, David C., The Legal and Social Movement Against Unpaid Internships (July 27, 2016). Northeastern University Law Journal, Vol. 8, No. 2, p. 357 (2016); Suffolk University Law School Research Paper No. 13-34. Available at SSRN: <https://ssrn.com/abstract=2338646>

Case law and legislative provisions

European Social Charter, Oct. 18, 1961, 35 E.T.S., *available at* <http://www.conventions.coe.int/Treaty/en/Treaties/Html/035.htm>.

European Social Charter (revised), May 3, 1996, 163 E.T.S. *available at* <http://www.conventions.coe.int/Treaty/en/Treaties/Html/163.htm>.

European Committee of Social Rights: Rules, 10 May 2011, http://www.coe.int/t/dghl/monitoring/socialcharter/escrules/Rules_en.pdf

Media

Salcedo, C. 2016. "European Social Charter Litigation: Setting Limits to Austerity Measures" *Social Watch* (12 August 2016). Available at <http://www.socialwatch.org/node/17408>.

Baussand, P. 2015. "I don't want to go back to our social rights of 2007" *Social Platform* (16 February 2015). Available at <http://www.socialplatform.org/news/i-dont-want-to-just-go-back-to-our-social-rights-of-2007/>.

Nolan, A. and Freedman, R. 2015. "The human rights sector must stop exploiting unpaid interns" *The Conversation* (12 January 2015). Available at: <https://theconversation.com/the-human-rights-sector-must-stop-exploiting-unpaid-interns-34994>.

Porcaro, G. 2014. "Unpaid internships set to continue to shame Europe" *Euractiv* (5 March 2014). Available at <https://www.euractiv.com/section/social-europe-jobs/opinion/unpaid-internships-set-to-continue-to-shame-europe/>

Bank, M. 2015. "The Brussels Times investigates unpaid internships in Brussels" *The Brussels Times* (19 January 2015). Available at <http://www.brusselstimes.com/magazine2/1986/the-brussels-times-investigates-unpaid-internships-in-brussels>

Sellier, E. 2016. "Interns raise their voices against unpaid EU positions" *EU Observer* (5 August 2016). Available at <https://euobserver.com/opinion/134579>.

Other relevant sources

HUDOC (hudoc.esc.coe.int) - The HUDOC database provides access to the Decisions and Conclusions of the European Committee of Social Rights. It includes decisions on admissibility and merits, as well as all follow-up documents, and documents from the reporting procedure.

Complaints in progress may be found on the web page for the collective complaints procedure (<http://www.coe.int/en/web/turin-european-social-charter/collective-complaints-procedure>) - The original complaint is published as a document related to the case, so it is possible to see examples of successful applications.

Digest:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168049159f>

Relevant organisations in addition to YFJ:

- B!NGO - Established in Brussels in 2013 with a network of 15 organisers, it recently launched its Just Pay campaign to pursue employers that fail to pay the minimum wage.
- Internship Black List is a network aiming to identify internship conditions which breach Belgian labour law.
- InternsGoPro is an initiative to develop an internship quality label, based on ratings given by interns to their institutions in an online survey.
- Intern Aware – A UK-based organisation that campaigns against abusive practices in internships.
- Intern Labor Rights
- Canadian Intern Association