

KARIN LUKAS*, CAROLINA BRAGLIA ALOISE BERTAZOLLI,
FRANZISKA PUPETER*****

**FAIR REMUNERATION AND COLLECTIVE
REPRESENTATION OF SOLO-ENTREPRENEURS
IN THE COUNCIL OF EUROPE**

ABSTRACT. 'Solo-entrepreneurs' are self-employed workers who provide their personal labour to earn a livelihood but do not have an employment relationship or employees. Their work is often carried out under flexible arrangements which exhibits precarious features, prompting the need for the study of their protection in the Council of Europe. This paper focuses on their rights to fair remuneration and collective representation under the European Convention on Human Rights (ECHR) and the European Social Charter (ESC). The paper discusses the scope for protection of solo-entrepreneurs through the right to fair remuneration under the ESC and the right to collective representation under both treaties. Based on the interpretation of these two treaties and the relevant case law, the paper concludes that solo-entrepreneurs fall into the same category as workers under both instruments and are covered by the material and personal scope of those rights.

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* Karin Lukas - Senior Visiting Researcher and Professor at the Legal Studies Department, at CEU.
Email: lukask@ceu.edu. ORCID: <<https://orcid.org/0000-0002-4883-1634>>.

** Carolina Braglia Aloise Bertazolli - PhD student at the Legal Studies Department, at CEU.
Email: bertazollic@ceu.edu. ORCID: <<https://orcid.org/0000-0003-3366-2652>>.

*** Franziska Pupeter - PhD student at the Legal Studies Department, at CEU.
Email: pupeterf@ceu.edu. ORCID: <<https://orcid.org/0009-0007-3202-4671>>.

1. Introduction

Globally, the dissolution of traditional forms of employment is marked by two key factors: the blurring of the boundaries between self and dependent employment, and the emergence of digitalisation and work flexibility. Self-employment,¹ including a considerable proportion of false self-employment, is on the rise. Studies show that self-employed workers are a heterogeneous group engaged in different forms of self-employment, ranging from top-level workers to the ‘vulnerable self-employed.’² These self-employed workers, also called solo-entrepreneurs, face multiple challenges relating to pay, social security coverage, training and access to fundamental rights at work.³

The aim of this paper is to clarify the human rights standards applicable to solo-entrepreneurs, to further the research on this category of workers, and to make suggestions to ensure their protection. Research on this group of self-employed persons also covers ‘crowd work’ and ‘platform work’ which have recently attracted much attention.⁴ This includes work provided locally and facilitated by digital platforms such as Uber, Didi, Grab, Deliveroo or Foodora which deliver services and crowd-based work provided globally by the likes of Amazon Mechanical Turk or Clickworker.⁵ Recent developments in self-employment include an increase in platform-mediated work ‘such

¹ The boundaries between self-employment and employment can be blurred. The main difference is that solo-self-employed persons work on their own. However, these self-employed can depend economically on third parties and may require social protection. See Claudia Schubert, ‘Introduction’ in Claudia Schubert (ed), *Economically-dependent Workers* (Bloomsbury Publishing 2022), 1.

² Of the estimated 32 million self-employed workers in the European Union (EU), roughly half — ‘employers’ and ‘stable own-account workers’ — have high-quality jobs. The other half, however, face economic dependence, low work autonomy and financial precarity. Greet Vermeylen, Mathijn Wilkens, Isabella Biletta, Andrea Fromm, Agnès Parent-Thirion and Ricardo Rodriguez Contreras, ‘Exploring Self-Employment in the European Union’, *European Foundation for the Improvement of Living and Working Conditions* (2017), 61.

³ ‘Ensuring Better Social Protection for Self-Employed Workers’, *International Labour Office and Organisation for Economic Co-operation and Development* (2020), 17.

⁴ Frank Bayreuther, ‘Sicherung Einer Fairen Vergütung Und Eines Angemessenen Sozialen Schutzes von (Solo-) Selbständigen, Crowdworkern Und Anderen Plattformbeschäftigten’, *Bundesministerium für Arbeit und Soziales* (2018); Martin Risak, *Fair Working Conditions for Platform Workers: Possible Regulatory Approaches at the EU Level* (Friedrich-Ebert-Stiftung 2018).

⁵ Christina Behrendt, Quynh Nguyen and Uma Rani, ‘Social Protection Systems and the Future of Work: Ensuring Social Security for Digital Platform Workers’ (2019) 72 *International Social Security Review* 17, 18.

as “crowd work”, “gig work” and other forms of on-demand labour.”⁶ Gig workers are those who are employed on a freelance basis, carrying out short-term jobs or contracts for one or more employers.⁷ The gig economy usually includes two forms of work: ‘crowd work and on-demand work through apps.’⁸ Crowd work requires individuals to ‘complete a series of tasks through online platforms,’⁹ whereas the work-on-demand via apps facilitates hiring of conventional labour,¹⁰ such as transport and delivery.¹¹

Digital labour platforms create opportunities for businesses and self-employed workers, as well as improve access to services for consumers. However, new challenges have emerged: it has become increasingly difficult to correctly classify the employment status of platform workers, leading to inadequate labour and social rights protection. Workers experience inequality of bargaining power and varying degrees of control exercised by digital employment platforms, including over working conditions and pay levels. Five-and-a-half-million people in the EU are misclassified as self-employed, although they carry out work with a certain degree of dependency on the platform similar to that of employees.¹²

Platform work is an indicator of the inclusion and exclusion mechanisms of the labour market. Those who have formal access to the labour market and are not entirely dependent on platform work for their livelihood can directly benefit from such services. Those who use these platforms because they cannot access the labour market in a secure way and with formal work arrangements tend to be exploited by the system. This contributes to the precarious nature of the ‘uberisation’ of their work.¹³

Thus, platform work involves both freedom and precariousness, depending on one’s position within the system. What is a flexible tool for some can become a means of exploitation for others. The exploitative element of this type of work needs to be

⁶ ‘Ensuring Better Social Protection for Self-Employed Workers’, (2020), 4.

⁷ Boidurjo Rick Mukhopadhyay and Bibhas K. Mukhopadhyay, *What Is the Gig Economy?* (Tripura Times 2020).

⁸ Valerio De Stefano, ‘The Rise of the «just-in-Time Workforce»: On-Demand Work, Crowdwork and Labour Protection in the «gig-Economy»’, (2016) *Comparative Labor Law & Policy Journal*, 1.

⁹ *Ibid.*

¹⁰ The use of the word ‘traditionally’ translates to the offline type of work.

