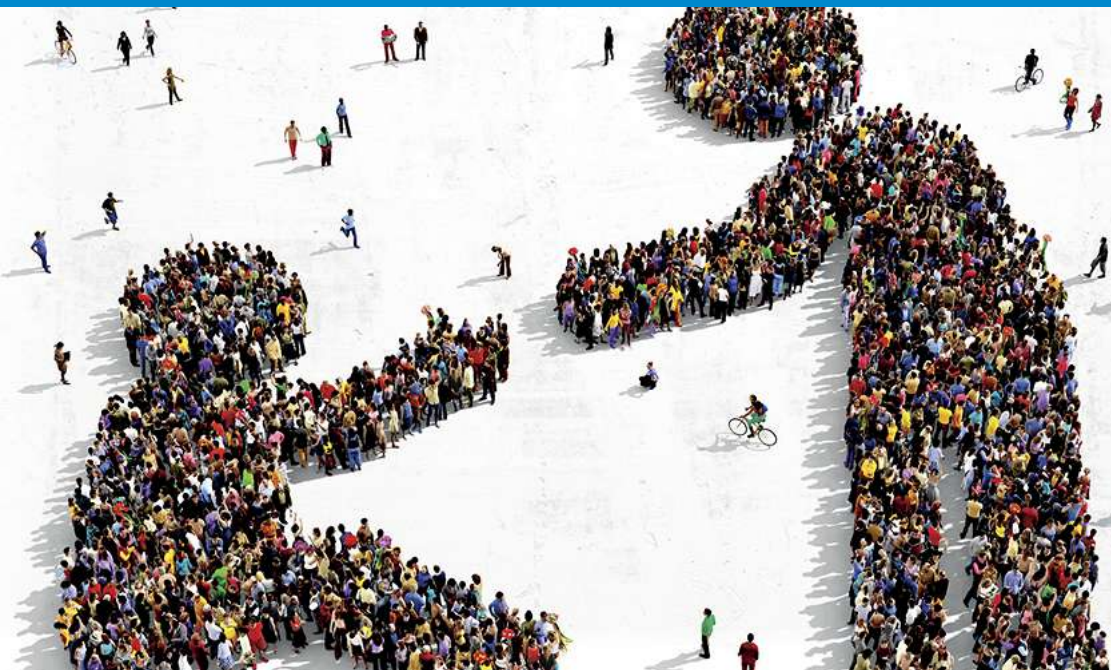


# IMPROVING THE PROTECTION OF SOCIAL RIGHTS IN EUROPE



## VOLUME I

Analysis of the legal framework  
of the Council of Europe for the protection  
of social rights in Europe

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

# **IMPROVING THE PROTECTION OF SOCIAL RIGHTS IN EUROPE**

## **VOLUME I**

### **ANALYSIS OF THE LEGAL FRAMEWORK OF THE COUNCIL OF EUROPE FOR THE PROTECTION OF SOCIAL RIGHTS IN EUROPE**

**adopted by the CDDH at its 89<sup>th</sup> meeting  
(19–22 June 2018)**

**Council of Europe**

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**Améliorer la protection des  
droits sociaux en Europe**

**VOLUME I - Analyse du cadre juridique du  
Conseil de l'Europe de la protection des droits  
sociaux en Europe**

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# Preface



Since the adoption of the Council of Europe's Statute in 1949, social rights have been at the core of our Organisation's aims. 70 years later, at its 129<sup>th</sup> Session (Helsinki, May 2019), the Committee of Ministers of the Council of Europe "reaffirmed the importance of social rights across the continent", acknowledging that social justice is an indicator of a healthy democracy. Where social rights are disregarded, the link between people and elected representatives erodes. That is why the increased inequality we face today is a major challenge for Europe.

The publication of the present Steering Committee for Human Rights (CDDH) report on social rights is therefore particularly opportune.

The CDDH has drawn up a sound analysis of the Council of Europe legal framework for the protection of social rights. It has also identified good practices and proposals with a view to improving the implementation of social rights in Europe. This includes ideas to facilitate the relationship between the treaty system of the European Social Charter with other European or global instruments for the protection of social rights.

At the initiative of the Committee of Ministers' French Presidency, governments have already started their reflection on possible measures to improve the protection of social rights in Europe and for the better functioning of the treaty system of the Charter. I welcome this.

**The protection and promotion of social rights constitute a continuing challenge for our societies, and I hope that the Council of Europe and each of its member states will continue to co-operate more closely in this area so that the improvements proposed in this report become a reality.**

A handwritten signature in blue ink, consisting of a stylized 'T' followed by a long horizontal line.

**Thorbjørn Jagland  
Secretary General of the Council of Europe  
Strasbourg, 5 September 2019**

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## **EXECUTIVE SUMMARY**

**1. The present report has been drawn up following the mandate given by the Committee of Ministers to the Steering Committee for Human Rights (CDDH) to elaborate an “analysis of the legal framework of the Council of Europe for the protection of social rights in Europe”.**

**2. Following an Introduction, the Analysis describes the legal framework of the Council of Europe for the protection of social rights, both by the European Social Charter (the (revised) Charter<sup>1</sup>) and by the European Convention on Human Rights (the Convention) (part I). It then gives an overview over the Council of Europe’s further action for social rights taken by the Secretary General, the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities, the Commissioner for Human Rights and the Conference of INGOs (part II). Furthermore, as a number of non-Council of Europe actors can equally adopt measures which concern or have an impact on the protection of social rights within the Council of Europe, short consideration is also given to actions outside the Council, taken by the European Union (EU), other international instruments and organisations or international workers and employers’ organisations concerning the social rights protected within this organisation (part III). Finally, some conclusive remarks are made.**

### **Introduction**

**3. The Analysis recalls the terms of reference received by the CDDH from the Committee of Ministers and the methodology followed. It then presents a short review of the background to the protection of social rights within the Council of Europe. It recalls the indivisibility of all human rights, be they civil, political, economic, social or cultural, and the interdependence of these rights. It further refers to the context in which it was drawn up, in**

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<sup>1</sup> In the present document, the term “(revised) Charter” refers to the European Social Charter as adopted in 1961 and/or the European Social Charter as revised in 1996.

which the economic crisis and austerity measures were found by a number of Council of Europe organs and institutions to have had an impact on the protection particularly of social rights and social cohesion in its Member States. Furthermore, the social rights protection within the Council has to take into account the international context in which it operates and the need to increase the synergy between the (revised) Charter and the European Union legislation or policy.

## **I. The legal framework of the Council of Europe for the protection of social rights**

4. The Analysis then describes the Council of Europe's protection of social rights notably by two complementary treaties, the European Social Charter and the European Convention on Human Rights.

5. As for the treaty system of the European Social Charter, it is noted that the (revised) Charter is currently in force in 43 out of the 47 Member States of the Council of Europe. Nine Member States are bound only by the original 1961 Charter, the other 34 Member States are bound by the 1996 Revised Charter. Furthermore, 15 Member States are currently bound by the 1995 Additional Protocol Providing for a System of Collective Complaints.

6. The 1961 Charter comprises, in particular, the right to work (including just, safe and healthy working conditions and a fair remuneration – Articles 1–4), the rights to organise and bargain collectively (Articles 5 and 6), the rights to vocational guidance and training (Articles 9–10), the rights to protection of health, to social security, social and medical assistance and to benefit from social welfare services (Articles 11–14) and rights providing specific protection for young persons (Articles 7 and 17), employed women (Articles 8 and 17), persons with disabilities (Article 15), families (Article 16) and migrant workers (Articles 18–19). The new rights contained in the Revised Charter comprise, in particular, the right to protection against poverty and social exclusion (Article 30), the right to housing (Article 31), the right to protection in cases of termination of

employment (Article 24), the right to dignity at work (Article 26), the rights of workers with family responsibilities to equal opportunities and equal treatment (Article 27) and rights of workers' representatives in undertakings (Article 28).

7. Unlike the Convention, the (revised) Charter is based on an "à la carte" system of acceptance of its provisions, which allows States to choose to a certain extent the provisions they are willing to accept as obligations under international law. Compliance with the provisions of the (revised) Charter is monitored by the Committee of Independent Experts also known as the European Committee of Social Rights (ECSR), the Governmental Committee of the European Social Charter and the European Code of Social Security (Governmental Committee) and the Committee of Ministers in the State reporting procedure and by the ECSR in the collective complaints procedure.

8. Some national courts have applied provisions of the (revised) Charter in their decisions in recent years and some States have undertaken significant reforms further to ECSR decisions or conclusions.

9. The Convention, which has been ratified by all 47 Council of Europe Member States, and its Protocols, while essentially protecting civil and political rights, directly protects a few rights which can also be classified as containing aspects of social rights, namely the prohibition of slavery and forced labour (Article 4), freedom of association (Article 11) and the right to education (Article 2 of Protocol No. 1). Moreover, a number of further rights laid down in the Convention and its Protocols, while not being social, economic or cultural rights as such, extend into the sphere of social rights by the interpretation given to these provisions by the European Court of Human Rights (the Court) and are thus indirectly protected by the Convention. These include the right to life (Article 2), the prohibition of torture and inhuman or degrading treatment (Article 3), the right to a fair trial (Article 6), the right to respect for private and family life (Article 8), freedom of thought, conscience and religion (Article 9), freedom of expression (Article 10), the protection of property

(Article 1 of Protocol No. 1) and the prohibition of discrimination (Article 14 and Article 1 of Protocol No. 12). The States' undertaking to abide by the binding judgments of the Court, which comprises an obligation to implement appropriate general measures to solve the problems that have led to the Court's finding of a violation also in respect of other persons in the applicant's position, have resulted in numerous reforms in the field of social rights.

## **II. The Council of Europe's further action for social rights**

10. The Secretary General of the Council of Europe launched the "Turin Process" in 2014, which is aimed at strengthening the treaty system of the European Social Charter within the Council of Europe and in its relationship with the law of the European Union and has been pursued, *inter alia*, by a number of high-level conferences since then. As to the follow-up given to date to the process by the Council of Europe Member States, it was noted that only Greece ratified the Revised Charter since then; no further State ratified the 1995 Additional Protocol Providing for a System of Collective Complaints. Belgium and Ukraine, however, accepted new provisions of the Revised Charter after the launch of the Turin process. As for the compliance of Member States with the requirements under the (revised) Charter, while there were conclusions of non-conformity with the (revised) Charter in roughly one third of the situations examined in the past four years, some positive developments could equally be noted.

11. The Committee of Ministers, in addition to its role in the process of the implementation of the social rights enshrined in the (revised) Charter, adopted a number of recommendations and other instruments aimed at reinforcing social rights in the past years. These included an Action Plan for Social Cohesion, guidelines on improving the situation of low-income workers, the promotion of human rights of older persons or the access of young people from disadvantaged neighbourhoods to social

rights. The Committee of Ministers, which had expressed its resolve to secure the effectiveness of the (revised) Charter in its 2011 Declaration marking the Charter's 50<sup>th</sup> anniversary, regularly invites Member States which have not yet done so to consider ratifying the Revised Charter and its Protocols.

12. The Parliamentary Assembly addressed social rights-related issues in numerous recent Resolutions and Recommendations, covering subjects including employment rights of domestic workers, access to health care for children, equality and inclusion for persons with disabilities or protection of the right to bargain collectively. It has supported the "Turin Process" from the outset, considering that the potential of the (revised) Charter was not fully exploited in particular as ratifications were still pending from several Member States.

13. The Congress of Local and Regional Authorities, representing authorities for which social rights play an important role in the day-to-day decision-making, has equally adopted Resolutions covering social rights subjects such as employment and vulnerable groups, access to public spaces of persons with disabilities or access to social rights for migrants.

14. The Commissioner for Human Rights regularly meets individuals experiencing difficulties in exercising their social rights in the course of field visits in the context of his country work. A number of his recent country reports, Human Rights Comments and Issue Papers have dealt with social rights including the right to work, education and health care. He often covered subjects concerning the access of specific groups including children, women, elderly persons, persons with disabilities or migrants to social rights. He equally expressed full support for the "Turin Process" from the outset.

**15. The Conference of INGOs equally conducted work on a number of specific social rights issues, adopted recommendations and issued publications, inter alia, on the violation of economic, social and cultural rights by austerity measures and the fight against poverty and social exclusion. It further issued a Call for Action to support the “Turin Process” and created a Coordination Committee to work on a permanent basis with the INGOs on the promotion of this process.**

### **III. Actions outside the Council of Europe concerning the social rights protected within the Council**

**16. Certain non-Council of Europe actors can equally adopt measures which concern or have an impact on the protection of social rights within the Council of Europe, particularly by the European Social Charter.**

**17. As regards the European Union, the Council of the EU, the European Parliament and the Commission proclaimed the European Pillar of Social Rights in November 2017, the objective of which is to contribute to social progress by supporting fair and well-functioning labour markets and welfare systems; the Pillar refers, inter alia, to the European Social Charter. Moreover, the European Parliament and the EU Agency for Fundamental Rights both made suggestions to the EU Member States concerning social rights protected, inter alia, by the European Social Charter.**

**18. The (revised) Charter is further interpreted, inter alia, in the light of other international treaties elaborated in different international organisations, particularly instruments of the International Labour Organisation.**

**19. It is noted that certain international organisations of workers and employers have a privileged role in both the reporting and the collective complaints procedure under the (revised) Charter. The European Trade Union Confederation (ETUC), in particular, has further launched campaigns in the field of social rights, particularly trade union rights, including those protected by the (revised) Charter.**

## **Conclusive remarks**

**20. The Analysis concludes that there has been a constant development in the protection of social rights within the legal framework of the Council of Europe, both under the (revised) Charter and under the Convention. Both the implementation of the ECSR's conclusions and decisions and that of the Court's judgments have led to a number of amendments in national law and practice which enhanced social rights protection in the Council of Europe Member States.**

**21. The impact of the (revised) Charter which contains a comprehensive social rights catalogue is restricted by the "à la carte" system of acceptance of its provisions and the fact that only 43 of the 47 Council of Europe Member States are bound by the (revised) Charter (nine States are bound only by the original 1961 Charter, the other 34 Member States are bound by the 1996 Revised Charter) and only 15 States by the 1995 Additional Protocol Providing for a System of Collective Complaints. It can be noted that the scope of the Charter is limited in terms of the persons protected by it (paragraph 1 of the Appendix to the Charter). It has further been advanced by some that the impact of the Charter system for the protection of social rights is restricted by the limited scope of application of the Charter in terms of the persons protected by it. However, others have raised that it has not been analysed if and to what extent this restricts the effective protection of social rights in view of the protection under other instruments.**

**22. Since the beginning of the "Turin Process" aimed at strengthening the treaty system of the European Social Charter, one State (Greece) ratified the Revised Charter. The number of collective complaints lodged rose in the past years.**

**23. It is recalled, finally, that in accordance with the mandate given by the Committee of Ministers to the CDDH for the biennium 2018–2019 in the field of social rights, the CDDH, on the basis of the present Analysis as well as other relevant sources, shall identify good practices and make, as appropriate, proposals with a view to improving the implementation of social rights and to facilitate in particular the relationship between the Council of Europe instruments and other instruments for the protection of social rights. These issues shall be addressed in a further report.**

## INTRODUCTION

24. The present analysis of the legal framework of the Council of Europe for the protection of social rights in Europe has been drawn up in accordance with the mandate given by the Committee of Ministers to the CDDH in the field of social rights. The following introduction shall first set out the terms of reference received and the methodology followed by the CDDH and its Drafting Group on Social Rights (CDDH-SOC). It shall further review the background to the protection of social rights within the Council of Europe against which it has been prepared. It recalls the indivisibility of all human rights, be they civil, political, economic, social or cultural, and the interdependence of these rights. Reference is further made to the context in which the Analysis was drawn up, in which the economic crisis was found by a number of Council of Europe organs and institutions to have had an impact on the protection particularly of social rights and on social cohesion in its Member States. Sight may further not be lost of the fact that the social rights protection within the Council has to take into account the international context in which it operates and notably has to ensure coherence and create synergies with the standards of European Union law in this field.

