

Table of Contents

The Author	3
List of Abbreviations	13
Part I. The Council of Europe	15
Chapter 1. General Background Information	15
§1. DEFINITION	15
§2. HISTORY AND MEMBERSHIP	15
§3. OBSERVERS, PARTNERS AND INTERNATIONAL COOPERATION	16
§4. STRUCTURE	17
§5. AIMS AND FUNCTIONS	17
§6. HEADQUARTERS AND OFFICES	19
§7. SYMBOLS	19
Chapter 2. International Treaties Protecting Labour Rights	20
§1. INTRODUCTION	20
§2. THE EUROPEAN SOCIAL CHARTER OF 1961	21
§3. ADDITIONAL PROTOCOLS	24
I. The Additional Protocol of 1988	24
II. Amending Protocol of 1991	25
III. Additional Protocol of 1995 – Establishing a Collective Complaints System	26
§4. THE REVISED EUROPEAN SOCIAL CHARTER OF 1996	27

Table of Contents

Part II. Labour Human Rights	37
Introduction: Categories of Labour Human Rights Connected with Work and Methods of their Protection	37
Chapter 1. Regulation of Individual Labour Human Rights	39
§1. THE RIGHT TO WORK	39
I. Full Employment	39
II. Freedom of Work	45
A. Prohibition of Forced Labour	46
B. Eliminating Forms of Discrimination in Employment	50
III. To Establish and Maintain the Function of General Access to Free Employment Services	57
IV. Vocational Guidance, Training and Rehabilitation	61
§2. THE RIGHT OF NATIONALS TO ENGAGE IN GAINFUL OCCUPATION IN THE TERRITORIES OF OTHER COUNTRIES	63
I. Introduction	63
II. An Obligation to Apply the Existing Regulations in a Spirit of Liberty	66
III. Simplifying Existing Formalities and Reducing or Abolishing Administrative Fees	68
IV. Liberalisation of Regulations	70
§3. THE RIGHT TO JUST CONDITIONS OF WORK	71
I. The Definition of Reasonable Daily and Weekly Working Hours	72
II. Public Holidays with Pay	77
III. Two Weeks' Annual Holiday with Pay	78
IV. The Duty to Eliminate Risks for Workers in Dangerous or Unhealthy Occupations and Provide Them with Additional Paid Holidays or Reduced Working Hours when Possible	82
V. To Ensure a Weekly Rest Period	86
VI. To Ensure Workers are Informed in Writing of the Aspects of the Work Agreement	89
VII. Protection of Workers Employed in Night Work	90
§4. THE RIGHT TO SAFE AND HEALTHY WORKING CONDITIONS	92
I. According to the European Social Charter	93
A. The Responsibility to Issue Regulations Dealing with Health and Safety at Work	93
B. Obligation to Provide for the Enforcement of Such Regulations by Measures of Supervision	95
C. To Ensure Consultation with Stakeholders in Matters of Industrial Health and Safety	97

Table of Contents

II. According to the Revised European Social Charter	99
A. Policies of Occupational Safety and Health	101
B. Occupational Health Services	101
§5. THE RIGHT TO FAIR REMUNERATION	103
I. Decent Remuneration	103
II. Additional Remuneration for Overtime Work	108
III. The Right of Men and Women to Equal Remuneration for Work of Equal Value	114
IV. The Right of All Workers to a Reasonable Period of Notice for Termination of Employment	120
V. Deductions from Wages	128
§6. THE RIGHT OF CHILDREN AND YOUNG PERSONS TO PROTECTION	132
I. Introduction	132
II. A Ban on Employing Children under the Age of 15 Years	132
III. A Prohibition of Employing Persons under the Age of 18 Years in Employment Dangerous or Harmful to Health	135
IV. The Banning of Employment of Children of School Age in Work Affecting their Education	137
V. Time of Work for Young Workers	140
VI. Remuneration for Young Workers	142
VII. Time of Vocational Training	145
VIII. Annual Holiday for Young Persons	146
XI. Banning the Employment of Young Persons in Night Employment	148
X. Regular Medical Supervision of Young Persons	150
XI. Special Protection of Children and Young Persons against Physical and Moral Dangers	152
§7. THE RIGHT OF EMPLOYED WOMEN TO PROTECTION	153
I. Maternity Leave	154
II. Prohibiting the Termination of a Work Agreement with a Pregnant Woman	160
III. Time off Work for Mothers Nursing their Infants	165
IV. Obligation to Regulate Rules of Employment concerning Women Workers Employed at Night Time in Industrial Occupations	167
V. Duty to Regulate the Rules of Employment at Night Time concerning Pregnant Women, Women who have Recently Given Birth or Women Nursing their Infants	168
VI. Prohibiting the Employment of Women	169
VII. Prohibiting the Employment of Pregnant Women, Women Who have Recently Given Birth, or Who are Nursing their Infants, in Underground Mining and All Other Work of Dangerous, Unhealthy or Arduous Nature	170
§8. THE RIGHT TO VOCATIONAL GUIDANCE	171