¹¹ De Stefano, (2016), 1.

¹² ‘Improving Working Conditions in Platform Work’, European Commission (2021).

¹³ Julia Ticona and Alexandra Mateescu, ‘Trusted Strangers: Carework Platforms’ Cultural Entrepreneurship in the on-Demand Economy’ (2018) 20 *New Media & Society* 4384.

systematically addressed, as platform work and precarious self-employment are set to expand in Europe.

The above discussion raises concerns about two rights that solo-entrepreneurs should be entitled to: fair remuneration and collective representation. Fair remuneration allows the worker to lead a decent life, and collective representation fosters a secure working environment by setting fair terms and conditions of work through *inter alia* collective bargaining.

The status of the worker has a direct impact on these rights. One of the main characteristics of solo-entrepreneurs is the flexibility of working hours and place of work. Consequently, their remuneration depends on the number of hours they actually work. Their collective organisation is made difficult by the distance between them and the lack of a common physical workplace. Further, the existence of antitrust laws, which prohibit the conclusion of collective agreements necessary to establish their rights, subverts the possibility of organising.¹⁴ Therefore, using the Council of Europe's human rights standards, this paper will identify the legal obligations that states have towards such workers under European human rights law, and suggest individual and collective approaches to prevent their exploitation.

These developments raise certain fundamental questions: who is a worker under the Council of Europe's legal framework, as interpreted by the ECSR and the ECtHR? What are the standards set by the ECSR and the ECtHR for the rights to fair remuneration and collective representation and which of these protect solo-entrepreneurs? The second question also touches on the discrimination that solo-entrepreneurs may face in relation to their rights, in particular gender discrimination regarding the right to fair remuneration.

This paper has several subsections within the overall focus on the rights of solo-entrepreneurs. The first subsection discusses who is covered by the notion of workers in the Council of Europe, given that the ECHR and the ECSR have different personal scopes. The second subsection analyses the right to fair remuneration, delving into the issue of gender discrimination faced by female solo-entrepreneurs. The ECHR does not feature in this subsection as the right to fair remuneration is not recognised in the Convention. The third subsection examines the right to collective representation under ESC and the ECHR. The conclusion will summarise the findings.

¹⁴ Valerio De Stefano, 'Non-Standard Work and Limits on Freedom of Association: A Human Rights-Based Approach' (2017) 46 *Industrial Law Journal* 185, 193.

2. *Rights of Solo-entrepreneurs*

The right to fair remuneration and the right to collective representation are areas where solo-entrepreneurs lack state protection, since they are not considered as employees and labour law protection is tied to employment status. In this section, we analyse what the states' obligations are in the Council of Europe to ensure that the rights of the solo-entrepreneurs are guaranteed.

2.1. Definition of Workers in the Council of Europe

The world of work has changed dramatically over the past few decades. Women have entered the labour market in greater numbers and the nature of work and employment relationships has changed. Technology has advanced, transforming market demands. However, the legal definition of who a worker is, and what protection they need, has not evolved at the same pace. Changes in the law have not kept pace with the changes in the nature of work. The position of solo-entrepreneurs as workers is legally unclear as it is a new, flexible type of work.

Due to the interpretative task attributed to adjudicatory bodies, we rely on this task to determine whether solo-entrepreneurs are included under the protection of the ECSR and the ECHR¹⁵ since the first research question concerned the meaning of workers in the Council of Europe and whether the protection of these instruments extends to solo-entrepreneurs.

Workers' rights, which are socio-economic rights, are not directly included in the ECHR. Consequently, the Convention does not mention workers. However, the ECtHR understood that the ECHR protects work-related issues through various provisions.¹⁶ Over the years, the ECtHR has expanded its competence to hear cases related to socio-economic rights by the method of interpretation of the positive obligations of states.¹⁷ This interpretive technique extended the Court's jurisprudence

¹⁵ The living instrument doctrine advances that treaties must be interpreted in light of the present-day conditions rather than by the standards of when they were drafted. See for example: *Demir and Baykara v Turkey* Application No 34503/97, Merits and Just Satisfaction, 21 November 2006, §146; *Marangopoulos Foundation for Human Rights (MFHR) v Greece* Complaint No 30/2005, Merits, 06 December 2006, §194.

¹⁶ ECtHR. Factsheet work-related rights. < https://www.echr.coe.int/documents/d/echr/fs_work_eng >.

¹⁷ *Airey v Ireland* Application No. 6289/73, Merits, 09 October 1979, §32; Jean-François Akandji-Kombe, *Positive Obligations under the European Convention on Human Rights: A Guide to the Implementation of the European Convention on Human Rights* (2007), Ingrid Leijten, *Core Socio-Economic Rights and the European Court of Human Rights*

from a merely procedural analysis of the rights in the Convention to a consideration of their social content. In the Court's jurisprudence, rights, such as the freedom of association, have been expanded to include social rights directly. Other rights, such as the rights to housing and health, are included indirectly as social and economic dimensions of certain civil and political rights. Despite their absence in the text of the Convention, the ECtHR has advanced the protection of social rights and has condemned states which do not enforce their own legislation covering these rights. Specifically regarding workers' rights, the European Court has protected aspects of individual labour and social rights as well as collective trade union rights. These cases have dealt with issues like access to work, dismissal, collective bargaining and pension benefits.¹⁸

Despite this expansion in the ECtHR's focus, the Court has not created a definition of workers. It is clear from the jurisprudence that some aspects of work are protected for those in employment relationships.¹⁹ By contrast, an individual's right to join or form trade unions as a self-employed person is not yet explicit from the Court's case law. However, the fact that there are cases discussing the self-employed means that the ECtHR has extended the protection of the Convention beyond individuals with employment status. Nevertheless, as analysed below, this expansion is limited due to the restraints on the Court's competence. Almost a decade later, the ESC came into force. Initially, the ECSR²⁰ had the competence to monitor the Charter, and states had to report on the implementation of social rights. In the 1990s, the Charter underwent two major changes: a Revised European Social Charter (RESC) came into force, and the Protocol for Collective Complaints²¹ was approved, allowing the Committee the competence to hear collective complaints.²² With regard to collective complaints, 16

(CUP 2018), 39-42.

¹⁸ *Guide on the Case-Law of the European Convention on Human Rights: Social Rights*, Council of Europe, August 2022. Leijten, (2018).

¹⁹ *Ibid*, 17-18.