### 1. Terms of reference received and methodology followed

25. The Committee of Ministers, at its 1241<sup>st</sup> meeting of 24–26 November 2015, adopted the terms of reference of the Steering Committee for Human Rights (CDDH) and entrusted it with the following tasks in the field of social rights:

- “(i) Undertake an analysis of the legal framework of the Council of Europe for the protection of social rights in Europe, in particular the jurisprudence of the European Court of Human Rights as well as other relevant sources e.g. reports and decisions of those Council of Europe bodies having a mandate relating to social rights and their implications for the respective States Parties (deadline: 31 December 2016);

- (ii) On this basis, identify good practices and make, as appropriate, proposals with a view to improving the implementation of social rights and to facilitate in particular the relationship between the various European instruments for the protection of social rights (deadline: 31 December 2017).<sup>2</sup>

26. In order to carry out its work, the CDDH set up a Drafting Group on Social Rights (CDDH-SOC) chaired by Mr Vít A. SCHORM (Czech Republic) and assigned a Rapporteur, Ms Chantal GALLANT (Belgium). The “Draft report of the Steering Committee for Human Rights (CDDH) on the legal framework of the Council of Europe for the protection of social rights” prepared by the Rapporteur notably took into account the contributions received from various actors and organs of the Council of Europe having a mandate relating to social rights.<sup>3</sup> This initial report was examined by the CDDH-SOC during its 1<sup>st</sup> meeting (19–21 April 2017)<sup>4</sup> and then by the CDDH during its 87<sup>th</sup> meeting (6–9 June 2017). The CDDH gave further instructions regarding the report in its 87<sup>th</sup> and 88<sup>th</sup> meetings in June and December 2017.<sup>5</sup> Furthermore, several contributions were made by Member States’ experts regarding the initial draft report.<sup>6</sup>

27. At its 1300<sup>th</sup> meeting of 21–23 November 2017, the Committee of Ministers adopted the CDDH’s terms of reference for the biennium 2018–2019 in which it again charged the CDDH with the following task in the field of social rights:

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<sup>2</sup> See document CM(2015)131-addfinal.

<sup>3</sup> The following entities have been asked for contributions: the Registry of the European Court of Human Rights, the Departments for the Execution of Judgments of the European Court of Human Rights and of the European Social Charter, the Secretariats of the Parliamentary Assembly and of the Congress of Local and Regional Authorities, the Conference of INGOs and the Office of the Commissioner for Human Rights. In addition, contributions have been received from the European Network of National Human Rights Institutions (ENNHRI) and the European Trade Union Confederation (ETUC).

<sup>4</sup> See for the meeting report document CDDH-SOC(2017)R1.

<sup>5</sup> See for the report of the 87<sup>th</sup> meeting in June 2017 CDDH(2017)R87, §§ 30–38 and for the report of the 88<sup>th</sup> meeting in December 2017 CDDH(2017)R88, §§ 13–15 and Appendix IV.

<sup>6</sup> See CDDH-SOC(2017)003 and CDDH-SOC(2018)05.

*“On the basis of the analysis of the legal framework of the Council of Europe for the protection of social rights in Europe, identify good practices and make, as appropriate, proposals with a view to improving the implementation of social rights and to facilitate in particular the relationship between the Council of Europe instruments with other instruments for the protection of social rights (deadline: 31 December 2019).”<sup>7</sup>*

28. The present Analysis has been drawn up on the basis of the above-mentioned initial report prepared by the Rapporteur, having regard, in particular, to the national contributions received. It represents the answer of the CDDH to the (initially first) part of its mandate to provide an analysis of the legal framework of the Council of Europe for the protection of social rights in Europe. It describes the protection of social rights in Europe notably by the European Social Charter and by the European Convention on Human Rights (part I) and sets out the further action taken by the organs and institutions of the Council of Europe other than the European Court of Human Rights and the European Committee of Social Rights in the field of social rights (part II). Moreover, as a number of non-Council of Europe actors can also take measures which concern or have an impact on the protection of social rights within the Council of Europe, short consideration is further given to actions outside the Council concerning the social rights protected within this organisation (part III). The Analysis is terminated by conclusive remarks.

## 2. Review of the background

### a) Indivisibility and interdependence of human rights

29. The Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly on 10 December 1948, is a catalogue of all the fundamental rights recognised by the international community so as to ensure the dignity of every

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<sup>7</sup> Document CM(2017)131-addfinal.

individual. It contains both civil and political rights and social, economic and cultural rights (see Articles 22–26 of the Declaration) in the same instrument.<sup>8</sup>

30. Within the Council of Europe, however, the Universal Declaration has been implemented through the creation of two separate treaties: the Convention (1950) and the Charter (1961).

31. The same distinction was drawn at the United Nations level where two separate International Covenants were adopted in 1966, namely the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). It is worth recalling the adoption in 2008 of an Optional Protocol to the ICESCR which reaffirmed the indivisibility and interdependence of all human rights and, as does the First Optional Protocol to the ICCPR, provides for the possibility for individuals to submit communications alleging violations of the rights set forth in the respective Covenant.

32. At the 1993 World Conference on Human Rights held in Vienna, the international community reiterated its commitment to the principles contained in the Universal Declaration of Human Rights which “is the source of inspiration and has been the basis for the United Nations in making advances in standard setting as contained in the existing international human rights instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.”<sup>9</sup> The Conference reaffirmed in paragraph 5 of the Vienna Declaration:

“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and

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<sup>8</sup> See United Nation’s General Assembly Resolution 217 A.

<sup>9</sup> Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, 8<sup>th</sup> preambular paragraph.

with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”<sup>10</sup>

33. The principles of indivisibility and interdependence of human rights have been highlighted regularly within the Council of Europe.<sup>11</sup> The indivisibility of human rights has expressly been referred to, in particular, in the Preamble to the Revised European Social Charter (4<sup>th</sup> Recital):

*“Recalling that the Ministerial Conference on Human Rights held in Rome on 5 November 1990 stressed the need ... to preserve the indivisible nature of all human rights, be they civil, political, economic, social or cultural ...”*<sup>12</sup>

**b) Social rights and socio-economic changes**

34. The recent years were marked by the impact of the economic crisis and the corresponding austerity measures on the enjoyment of a wide range of economic, social and cultural rights. That impact was felt differently in Europe from one country to another. The problems linked to the crisis and austerity measures, while not having been created by the crisis, seem to have been exacerbated rather than caused by the crisis.<sup>13</sup>

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<sup>10</sup> Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993.

<sup>11</sup> See, for example, the Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter, adopted by the Committee of Ministers on 12 October 2011 at the 1123<sup>rd</sup> meeting of the Ministers’ Deputies.

<sup>12</sup> See European Social Charter (revised) of 3 May 1996, ETS No. 163.

<sup>13</sup> See for this view the CDDH feasibility study on “The impact of the economic crisis and austerity measures on human rights in Europe” adopted by the CDDH on 11 December 2015, paragraph 3.

35. A 2015 study of the CDDH on “the feasibility of new activities as well as on the revision of existing instruments to deal with the impact of the economic crisis on human rights in Europe” entitled “The impact of the economic crisis and austerity measures on human rights in Europe” analysed the impact of the economic crisis on human rights in specific areas.<sup>14</sup> It found that a number of different Council of Europe organs and bodies had concluded that the crisis had had an impact on human, and in particular social rights in the fields of access to justice and a fair trial and that certain groups of persons, including women, children and young persons as well as prisoners, migrant workers and asylum seekers were often particularly affected by the economic crisis and reduced State resources, which had further repercussions on the social cohesion in the Council of Europe Member States.<sup>15</sup>

36. It should be noted that State Parties to the Charter made serious and considered efforts to mitigate the adverse social consequences of the economic crisis in compliance with their obligation laid down in Part 1 of the (revised) Charter in which “the Contracting Parties accept as the aim of their policy, to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which the (...) rights and principles [listed in the Charter] may be effectively realised”.

37. As for the views of the various Council of Europe bodies and instances on the impact of the economic crisis on fundamental social rights, the following notes are non-exhaustive.

38. Both in the framework of the reporting and the collective complaint procedure, the ECSR expressed its views on the protection of social rights in times of economic crisis. In the general introduction to its Conclusions 2009, the ECSR stated that the implementation of the social rights guaranteed by the Charter had acquired greater importance in a context of global economic crisis:

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<sup>14</sup> See *ibid.*, paragraphs 1 and 20 et seq.

<sup>15</sup> See *ibid.*, paragraphs 20–38.

**“The severe financial and economic crisis that broke in 2008 and 2009 has already had significant implications on social rights, in particular those relating to the thematic group of provisions ‘Health, social security and protection’ [...]. Increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increase while [...] revenues decline. [T]he Committee recalls that under the 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. From this point of view, the Committee considers that the economic crisis should not have as a consequence the reduction of the protection of the rights recognized by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most.”<sup>16</sup>**

**39. But also in relation to its examination of thematic rights for example relating to health, social security and social protection, the ECSR conclusions are testimony to the effects of the crisis and austerity policies as the number of findings of non-conformity found is higher than before the crisis arose, in particular in relation to, for instance, inadequate levels of social security benefits (disproportionately affecting the poor, unemployed, elderly and sick persons or putting growing pressure on health care systems).<sup>17</sup>**

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<sup>16</sup> Conclusions 2009: General introduction, op. cit.: <http://hudoc.esc.coe.int/eng#>.

<sup>17</sup> ECSR Conclusions 2013 and 2017 on thematic group 2 “Health, social security and social protection”.

40. The ECSR has had to deal with a number of collective complaints regarding the effects of austerity measures on the implementation of the Charter, all of them directed against Greece.<sup>18</sup> In its decisions on the merits of Complaints Nos. 65-66 the ECSR noted amongst others that *“while it may be reasonable for the crisis to prompt changes [...] to restrict certain items of public spending or relieve constraints on businesses, these changes should not excessively destabilise the situation of those who enjoy the rights enshrined in the Charter”* and *“the establishment and maintenance of such rights [...] is indeed one of the aims [of] the Charter. Doing away with such guarantees would not only force employees to shoulder an excessively large share of the consequences of the crisis but also accept pro-cyclical effects liable to make the crisis worse and to increase the burden on welfare systems [...], unless it was decided at the same time to stop fulfilling the obligations of the Charter in the area of social protection.”* In its decisions on the merits of Complaints Nos. 76-80/2012, the ECSR found *“the cumulative effect of the restrictions [...] is bound to bring about a significant degradation of the standard of living and the living conditions of many of the pensioners concerned”* and that *“any decisions made in respect of pension entitlements must respect the need*

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<sup>18</sup> General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaints Nos. 65-66/2011, decision on the merits of 23 May 2012 (violations of Article 4 §§ 1 and 4 because changes to the Labour Code provided for the option of dismissing workers up to one year from their hiring without having to give grounds and the introduction of pay for young workers up to the age of 25 that was significantly less than that of older workers); Federation of employed pensioners of Greece (IKA-ETAM) v. Greece, Complaint No. 76/2012, Panhellenic Federation of Public Service Pensioners (POPS) v. Greece, Complaint No. 77/2012, Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece, Complaint No. 78/2012, and Pensioners' Union of the Agricultural Bank of Greece (ATE) v. Greece, Complaint No. 80/2012, decisions on the merits of 7 December 2012 (violations of Article 12 § 3 because of reduction of amongst others pension benefits/rights of in particular public servants); and Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017 (violation of Articles 4 (fair remuneration), 7 (protection of young persons) and Article 3 of the 1998 Additional Protocol (the right to take part in the determination and improvement of the working conditions and working environment).

to reconcile the general interest with individual rights, including any legitimate expectations that individuals may have in respect of the stability of the rules applicable to social security benefits". The ECSR further stated that *"the fact that the contested provisions of domestic law seek to fulfil the requirements of other legal obligations does not remove them from the ambit of the Charter"* (in this case, Greece's obligations in connection with loans from EU institutions and the International Monetary Fund).

41. As for the Court, reference could first be made to the views expressed by the President of the Court at the time, Sir Nicolas BRATZA, who considered in January 2012:

*"The economic crisis with its potential for generating political instability seems to spiral further and further out of control. All our societies are experiencing difficulties that few of us can have foreseen only a short time ago. In this environment the vulnerable are more exposed and minority interests struggle to express themselves. The temptation is to be inward-looking and defensive, for States as well as individuals. Human rights, the rule of law, justice seem to slip further down the political agenda as governments look for quick solutions or simply find themselves faced with difficult choices as funds become scarce. It is in times like these that democratic society is tested. In this climate we must remember that human rights are not a luxury."*<sup>19</sup>

42. The Court as such has handed down many decisions in which its reasoning takes account of economic and financial factors. It has also had to deal with cases directly concerned with austerity measures introduced by Member States to cope with the economic crisis. Most of the cases alleged violations of Article 1 of Protocol No. 1 for example in the cases of *Mihăieş and Senteş v. Romania* (inadmissibility decision of 6 November

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<sup>19</sup> See European Court of Human Rights – Annual Report 2012, Strasbourg 2013, p. 31.

2011)<sup>20</sup>, *Koufaki and Adedy v. Greece* (decision of 7 May 2013),<sup>21</sup> *Da Conceição Mateus and Santos Januário v. Portugal* (decision of 8 October 2013)<sup>22</sup> and *Savickas and Others v. Lithuania* (decision of 15 October 2013).<sup>23</sup> From the standpoint of Article 6, reference could be made to the case of *Frimu and Others v. Romania* where the Court has ruled, indirectly, on a reduction in the retirement pensions of former officials of the judicial service, as a means of reducing the state budget.<sup>24</sup> Two further cases may also be cited concerning austerity measures in the banking sector in response to the economic crisis, namely *Adorisio and Others v. the Netherlands* and *Mamatas and Others*

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<sup>20</sup> The applicants complained that the application of an austerity programme had led to a 25% reduction in their remuneration as public service employees. The Court ruled that even if they could be deemed to have a "possession", the authorities had not exceeded their margin of appreciation.

<sup>21</sup> The Court considered applications relating to a series of austerity measures, including cuts in public officials' salaries, pensions, bonuses and other allowances, to reduce public spending and respond to the crisis facing the country. The Court declared these applications inadmissible, since the adoption of the impugned measures had been justified by the existence of an exceptional crisis without precedent in recent Greek history, necessitating an immediate reduction in public expenditure. The Court reaffirmed the principle that law makers had a wide margin of appreciation when implementing economic and social policies and that in this case the aims of the policies were in the general interest and also coincided with those of the euro zone Member States, which were required to ensure budgetary discipline and preserve the stability of the euro zone. The Court held that the reduction in the first applicant's salary from €2 435.83 to €1 885.79 was not such as to place her at risk of having insufficient means to live on, in breach of Article 1 of Protocol No. 1. In the case of the second applicant, compensation had been provided for the abolition of his 13<sup>th</sup> and 14<sup>th</sup> month salary payments by the introduction of a single bonus.

<sup>22</sup> See also the inadmissibility decision of 1 September 2015 in *Da Silva Carvalho Rico v. Portugal*, which also concerned cuts in retirement pensions resulting from austerity measures, in which the Court noted in particular the general interest applicable in Portugal following the financial crisis and the limited and temporary nature of the measures introduced.

<sup>23</sup> See also the *Khoniakina v. Georgia* judgment of 19 June 2012 (legislation retroactively modifying the retirement pensions of Supreme Court judges was not in breach of Article 6 and Article 1 of Protocol No. 1) and the inadmissibility decision of 8 January 2013 in *Bakradze and Others v. Georgia* on the same subject.