Table of Contents

§9. THE RIGHT TO VOCATIONAL TRAINING	173
I. The Obligation to Provide or Promote Technical and Vocational Training and Granting Facilities for Access to Higher Technical and University Education	174
II. The Duty of Providing or Promoting a System of Apprenticeship for Young Persons	178
III. Vocational Training for Adult Workers	180
IV. Special Measures for the Retraining and Reintegration of the Long-term Unemployed	183
V. The Duty of Encouraging Actions Facilitating Vocational Training	184
§10. THE RIGHT TO EQUAL OPPORTUNITIES AND EQUAL TREATMENT IN MATTERS OF EMPLOYMENT WITHOUT DISCRIMINATION ON THE GROUNDS OF SEX	188
§11. THE RIGHT TO PROTECTION IN CASES OF TERMINATION OF EMPLOYMENT	196
§12. THE RIGHT OF WORKERS TO THE PROTECTION OF THEIR CLAIMS IN THE EVENT OF THE INSOLVENCY OF THEIR EMPLOYER	203
§13. THE RIGHT TO DIGNITY AT WORK	208
§14. THE RIGHT OF WORKERS WITH FAMILY RESPONSIBILITIES TO EQUAL OPPORTUNITIES AND EQUAL TREATMENT	214
Chapter 2. The Regulation of Collective Labour Rights	218
§1. THE RIGHT TO ORGANISE	218
I. Forming Trade Unions	219
II. The Freedom of Trade Unions to Regulate their Internal Organisational Affairs	223
III. The Right of Workers to Join a Trade Union or to Elect not to	226
A. The Right to Join a Trade Union	226
B. The Right not to Join a Trade Union	227
IV. The Freedom to Carry out Trade Union Activities	231
A. Negotiating Collective Labour Agreements	231
B. Carrying out Trade Union Activities in the Territory of the Workplace	234
V. Legal Guarantees Allowing Workers to Freely Associate in Trade Unions	236
A. Prohibiting Discrimination of Workers Based on their Trade Union Membership and Participation in Trade Union Activities	236

Table of Contents

B. Prohibition of Allocating Workers Duties, which are not Being Fulfilled by Workers Participating in a Legal Strike Action	239
VI. Union Freedom and the Right to Associate in Trade Unions for Certain Categories of Worker	240
A. Trade Union Freedom for Civil Servants	240
B. The Right of Police Officers to Organise	241
C. Union Freedom for Professional Militia	243
D. The Right of Migrant Workers, Citizens of a Member State, to Organise	244
§2. THE RIGHT TO BARGAIN COLLECTIVELY	245
I. Introduction	245
II. Joint Consultations between Workers and Employers	246
III. Collective Labour Agreements	250
IV. Mediation and Arbitration	257
V. Right of Workers and Employers to Collective Action	262
A. Collective Action	262
B. A Legal Strike	264
C. Restricting the Right to Strike	269
1. Restricting the Right to Strike in Collective Labour Agreements	269
2. Restricting the Right to Strike, as Introduced by the Domestic Legislation of Member States	270
D. Restricting the Number of Entities Entitled to Organise Strikes	270
E. Procedural Requirements Needed Prior to the Commencement of a Legal Strike	271
F. Compulsory Referral of Collective Disputes to an Arbitration Tribunal	273
G. The Obligation to Ensure Continuous Operation of Certain Workplaces	274
H. The Legal Consequences of Collective Action with regard to Individual Work Agreements	276
1. Strike and the Termination of a Work Agreement	276
2. Strike Action and the Right to Fair Remuneration	278
3. Strikes: Civil Liability and Criminal Responsibility	278
4. Restrictions on the Right to Strike as Imposed by the Courts	280
5. Lock-outs	282
§3. THE RIGHT TO INFORMATION AND CONSULTATION	283
§4. THE RIGHT TO TAKE PART IN THE DETERMINATION AND IMPROVEMENT OF WORKING CONDITIONS AND WORKING ENVIRONMENT	289

Table of Contents

§5. THE RIGHT OF WORKERS TO INFORMATION AND CONSULTATION IN COLLECTIVE REDUNDANCY PROCEDURES	293
§6. THE RIGHT OF WORKERS' REPRESENTATIVES TO PROTECTION	297
I. An Obligation to Ensure Workers' Representatives the Protection of Endurance in the Undertaking	298
II. The Obligation to Afford Workers' Representatives Facilities to Carry out Their Statutory Functions	300
Chapter 3. Necessary Derogations	303
§1. TEMPORARY DEROGATIONS OF THE CHARTER IN CASE OF WAR OR NATIONAL SECURITY THREATS	303
§2. DEROGATIONS NECESSARY FOR THE PROTECTION OF THE RIGHTS AND FREEDOMS OF OTHERS OR FOR THE PROTECTION OF PUBLIC INTEREST, NATIONAL SECURITY, PUBLIC HEALTH, OR MORALS	304
§3. DEROGATIONS OF THE PROVISIONS SPECIFIED BY THE CHARTER TO THE SIGNIFICANT MAJORITY OF WORKERS	305
§4. TERRITORIAL APPLICATION OF THE CHARTER	306
Part III. The Supervision of Compliance with the Laws of the European Social Charter	309
Chapter 1. Supervisory Bodies	309
§1. THE COMMITTEE	309
I. Reports Concerning the Ratified Provisions of the Charter	311
II. Reports Concerning Provisions of the Charter that Have not Been Ratified	314
§2. THE GOVERNMENTAL COMMITTEE	316
§3. THE COMMITTEE OF MINISTERS	319
Chapter 2. Adjudicating Collective Complaints	321
§1. INTRODUCTION	321
§2. ENTITIES ENTITLED TO INITIATE COLLECTIVE COMPLAINT PROCEEDINGS	321
§3. EXAMINING THE ADMISSIBILITY OF THE COLLECTIVE COMPLAINT	324

Table of Contents

§4. GROUNDS FOR COLLECTIVE COMPLAINT	325
§5. FORMAL REQUIREMENTS FOR COLLECTIVE COMPLAINT PROCEEDINGS	330
§6. COLLECTIVE COMPLAINT PROCEEDINGS	332
§7. CONCLUSION	333
Selected Bibliography	335
Index	337