²⁰ Protocol amending the European Social Charter 1991, Council of Europe ETS No 142. According to Article 24(2), the ECSR has the legal mandate to 'assess from a legal standpoint the compliance of national law and practice with the obligations arising from the Charter.'

²¹ Additional Protocol to the European Social Charter Providing for a System of Collective Complaints 1995, Council of Europe ETS No 158.

²² Holly Cullen, 'The Collective Complaints System of the European Social Charter: Interpretative Methods of the European Committee of Social Rights', (2009) 9 *Human Rights Law Review* 61, 61-62. States that have ratified the RESC are bound by these rights, while those that have not are bound by the 1961 Charter (seven out of 42 States).

States have ratified the Protocol.²³ These decisions are legally non-binding, and the Committee of Ministers has the power to impose remedies and monitor compliance.²⁴

Besides the existence of two different versions, the ESC has two relevant caveats: the *à la carte* system and the personal scope of the Charter. In the *à la carte* system, State Parties choose the provisions to which they are bound and ensure compliance.²⁵ In the Charter systems, states must accept a certain minimum number of provisions of the Charter — either from the 1961 document or from the RESC.²⁶ This leads to protection gaps as some States Parties have accepted only the minimum, while a few have accepted all Charter provisions.

The second caveat relates to the personal scope of the Charter. Its Appendix states that the personal scope includes nationals of State Parties, and it extends to foreigners as long as they are ‘nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned.’²⁷ On this, the ECSR had decided that unlawful residents (only) must have their most basic rights protected because of the object and purpose of the Charter, which acts as a human rights instrument protecting all persons on the territory of the concerned State Party. This means that states cannot deny basic rights like clothing, shelter, food, etc. to illegal migrants.²⁸ Therefore, when analysing the provisions of the ESC, the *à la carte* system and the personal scope are relevant to determine the obligations of states in relation to these rights.

Moreover, the ESC does not contain an explicit definition of the term ‘worker’. According to the ECSR, the definition of ‘worker’ does not depend on domestic law. The reason why the ECSR adopted an autonomous concept was to avoid leaving the enforcement of guarantees completely to the discretion of the states.²⁹ Consequently, if self-employed workers, including platform workers, are classified in domestic legislation

²³ Signatures & Ratifications - Social Rights <<https://www.coe.int/en/web/european-social-charter/signatures-ratifications>> accessed 3 December 2023.

²⁴ Andrea Spagnolo, ‘They Are not Enforceable, but States Must Respect Them: An Attempt to Explain the Legal Value of Decisions of the European Committee of Social Rights’, (2022) 7 *European Papers* 1495, 1509.

²⁵ For more information on the *à-la-carte* system, see: ‘Accepted Provisions of the European Social Charter - Social Rights’ <<https://www.coe.int/en/web/european-social-charter/provisions-of-the-charter>> accessed 3 December 2023.

²⁶ States must accept six of the nine articles: Articles 1, 5, 6, 12, 13, 16 and 19 from the 1961 Charter and Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20 from the RESC.

²⁷ Appendix European Social Charter (Revised) 1996, Council of Europe ETS 163.

²⁸ Conference of European Churches (CEC) v the Netherlands Complaint No 90/2013, Merits, 01 July 2014, §§62-76.

²⁹ European Youth Forum (YFJ) v Belgium Complaint No 150/2017, Merits, 08 September 2021, §119.

as entrepreneurs rather than workers, this will not determine whether they are seen as workers under the ESC.

The ESC does not expressly state whether the employment provisions of Part II apply to self-employed workers. However, the ECSR has taken the view that these provisions do apply to self-employed persons, unless the context of the provision limits it to employed persons.³⁰ As explained by Monika Schlachter, ‘unless a limitation is clearly required, the notion of “worker” is interpreted broadly to include anyone performing work; neither their contractual status nor an eventual economic dependence on their customer is determinative for including them in the personal scope of application of a given provision.’³¹ For example, the ECSR has held that Article 3 of the ESC on safe and healthy working conditions applies to all sectors of the economy and to all workers, including the self-employed.³²

Based on these interpretations of the ECtHR and the ECSR, solo-entrepreneurs are protected by the two main treaties of the Council of Europe. This protection is, however, limited. By ECtHR’s interpretation, the protection only covers trade union rights, whereas according to the ECSR, the protection of the ESC is only available in provisions that are not clearly intended to protect employees. The next two subsections discuss the right to fair remuneration and the right to collective representation of solo-entrepreneurs in the ECHR and the ESC.

2.2. The Right to Fair Remuneration

Fair remuneration is a fundamental labour right that guarantees that workers have a safety net of income to support themselves and their families. The discussion on the minimum wage for solo-entrepreneurs is necessary to address unfair working conditions created by unequal bargaining powers. The right to fair remuneration is directly prescribed by the ESC, but not by the ECHR. However, remuneration appears

³⁰ David Harris, *The European Social Charter*, 2nd ed (Brill 2001) at 388 as cited: Article 1§3 concerning employment services and Article 4§4 concerning notice of termination of employment. These provisions clearly do not apply to self-employed persons; Lukas, *The Revised European Social Charter: An Article-by-Article Commentary* (2021), 87.

³¹ Monika Schlachter, ‘The Self-Employed Persons Under the European Social Charter’ in Claudia Schubert (ed.), *Economically-dependent Workers* (2022), 244.

³² Regarding those workers engaged in vulnerable atypical work, casual workers are the ones that work under a fixed-term contract. See Conclusions XIV-2 - Statement of Interpretation - Article 3, European Committee of Social Rights (1998); Appendix European Social Charter (Revised) 1996, Council of Europe ETS 163; Lukas, (2021), 360-361.

in the ECtHR's case law in three instances.³³

By contrast, in the ESC, Article 4 provides for the right to fair remuneration in both versions of the Charter. On the personal scope of the provision, Article 4 uses the English word *workers* and the French word *travailleurs*, and not employee or employé when listing their rights.³⁴ Therefore, according to the ECSR, Article 4 covers all workers, including civil servants and public service employees, migrant workers, seasonal workers and domestic workers.³⁵

As mentioned in the introduction, the ESC functions on an *à la carte* system, allowing states to choose which articles they want to accept. Article 4 is a widely accepted provision.³⁶ The right to fair remuneration provision in Article 4(1) establishes the right to a remuneration that ensures a decent standard of living for workers and their families. According to the ECSR, the concept of a 'decent standard' of living goes beyond the basic material necessities such as food, clothing and housing, and includes the resources necessary to participate in cultural, educational and social activities.³⁷ In practical terms, the ECSR's interpretation of fair remuneration is that the minimum or lowest net remuneration paid in the labour market should not fall below 60% of the average net national wage. This assessment is therefore based on net amounts, after deduction of taxes and social security contributions from gross wages.³⁸ In any case, the wage must