<sup>24</sup> In its inadmissibility decision of 13 November 2012, the Court found that the fact that there had been discrepancies in the assessments of courts ruling on similar situations was not in violation of Article 6 § 1, since the case concerned the application of clearly expressed legal provisions to varying personal situations. Judicial practice might vary for two years, or even more, before machinery to ensure consistency was established.

v. Greece<sup>25</sup>. To date, there appears to have been only one case in which the Court has found a violation in connection with austerity measures, namely the case of *N.K.M. v. Hungary* of 14 May 2013 (excessive rate of tax on severance pay following legislation to raise these rates in the public sector).

43. As for other views expressed by Council of Europe instances, reference could amongst others be made to:

- The Secretary General of the Council of Europe, Thorbjørn JAGLAND, who noted that “the economic crisis and austerity policies have clearly had a negative impact on social and economic rights across Europe. Benefits are being restricted and people moving between countries to live or find work are often being unfairly treated.” He emphasised that “the need to protect everyday rights for workers and non-working people is a core European value which becomes all the more important when times are tough”, that “all Council of Europe member states should ratify the latest version of the European Social Charter and also sign up to the complaints mechanism which helps to make sure it is put into practice” and that “international organisations – including the European Union – must take individual countries’ obligations

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<sup>25</sup> In its inadmissibility decision of 17 March 2015 in *Adorisio and Others v. the Netherlands*, the Court found that the restrictions on the applicants’ procedural rights, in proceedings designed to ensure a rapid decision on the expropriation of their financial assets, was not in breach of Article 6 since, notwithstanding the very short time available, the applicants had had an effective remedy and the Government had been faced with the need to intervene as a matter of urgency in order to prevent serious harm to the national economy. In its *Mamatras and Others v. Greece* judgment of 21 July 2016, the Court found that there had been no violation of Article 1 of Protocol No. 1, alone or taken in conjunction with Article 14, in connection with an imposed decrease in the nominal value of bonds without the consent of the private investors concerned, to reduce the level of public debt (following negotiations between the state and international institutional investors on a reduction in their claims). The applicants’ bonds had been cancelled and replaced with new securities, entailing a 53.5% capital loss. However, the Court found that since the exchange operation had resulted in a reduction of the Greek debt, the impugned interference had pursued an aim in the public interest. Moreover, the loss, which on the face of it was substantial, had not been sufficient to amount to the cancellation of or an insignificant return on the applicants’ investments.

under the Charter into account when discussing austerity measures”.<sup>26</sup>

- **The Joint Declaration of the Presidents of the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities and the Conference of INGOs of the Council of Europe entitled “Acting together to eradicate extreme poverty in Europe” of 17 October 2012** stating that it is the people belonging to the most disadvantaged social groups who are the hardest hit by the economic crisis and often also by fiscal austerity measures.<sup>27</sup>
- **The Parliamentary Assembly Resolutions on “Austerity measures – a danger for democracy and social rights” (Resolution 1884 (2012)), on “The young generation sacrificed: social, economic and political implications of the financial crisis” (Resolution 1885 (2012)) and on “equality and the crisis” (Resolution 2032 (2015)).**
- **The Commissioner for Human Rights addressed the negative impact of the economic crisis and the austerity measures on human rights in both an Issue Paper on this topic of 2013<sup>28</sup> and in two Comments of 2014 in which the Commissioner addressed in particular the need to protect in particular women and youth in times of crisis and austerity measures.**

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<sup>26</sup> See his press release (DC011(2014) of 28 January 2014) referring to the ECSR Conclusions 2013.

<sup>27</sup> See Joint Declaration of the Presidents of the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities and the Conference of INGOs.

<sup>28</sup> The Commissioner stressed that the whole spectrum of human rights had been affected, including the rights to decent work, an adequate standard of living and social security, the right to participation, and access to justice, and that vulnerable groups had been hit disproportionately hard – compounding pre-existing patterns of discrimination. Furthermore, the Commissioner recommended ensuring a minimum level of social protection for all, including by maintaining social security guarantees for basic income and health care to ensure universal access to essential goods and services during the crisis. According to him, States should resist any pressure to undermine such basic guarantees by ring fencing public budgets to protect at least the minimum core levels of economic and social rights at all times.

- The Recommendation on “**The violation of economic, social and cultural rights by austerity measures: a serious threat to democracy**” adopted on 25 June 2015 by the Conference of INGOs signalling a deterioration in several Member States of entitlements related to the right to work, the right to health, the right to education and the right to housing.<sup>29</sup>

c) Social rights, Council of Europe and the European Union

**44. Both the Council of Europe and the European Union<sup>30</sup> work towards the effective implementation of social rights and the reinforcement of their protection. At the Council of Europe level, the two major instruments on protection of social rights are the European Social Charter and the European Convention on Human Rights. At the European Union level, social rights have been covered by the Community Charter of Fundamental Social Rights of Workers, a legally not binding document adopted by the European Council on 9 December 1989. Most of the provisions contained therein have subsequently been introduced in the EU Charter of Fundamental Rights (Articles 24–36), which equally adopted several guarantees laid down in the (revised) Charter.<sup>31</sup> Moreover, the Treaty on the Functioning of the EU contains a chapter on social policy (Articles 151 et seq.) and, in that context, draws some inspiration from the (revised) Charter which is explicitly cited in the preambles to the Treaty on European Union and the EU Charter of Fundamental Rights as well as in Article 151 § 1 of the Treaty on the Functioning of the EU.<sup>32</sup>**

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<sup>29</sup> See Recommendation on “**The violation of economic, social and cultural rights by austerity measures: a serious threat to democracy**”, document CONF/PLE(2015)REC1.

<sup>30</sup> In tandem with the action being taken at Council of Europe level, awareness is also growing at European Union level of the need to provide greater protection for social rights. Evidence of this can be seen in the “European Pillar of Social Rights” proclamation, various European Parliament resolutions and also recommendations/reports from the FRA (European Union Agency for Fundamental Rights), see in more detail III.1. below.

<sup>31</sup> See also O. Dörr, *The European Social Charter*, in: S. Schmahl/M. Breuer, *The Council of Europe – Its Laws and Policies*, paragraph 23.36.

<sup>32</sup> See also Dörr, *ibid.*, paragraph 23.35.

45. The social rights protection within the Council of Europe therefore has to take into account the international context in which it operates. The Secretary General of the Council of Europe, Mr Thorbjørn JAGLAND, stressed in his strategic vision for his second term (2014–2019) that it was of crucial importance to ensure coherence between the social rights standards in the (revised) Charter and those of the European Union and to increase synergies between the two protection systems.<sup>33</sup>

## **I. THE LEGAL FRAMEWORK OF THE COUNCIL OF EUROPE FOR THE PROTECTION OF SOCIAL RIGHTS**

46. The Council of Europe has adopted two major treaties in the area of fundamental rights:<sup>34</sup>

- The Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter referred to as “the Convention”). The Convention was opened for signature in Rome on 4 November 1950; it entered into force on 3 September 1953. It was since then supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13 guaranteeing additional rights. It mainly enshrines “civil and political” rights.
- The European Social Charter (hereafter referred to as “the 1961 Charter” or “the Charter”). Opened for signature in Turin on 18 October 1961, it entered into force on 26 February 1965. A new Charter text, the European Social Charter (revised), which embodies in one instrument all rights guaranteed by the 1961 Charter, its Additional Protocol of 1988 and some new rights, was opened for

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<sup>33</sup> See Priority No. 5 of the Secretary General of the Council of Europe for the 2014–2019 term, document SG/Inf(2014)34 of 16 September 2014. See also the Secretary General's Opinion on the EU initiative to establish a European Pillar of Social Rights of 2 December 2016.

<sup>34</sup> See the website of the European Social Charter for a table on the Evolution-Convention-and-Charter providing a comparative overview of both instruments and their operation.

signature on 3 May 1996 and entered into force on 1 July 1999 (hereafter referred to as “the Revised Charter”). The (revised) Charter (that is, the 1961 Charter and/or the Revised Charter) enshrines “economic and social” rights.<sup>35</sup>

47. These treaties are complementary. Civil and political rights protected under the Convention have aspects pertaining to a number of social rights protected by the (revised) Charter.<sup>36</sup>

48. As a matter of example, an aspect of the right to work under Article 1 of the (revised) Charter, in so far as it covers protection of the right of the worker to earn his living in an occupation freely entered upon, is also covered by Article 4 of the Convention insofar as it prohibits forced or compulsory labour. Furthermore, trade union rights are protected in several provisions of the (revised) Charter, which provides for the right to organise (Article 5) and to bargain collectively (Article 6) and for the right of workers’ representatives to protection in the undertaking (Article 28). Article 11 of the Convention equally covers trade union rights in protecting the right to freedom of peaceful assembly and association, including the right to form and join trade unions.

49. Moreover, the rights to protection of health and to social and medical assistance are provided for specifically in Articles 11 and 13 of the (revised) Charter but some of their aspects are also covered in certain contexts by the prohibition on inhuman or degrading treatment under Article 3 of the Convention or by the right to respect for private life under Article 8 of the Convention.

50. Specific rights in the (revised) Charter, such as the right of employed women to protection of maternity (Article 8), the right of the family to social, legal and economic protection (Article 16) or the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27) may in some ways

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<sup>35</sup> See the European Social Charter’s website for more information on the Charter’s treaty system.

<sup>36</sup> See also <https://www.coe.int/en/web/turin-european-social-charter/-european-social-charter-and-european-convention-on-human-rights>.

be related to the right under Article 8 of the Convention to respect for private and family life. As for the right to education which the State has undertaken to provide, guaranteed by Article 2 of Protocol No. 1 to the Convention, the (revised) Charter specifies in Articles 7 (right of children and young persons to protection), 9 (right to vocational guidance), 10 (right to vocational training), 15 (rights of persons with disabilities) and 19 (rights of migrant workers) how this right should be implemented mostly in regard to vocational guidance and training. Lastly, there are some links between the protection of property under Article 1 of Protocol No. 1 to the Convention and several articles in the (revised) Charter relating, notably, to remuneration and benefits (Articles 4 and 12).

51. As regards the legal obligations for the Contracting Parties stemming from the (revised) Charter and the Convention, under the (revised) Charter, the Contracting Parties accept as the aim of their policy to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which the rights and principles contained in the Charter may be effectively realised, while the rights guaranteed under the Convention shall be secured by the Contracting Parties to everyone in their jurisdiction. That distinction reflects the specificity of social rights.

52. As regards the types of obligations arising for the State parties both under the Charter and under the Convention, according to the ECSR and the Court, these are threefold and comprise an obligation to respect,<sup>37</sup> an obligation to protect<sup>38</sup> and

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<sup>37</sup> As an example of the obligation to respect, the following decisions of the ECSR are worth noting: FIDH v. Greece, Complaint No. 7/2000, decision on the merits of 5 December 2000, concerning a Greek legislative decree banning career officers who have received several periods of training from resigning their commissions for up to 25 years; QCEA v. Greece, Complaint No. 8/2000, decision on the merits of 25 April 2001, concerning the impact of the length of civilian service on the entry of conscientious objectors in Greece into the labour market; and ERRC v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, concerning evictions of Roma from sites or dwellings. As for the Court, the duty to respect is at issue in all applications concerning allegedly unjustified interference by State authorities with the Convention rights.

<sup>38</sup> As an example of the obligation to protect, mention can be made of the following decisions of the ECSR: MFHR v. Greece, Complaint No. 30/2005, decision on

an obligation to fulfil<sup>39</sup>. Both the Charter and the Convention include positive and negative obligations, and obligations of immediate effect and, with regard to certain aspects of social rights, obligations of progressive realisation. States enjoy a wide margin of appreciation<sup>40</sup> with regard to the means chosen to comply with this last category of obligations – more relevant in

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admissibility of 10 October 2005, § 14, concerning the semi-privatised mining of lignite, posing health and environmental risks; *OMCT v. Ireland*, Complaint No. 18/2003, decision on the merits of 7 December 2004, §§ 56–58, concerning the duty to ban corporal punishment of children; *C.G.S.P. v. Belgium*, Complaint No. 25/2004, decision on the merits of 9 May 2005, § 41, where the ECSR interprets Article 6 § 1 of the Charter on collective bargaining as meaning that States must take positive steps to encourage consultation between trade unions and employers' organisations and, if such consultation does not take place spontaneously, must establish permanent bodies and arrangements in which unions and employers' organisations are equally and jointly represented. It should be noted that similar ("positive") protection obligations are recognised by the Court, which can make it compulsory for States to enact legislation, inform or advise, conduct effective inquiries, instruct/train its staff and adopt specific prevention measures, see, in particular, *Siliadin v. France*, no. 73316/01, §§ 77–89, ECHR 2005-VII with many examples.

<sup>39</sup> As an example of the obligation to fulfil, the following decisions of the ECSR are worth mentioning: *Autism-Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 53, concerning the progressive creation of educational establishments and places suitable for autistic children and adults; *ICJ v. Portugal*, Complaint No. 1/1998, decision on the merits of 9 September 1999, §§ 32 et seq., concerning the abolition of child labour; *ERRC v. Italy*, Complaint No. 27/2004, decision on the merits of 7 December 2005, concerning the creation of suitable sites for nomadic Roma and the introduction of measures, having regard to the different situation of settled Roma, aimed at improving their housing conditions. Although the Court only considers individual cases, many of its judgments require, in terms of execution, general (sometimes structural) measures to be adopted. This is particularly true of its pilot judgments, highlighting structural shortcomings which call for measures that take into account the number of people affected (collective aspect), see, *inter alia*, *Varga and Others v. Hungary*, nos. 14097/12 and 5 others, §§ 94 et seq., 10 March 2015.

<sup>40</sup> See for a reference by the ECSR to the States' margin of appreciation, for instance, *Eurofedop v. Greece*, Complaint No. 115/2015, decision on the merits of 13 September 2017, §§ 39 and 46; and *FAFCE v. Sweden*, Complaint No. 99/2013, decision on the merits of 17 March 2015, §§ 73 and 74. Compare also Article 8 § 4 of the Optional Protocol to the ICESCR, according to which, when examining communications under the present Protocol, the Committee shall consider the reasonableness of the steps taken by the State Party in accordance with part II of the Covenant. In doing so, the Committee shall bear in mind that the State Party may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant.

the context of the Charter – which necessitate positive measures of fulfilment and can at times only be fully implemented over time, in view of their complexity and the important budgetary resources required.

53. Regarding the (revised) Charter, the monitoring of its implementation is carried out by the ECSR, by its examination of State reports and of collective complaints, as well as by the Governmental Committee of the European Social Charter and the European Code of Social Security (Governmental Committee) and the Committee of Ministers.<sup>41</sup> The Committee of Ministers may direct recommendations to reviewed States. Supervision of the respect of human rights as enshrined in the Convention is ensured by the Court, by its examination of individual applications. The Court has the competence to issue rulings legally binding the responding States of which the Committee of Ministers supervises the execution.

54. It is to be noted that the collective complaints procedure is a protection system complementing the reporting system. It is a different system from the jurisdictional protection afforded by the Court under the Convention. Indeed, because of their collective nature, complaints may only raise questions concerning the allegedly unsatisfactory application of the Charter and may not concern merely individual situations. A complaint may be lodged with the ECSR without domestic remedies having been exhausted and consequently, without delay and without the complainant organisation necessarily being a victim of the alleged violation of the (revised) Charter.

55. It should also be noted that while foreigners who are not lawfully residing or working regularly on the territory of a State Party or who are not nationals of another State Party are excluded from the scope of application of the Charter (see paragraph 1 of the Appendix to the Charter), the Convention protects everyone within the jurisdiction of a State Party (Article 1 of the Convention).<sup>42</sup>

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<sup>41</sup> See in more detail below.

<sup>42</sup> See also O. Dörr, The European Social Charter, in: S. Schmahl/M. Breuer, The Council of Europe – Its Laws and Policies, paragraph 23.05.