³³ The first is the reduction of salaries due to austerity measures. The focus is not the right to remuneration, but on the extent to which the state reduces public servants' earnings. The second is when the Court assesses the existence of employment relationships and whether that leads to trade union rights. One of the elements addressed by the ECtHR is the remuneration paid by the employer to determine this relationship. In both cases, solo-entrepreneurs are not a protected group as they are neither public servants nor employees. The third instance covers cases on minimum subsistence levels focusing on extreme forms of poverty and deprivation. See: Guide on the Case-Law of the European Convention on Human Rights: Social Rights, Council of Europe, August 2022 at 27; *Sindicatul "Păstorul Cel Bun" v Romania* Application No 2330/09, Merits and Just Satisfaction, 09 July 2013, §§141-142; and *M.S.S v Belgium and Greece* Application No 30696/09, Merits and Just Satisfaction, 21 January 2011; See also Leijten, (2018), 65.

³⁴ In the Council of Europe, English and French are the two official languages for all treaties.

³⁵ Conclusions 2014 - Slovenia - Article 4.1, European Committee of Social Rights (2014).

³⁶ Acceptance of Provisions of the Revised European Social Charter (1996)' < <https://rm.coe.int/country-by-country-table-of-accepted-provisions/1680630742> > accessed 3 December 2023.

³⁷ Conclusions 2010 - Statement of Interpretation - Article 4.1, European Committee of Social Rights (2010).

³⁸ This benchmark was established in Conclusions XIV-2 - Statement of Interpretation - Article 4-1, European Committee of Social Rights (1998); Where net figures are difficult to establish, it is for the State Party concerned to provide proper figures or estimates. See also Lukas, (2021) at 75-93, 80; Emmanuelle Mazuyer, Article 4 Revised European Social Charter, in Edoardo Ales, Mark Bell, Olaf Deinert, and Sophie Robin-Olivier (eds), *International*

be clearly above the poverty line of the country, regardless of the percentage.³⁹

The benchmark developed by the ECSR applies to solo-entrepreneurs as they fall within the scope of Article 4(1). Therefore, a State Party is in contravention of the European Social Charter if the remuneration of solo-entrepreneurs is 60% below the net national average.

Finally, Article 4(3) enshrines the right to equal pay for equal work or work of equal value for women and men. This provision has been widely accepted by the states.⁴⁰ The Committee's extensive case law on this right covers several aspects. First, equal pay must be expressly provided for in national legislation.⁴¹ Second, it must cover all the elements of the payment, including wages and all other benefits, whether cash or in kind, paid directly or indirectly by the employer to the worker,⁴² and it applies to both full-time and part-time employees.⁴³ Third, it must be included in wage-setting processes either through legislation or collective bargaining, and violations must be sanctioned, for example, by eliminating discriminatory clauses in collective agreements.⁴⁴ Fourth, states must also have provisions in place to allow for pay comparisons across companies to enhance pay transparency⁴⁵ and take adequate measures to reduce and eventually close the gender pay gap.⁴⁶ According to the Committee, national law must establish effective remedies in cases of pay discrimination. These effective remedies include the right to appeal to a court,⁴⁷ a shift

and European Labour Law: a Commentary (2018), 273ff.

³⁹ Conclusions XX-3 - Greece - Article 4.1, European Committee of Social Rights (2014). If the lowest wage lies between 60 per cent and 50 per cent, the State Party must provide detailed evidence that the lowest wage is sufficient to provide for a decent standard of living. This will consider earnings-related benefits as well as the costs of health care, education, mobility etc. See Conclusions 2018 - Lithuania - Article 4-1, European Committee of Social Rights (2018).

⁴⁰ 38 countries accepted the provision: 5 countries under the 1961 Charter and 33 under the RESC.

⁴¹ Conclusions XV-2 - Slovak Republic - Article 4.3, European Committee of Social Rights (2001); Conclusions 2014 - Georgia - Article 4.3, European Committee of Social Rights (2014).

⁴² Conclusions I - Statement of Interpretation - Article 4.3, European Committee of Social Rights (1967).

⁴³ Conclusions XVI-2 - Portugal - Article 4.3, European Committee of Social Rights (2004).

⁴⁴ Conclusions XII-5 - Statement of Interpretation - Article 1.1, 4.3, 1 Additional Protocol, European Committee of Social Rights (1995).

⁴⁵ Conclusions 2012 - Statement of Interpretation - Article 20, European Committee of Social Rights (2012); Conclusions 2014 - Romania - Article 4.3, European Committee of Social Rights (2014).

⁴⁶ Conclusions XVIII-2 - Czech Republic - Article 4.3, European Committee of Social Rights (2006).

⁴⁷ Conclusions I - Statement of Interpretation - Article 4.3, European Committee of Social Rights (1967).

in the burden of proof in favour of the plaintiff,⁴⁸ adequate, proportionate and sufficiently dissuasive remedies,⁴⁹ and protection against dismissal or other retaliatory action by the employer against an employee who has taken legal action against the dismissal.⁵⁰

Studies on platform work indicate that remuneration disparities between women and men exist.⁵¹ Women face higher precariousness because of care work, which is also due to 'more precarious employment backgrounds.'⁵² Because of higher care responsibilities, women turn to atypical employment, in particular to part-time and self-employment, for its spatial and temporal flexibility. Studies on self-employment highlight 'the gender-based dynamic underlying the constrained choice of atypical employment.'⁵³ This multitasking of care and platform work limits the time windows and job opportunities they can seize.⁵⁴ Therefore, platform work and crowd work, 'can serve as a magnifying glass to study how gender inequalities are reproduced in the digital world of work.'⁵⁵ While the digital work model can be characterised as precarious, not all platform or crowd workers can necessarily be identified as being in a precarious work situation.⁵⁶ Precarity risks are lower for men and women where there are stronger social security systems, reflecting the lower commodification of labour. However, there are gender disparities in pay levels that defy objective explanations and consequently amount to gender discrimination.⁵⁷

⁴⁸ Conclusions 2014 - Andorra - Article 4.1, European Committee of Social Rights (2014).

⁴⁹ Conclusions XII-5 - Statement of Interpretation - Article 1.1, 4.3, 1 Additional Protocol, European Committee of Social Rights (1995).

⁵⁰ Conclusions XIX-3 - Iceland - Article 4.3, European Committee of Social Rights (2010); University Women of Europe (UWE) v Bulgaria Complaint No 125/2016, Merits, 06 December 2019, §138.

⁵¹ Christine Gerber, 'Gender and Precarity in Platform Work: Old Inequalities in the New World of Work' (2022) 73 *New Technology, Work and Employment* 206, 207.

⁵² *Ibid.*, 209.

⁵³ *Ibid.*, 208. The authors points out that in Germany, one-fifth of women in this type of employment lists 'care responsibilities [...]' as a motivation for pursuing self-employment.' The number of women in such arrangements contrasts the mere 2.5% of men choosing self-employment due to care responsibilities.

⁵⁴ Abi Adams-Prassl and Janine Berg, *When Home Affects Pay: An Analysis of the Gender Pay Gap Among Crowdworkers* (SSRN 2017).

⁵⁵ Christine Gerber, 'Gender and Precarity in Platform Work: Old Inequalities in the New World of Work' (2022) 73 *New Technology, Work and Employment* 206, 226.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

Further, a 2018 study conducted by the European Foundation for the Improvement of Living and Working Conditions, showed that there was '[p]otential for discrimination through algorithms and ratings and [there was a] lack of mechanisms to address this stigma of platform work.'⁵⁸ Once a plaintiff submits prima facie evidence of discrimination, it is for the platform to prove that the correlations it relies on to explain the difference are not discriminatory. This means that the data the algorithm uses must be free of discriminatory content or assumptions.⁵⁹ As Erika Kovacs notes, platforms have the necessary information about workers' profiles, pay and ratings, and are therefore in the best position to counteract discrimination.⁶⁰

This analysis of Articles 4(1) and 4(3) of the ESC leads to a number of conclusions. First, the personal scope of these provisions encompasses solo-entrepreneurs. Second, the material scope of the provision is of extreme relevance to this category of workers. Article 4(3) fosters gender equality in the workplace and the Committee has developed a robust set of standards to ensure such equality in this area.

Algorithmic bias can lead to gender discrimination in platform work. On this topic, the ECSR has noted that where seemingly neutral legislation leads to disproportionate and unjustified impact on a particular group of persons, this amounts to indirect discrimination and is in breach of the ESC.⁶¹ If this rule is applied by analogy to the situation of platform workers, a seemingly neutral algorithm that has the effect of discriminating against women in terms of wages would be in breach of Article 4(3). States would then be required to put in place regulations to avoid possible indirect discrimination through the algorithms.

In conclusion, the standards set by the Committee in relation to Articles 4(1) and 4(3) are applicable to solo-entrepreneurs by virtue of the personal and material scope of the provisions. The Committee has delivered explicit conclusions or decisions on the situation of solo-entrepreneurs, asking states to provide information on their

⁵⁸ Willem Pieter de Groen, Zachary Kilhoffer, Karolien Lenaerts and Irene Mandl, 'Employment and Working Conditions of Selected Types of Platform Work', *European Foundation for the Improvement of Living and Working Conditions* (2018), 36.

⁵⁹ For application of this issue in the EU context see Miriam Kullmann, 'Platform Work, Algorithmic Decision-Making, and EU Gender Equality Law', 34 *International Journal of Comparative Labour Law and Industrial Relations* 1 (2018), 19.

⁶⁰ Erika Kovacs, 'Gender Equality in Virtual Work II.: Regulatory Suggestions', 2 *Hungarian Labour Law E-Journal* 1 (2018), 10.

⁶¹ Associazione sindacale 'La Voce dei Giusti' v Italy Complaint No 105/2014, Merits, 18 October 2016, §§63–81.

situation with regard to Article 4(1) in the 2022 monitoring cycle.⁶² The 2022 reports under the Revised European Social Charter demonstrate the growing importance of discussing these rights. Thirty-five countries were required to report on their measures to protect labour rights, such as the rights to fair remuneration and collective representation. The ECSR requested 19 countries⁶³ to report on their efforts to ensure fair remuneration in the platform economy. The ECSR, based on these reports, recognized the right to fair remuneration of platform and gig workers. Due to misclassification as self-employed and the absence of labour protection, these workers are in a precarious situation.⁶⁴ The ECSR asked states for further information on how they protect this category of workers.

2.3. The Right to Collective Representation

The right to collective representation of solo-entrepreneurs has proved controversial due to the nature of the work and antitrust laws.⁶⁵ The ESC protects the right to collective representation through two rights: Article 5 concerns the right to organise and Article 6 the right to collective bargaining. Both are considered core provisions of the Charter and states have to accept them mandatorily, which explains the high number of ratifications.

Article 5 guarantees freedom of association, and the right to form and join trade unions and employers' organisations. It covers not only workers in active employment relationships, but also those exercising rights that result from work, such as pensioners or unemployed persons.⁶⁶ Regarding the personal scope, the provision uses the word 'workers' instead of employees, indicating that this protection can be extended to solo-entrepreneurs.

The state must take adequate legislative or other measures to guarantee the exercise of the right to organise and to protect the workers' organisations from employer

⁶² See for example European Committee of Social Rights Conclusions 2022 on Austria (2023), 12-13.

⁶³ The countries are Albania, Andorra, Austria, Azerbaijan, Belgium, France, Germany, Greece, Ireland, Italy, Lithuania, Luxembourg, Malta, Portugal, Romania, Serbia, the Slovak Republic, Spain, and the United Kingdom.

⁶⁴ Press briefing elements, Conclusions 2022, European Committee of Social Rights (2023).

⁶⁵ Valerio De Stefano, 'Non-Standard Work and Limits on Freedom of Association: A Human Rights-Based Approach' (2017) 46 *Industrial Law Journal* 185, 192-193.

⁶⁶ Conclusions XVII-1 - Poland - Article 5, European Committee of Social Rights (2005); Digest of the Case Law of the European Committee of Social Rights, Council of Europe, June 2022, 82.

interference.⁶⁷ This also means that the state should ensure that there are no laws that impede the right of workers to organise or allow the employers to interfere.⁶⁸

A restriction on the freedom to organise is compatible with the ESC only if it satisfies the conditions of Article G.⁶⁹ This provision requires that any restriction must be prescribed by law, pursue a legitimate purpose and be necessary in a democratic society for the achievement of that purpose.