56. Without prejudice to the substantial legal and practical differences in the implementation of the social rights guaranteed under the Charter and the civil and political rights guaranteed under the Convention as described above it is also worth noting at this stage that, in their assessment of the cases submitted to them, the ECSR and the Court not infrequently take into account the connections between the Charter and the Convention and employ very similar criteria, assessing the implementation in practice of the protected rights and examining whether the restrictions imposed on them are prescribed by law, pursue a legitimate aim and are necessary in a democratic society. In doing so they ensure that all human rights – whether civil and political or economic, social and cultural – are effectively protected.

# **1. The European Social Charter**

## **a) The treaty system of the Charter: state of signatures and ratifications**

57. The Charter treaty system for the protection of social, economic and cultural rights comprises the 1961 European Social Charter, the 1996 Revised European Social Charter as well as three Protocols to the European Social Charter of 1988, 1991 and 1995.

58. The European Social Charter was opened for signature on 18 October 1961 in Turin. It entered into force on 26 February 1965. On 5 May 1988 the Additional Protocol to the Charter which extended the rights contained in the 1961 Charter was opened for signature; it entered into force on 4 September 1992.

59. After the Rome Conference held in October 1990 marking the 40<sup>th</sup> anniversary of the Convention, the Council of Europe, having regard to the indivisibility and interdependence of human rights, decided to “relaunch” the Charter. This decision led to the Turin Conference marking the 30<sup>th</sup> anniversary of the Charter (October 1991), resulting in the adoption of the Protocol amending the European Social Charter of 21 October 1991 (the “Turin Protocol”), dedicated, in particular, to strengthening the reporting procedure.

60. Subsequently, an Additional Protocol (1995) providing for a system of collective complaints was adopted; it entered into force on 1 July 1998. Finally, the Revised European Social Charter was opened for signature by the Member States on 3 May 1996 and entered into force on 1 July 1999. The Revised Charter groups together all rights guaranteed by the 1961 Charter and its 1988 Additional Protocol while reinforcing some of them and also adds new rights<sup>43</sup>. It shall gradually replace the initial 1961 Charter.

61. The (revised) Charter is currently in force in 43 out of the 47 Member States of the Council of Europe.<sup>44</sup> Nine Member States are bound only by the original 1961 Charter;<sup>45</sup> the other 34 Member States are bound by the 1996 Revised Charter<sup>46</sup>. Four Member States have to date ratified neither the Charter nor the Revised Charter.<sup>47</sup>

62. As to the 1991 Protocol amending the Charter, it has not yet entered into force, as it needs to be ratified by all Contracting Parties to the Charter and four States have not yet ratified it.<sup>48</sup>

63. Finally, 15 States are currently bound by the 1995 Additional Protocol providing for a system of collective complaints.<sup>49</sup>

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<sup>43</sup> See for more details below.

<sup>44</sup> See the Treaty Office's homepage for the Chart of signatures and ratifications of the 1961 Charter and the Chart of signatures and ratifications of the 1996 revised Charter.

<sup>45</sup> Croatia, the Czech Republic, Denmark, Germany, Iceland, Luxembourg, Poland, Spain and the United Kingdom.

<sup>46</sup> Note the most recent ratification of the Revised Charter by Greece on 18 March 2016.

<sup>47</sup> Liechtenstein, Monaco, San Marino and Switzerland.

<sup>48</sup> Denmark, Germany, Luxembourg and the United Kingdom. See the Treaty Office's homepage for the Chart of signatures and ratifications of the 1991 Amending Protocol.

<sup>49</sup> Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden. See the Treaty Office's homepage for the Chart of signatures and ratifications of the 1995 Additional Protocol.

**b) Scope of the Charter and monitoring mechanisms**

**i) The rights protected by the European Social Charter (material scope)**

**64. The 1961 Charter contains a range of social, economic and cultural rights laid down in 19 Articles, covering rights related notably to employment and also to health, education and social protection and welfare. It further provides for specific protection for a number of groups. It comprises, in particular, the right to work (including just, safe and healthy working conditions and a fair remuneration – Articles 1–4), the rights to organise and bargain collectively (Articles 5 and 6), the rights to vocational guidance and training (Articles 9–10), the rights to protection of health, to social security, social and medical assistance and to benefit from social welfare services (Articles 11–14) and rights providing specific protection for young persons (Articles 7 and 17), employed women (Articles 8 and 17), persons with disabilities (Article 15), families (Article 16) and migrant workers (Articles 18–19).**

**65. The Revised Charter groups together all the rights guaranteed by the 1961 Charter and its 1988 Additional Protocol,<sup>50</sup> while incorporating amendments<sup>51</sup> and new rights. The new rights contained in the Revised Charter comprise, in particular, the right to protection against poverty and social exclusion (Article 30), the right to housing (Article 31), the right to protection in cases of termination of employment (Article 24), the**

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<sup>50</sup> CETS No. 128. The Additional Protocol adds the following rights in addition to those guaranteed under the 1961 Charter: the right of workers to non-discrimination on grounds of sex in employment matters, their right to be informed and consulted within the undertaking; their right to take part in the determination and improvement of working conditions; and the right of elderly persons to social protection.

<sup>51</sup> CETS No. 163. The amendments compared to the 1961 Charter include a reinforcement of the principle of non-discrimination, the improvement of equality of treatment for men and women in all fields covered by the treaty, a better protection of maternity and social protection of mothers, a better social, legal and economic protection of employed children and a better protection of persons with disabilities.

right to dignity at work (Article 26), the rights of workers with family responsibilities to equal opportunities and equal treatment (Article 27) and rights of workers' representatives in undertakings (Article 28).<sup>52</sup>

66. Part I of the Revised Charter formulates the thirty-one rights covered by the Charter while Part II details States' obligations with respect to their implementation.

67. The (revised) Charter is based on an "à la carte" system of acceptance of its provisions, which allows States to choose to a certain extent the provisions they are willing to accept as obligations under international law. Accordingly, while encouraging them to progressively accept all of its provisions, the (revised) Charter allows States, at the time of ratification, to adapt their undertakings to fit the level of protection of social rights achieved in their country, in law and/or in practice.

68. However, this "à la carte system" has its limits. As laid down in Part III, Article A § 1 of the Revised Charter, on undertakings, the Contracting Parties undertake not only to consider Part I of the Revised Charter as a declaration of the aims which they will pursue by all appropriate means. States which ratify the Revised Charter further undertake to consider themselves bound by a minimum number of rights. These must comprise at least six of nine specified "core" Articles of Part II of the Revised Charter, namely Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20, and an additional number of articles or numbered paragraphs of Part II of the Revised Charter which it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than sixteen articles or sixty-three numbered paragraphs.<sup>53</sup> The original 1961 Charter already provided for such an "à la carte" system. Under Article 20 of the European Social Charter of 1961 States must accept at least five of seven Articles (Articles 1, 5, 6, 12, 13, 16 and 19) and a number of articles or numbered paragraphs of Part II of the

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<sup>52</sup> See the Council of Europe Treaty Office's homepage for a summary of the Details of Treaty No. 163.

<sup>53</sup> See the website of the Council of Europe's European Social Charter for a table of provisions accepted by States Parties to the Charter and revised Charter.

Charter as it may select, provided that the total number is not less than 10 articles or 45 numbered paragraphs.

69. Concerning the “core” provisions of the (revised) Charter the current situation is the following:<sup>54</sup>

- Article 1 (right to work) has been accepted by 43 States,
- Article 5 (right to organise) by 42 States,
- Article 6 (right to bargain collectively) by 41 States,
- Article 7 (right of children and young persons to protection) by 41 States,
- Article 12 (right to social security) by 39 States,
- Article 13 (right to social and medical assistance) by 25 States,
- Article 16 (right of the family to social, legal and economic protection) by 38 States,
- Article 19 (right of migrant workers and their families to protection and assistance) by 34 States and
- Article 20 (right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex) by 38 States.<sup>55</sup>

70. Concerning the other provisions of the Charter, those that are most accepted by States are the following:

- Article 2 §§ 2 and 5 (right to public holidays with pay and to a weekly rest period),
- Article 4 §§ 2 and 3 (right to an increased rate of remuneration for overtime work and to equal pay for men and women),
- Article 8 § 1 (right to take leave before and after childbirth up to a total of at least 14 weeks) and
- Article 11 (right to protection of health).

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<sup>54</sup> See the European Social Charter’s website for a [Table of accepted provisions](#) of the 1961 Charter, 1988 Additional Protocol and 1996 Revised Charter.

<sup>55</sup> This is a global overview which does not take into account the acceptance by States of the various paragraphs of these articles. Thus, for example, paragraph 4 of Article 6 (right to strike) was not accepted by 5 States and paragraph 5 of Article 7 (remuneration of young workers) was not accepted by 7 States.

**71. Concerning the other provisions of the Charter, those that are the least accepted by States are the following:**

- Article 18 §§ 1 to 3 (right to engage in a gainful occupation in the territory of other Parties),**
- Article 23 (right of elderly persons to social protection),**
- Article 30 (right to protection against poverty and social exclusion) and**
- Article 31 (right to housing).**

**72. As regards the acceptance of the provisions of the (revised) Charter in general, only two States, France and Portugal, have accepted all provisions of the Revised Charter.<sup>56</sup>**

**ii) Persons protected by the Charter (personal scope)**

**73. The first paragraph of the Appendix to the Charter extends the scope of most of the Articles of the Charter (in addition to nationals) to “foreigners only insofar as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned”. By introducing this provision, the States Parties had in mind a limited personal scope of the Charter, and still do so, given the lack of a favorable response to a letter of 13 July 2011 of the President of the ECSR, by which the Parties were invited to abandon the provision.**

**74. Depending of the Article of the (revised) Charter concerned, the personal scope of application differs. Many of the Articles of the Charter concern particular groups of persons, notably different categories of workers, as well as children and young persons, elderly persons, persons with disabilities or the family. Furthermore, some provisions of the (revised) Charter can potentially cover every person – within the personal scope of the Charter as set out in the first paragraph of the Appendix to the Charter –, without referring only to a particular social group.**

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<sup>56</sup> See the European Social Charter’s website for a [Table of accepted provisions](#) of the 1961 Charter, 1988 Additional Protocol and 1996 Revised Charter.

### **iii) The supervisory mechanism of the European Social Charter**

**75. As set out in Part IV the supervisory mechanism of the (revised) Charter comprises different actors. Compliance with the provisions of the (revised) Charter is monitored by the ECSR. Furthermore, in the reporting procedure, the Governmental Committee of the European Social Charter and the European Code of Social Security (Governmental Committee) decides on situations which should be the subject of recommendations by the Committee of Ministers to the States concerned. The Committee of Ministers, for its part, adopts resolutions and may adopt recommendations in the reporting procedure.**

#### **The European Committee of Social Rights (ECSR)**

**76. Pursuant to the Charter and according to the decisions of the Committee of Ministers, the ECSR currently comprises fifteen independent and impartial members who are elected by the Committee of Ministers from a list of experts of the highest integrity and of recognised competence in international social questions, proposed by the States Parties (see Article 25 of the Charter, read in conjunction with Article C of the Revised Charter). Under the Turin Protocol, they shall be elected by the Parliamentary Assembly (PACE) but this provision in the Protocol is the only one which has not yet been implemented, pending the entry into force of the Protocol (see above).<sup>57</sup> The ECSR is currently composed of 14 nationals of States of the European Union (EU) and one Norwegian national<sup>58</sup>. The ECSR members' term of office is six years (renewable once).**

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<sup>57</sup> To enhance the legitimacy of the processes of monitoring social rights, PACE encourages the four States which have not yet done so to ratify the Turin Protocol (see document AS/Soc/ESC(2014)03rev, 17 October 2014).

<sup>58</sup> For more information on the ECSR, including its current composition see <https://www.coe.int/en/web/turin-european-social-charter/european-committee-of-social-rights>. It is recognised that the composition both in total numbers as well as concerning the countries represented entail a problem of legitimacy for the States parties to the Charter which are not from the EU.

77. The ECSR meets seven times a year, in principle in Strasbourg. The Council of Europe Secretariat (the Department of the European Social Charter) ensures the continuity of the work between sessions.

### Conclusions, decisions and statements of interpretation

78. Conclusions on State compliance with the Charter are adopted by the ECSR in the State reporting procedure on the basis of national reports (see Articles 21–29 of the Charter). Decisions are adopted by the ECSR in the collective complaints procedure under the Additional Protocol Providing for a System of Collective Complaints.

79. The decisions and conclusions of the ECSR, to which the ECSR members can append their dissenting opinions, are not legally binding on States Parties: they apply and interpret the provisions of the Charter and indicate what positive and negative actions should be taken by States in order to properly respect social rights and bring their national situation into conformity with the obligations set out by the Charter. Further, they serve as a basis for positive developments in the States. They are sometimes referred to by national courts for the purpose of applying, interpreting, and/or even of assessing the validity of national legislation.<sup>59</sup>

80. Lastly, in the State reporting procedure, the ECSR – like the various UN treaty bodies – also adopts its statements of interpretation by which it indicates in general terms the requirements of the (revised) Charter in respect of certain of its provisions. Furthermore, the ECSR has adopted its general statements of interpretation.<sup>60</sup>

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<sup>59</sup> See, *inter alia*, O. Dörr, *ibid.*, paragraph 23.77 with further references; and I.1.(d) below. See also the Summary of the Member States' replies to the questionnaire related to the good practices on the implementation of social rights at national level (CDDH-SOC(2018)07) for further examples.

<sup>60</sup> See, in particular, 2002: Statement on the application of the Revised Charter; 2004: Statement on the personal scope of the Charter; 2006: Statement on the nature and scope of the Charter; 2008: Statement on the burden of proof in discrimination cases; 2013: Statement on the rights of

## **The Governmental Committee**

**81. The Governmental Committee of the European Social Charter and European Code of Social Security<sup>61</sup> is composed of representatives of the States Parties to the (revised) Charter and assisted by observers representing international employers' and workers' organisations and trade unions (European Trade Union Confederation (ETUC), Business Europe and International Organisation of Employers (IOE)). It considers conclusions of non-conformity adopted by the ECSR in the State reporting procedure following their publication, having regard to the reports of the ECSR and of the States Parties concerned.**

**82. In the event that the Governmental Committee considers that a State does not take sufficient action on a conclusion of non-conformity, it may propose that the Committee of Ministers address a Recommendation to the State concerned, calling upon the latter to take appropriate measures to remedy the situation.**

### **State reporting procedure**

**83. The State reporting procedure is set out in Part IV (Articles 21 et seq.) of the 1961 Charter and has been further elaborated in several decisions of the Committee of Ministers. In the course of time the reporting system has become very elaborate. The 1991 Protocol (the "Turin Protocol"), which contains amendments to the reporting procedure, has not yet entered into force;<sup>62</sup> despite this, most of its provisions are applied on the basis of a decision of the Committee of Ministers.<sup>63</sup> This decision clarified the prerogatives and responsibilities of the control organs of the Charter, and has also**

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stateless persons under the Charter; 2015: Statement on the rights of refugees under the Charter, published on an urgent basis in October – in advance of the publication of the annual ECSR report.

<sup>61</sup> See the European Social Charter's website for information on the [European Code of Social Security](#).

<sup>62</sup> It should be recalled that it requires ratification by all States Parties. To date, four States have yet to ratify it.

<sup>63</sup> On 11 December 1991 the Committee of Ministers adopted a decision calling on the States and monitoring bodies to consider already applying some of its measures if permitted to do so by the text of the Charter.

enabled the social partners and non-governmental organisations (NGOs) to be more closely involved in the procedure. Pursuant to Part IV, Article C of the Revised Charter, the same reporting procedure applies in respect of the undertakings under the Revised Charter.