Taking into account all the elements discussed above, solo-entrepreneurs have the right to organise. Nevertheless, they face several challenges in this respect, as analysed by, among others, Valerio De Stefano.⁷⁰ First, there are difficulties in organising people who work in different jobs and in different geographical locations. Second, people on temporary contracts are more likely to be afraid of organising given the precariousness of contract renewals. Third, in some countries, antitrust laws do not allow solo-entrepreneurs to organise, an issue under discussion in the EU.⁷¹ The case law of the ECSR has established that a total ban on the right to organise is contrary to Article G on permissible state restrictions and would not be a proportionate measure under the rule of the provision.⁷² In a report on the situation in Romania, an NGO submitted that the list of workers entitled to organise is restrictive and self-employed individuals were not protected by national law. The Committee has requested clarification from the government.⁷³ According to the ECSR's longstanding case law, a complete ban on the right to organise for solo-entrepreneurs is contrary to the ESC and would lead to a violation of Article 5.

Another aspect of the right to collective representation is present in Article 6 of the ESC that protects the right to collective bargaining.⁷⁴ Article 6 has four paragraphs

⁶⁷ Conclusions I - Statement of Interpretation - Article 5, European Committee of Social Rights (1967).

⁶⁸ *Ibid.*

⁶⁹ Conclusions XX-3 - United Kingdom - Article 5, European Committee of Social Rights (2014).

⁷⁰ Valerio De Stefano, 'Non-Standard Work and Limits on Freedom of Association: A Human Rights-Based Approach' (2017) 46 *Industrial Law Journal* 185, 190-193.

⁷¹ *Ibid.*

⁷² *Confederazione Generale Italiana del Lavoro (CGIL) v Italy*, Complaint No 140/2016, Merits, 22 January 2019 §90.

⁷³ European Committee of Social Rights Conclusions 2022 on Romania (2023) at 22.

⁷⁴ Regarding Article 6, five out of the seven countries in the 1961 Charter accepted the whole provision, and the remaining two only rejected Article 6(4). In addition, under the RESC, 32 states accepted the whole provision, two did not accept it at all and one state accept the first three paragraphs and rejected Article 6(4).

listing the aspects of the right to collective bargaining. Nevertheless, the only paragraph applicable to solo-entrepreneurs is Article 6(2). This is because the personal scope of the other paragraphs is directed at employees.⁷⁵ Article 6(2) focuses on organisations of employers and workers. This paragraph has a high level of acceptance among states,⁷⁶ which means that there is almost a total consensus on the high relevance of this right.

A relevant characteristic of the practice of collective bargaining is that it must be free and voluntary, and the state must ensure that workers are protected, and take positive measures to protect them.⁷⁷ This right is not absolute in nature, states can restrict a trade union's rights if justifiable and proportionate.⁷⁸

The ECSR has clarified the personal scope of Article 6(2). The Committee explicitly considers a general prohibition of collective bargaining for self-employed persons as too excessive if they have 'no substantial influence on their contractual conditions at the individual negotiation level.'⁷⁹ This interpretation was confirmed in the case of *Irish Congress of Trade Unions v. Ireland*.⁸⁰

The Irish Congress of Trade Unions case concerned self-employed voice-over actors who were prohibited from collectively bargaining because they were subject to competition law. The Competition Authority found, in 2004, that a collective agreement between the trade union EQUITY/SIPTU (representing voice-over actors) and the Institute of Advertising Practitioners was in breach of the Competition Act 2002 on the exclusive ground that each actor was a 'business undertaking.' It was

⁷⁵ The other paragraphs dictate the need for consultation between employers and workers (paragraph 1), mechanisms to settle labour disputes (paragraph 3) and collective action in case of conflict between the two groups which includes the right to strike (paragraph 4).

⁷⁶ All states under the 1961 Charter and 33 states in the RESC accepted Article 6(2).

⁷⁷ Lukas, (2021) at 108; Digest of the Case Law of the European Committee of Social Rights, Council of Europe, June 2022 at 87.

⁷⁸ Associazione nazionale sindacato professionisti sanitari della funzione infermieristica - Nursing Up v Italy Complaint No 169/2018, Merits, 19 October 2022, §70 and §76.

⁷⁹ European Organisation of Military Associations (EUROMIL) v Ireland, Complaint No 112/2014, Merits, 12 September 2017, §94; Irish Congress of Trade Unions v Ireland Complaint No 123/2016, Merits, 12 September 2018, §40; The right to collective bargaining can only be restricted by law by the States Parties in the case when a legitimate aim is pursued and this restriction is considered to be necessary in a democratic society, see as mentioned in *ibid.*, §36; European Federation of Police v Ireland Complaint No 83/2012, Admissibility and Merits, 02 December 2013, §159; European Council of Police Trade Unions (CESP) v France Complaint No 101/2013, Merits, 27 January 2016, §118.

⁸⁰ Irish Congress of Trade Unions v Ireland Complaint No 123/2016, Merits, 12 September 2018.

unlawful to agree to fix prices for the sale of their services.⁸¹

Prior to the ECSR decision, Ireland passed an Amendment to the Act in 2017, which introduced a limited exemption allowing for three categories of self-employed workers — voiceover actors, session musicians, and freelance journalists — to bargain collectively on working conditions and terms of employment, including rates of pay. The Act also created a mechanism whereby trade unions representing certain categories of self-employed workers (false self-employed workers and fully dependent self-employed workers) could apply to a minister to allow them to bargain collectively.⁸²

Because of the two different time periods of the Act, the ECSR analysed them separately. Regarding the situation before the legislative change, Ireland breached the ESC. Without discussing the concept of ‘false self-employed’ or ‘fully dependent self-employed workers,’ the Committee found that this group of workers could not be predominantly characterised as genuinely independent self-employed persons. They did not meet all or most of the criteria, such as having several clients, the authority to hire staff, and to make strategic decisions on how to run their business. Consequently, denying them the right to collective bargaining led to the lack of influence over their payment conditions.⁸³

As for the period after the amendment of 2017, the ECSR emphasised that this mechanism must take into account its interpretation of Article 6(2). Any restrictions on the right of self-employed workers to bargain collectively must respect the conditions set out in Article G. Self-employed workers who have no substantial influence on the content of their contractual conditions must therefore be given the right to bargain collectively.⁸⁴

This decision clarifies that the right to collective representation for those who

⁸¹ *Ibid*, 45.

⁸² *Ibid*, §§104-108.

⁸³ *Ibid*, §99; *Rombouts, ICTU v. Ireland: Expanding the Scope of Self-Employed Workers Entitled to Collective Bargaining Rights in Relation to Competition Law Prohibitions* (2019) 5 International Labor Rights Case Law 17, 21; Countouris and De Stefano, *New Trade Union Strategies for New Forms of Employment*, European Trade Union Confederation (2019), §§53-54.