84. Under the reporting system, States Parties are under the obligation to regularly submit a report on how the provisions of the (revised) Charter they have accepted are applied in law and in practice (see Article 21 of the Charter). At the first stage of the procedure, the reports are examined by the ECSR which assesses, from a legal point of view, whether or not the national situations they describe comply with the (revised) Charter. The findings of the ECSR – known as “conclusions” – are published annually.

85. The second stage of the reporting procedure takes place before the Governmental Committee of the European Social Charter and the European Code of Social Security<sup>64</sup> (“Governmental Committee”) comprising representatives of the States Parties and observers from the aforementioned international social partners (Business Europe, IOE and ETUC). In the light of the selected conclusions of the ECSR and the States Parties’ explanations and after a thorough discussion of inter alia national circumstances and social and economic policy considerations, it decides on situations which, in its opinion, should be the subject of recommendations to States.<sup>65</sup> It then presents a report to the Committee of Ministers which is made public.<sup>66</sup>

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<sup>64</sup> See the European Social Charter’s website for more information on the European Code of Social Security.

<sup>65</sup> According to an informal working method, agreed upon in 2015 between the Governmental Committee and the ECSR, the latter selects henceforth a maximum of situations for discussion by the Governmental Committee from among its negative conclusions (currently 80 per cycle). Many negative conclusions are therefore no longer discussed by the Governmental Committee.

<sup>66</sup> Part IV, Article 27 of the Charter.

86. There are also working meetings held between the ECSR and the Governmental Committee, generally focusing on a specific issue (for example, the interpretation of specific articles of the Charter and the simplification of the reporting system).

87. The third stage of the reporting procedure takes place before the Committee of Ministers. Once it has received the report of the Governmental Committee, it adopts, by a two-thirds majority of the votes cast, a resolution which brings each supervision cycle to a close and may contain individual recommendations addressed to the States concerned, directing them to remedy the situations of non-conformity, as indicated by the Governmental Committee and taking into account *inter alia* social and economic policy considerations. Only States Parties to the Charter are entitled to vote on resolutions and recommendations.<sup>67</sup> It is to be noted, however, that so far in practice, recommendations addressed to individual States by the Committee of Ministers following the ECSR's finding of non-conformity of a situation with the Charter remained rare.<sup>68</sup>

88. Moreover, the States are to submit regular reports relating to the provisions of the (revised) Charter which they have not accepted (Article 22 of the Charter).

89. In 2007, following a decision by the Committee of Ministers, the provisions of the Charter were divided into four thematic groups of substantive undertakings: Group 1: Employment, training and equal opportunities; Group 2: Health, social security and social protection; Group 3: Labour rights; and Group 4: Children, families, migrants. Every year, States are to submit a report on one of these four thematic groups. Consequently, each provision of the (revised) Charter is reported upon every four years.<sup>69</sup>

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<sup>67</sup> Part IV, Article 29 of the Charter.

<sup>68</sup> See on this issue, for instance, Olivier de Schutter and Matthias Sant'Ana, *The European Committee of Social Rights (the ECSR)*, in: Gauthier de Beco (ed.), *Human Rights Monitoring Mechanisms of the Council of Europe*, 2012, pp. 81–82.

<sup>69</sup> See, *inter alia*, O. Dörr, *ibid.*, paragraph 23.61 with further references.

90. In 2014, the Committee of Ministers adopted further changes to the Charter reporting and monitoring system, with the aim to simplify the system of national reports for those States (currently 15) which have accepted the collective complaints procedure. Every two years, instead of the ordinary thematic report, these States must now submit a simplified national report in which they explain the follow-up action taken in response to decisions of the ECSR on collective complaints brought against them.<sup>70</sup> Depending on the case, the ECSR may then conclude that the national situation has been brought into conformity with the Charter. For the other States, it will come into force one year after their acceptance of the 1995 Protocol providing for the collective complaints procedure.

91. In 2014, it was also decided that all States must submit additional reports on conclusions of non-conformity for repeated lack of information one year after adoption of such conclusions by the ECSR.<sup>71</sup> Thereby, the Committee of Ministers intended to encourage States to seriously and swiftly consider the ECSR's findings.

92. When sending the Secretary General a report pursuant to Articles 21 and 22 of the Charter, States must also send a copy of the report to the national organisations which are members of the international organisations of employers and trade unions invited, under Article 27 § 2 of the Charter, to be represented at meetings of the Governmental Committee.<sup>72</sup> These organisations may send any comments they have on the national reports to the Secretary General, who then sends a copy of their comments to the States concerned, so that they have an opportunity to respond. Moreover, there is also a provision whereby the

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<sup>70</sup> The 15 States currently concerned by the simplified reporting procedure have been split into two groups according to the number of complaints lodged against them (from the highest to the lowest number).

<sup>71</sup> For example, when the ECSR finds that a situation is not in conformity owing to a lack of information after examination by Thematic Group 1, the State concerned must submit the information required when it comes to its report on Thematic Group 3.

<sup>72</sup> In practice, this concerns the following three organisations: the European Trade Union Confederation (ETUC), Business Europe and the International Organisation of Employers (IOE).

Secretary General sends a copy of the national reports to the international non-governmental organisations which have consultative status with the Council of Europe and have particular competence in the matters governed by the Charter (Article 1 of the Turin Protocol). Lastly, given that the reports are published on the website dedicated to the European Social Charter, any national or other organisation may submit its comments to the Department of the European Social Charter,<sup>73</sup> and it falls to the ECSR, if it sees fit, to take them into account when assessing a national situation. In practice, it is rare that national and international organisations send comments on the State reports.

93. Lastly, in order to promote a better understanding of the Charter, several ECSR delegations take part each year in bilateral meetings with States to discuss the following points: the conclusions adopted during the preceding supervision cycles and examination, in the current cycle, of these countries' policies with regard to their commitments under the Charter; the non-accepted articles (see above); and ratification of the Revised Charter and the Protocol providing for the system of collective complaints for States not yet Parties to these two instruments.

#### Collective complaints procedure<sup>74</sup>

94. The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints was opened for signature on 9 November 1995 and came into force on 1 July 1998. As stressed by the Preamble to the Protocol, the primary objective of the collective complaints procedure is to improve the effective enforcement of the social rights guaranteed by the Charter.

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<sup>73</sup> For example, in 2015, "shadow reports" were submitted by the Belgian Interfederal Centre for Equal Opportunities (UNIA), the Danish Institute for Human Rights (INDH) and the Scottish Human Rights Commission (INDH), whereas in 2014 and in 2017, "shadow reports" were also submitted by the Greek National Commission for Human Rights (NCHR).

<sup>74</sup> See for a summary on the procedure <http://www.coe.int/en/web/turin-european-social-charter/conference-turin>: information note in preparation for the Turin I conference.

95. The collective complaints procedure has given a more important role to the social partners and NGOs by authorising them to submit a direct request to the ECSR for a decision on the allegedly unsatisfactory application of provision(s) of the (revised) Charter in States which have accepted the procedure. Pursuant to Article 1 of the 1995 Additional Protocol, the organisations entitled to lodge collective complaints are: a) the aforementioned international social partners (Business Europe, ETUC<sup>75</sup> and IOE); b) INGOs enjoying consultative status with the Council of Europe whose application to bring collective complaints has been accepted by the Governmental Committee<sup>76</sup>; and c) national social partners. In addition, Article 2 of the Protocol provides that any State may grant the right to lodge complaints to representative national NGOs with particular competence in the matters governed by the Charter. However, out of 15 States, so far only Finland has done so. At present, 62 organisations are registered on the list of INGOs entitled to lodge collective complaints.

96. Pursuant to Rule 25 of the Rules of the ECSR, States shall be represented before the ECSR by the agents they appoint in the collective complaints procedure. It may be noted in this context that since 2014, several meetings have been held between the ECSR bureau and the Government agents during which various procedural and technical issues relating to the system of collective complaints were discussed. In 2016, the idea was in principle accepted also to have such meetings with representatives of INGOs and international social partners – at least with those submitting regularly complaints and/or observations.

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<sup>75</sup> To date, the ETUC and its national affiliates have filed two collective complaints: ETUC, CITUB and PODKREPA v. Bulgaria, Complaint No. 32/2005; and ETUC, CSC, FGTB and CGSLB v. Belgium, Complaint No. 59/2009. On the contrary, no complaint has yet been lodged either by Business Europe or by the IOE.

<sup>76</sup> See the following link to the list of INGOs entitled to submit collective complaints (62 in total, as of 1 January 2018).

**97. In view of their collective nature, complaints can raise questions pertaining only to the allegedly unsatisfactory application of the (revised) Charter in a State's law or practice (see Article 1 of the 1995 Protocol); they cannot concern only individual situations. There is no need to have exhausted domestic remedies before lodging a complaint, and the claimant organisation or their members do not necessarily have to be victim(s) of the alleged violation(s).**

**98. When a complaint is lodged, the ECSR starts by examining its admissibility under Articles 6 and 7 of the Additional Protocol and its rules of procedure. Then, following its decision on admissibility, and in a procedure that is usually written and adversarial, the ECSR examines the respondent State's submissions on the merits of the complaint, the response from the claimant organisation and, where appropriate, any further response from the respondent State (see Article 7 of the 1995 Protocol).<sup>77</sup>**

**99. During the written procedure, several third-party interventions are possible, in particular by States having accepted the complaints procedure and by the aforementioned international social partners, who are invited to submit observations on all complaints, independently from the States concerned and whether lodged by (international or national) NGOs or national employers' or employees' organisations.<sup>78</sup>**

**100. It should be noted that, in practice, interventions by other States that have accepted the collective complaints procedure are rare. In one such example, Finland submitted observations with a view to refuting Complaint No. 39/2006 (FEANTSA v. France) concerning the right to housing. In contrast, interventions by the aforementioned international social partners (ETUC,**

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<sup>77</sup> Sometimes, the ECSR decides simultaneously on the admissibility and the merits of complaints.

<sup>78</sup> Rule 32 of the Rules of the ECSR: <https://www.coe.int/en/web/turin-european-social-charter/rules> (latest version of 26 January 2018).

Business Europe and IOE) are more common, especially by the ETUC<sup>79</sup>.

101. Furthermore, upon a proposal by the Rapporteur, the President of the ECSR may invite any organisation, institution or individual (legal or natural; this did not yet occur) to submit observations.<sup>80</sup> For example, in 2012 the Belgian Interfederal Centre for Equal Opportunities (UNIA) was invited to submit its observations regarding Complaint No. 75/2011 (FIDH v. Belgium) concerning, in particular, the access of highly dependent adults with disabilities to the appropriate social services. UNIA also submitted observations on Complaint No. 109/2014 (MDAC v. Belgium) concerning the right of children with disabilities to be educated in ordinary Flemish primary and secondary schools.

102. In addition to this possibility for National Human Rights Institutions (NHRIs) and independent bodies promoting equality (such as UNIA) to submit observations, in some cases NHRIs provide support to NGOs lodging complaints. For example, the Irish NHRI granted financial assistance for research work that resulted in Complaint No. 110/2014 (FIDH v. Ireland) concerning the law, policies, and practices with respect to social housing, and the Greek NHRI gave its support for Complaint No. 111/2014 (GSEE v. Greece)<sup>81</sup> on the impact of austerity measures on many workers' rights.

103. In connection with this last complaint, it is worth noting that, for the first time, the European Commission had submitted observations. In the future, the ECSR might also invite other organisations or stakeholders, such as the Commissioner for Human Rights, to submit observations on complaints. It should also be pointed out that the ILO (International Labour Organisation), having a right to participate in a consultative

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<sup>79</sup> To date, the ETUC has sent 37 observations regarding 44 collective complaints, while the IOE submitted comments only once and Business Europe has not yet submitted any.

<sup>80</sup> Rule 32A of the Rules of the ECSR: Request for observations.

<sup>81</sup> Decision on admissibility of 19 May 2015 and decision on the merits of 23 March 2017.

capacity in the deliberations of the ECSR (Article 26 of the Charter), may equally submit observations on complaints.

104. Any observations the ECSR receives from third parties are forwarded to the State in question and to the organisation that has lodged the complaint.<sup>82</sup> Written submissions, responses and observations and any case documents transmitted during the examination of the merits phase are also published on the European Social Charter's website.

105. In the course of its examination of a complaint, the ECSR can also decide to organise a hearing,<sup>83</sup> either at the request of one of the parties or on its own initiative. If one of the parties requests a hearing, the ECSR decides whether or not the request should be granted. Hearings are public unless the President decides otherwise. In addition to the parties to the complaint, States and organisations which have indicated that they wish to intervene in support of a complaint or for its rejection are invited to submit observations and/or take part in the hearing. To date, in practice ECSR hearings are rare (in total 9 hearings).<sup>84</sup>

106. Moreover, since 2011, the Rules of the ECSR provide that as from the decision on the admissibility of a collective complaint or at any subsequent time during the proceedings before or after the decision on the merits the ECSR may, at the request of a party, or on its own initiative, indicate to the parties any immediate measure the adoption of which seems necessary

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<sup>82</sup> Article 7 § 3 of the 1995 Additional Protocol and Rule 32 § 3 of the Rules of the ECSR.

<sup>83</sup> Article 7 § 4 of the 1995 Additional Protocol and Rule 33 of the Rules of the ECSR.

<sup>84</sup> Hearings held: 9 October 2000: Eurofedop v. France, Complaint No. 2/1999; Eurofedop v. Italy, Complaint No. 4/1999; and Eurofedop v. Portugal, Complaint No. 5/1999; 11 June 2001: CFE-CGC v. France, Complaint No. 9/2000; 31 March 2003: Confederation of Swedish Enterprise v. Sweden, Complaint No. 12/2002; 29 September 2003: Autism-Europe v. France, Complaint No. 13/2002; 11 October 2004: ERRC v. Greece, Complaint No. 15/2003; 27 June 2007: ATD Fourth World v. France, Complaint No. 33/2006; and FEANTSA v. France, Complaint No. 39/2006; 21 June 2010: COHRE v. Italy, Complaint No. 58/2009; 7 September 2015: CGIL v. Italy, Complaint No. 91/2013; and 20 October 2016: GSEE v. Greece, Complaint No. 111/2014.

with a view to avoiding the risk of a serious irreparable injury and to ensuring the effective respect for the rights recognised in the Charter.<sup>85</sup> To date, the ECSR has received seven requests for immediate measures to be indicated to the respondent Governments. Two of these are currently pending before the ECSR. In three cases, the ECSR dismissed the requests.<sup>86</sup> In two complaints, the ECSR invited the respondent State to:

*“[a]dopt all possible measures with a view to avoiding serious, irreparable injury to the integrity of persons at immediate risk of destitution, through the implementation of a co-ordinated approach at national and municipal levels with a view to ensuring that their basic needs (shelter)<sup>87</sup>/(shelter, clothes and food)<sup>88</sup> are met; and ... [e]nsure that all the relevant public authorities are made aware of this decision”.*

107. It has been advanced, however, that the ‘immediate measure’ that the ECSR may indicate according to its Rules of Procedure, does not fit well with the character of the collective complaint procedure. Given the nature of the collective complaint such measures are general with potentially far-reaching consequences. While measures in individual situations normally fall within the discretionary powers of the relevant authorities – for instance a minister or an executive agency – this is different for lifting general measures which may even require suspension by the government of Acts of Parliament. In many countries this would be constitutionally impossible.

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<sup>85</sup> Rule 36 of the Rules of the ECSR.

<sup>86</sup> In the context of *Approach v. Ireland*, Complaint No. 93/2013; *Approach v. Belgium*, Complaint No. 98/2013 and *Unione Italiana del Lavoro U.I.L. Scuola – Sicilia v. Italy*, Complaint No. 113/2014.

<sup>87</sup> *FEANTSA v. the Netherlands*, Complaint No. 86/2012, decision on immediate measures of 25 October 2013.

<sup>88</sup> *CEC v. the Netherlands*, Complaint No. 90/2013, decision on immediate measures of 25 October 2013.

108. Following its deliberations, the ECSR adopts a decision on the merits of the complaint finding that there has or has not been a violation of the Charter. This decision is then transmitted to the parties and to the Committee of Ministers.<sup>89</sup> The average duration of proceedings from the lodging of the complaint until the adoption of the decision on the merits has been 19.4 months.<sup>90</sup> The decisions of the ECSR are not made public until the Committee of Ministers has adopted a resolution, or at the latest four months after the ECSR's decision has been forwarded to the latter (Article 8 § 2 of the 1995 Protocol).

109. According to Article 9 § 1 of the 1995 Additional Protocol, the Committee of Ministers shall adopt a resolution by a majority of those voting on the basis of the report containing the decision of the ECSR. If the ECSR found that the Charter had not been complied with, the Committee of Ministers shall adopt, by a majority of two-thirds of those voting, a recommendation addressed to the Contracting Party concerned. In both cases, entitlement to voting shall be limited to the Contracting Parties to the Charter. In addition, Article 9 § 2 of the 1995 Protocol provides that, at the request of the Contracting Party concerned, the Committee of Ministers may decide by a two-thirds majority of the Contracting Parties to the Charter to consult the Governmental Committee where the ECSR's report raises new issues.

110. As with the reporting procedure, it is for the ECSR to determine whether the national situation has been brought into conformity with the Charter. This may be done by the ECSR on the occasion of new complaints and/or in the reporting system in which the State provides information, in a simplified report, on the steps it has taken in response to the decisions taken in respect of that State.<sup>91</sup> This mechanism illustrates the complementary nature of the two procedures to monitor the

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<sup>89</sup> See Article 8 of the 1995 Additional Protocol and Rule 35 of the Rules of the ECSR.

<sup>90</sup> This is the overall average duration of proceedings (comprising both the admissibility stage and the merits stage) for the complaints completed during the period 1998-2017. However, the duration of proceedings has been increasing in recent years, *inter alia* due to the increase in the number of complaints lodged. Thus, the average duration of proceedings for the 6 complaints decided on the merits in 2017 was 27.3 months.

<sup>91</sup> See Rule 40 of the Rules of the ECSR.

application of the Charter, which allows for a more regular follow-up to the decisions of the ECSR, as it is no longer necessary to await the next State report on the question(s) at issue in the collective complaints leading to the finding of a violation or violations of the (revised) Charter. In the present situation follow-up reporting in the collective complaints procedure can go on indefinitely, even in spite of the closure of the case by the Committee of Ministers.

c) Interpretation and implementation of the Charter by the ECSR

i) General principles of interpretation of the Charter

111. In the decisions and conclusions, the ECSR has developed a number of general principles of its interpretation of the (revised) Charter<sup>92</sup>.

112. Accordingly, the ECSR has clarified the nature and scope of the (revised) Charter:

*“(...) Its purpose is to apply the Universal Declaration of Human Rights within Europe, as a complement to the European Convention on Human Rights. (...) While recognising, therefore, the diversity of national traditions (...) it is important to: strengthen commitment to the shared values of solidarity, non-discrimination and participation; identify principles to ensure that the rights embodied in the Charter are applied equally effectively in all the (...) member states.*

*Primary responsibility for implementing the European Social Charter naturally rests with national authorities. (...) these authorities may in turn delegate certain powers to local authorities or the social partners. However, if they are not accompanied by appropriate safeguards, such implementation*

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<sup>92</sup> See for instance Lörcher, K. (2017), “Interpretation”, in Bruun, N., Lörcher, K. Schömann, L and Clauwaert, S., *The European Social Charter and the Employment Relation*, Hart Publishing, Oxford, (2017), pp. 52-62.

arrangements may threaten compliance with undertakings under the Charter.”<sup>93</sup>

**113. The ECSR further clarified its interpretation of the (revised) Charter in the light of the Vienna Convention on the Law of Treaties and the aforementioned 1993 Vienna Declaration:**

*“The present complaint raises issues of primary importance in the interpretation of the Charter. In this respect, the Committee (...) has to interpret the Charter; it does so on the basis of the 1969 Vienna Convention (...). According to Article 31 § 1 (...): ‘A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.’ The Charter was envisaged as a human rights instrument to complement the European Convention on Human Rights. It is a living instrument dedicated to certain values (...): dignity, autonomy, equality and solidarity (...) according to the Vienna Declaration of 1993, all human rights are ‘universal, indivisible, interdependent and interrelated’ (para. 5). The Committee is therefore mindful of the complex interaction between both sets of rights. (...) the Charter must be interpreted so as to give life and meaning to fundamental social rights. It follows (...) that restrictions on rights are to be read restrictively, (...) understood in such a manner as to preserve intact the essence of the right and to achieve the overall purpose of the Charter.”*<sup>94</sup>

**114. It can be noted that, contrary to the explicit wording in paragraph 1 of the Appendix to the Charter, the ECSR considers**

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<sup>93</sup> Conclusions XVIII-1 – Statement of interpretation – General (2006) (available at <http://hudoc.esc.coe.int/eng#>).

<sup>94</sup> FIDH v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 26 to 29.

that the provisions of the Charter may be extended to persons unlawfully present on the territory of a State Party.<sup>95</sup>

115. Furthermore, when considering several collective complaints, the ECSR has reiterated that the aim of the (revised) Charter was to protect rights not merely theoretically but also effectively. Accordingly, the ECSR considers that the satisfactory application of the (revised) Charter cannot be ensured solely by the operation of legislation if it is not effectively applied and rigorously supervised.<sup>96</sup> Consequently, States have an obligation to take not only legal action but also practical action to give full effect to the rights recognised in the (revised) Charter.<sup>97</sup>

116. Moreover, following the Court's example, the ECSR has interpreted the (revised) Charter provisions so as to comprise "positive obligations".<sup>98</sup>

117. Lastly, certain rights enshrined in the (revised) Charter must be implemented immediately upon entry into force of the (revised) Charter in the State concerned (this relates in particular to negative obligations and obligations to comply), whereas other rights may be implemented gradually. The latter comprise rights the implementation of which is particularly complex, often necessitating structural measures and entailing substantial financial costs.

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<sup>95</sup> This has raised questions by States Parties whether the rules of interpretation laid down in the Vienna Convention were applied rightly or whether the ECSR had not gone beyond the powers entrusted to it by the Charter, see Resolutions of the Committee of Ministers CM/ResCh S(2015)4 and 5 concerning the collective complaints *FEANTSA v. the Netherlands* and *CEC v. the Netherlands*.

<sup>96</sup> See *ICJ v. Portugal*, Complaint No. 1/1998, decision on the merits of 9 September 1999, § 32.

<sup>97</sup> See *Autism-Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 53.

<sup>98</sup> See, for instance, *MFHR v. Greece*, Complaint No. 30/2005, decision on admissibility of 10 October 2005, § 14, concerning the semi-privatised mining of lignite, posing health and environmental risks; *OMCT v. Ireland*, Complaint No. 18/2003, decision on the merits of 7 December 2004, §§ 56–58, concerning the duty to ban corporal punishment of children; *C.G.S.P. v. Belgium*, Complaint No. 25/2004, decision on the merits of 9 May 2005, § 41, where the ECSR interprets Article 6 § 1 of the Charter on collective bargaining as meaning that States must take positive steps to encourage consultation between trade unions and employers' organisations; see also I. above.

**118. The ECSR has clarified the way in which a gradual implementation is in conformity with the (revised) Charter:**

*“When the achievement of one of the rights (...) is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for others persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings”.<sup>99</sup> “In the absence of any commitment to or means of measuring the practical impact of measures taken, the rights (...) are likely to remain ineffective. In connection with timetabling – with which other regulatory bodies of international instruments are also very concerned – it is essential for reasonable deadlines to be set that take account not only of administrative constraints but also of the needs of groups that fall into the urgent category. At all events, achievement of the goals that the authorities have set themselves cannot be deferred indefinitely.”<sup>100</sup>*

**ii) References to the case-law of the Court and other international instruments**

**119. In its interpretative work, the ECSR has, on numerous occasions, referred to the Convention and the case-law of the Court for the definition of principles and concepts. The following are just a few examples, relating to:**

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<sup>99</sup> See *Autism-Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 53.

<sup>100</sup> See *ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 65–66.

- **Article E in conjunction with another provision of the Revised Charter:** the ECSR considers that its role is similar to that of Article 14 of the Convention. Referring to the Court's judgment of 1968 in the case "*relating to certain aspects of the laws on the use of languages in education in Belgium*", the ECSR held that Article E had no independent existence and had to be combined with a substantive provision of the Charter;<sup>101</sup>
- **the definition of discrimination:** the ECSR referred to the Court's *Thlimmenos v. Greece* judgment of 2000, according to which discrimination arises where States fail to treat differently persons whose situations are significantly different;<sup>102</sup>
- **the protection of the Sinti and Roma population:** the ECSR held, as had the Court in its *Chapman v. the United Kingdom* (2001), *Muñoz Díaz v. Spain* (2009) and *Oršuš and Others v. Croatia* (2010) judgments, that the obligation to protect the identity and lifestyle of minorities covered not only protection of their interests, but also preservation of cultural diversity of value to the whole community;<sup>103</sup>
- **the definition of "collective expulsion":** the ECSR aligned its definition with that given by the Court to Article 4 of Protocol No. 4 to the Convention: "*any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group*";<sup>104</sup>

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<sup>101</sup> SAGES v. France, Complaint No. 26/2004, decision on the merits of 15 June 2005, § 34.

<sup>102</sup> See Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 52; and MDAC v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, §§ 50–51.

<sup>103</sup> COHRE v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 37 to 40, 106, 117, 120 to 121, 129, 131, 138 and 155 to 156.

<sup>104</sup> *Ibid.*, §§ 155 and 156.

- the right to housing: the ECSR’s interpretation of Article 31 of the Revised Charter must be in keeping with the Court’s interpretation of the relevant provisions of the Convention;<sup>105</sup>
- the concept of “corporal punishment”: the ECSR referred to the Court’s interpretation of the concepts of the judicial birching of children (*Tyrer v. the United Kingdom*, 1978), corporal punishment inflicted at school (*Campbell and Cosans v. the United Kingdom*, 1982) and parental corporal punishment (*A. v. the United Kingdom*, 1998) in its interpretation of Article 17 § 1 b) of the Revised Charter on the protection of children and adolescents against violence, negligence and exploitation;<sup>106</sup>
- the right to organise: referring to the Court’s 1998 judgment in the *Gustafsson v. Sweden* case, the ECSR held that treating employers differently depending on whether or not they are members of a trade union is not in conformity with Article 5 of the Charter if this affected the very substance of their freedom of association.<sup>107</sup>

120. The (revised) Charter is also interpreted in the light of other international treaties in the areas of the rights guaranteed by it and in the light of the interpretation given to those treaties by their respective monitoring bodies, in particular the International Covenant on Economic, Social and Cultural Rights,<sup>108</sup> the instruments of the International Labour

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<sup>105</sup> *ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 68–69; *FEANTSA v. France*, Complaint No. 39/2006, decision on the merits of 5 December 2007, §§ 64–65; and *FEANTSA v. Slovenia*, Complaint No. 53/2008, decision on the merits of 8 September 2009, §§ 32–35.

<sup>106</sup> *OMCT v. Greece*, Complaint No. 17/2003, decision on the merits of 7 December 2004, § 31; *OMCT v. Ireland*, Complaint No. 18/2003, decision on the merits of 7 December 2004, § 55; *OMCT v. Italy*, Complaint No. 19/2003, decision on the merits of 7 December 2004, § 41; *OMCT v. Portugal*, Complaint No. 20/2003, decision on the merits of 7 December 2004, § 34; and *OMCT v. Belgium*, Complaint No. 21/2003, decision on the merits of 7 December 2004, § 38.

<sup>107</sup> *Federation of Finnish Enterprises v. Finland*, Complaint No. 35/2006, decision on the merits of 16 October 2007, §§ 28–29.

<sup>108</sup> For example, the ECSR referred to Article 11 of the Covenant and General Comments Nos. 4 and 7 of the UN Committee on Economic, Social and Cultural

Organisation (ILO),<sup>109</sup> the United Nations Convention on the Rights of the Child,<sup>110</sup> the United Nations Convention on the rights of persons with disabilities and the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>111</sup>

121. Lastly, it should be pointed out that the ECSR takes account of European Union law when it interprets the Charter.<sup>112</sup> Moreover, the revised Charter of 1996 – compared with its original 1961 text – contains amendments which take account of the developments in EU law, and which influence the way in which States implement the Charter.<sup>113</sup>

### iii) Examples of ECSR decisions and conclusions

122. From the entry into force in 1998 of the 1995 Protocol Providing for a System of Collective Complaints until 21 February 2018, the ECSR has registered a total of 158 complaints, 114 of which have already been processed<sup>114</sup> and 44 of which are currently being examined<sup>115</sup>. The majority (roughly 60%) of complaints have been lodged by INGOs having consultative

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Rights with regard to the right to housing in general – see ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 68–71 – and to forced expulsions – see COHRE v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 20–21. With regard to education, the ECSR referred to its General Comment No. 13 – see MDAC v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, § 37.

<sup>109</sup> See, for example, POPS v. Greece, Complaint No. 77/2012, decision on the merits of 7 December 2012, § 30 on the reform of pensions, and Bedriftsforbundet v. Norway, Complaint No. 103/2013, decision on the merits of 17 May 2016, § 27 on trade union monopolies.

<sup>110</sup> See, for example, DCI v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 29; and OMCT v. Ireland, Complaint No. 18/2003, decision on the merits of 7 December 2004, §§ 34 and 55.

<sup>111</sup> See, for example, ERRC v. Portugal, Complaint No. 61/2010, decision on the merits of 30 June 2011, § 12.

<sup>112</sup> See, for instance, LO and TCO v. Sweden, Complaint No. 85/2012, decision on admissibility and the merits of 3 July 2013, §§ 116 and 120. See further L1.(e) below.

<sup>113</sup> See also L1.(e) below.

<sup>114</sup> See the following link to the European Social Charter's website for the [list of processed complaints](#).

<sup>115</sup> See the following link to the European Social Charter's website for the [list of pending complaints](#).

status with the Council of Europe, whereas approximately 30% have been lodged by national trade unions, and some 10% by the international social partners (to date only by the ETUC), national employers' organisations and national NGOs.<sup>116</sup> There has been a recent increase in the number of complaints lodged: 18 complaints in 2017 and 21 in 2016, compared to 6 complaints in 2015 and 10 in 2014.<sup>117</sup>

123. Until 21 February 2018, the ECSR has delivered more than 100 decisions on the merits<sup>118</sup> of complaints relating to a wide range of issues – including the rights of Roma, the

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<sup>116</sup> It is recalled that, to date, only Finland has acknowledged the right of national NGOs to lodge complaints – 7 complaints have been lodged by 3 national NGOs: Complaints Nos. 70/2011 and 71/2011 by The Central Association of Carers in Finland; Complaints Nos. 88/2012, 106/2014, 107/2014 and 108/2014 by the Finnish Society of Social Rights and Complaint No. 139/2016 by Central Union for Child Welfare (CUCW).

<sup>117</sup> This was equally stressed in the speech by the President of the ECSR during an exchange of views with the Ministers' Deputies on 22 March 2017, see <http://rml.coe.int/doc/09000016807010f3>.