⁸⁴ *Irish Congress of Trade Unions v Ireland Complaint No 123/2016, Merits*, 12 September 2018, §111; However, see the dissenting opinion by Barbara Kresal and Petros Stangos. They considered the amendments introduced by Ireland still too restrictive, given the importance of the right to collective bargaining for all workers, including the self-employed. See also Barbara Kresal, ‘Collective Bargaining for Platform Workers and the European Social Charter’, in José Maria Miranda Boto and Elisabeth Brameshuber (eds), *Collective Bargaining and the Gig Economy a Traditional Tool for New Business Models* (2022), 71.

are not genuinely independent self-employed on the basis of the criteria above is crucial. In this context, Bas Rombouts notes that the right to collective bargaining is essential for workers who fall outside the formal definition of ‘dependent worker’ as this puts them at a disadvantage in setting the terms and conditions of their employment relations.^{85 86}

The importance of the right to collective bargaining for self-employed persons was already underscored by the ECSR in 2018 under the reporting mechanism since it requested the governments to submit information on whether they ensure this right. However, most states did not provide any information on the right of self-employed individuals under Article 6(2) in the 2022 reporting cycle. Two countries stand out in this reporting cycle. On the one hand, Poland changed its law to allow self-employed persons to bargain collectively.⁸⁷ On the other hand, Germany put in place legislation that is ‘overly restrictive’ of this right.⁸⁸ In both cases, the Committee requested further information on the implementation of these amendments.

Unlike the ESC, the ECHR does not contain an explicit right to collective bargaining. The ECHR provides for the freedom of assembly and association under Article 11, stating that this freedom belongs to ‘everyone.’ The European Court has extended the freedom of association to self-employed persons.⁸⁹ Trade union freedom is not an independent right, but a specific aspect of freedom of association.⁹⁰ Trade union freedom includes the right of its members to be heard in order to protect their interests but does not guarantee them any particular kind of treatment by the state. However, it does require the national law to enable trade unions ‘to strive for the protection of their members’ interests.⁹¹ Therefore, the personal scope of Article 11

⁸⁵ Bas Rombouts, ICTU v. Ireland: Expanding the Scope of Self-Employed Workers Entitled to Collective Bargaining Rights in Relation to Competition Law Prohibitions (2019) 5 *International Labor Rights Case Law* 17, 22.

⁸⁶ Similarly, Schlachter notes that the economic dependence is crucial in granting collective bargaining rights to self-employed persons since they do not have the power to change their precarious working conditions individually. Monika Schlachter, ‘The Self-Employed Persons Under the European Social Charter’ in Claudia Schubert (ed), *Economically-dependent Workers* (2022), 249-250.

⁸⁷ European Committee of Social Rights Conclusions XXII-3 (2022) on Poland (2023), 21.

⁸⁸ European Committee of Social Rights Conclusions XXII-3 (2022) on Germany (2023), 27.

⁸⁹ *Vöðdur Ólafsson v Iceland* Application No 20161/06, Merits and Just Satisfaction, 27 April 2010, §34 and §83. It also notes that Article 11 ‘does not exclude any occupational group from the right of association’; *Sindicatul “Păstorul Cel Bun” v Romania*, 09 July 2013, §145.

⁹⁰ *National Union of Belgian Police v Belgium* Application No 4464/70, Merits, 27 October 1975, §38.

⁹¹ *Sindicatul “Păstorul Cel Bun” v Romania*, 09 July 2013, §134.

includes solo-entrepreneurs, including their trade union rights.

Despite not being explicitly codified in the ECHR, in *Demir and Baykara v. Turkey*, the Grand Chamber held that the right to collective bargaining was an essential element of the freedom of association, having considered the ‘perceptive evolution in such matters.’^{92 93} The ECtHR observed in this case that the collective bargaining process and the resulting collective agreement were for the trade union ‘essential means to promote and secure the interests of its members.’⁹⁴ The lack of legislation in line with the ILO conventions, and the Court of Cassation’s decision ‘based on that absence, with the resulting de facto annulment *ex tunc* of the collective agreement in question, constituted an undue interference with the applicants’ trade-union freedom as protected by Article 11 of the Convention.’⁹⁵ In the case of solo-entrepreneurs, the right to form a trade union means that their obligations must largely correspond to those obligations typically found in an employment relationship in order for Article 11 of the ECHR to apply. The existence of an employment relationship depends on the performance of work and remuneration. However, it remains unclear which facts relating to the performance of work should be considered.⁹⁶

In interpreting Article 11, the ECtHR looks at elements of international law, their interpretation by competent organs, and the practice of European States reflecting their common values.⁹⁷ This is one of the Court’s interpretative techniques used over the years, and state consensus plays a crucial role when the Court expands the Convention’s protection.

The ECtHR has usually given states a wide margin of appreciation for the nature and scope of Article 11, including for self-employed workers. In *Manole and “Romanian*

⁹² *Demir and Baykara v Turkey*, 21 November 2006, §153.

⁹³ *Wilson, National Union of Journalists and Others v the United Kingdom* Applications Nos 30668/96, 30671/96 and 30678/96, Merits and Just Satisfaction, 02 July 2002, §44; *Swedish Engine Drivers’ Union v Sweden* Application No 5614/72, Merits, 06 February 1976, §39; *Gustafsson v Sweden* Application No 15573/89, Merits and Just Satisfaction, 25 April 1996, §45; *Francesco Schettini and Others v Italy* Application No 29529/95, Admissibility, 9 November 2000.

⁹⁴ *Demir and Baykara v Turkey*, 21 November 2006, §157.

⁹⁵ *Ibid.*

⁹⁶ Elisabeth Brameshuber, ‘(A Fundamental Right to) Collective Bargaining for Economically Dependent Employee-like Workers’, in José Maria Miranda Boto and Elisabeth Brameshuber (eds), *Collective Bargaining and the Gig Economy: A traditional tool for new business models* (2022), 231.

⁹⁷ *Demir and Baykara v Turkey*, 21 November 2006, §85; Schabas, *The European Convention on Human Rights: A Commentary* (2015), 507.