<sup>118</sup> So far there have been only 6 inadmissibility decisions: *Frente Comum de Sindicatos da Administração Pública v. Portugal*, Complaint No. 36/2006, decision on admissibility of 5 December 2006 – insufficient evidence that the representative of the complainant organisation had the authority to act; *SAIG-Syndicat des Hauts Fonctionnaires v. France*, Complaint No. 29/2005, decision on admissibility of 14 June 2005 – the complaint did not pertain to the applicable rules but rather to the manner in which they were being applied in a particular case in a set of proceedings over a period of eight years before administrative and criminal courts and disciplinary bodies; *Syndicat national des Dermato-Vénérologues v. France*, Complaint No. 28/2004, decision on admissibility of 13 June 2005 – the facts adduced were not of a nature to enable the ECSR to conclude that there had been a violation of the right guaranteed by the combination of Article E with Articles 1 § 2 and 4 § 1; *European Federation of Employees in Public Services v. Greece*, Complaint No. 3/1999, decision on admissibility of 13 October 1999 – Greece had not accepted the provisions relied upon; *FFFS v. Norway*, Complaint No. 120/2016, decision on the merits of 18 October 2016 – due to the validity of the reservation to Article 12 § 4 of the 1961 Charter to which Norway was bound before 1994, it was not obliged to grant before this date social security rights to foreign seamen not domiciled in Norway; and *Movimento per la libertà della psicanalisi-associazione culturale italiana v. Italy*, Complaint No. 122/2016, decision on admissibility of 24 March 2017 – the activities carried out by the complainant organisation were not within the essential prerogatives of a trade union and the movement could not be considered as a trade union organisation. In general, it should be emphasised that the fact that the vast majority of complaints have been declared admissible by the ECSR – in contrast to the situation with regard to the applications lodged with the Court – can largely be explained by the fact that there is no requirement to exhaust domestic remedies in the collective complaints procedure.

assistance to and the right to shelter for irregular migrants, the rights of persons with disabilities, the right to organise and the right to strike. In the vast majority of cases the ECSR has found one or more violation(s) of the Charter (in about 96% of the cases).

124. As for the States against whom collective complaints were lodged, the distribution has been relatively uneven: roughly one third of the complaints concerned France, some 14% Greece and some 10% Portugal and Italy, whereas other States Parties had only two or three complaints lodged against them over a period of more than 15 years. Lastly, it should be pointed out that recently, an INGO lodged the same complaint against all 15 States Parties to the 1995 Protocol.<sup>119</sup>

125. The ECSR has assessed the Contracting Parties' compliance with the provisions of the Charter, for instance, in the following decisions.<sup>120</sup>

126. In the context of the right to a fair remuneration under Article 4 of the Charter, the ECSR was called upon to decide on two complaints lodged by GENOP-DEI and ADEDY v. Greece which concerned austerity measures in Greece. These had entailed changes to the Labour Code providing for the option of dismissing workers up to one year from their hiring without having to give grounds<sup>121</sup> and the introduction of pay for young workers up to the age of 25 which was significantly less than that of older workers.<sup>122</sup>

127. The ECSR found on 23 May 2012 that there had been a violation of the Charter (Articles 4 § 4 and 4 § 1 in the light of the non-discrimination clause of the Preamble to the 1961 Charter) in both respects, despite the Government's objective of consolidating public finances. According to the ECSR:

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<sup>119</sup> See Complaints Nos. 124/2016 to 138/2016 by University Women of Europe – all registered on 24 August 2016.

<sup>120</sup> See for all ECSR decisions and conclusions and their follow-up the European Social Charter's HUDOC website: <http://hudoc.esc.coe.int/eng#>.

<sup>121</sup> GENOP-DEI and ADEDY v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012.

<sup>122</sup> GENOP-DEI and ADEDY v. Greece, Complaint No. 66/2011, decision on the merits of 23 May 2012.

**“while it may be reasonable for the crisis to prompt changes [...] to restrict certain items of public spending or relieve constraints on businesses, these changes should not excessively destabilise the situation of those who enjoy the rights enshrined in the Charter”. Accordingly “a greater employment flexibility in order to combat unemployment and encourage employers to take on staff, should not result in depriving broad categories of employees, particularly those who have not had a stable job for long, of their fundamental rights in the field of labour law, protecting them from arbitrary decisions by their employers or from economic fluctuations. The establishment and maintenance of such rights [...] is indeed one of the aims [of] the Charter. ... [D]oing away with such guarantees would not only force employees to shoulder an excessively large share of the consequences of the crisis but also accept pro-cyclical effects liable to make the crisis worse and to increase the burden on welfare systems [...], unless it was decided at the same time to stop fulfilling the obligations of the Charter in the area of social protection.”<sup>123</sup>**

**128. As for the right to organise guaranteed by Article 5 of the (revised) Charter, the ECSR held in Complaint No. 83/2012 (EuroCOP v. Ireland) that there had been no violation of Article 5 on grounds of the prohibition against members of the police on establishing trade unions.<sup>124</sup> The ECSR further concluded that there was a breach of Article 5 on grounds of the prohibition on police representative associations to join national employees’ organisations. Moreover, Article 6 § 2 had been breached on account of the latter’s restricted access to pay agreement negotiations and Article 6 § 4 had been violated by the said prohibition to strike on members of the police force.**

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<sup>123</sup> See Complaint No. 65/2011, cited above, §§ 17–18.

<sup>124</sup> Decision on the admissibility and the merits of 2 December 2013.

129. Furthermore, still with regard to the right to bargain collectively under Article 6 of the (revised) Charter, the ECSR considered in its decision of 3 July 2013 in *LO and TCO v. Sweden* the complaint by Swedish trade unions as well-founded. The complainants had alleged that the legislative amendments introduced in 2010 bringing Sweden into line with the *Laval* judgment of the Court of Justice of the European Union (CJEU) violated the Charter. The ECSR held that the amendments in question did not promote collective bargaining for posted workers in violation of Article 6 § 2 and that they introduced restrictions on the collective action in which workers must be able to engage in breach of Article 6 § 4. Furthermore, the said amendments did not respect the principle of not treating migrant workers less favourably, in violation of Article 19 § 4.<sup>125</sup>

130. With regard to the right to protection of health under Article 11 of the (revised) Charter, the ECSR has held on two occasions, in *MFHR v. Greece* and in *FIDH v. Greece*, that the Charter, just as the Convention, also guaranteed the right to a healthy environment.<sup>126</sup>

131. As for the right to social security under Article 12 of the (revised) Charter, the ECSR had to assess the pensions reform in Greece, again adopted in the context of the austerity measures taken, in five collective complaints, *IKA-ETAM v. Greece*, *POPS v. Greece*, *POS-DEI v. Greece*, *LS.A.P. v. Greece* and *ATE v. Greece*. The ECSR held that there had been a violation of the Charter (Article 12 § 3),<sup>127</sup> considering that:

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<sup>125</sup> *LO and TCO v. Sweden*, Complaint No. 85/2012, decision on admissibility and the merits of 3 July 2013, §§ 116 and 120. In the assessment of the follow-up to this decision, the ECSR held, in 2016, that the situation had still not been brought into conformity with the Charter.

<sup>126</sup> *MFHR v. Greece*, Complaint No. 30/2005, decision on the merits of 6 December 2006, § 195; in 2015, the ECSR held that the situation had not been brought into conformity with the Charter. See further *FIDH v. Greece*, Complaint No. 72/2011, decision on the merits of 23 January 2013; in 2015, the ECSR held that the situation had not been brought into conformity in respect of Articles 11 §§ 1 and 3 but that it had been brought in conformity in respect of Article 11 § 2.

<sup>127</sup> All decisions on the merits delivered on 7 December 2012: *IKA-ETAM v. Greece*, Complaint No. 76/2012; *POPS v. Greece*, Complaint No. 77/2012; *LS.A.P. v. Greece*, Complaint No. 78/2012; *POS-DEI v. Greece*, Complaint No. 79/2012; and *ATE v. Greece*, Complaint No. 80/2012. In its evaluation of Greece's follow-up to its decisions on austerity measures (simplified reporting procedure), the ECSR

*“the cumulative effect of the restrictions [...] is bound to bring about a significant degradation of the standard of living and the living conditions of many of the pensioners concerned” and that “any decisions made in respect of pension entitlements must respect the need to reconcile the general interest with individual rights, including any legitimate expectations that individuals may have in respect of the stability of the rules applicable to social security benefits”.*<sup>128</sup> **The ECSR further stated that “the fact that the contested provisions of domestic law seek to fulfil the requirements of other legal obligations does not remove them from the ambit of the Charter” (in this case, Greece’s obligations in connection with loans from EU institutions and the International Monetary Fund).**<sup>129</sup>

**132. With regard to the right to emergency social and medical assistance (Article 13 of the (revised) Charter), the right of children and young persons to social, legal and economic protection (Article 17) and the right to shelter (Article 31 § 2), the ECSR held in a series of decisions that from the point of view of human dignity, migrants in an irregular situation should be able to benefit from those rights.**<sup>130</sup> It thereby went beyond the

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considered in 2015 that the situations amounting to violations found in 2012 had not yet been brought in conformity with the Charter.

<sup>128</sup> See Complaint No. 76/2012, §§ 78 and 82.

<sup>129</sup> See *ibid.*, § 50.

<sup>130</sup> See *FIDH v. France*, Complaint No. 14/2003, decision on the merits of 8 September 2004; in its 2011 Conclusions, the ECSR found that the situation had been brought into conformity with the Charter. See further *DCI v. the Netherlands*, Complaint No. 47/2008, decision on the merits of 20 October 2009; the ECSR equally concluded that the situation had been brought in line with the Charter. See, moreover, *FEANTSA v. the Netherlands*, Complaint No. 86/2012, decision on the merits of 2 July 2014, and *CEC v. the Netherlands*, Complaint No. 90/2013, decision on the merits of 1 July 2014; in the assessment of the follow-up to these two decisions, the ECSR held, in 2016, that the situations had still not been brought in conformity with the Charter. In its latest follow-up report the Netherlands pointed to the decision of the Court in *Hunde v. the Netherlands* (no. 17931/16, 5 July 2016) where the Court considered the complaints under Article 3 of the Convention manifestly ill-founded, in particular because given the different measures taken by the Dutch Government in the meantime it could not be said that the Netherlands authorities had fallen short of their obligations under Article 3 by having remained

personal scope of application of the Charter. Pursuant to paragraph 1 of the Appendix, the Charter protects foreigners only insofar as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned. In its *FIDH v. France* decision of 2004 the ECSR accepted, first, the applicability of Articles 13 and 17 to minors in an irregular situation. In its *DCI v. the Netherlands* decision of 2009, the ECSR then reached a similar conclusion with regard to such minors' right to shelter under Article 31 § 2. Lastly, in its *CEC v. the Netherlands* and *FEANTSA v. the Netherlands* decisions of 2014, the ECSR concluded that both minors and adults in an irregular situation had the right to shelter and to emergency medical and social assistance.

133. In these decisions, the ECSR referred to instruments including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the UN Convention on the Rights of the Child, none of which, just as the Convention, provides for any restriction similar to the one in the above-mentioned Appendix. In its *DCI v. Belgium* decision of 2012, the ECSR highlighted the principles of its interpretation of the rights which must be guaranteed:

“The Committee nonetheless points out that, the restriction of the personal scope included in the Appendix should not be read in such a way as to deprive foreigners coming within the category of unlawfully present migrants of the protection of the most basic rights enshrined in the Charter or to impair their fundamental rights such as the right to life or to physical integrity or the right to human dignity (*Defence for Children International v. the Netherlands*, Complaint No. 47/2008, *ibid*, §19; *International Federation of Human Rights Leagues v. France*, *ibid*, §§ 30 and 31).

(...)

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inactive or indifferent. This was recently reaffirmed in *Said Good v. the Netherlands* (no. 50613/12, 23 January 2018).

In the light of the latter observations and of the mandatory, universally recognised requirement to protect all children – requirement reinforced by the fact that the United Nations Convention on the Rights of the Child is one of the most ratified treaties at world level, the Committee considers that paragraph 1 of the Appendix should not be interpreted in such a way as to expose foreign minors unlawfully present in a country to serious impairments of their fundamental rights on account of a failure to give guarantee to the social rights enshrined in the revised Charter.

However, although the restriction of personal scope contained in the Appendix does not prevent the application of the Charter's provisions to unlawfully present foreign migrants (including accompanied or unaccompanied minors) in certain cases and under certain circumstances, the Committee wishes to underline that an application of this kind is entirely exceptional. It would in particular be justified solely in the event that excluding unlawfully present foreigners from the protection afforded by the Charter would have seriously detrimental consequences for their fundamental rights (such as the right to life, to the preservation of human dignity, to psychological and physical integrity and to health) and would consequently place the foreigners in question in an unacceptable situation, regarding the enjoyment of these rights, as compared with the situation of *nationals and of lawfully resident foreigners*.<sup>131</sup>

134. It should be noted that the Committee of Ministers, in its resolutions concerning *FEANTSA v. the Netherlands* and *CEC v. the Netherlands*, explicitly recalled that the powers entrusted to the ECSR were firmly rooted in the Charter itself and recognised that the decisions of the ECSR raised complex issues in this regard and in relation to the obligation of States Parties to

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<sup>131</sup> See *DCI v. Belgium*, Complaint No. 69/2011, decision on the merits of 23 October 2012, §§ 28–39.

respect the Charter. It further recalled the limitation of the scope of the European Social Charter (revised), laid down in paragraph 1 of the Appendix to the Charter.<sup>132</sup>

135. With regard to the rights of persons with disabilities under Article 15 of the (revised) Charter the ECSR delivered two decisions against France finding a violation of Article 15 § 1 on the ground that mainstream education in ordinary schools was not a priority for children and adolescents suffering from autism (Autism-Europe v. France and AEH v. France).<sup>133</sup>

136. Furthermore, in Complaint No. 100/2013 (ERRC v. Ireland) concerning the right of the family to protection under Article 16 of the (revised) Charter, the ECSR held that there had been no violation of Article 16 in respect of the legal framework governing accommodation for Travellers.<sup>134</sup>

137. Concerning the right of children and young persons to protection under Article 17 of the (revised) Charter, the ECSR has confirmed, in a series of decisions, that in their domestic legislation States must explicitly and effectively prohibit all corporal punishment inflicted on children in the family, at school and in other settings (Approach v. France, v. Ireland, v. Italy, v. Slovenia, v. the Czech Republic and v. Belgium respectively).<sup>135</sup>

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<sup>132</sup> CM/ResCh S(2015)4 and CM/ResCh S(2015)5.

<sup>133</sup> See Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003; and AEH v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013. In the assessment of the follow-up to these two decisions, the ECSR held, in 2015, that the situations had still not been brought in conformity with the Charter.

<sup>134</sup> Complaint No. 100/2013, decision on the merits of 1 December 2015.

<sup>135</sup> Approach v. France, Complaint No. 92/2013, decision on the merits of 12 September 2014; Approach v. Ireland, Complaint No. 93/2013, decision on the merits of 2 December 2014; Approach v. Italy, Complaint No. 94/2013, decision on the merits of 5 December 2014; Approach v. Slovenia, Complaint No. 95/2013, decision on the merits of 5 December 2014 – in 2016, in the assessment of the follow-up to this decision, the ECSR held that the situation had not yet been brought in conformity with the Charter; Approach v. the Czech Republic, Complaint No. 96/2013, decision on the merits of 20 January 2015 – in the assessment of the follow-up to this decision in 2016, the ECSR held that the situation had not yet been brought in conformity with the Charter; Approach v. Belgium, Complaint No. 98/2013, decision on the merits of 20 January 2015.