Farmers Direct” v. Romania,⁹⁸ the Romanian courts refused to register a union of self-employed farmers as under the existent legal provision because only employees and public servants were entitled to form trade unions.⁹⁹ The ECtHR held that there had been no violation of Article 11, finding that the refusal to register the applicant union had not exceeded Romania’s margin of appreciation in determining how they secured the right to freedom of association for self-employed farmers. Taking into consideration the relevant international instruments, particularly the Conventions of the International Labour Organization (ILO), the ECtHR found that farmers’ organisations enjoyed essential rights under the Romanian legislation. This enabled them to defend the interests of the members in dealing with public authorities by establishing trade associations, even if they were not technically trade unions.¹⁰⁰ The ECtHR cited the ILO Global Report on the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, which emphasised that all workers, regardless of their employment status, should enjoy the right to establish and join trade unions, especially for ‘vulnerable categories of workers’¹⁰¹ However, the Court said that there were ‘no sufficient reasons [...] that the exclusion of self-employed farmers from the right to form trade unions amounts to a breach of Article 11 of the Convention.’¹⁰²

In conclusion, the ECtHR recognises in Article 11 the essential levels of representation to protect the interests of trade union members. States enjoy a wide margin of appreciation in interfering with Article 11 because of ‘the sensitive character of the social and political issues involved in achieving a proper balance between the competing interests and the wide degree of divergence between the domestic systems in this field.’¹⁰³ It is difficult to predict with certainty how a case of representation of self-employed workers, including that of solo-entrepreneurs, would be decided by the ECtHR. Nevertheless, the case law makes it evident that there must be a minimum level of collective representation, either through the establishment of a trade union or

⁹⁸ Manole and “Romanian Farmers Direct” v Romania Application No 46551/06, Merits, 16 June 2015.

⁹⁹ *Ibid.*, §11.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*, §25.

¹⁰² *Ibid.*, §71. Although the Court noted the observations of the ILO in the Applications of Conventions and Recommendations for the implementation of ILO Convention no. 87 in Romania and the discrepancies identified at the ILO level, the wide margin of appreciation granted to states led to a non-violation finding.

¹⁰³ Wilson, National Union of Journalists and Others v the United Kingdom, 02 July 2002, §44; Sørensen and Rasmussen v Denmark Applications Nos 52562/99 and 52620/99, Merits and Just Satisfaction, 11 January 2006, §58.

other forms of collective representation. This minimum level is determined by the ECtHR on a case-by-case basis. However, the analysis of the jurisprudence of the Court to date indicates that only extreme forms of state interference will lead to a violation of Article 11 of the Convention.

3. *Conclusion*

The aim of this paper was to identify the human rights standards applicable to solo-entrepreneurs in the Council of Europe. It focused on the European Convention on Human Rights and the European Social Charter as the main European human rights treaties. Solo-entrepreneurs are self-employed workers who do not hire others and are independent of employers as they do not have an employment relationship. Yet, they are economically dependent on their clients if they are largely, or even exclusively, engaged in crowd work, work on demand via apps, gig work or platform work.

The cardinal issue here is that the binary nature of labour law, limited to employers and employees, leaves an increasingly large group of persons working in precarious conditions without its protection. Given the continuing trend towards flexible working arrangements it is necessary to reassess the concept of work and move beyond the doctrinal confines of traditional employment relationships.¹⁰⁴ Countouris and De Stefano suggest a definition of ‘personal work’ as human activity or its product that is ‘predominantly the result of a person’s own labour.’¹⁰⁵ In a broad sense, this definition would include solo-entrepreneurs within the ambit of labour law protection, ‘understood as including both individual employment law, collective labour rights, and equality law.’¹⁰⁶

The second question focused on the rights to fair remuneration and the right to collective representation. As for the right to fair remuneration, only the ECSR was analysed, as the ECtHR has not adjudicated on this right. Article 4 of the ESC prescribes the right to fair remuneration, which focuses on workers in a broad sense. Article 4(1)

¹⁰⁴ Sandra Fredman, ‘Pasts and Futures: EU Equality Law’, in Alan Bogg, Cathryn Costello, and A.C.L. Davies (eds), *Research Handbook on Eu Labour Law* (2016), 397.

¹⁰⁵ Nicola Countouris and Valerio De Stefano, ‘The Future Concept of Work’ in Kalina Arabadjieva, Nicola Countouris, Bianca Luna Fabris and Wouter Zwysen (eds), *Transformative ideas – ensuring a just share of progress for all* (2023), 98.

¹⁰⁶ *Ibid.*

ensures right to a decent life and Article 4(3) prohibits discrimination based on gender.

The standards developed by the ECSR under these rights are fully applicable to solo-entrepreneurs. With regard to Article 4(1), the ECSR has established that the lowest remuneration cannot be less than 60% of the average net national wage. It must be above the poverty line in all states. In case the wage is over 50% but below 60%, states must prove that the amount is sufficient to lead a decent life. Article 4(3) is of great importance for female solo-entrepreneurs in view of discriminatory behaviour. Women face a higher risk of precariousness due to their care responsibilities at home. In addition, seemingly neutral platform algorithms can affect women disproportionality in relation to their wages. The ECSR may be called upon to decide on both of these issues once cases concerning solo-entrepreneurs are submitted.

The right to collective representation is enshrined both in the ESC and the ECHR. First, the ESC has dedicated two provisions for this right: Articles 5 and 6(2). Additionally, both provisions include the term ‘workers,’ which means, as explained earlier, that solo-entrepreneurs fall within their personal scope. Article 5 relates to freedom of association and trade unions. States must guarantee the right to organise, and laws cannot interfere with this right without complying with the Charter’s limitation clause in Article G. The ECSR does not allow for a total ban, but solo-entrepreneurs face difficulties in organising due to antitrust laws. Article 6(2) enshrines the right to collective bargaining, and here, states have a wider margin of appreciation to restrict the right, but they cannot impose unlimited and unjustified restrictions. The right to collective bargaining is the only right that the ECSR has decided on with regards self-employed persons.

The ECHR does not directly provide for the right to collective bargaining. However, the ECtHR has recognised this right in Article 11 as an essential element of freedom of association. Based on the case law, states have a wide margin of appreciation, however, they must ensure some form of association, even if it is not through a trade union. The ECtHR expresses its standards on a case-by-case basis, and so far, no judgment on the collective representation of solo-entrepreneurs has been rendered, thus leaving the content of the right and the corresponding state obligations towards solo-entrepreneurs undetermined.

Thus, although the personal scope of the ESC and the ECHR protects solo-entrepreneurs, only the ECSR has had the opportunity to apply the protection of the ESC to the precarious situation of solo-entrepreneurs. It remains to be seen whether the ECHR’s protection will be triggered as well, which would be urgently needed given the vulnerable situation of this group in Europe.