138. In the reporting procedure, the ECSR examined Thematic Group 3 covering “Labour rights” in 2014. On that occasion, it adopted 725 conclusions regarding 41 States: 252 conclusions of non-conformity with the Charter (35%), 337 conclusions of conformity (46%) and 136 “deferrals” (19%), in which, in the absence of sufficient information, the ECSR was unable to assess the situation. Positive developments were observed particularly in relation to the right to information and consultation in collective redundancy proceedings, the right to paid public holidays and the elimination of risks in inherently dangerous or unhealthy occupations. In contrast, the ECSR noted several recurring problems regarding the right to remuneration enabling workers and their families to have a decent standard of living, periods of notice which were often insufficient, and the unassignable and/or unattachable portion of wages which was often too low.<sup>136</sup>

139. In 2015, the ECSR examined Thematic Group 4 covering “Children, families and migrants”. At its session in December 2015, it adopted 824 conclusions concerning 31 States. Positive developments were observed in particular for the rights of workers with family responsibilities, the legal and social protection of families and corporal punishment. However, the ECSR noted several problems affecting numerous States, including two recurring problems: the pay and treatment of young workers and apprentices, and the rights and treatment of migrant workers (restrictive measures, in particular discrimination as regards family allowances and inadequate respect of the right to family reunion).<sup>137</sup>

140. In 2016, the ECSR examined Thematic Group 1 on “Employment, training and equal opportunities”. On that occasion, it adopted 513 conclusions concerning 34 States: 166 conclusions of non-conformity with the Charter (32%), 262

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<sup>136</sup> See the ECSR’s Activity Report 2014, pp. 19 et seq.

<sup>137</sup> See the ECSR’s Activity Report 2015, pp. 24 et seq. See in this context also the speech by the President of the ECSR on the occasion of his exchange of views with the Committee of Ministers at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806304fc>.

conclusions of conformity (51%) and 85 “deferrals” (17%). Positive developments were observed in particular for the right to protection in cases of termination of employment, the right of workers to the protection of their claims in the event of the insolvency of the employer as well as for the access to general and vocational secondary education, university and non-university higher education. However, the ECSR noted several problems affecting numerous cases: discrimination in employment, insufficient integration of persons with disabilities into the ordinary labour market, failure to provide for reasonable accommodation for persons with disabilities and the right to equality of opportunities for women and men.<sup>138</sup>

141. In 2017, the ECSR then completed its examination of State reports on rights relating to health, social security and social protection (Thematic Group 2). It adopted 486 conclusions in respect of 33 States: 175 conclusions of non-conformity with the Charter (36%), 228 conclusions of conformity (47%) and 83 “deferrals” (17%). Positive developments were observed in particular in that there is an improved framework and adoption of measures in respect of health and safety at work and an extension of social security benefits. However, the ECSR noted several problems affecting numerous cases: insufficient measures to reduce the high number of fatal accidents at the workplace and of infant and maternal mortality, inadequate levels of social security benefits and of social assistance and inadequate measures taken against poverty and social exclusion.<sup>139</sup>

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<sup>138</sup> See the ECSR’s Activity Report 2016, pp. 29 et seq. See on the ECSR’s Conclusions 2016 also <http://www.coe.int/en/web/turin-european-social-charter/-/discrimination-remains-widespread-in-the-states-parties-to-the-european-social-charter>.

<sup>139</sup> See the website of the European Social Charter for the 2017 Conclusions of the ECSR.

**d) Implementation of the Charter at national level**

**i) The application of the Charter by national courts**

**142. It is important to stress at the outset the non-exhaustive and purely illustrative nature of the examples which follow. These will be supplemented at a later stage in particular by an analysis of the replies given by the States to a questionnaire concerning their good practices in the implementation of social rights and in particular of the European Social Charter.<sup>140</sup>**

**143. The application of the Charter and of the decisions and conclusions of the ECSR by national courts can have a considerable impact on citizens' everyday lives. Therefore, the ECSR encourages:**

**“national courts to decide the matter in the light of the principles it has laid down [...] or, as the case may be, [...] the legislator to give them the possibility to draw the consequences as regards the conformity with the Charter and the legality of the provisions at issue.”<sup>141</sup>**

**144. It should be pointed out, however, that the application of the (revised) Charter by national courts differs and can take different forms or directions.**

**145. As a matter of example, Belgium's Council of State partially set aside a compulsory retirement decision relating to a civil servant, which followed automatically from two negative assessments and took effect 10 days later. It set aside the effective date, enforcing Article 4 § 4 of the Charter directly, since it held that this period, although admissible in domestic**

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<sup>140</sup> See the decision of the CDDH in December 2017, CDDH(2017)R88, § 15. See for the States' replies to a questionnaire related to the good practices on the implementation of social rights at national level document CDDH-SOC(2017)04, for a summary thereof document CDDH-SOC(2018)07 and for a short analysis of the replies document CDDH-SOC(2018)06.

<sup>141</sup> *Confederation of Swedish Enterprise v. Sweden*, Complaint No. 12/2002, decision on the merits of 22 May 2003, § 43, on the obligation to repeal or not to enforce pre-entry closed shop clauses, even if a State traditionally leaves regulation of the labour sector to the social partners alone (§ 28).

law, did not match the reasonable period of notice guaranteed by the Charter.<sup>142</sup> Other Belgian courts – including the Constitutional Court – are equally applying the Charter.<sup>143</sup>

146. Furthermore, in Spain a labour court overruled national legislation allowing workers to be dismissed during their probationary period without notice or compensation. In doing so, it based its reasoning on the decision of the ECSR in Complaint No. 65/2011 (GENOP-DEI and ADEDY v. Greece), holding that the measures imposed on Greece by the Troika were similar to those taken in Spain.<sup>144</sup> Several other Spanish labour courts have followed this judgment. In the same vein, three judgments by high regional courts in Spain have recently applied the Charter, giving it a binding effect (Article 4 § 4 on the right of all workers to a reasonable period of notice), and have recognised that the ECSR's interpretations can help the Spanish judiciary to interpret its dispositions.<sup>145</sup>

147. The Labour Division of the French Court of Cassation has also accepted the direct applicability of certain (revised) Charter articles such as Article 5 (right to organise) and Article 6 (right to bargain collectively).<sup>146</sup> It has further accepted the applicability of

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<sup>142</sup> Belgian Council of State, judgment of 28 April 2008, No. 182.454; and judgment of 6 November 2012, No. 221.273 (concerning Article 6 § 4 of the Charter).

<sup>143</sup> See, for example, the Belgian Constitutional Court's judgment of 4 May 2005, No. 87/2005 (at B.48 and B.49) regarding Article 2 § 1 of the Charter; judgment of 6 April 2000, No. 42/2000 (at B.7.4.) regarding Article 6 § 4 of the Charter; judgments of 14 November 2012, No. 142/2012, and of 15 July 1993, No. 62/1993, on other articles of the Charter. See also Judgment No. 101/2008, which refers to Article 31 of the Charter without reservations (although it is not binding on Belgium and a reservation has been expressed in this field concerning the EU Charter of Fundamental Rights) prior to finding a violation of the Constitution with regard to housing (at B.20 et seq.). For other courts referring to Article 6 § 4 of the Charter see, for example, the judgment of 5 November 2009 of the Brussels Labour Court.

<sup>144</sup> Juzgado de lo Social No. 2 of Barcelona, Judgment No. 412 of 19 November 2013.

<sup>145</sup> See High Court of Justice of the Canaries (Las Palmas, Gran Canaria), Chamber for Social and Labour Matters, Judgment 30/2016 of 28 January 2016, App. 581/2015; Judgment 252/2016 of 30 March 2016, App. 989/2015; Judgment 342/2016 of 18 April 2016, App. 110/2016.

<sup>146</sup> French Court of Cassation, Lab. Div., 14 April 2010, Nos. 09-60426 and 09-60429; 10 November 2010, No. 09-72856; 1 December 2010, No. 10-60117; 16 February 2011, Nos. 10-60189 and 10-60191; 23 March 2011, No. 10-60185; and 28 September 2011, No. 10-19113. See also Carole Nivard, *"L'effet direct de la*

some of the Revised Charter's general provisions in conjunction with Article 5: Article A specifying the extent of States' commitments, Article E enshrining the general principle of non-discrimination and Article G laying down the restrictions permitted by the Revised Charter.<sup>147</sup> France's Conseil d'Etat, for its part, recognised the direct applicability of a Revised Charter article (Article 24 on protection in cases of termination of employment) for the first time in its Fischer judgment of 10 February 2014.<sup>148</sup> In a decision of 11 April 2018, the Italian Constitutional Court, for its part, has used Article 5 of the Charter as a criterion for assessing the constitutionality of a provision of domestic law prohibiting military staff to form trade unions.<sup>149</sup>

148. Finally, the ECSR holds exchanges of views with national courts. By way of example, on 28 February 2017, a meeting took place with the Ukrainian Constitutional Court on the effective protection of pension and social security rights in the light of the Charter and the conclusions and decisions of the ECSR.<sup>150</sup>

## ii) Internal reforms further to ECSR decisions or conclusions

149. Some States have undertaken significant reforms following ECSR decisions or conclusions, a few examples of which are given below.<sup>151</sup>

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Charte sociale européenne devant les juridictions suprêmes françaises", *Revue des droits et libertés fondamentaux* (RDLF), 2012, Chron. 28.

<sup>147</sup> French Court of Cassation, Lab. Div., 29 February 2012, No. 11-60203; and 10 May 2012, No. 11-60235. See also Nivard, *ibid*.

<sup>148</sup> Conseil d'Etat, judgment of 10 February 2014. See also Carole Nivard, "*L'effet direct de la Charte sociale européenne devant le juge administratif – Retour sur la question évolutive de l'effet direct des sources internationales*", *RDLF* 2016, Chron. 22.

<sup>149</sup> See the Italian Constitutional Court's website for the Constitutional Court's Press release.

<sup>150</sup> See the following link for information on the exchange of views with the Ukrainian Constitutional Court.

<sup>151</sup> Similarly to the Factsheets published by the Court's Press Unit, country-by-country factsheets are published on the European Social Charter's website in respect of the Charter, summarising the States' commitments in respect of, and implementation of the Charter.

150. In its decision of 19 October 2009 in *ERRC v. France*, for instance, the ECSR found that there had been a violation of Article E taken in conjunction with Article 31 of the Revised Charter, since Travellers were discriminated against when it came to implementing their right to housing.<sup>152</sup> In its assessment of the follow-up to this decision, the ECSR found in 2015 that France had brought its situation in conformity through specific measures taken in the Travellers' interests in the field of housing, such as introducing an assisted rental loan for integration purposes, a reduction in the costs of setting up stopping places, a new inter-ministerial strategy on the situation of Travellers and a long-term plan to combat poverty and promote social inclusion containing provisions relating specifically to their accommodation.<sup>153</sup>

151. Furthermore, in its decision of 18 February 2009 in *ERRC v. Bulgaria*, the ECSR found that there had been a violation of Article 13 § 1 of the Charter, since the amendments to the Bulgarian Social Assistance Act suspended minimum income for persons in need after 18, 12 or 6 months.<sup>154</sup> In its assessment of the follow-up to this decision, the ECSR found in 2015 that Bulgaria had brought its situation in conformity with the Charter following an amendment of this law that now ensured social assistance to these persons without a time-limit.<sup>155</sup>

152. In *DCI v. Belgium*, the ECSR found that there had been a violation of Articles 17 § 1 and 7 § 10 of the Revised Charter as the Belgian Government had not taken the necessary and appropriate measures to guarantee illegally resident accompanied foreign minors and unaccompanied foreign minors who were not requesting asylum the care and assistance they needed and special protection against physical and moral

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<sup>152</sup> See *ERRC v. France*, Complaint No. 51/2008, decision on the merits of 19 October 2009.

<sup>153</sup> See the Social Charter's HUDOC database (<http://hudoc.esc.coe.int/eng#>) on the assessment of the follow-up to Complaint No. 51/2008.

<sup>154</sup> *ERRC v. Bulgaria*, Complaint No. 48/2008, decision on the merits of 18 February 2009.

<sup>155</sup> See the Social Charter's HUDOC database (<http://hudoc.esc.coe.int/eng#>) on the assessment of the follow-up to Complaint No. 48/2008.

hazards.<sup>156</sup> In 2015, the ECSR, in its assessment of the follow-up to this decision, held that Belgium had brought its situation into conformity with the Charter after having taken measures to provide these two categories of foreign minors with shelter in a reception centre.<sup>157</sup>

153. The ECSR has equally taken note of examples of the implementation of the Charter in the State Parties in its conclusions adopted with regard to State reports – whether in the form of new legislation or by changes in the practice of the application of the domestic law. A few examples are given below.

154. Concerning the right to health, in its Conclusions 2013, the ECSR specifically noted a number of measures taken by Turkey to reduce infant and maternal mortality, which had substantially improved the situation, and several regulations on waiting lists introduced in Slovenia in order to reduce waiting times for care and treatment.<sup>158</sup>

155. Concerning the rights of elderly persons, in its Conclusions 2013 and 2013/XX-2, the ECSR took particular note of the adoption of legislation in the Czech Republic prohibiting age discrimination outside employment and of specific measures taken in France, Malta, the Netherlands and Slovenia to combat the abuse of elderly persons.<sup>159</sup>

156. Concerning the right to organise, in its Conclusions 2014/XX-3, the ECSR noted a positive development in Belgium after the enactment of a law in 2009 enabling victims of discrimination based on trade union membership to claim compensation proportionate to damage actually suffered and prohibiting this type of discrimination at all stages of the employment relationship. Moreover, Romania passed the Social

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<sup>156</sup> DCI v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012.

<sup>157</sup> See <http://hudoc.esc.coe.int/eng#>.

<sup>158</sup> See Conclusions 2013 of 06/12/2013 – Turkey – Article 11-1; and Conclusions 2013 of 06/12/2013 – Slovenia – Article 11-1.

<sup>159</sup> See Conclusions XX-2 of 06/12/2013 – Czech Republic – Article 4 of the 1988 Additional Protocol; and Conclusions 2013 – France – Article 23.

Dialogue Act in 2011 which abolished the nationality requirement for membership of the Economic and Social Council.<sup>160</sup>

157. Concerning the rights of persons with disabilities, in its Conclusions of 2012 the ECSR specifically noted the passing by Estonia of an Equal Treatment Act (entry into force on 1 January 2009) prohibiting all forms of discrimination on the ground of disability in access to vocational guidance and training, and the passing by Poland of the 2010 Equal Treatment Act, introducing into the law on vocational and social rehabilitation and employment of persons with disabilities an expressly worded duty of “reasonable accommodation” for persons with disabilities who were employed, engaged in a recruitment process, undergoing training, on an internship, etc., unless such measures would impose a disproportionate burden on an employer.<sup>161</sup> Moreover, in its Conclusions of 2016, the ECSR noted, in particular, that Armenia adopted a law on employment (entry into force on 1 January 2014) which sets out the measures to be taken to help persons with disabilities integrate into the labour market.<sup>162</sup> Moreover, the Republic of Moldova adopted legislation to ensure equality (entry into force on 1 January 2013) which prohibits all forms of discrimination, including discrimination based on disability, and applies to all individuals and legal persons in the public and private domains.<sup>163</sup> Furthermore, Italy adopted Legislative Decree No. 76/2013, which obliges public and private employers to make reasonable accommodation to ensure compliance with the principle of equal treatment of persons with disabilities at work.<sup>164</sup>

158. Lastly, concerning the right to work, in its Conclusions of 2012 the ECSR particularly noted structural measures adopted by Sweden in the context of the economic crisis with a view to (i) encouraging unemployed persons to actively seek employment, (ii) facilitating labour market re-integration of

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<sup>160</sup> See Conclusions 2014 of 05/12/2014 – Romania – Article 5.

<sup>161</sup> See Conclusions 2012 of 07/12/2012 – Estonia – Article 15-1; and Conclusions XX-1 of 07/12/2012 – Poland – Article 15-2.

<sup>162</sup> See Conclusions 2016 of 09/12/2016 – Armenia – Article 15-2.

<sup>163</sup> See Conclusions 2016 of 09/12/2016 – Moldova – Article 15-1.

<sup>164</sup> See Conclusions 2016 of 09/12/2016 – Italy – Article 15-2.

persons excluded and (iii) achieving better labour market matching by a restructuring of the Public Employment Service. Moreover, the ECSR took note of the adoption by Austria of labour market measures including measures relating to education and training for both employees and jobseekers (including a 23.5% increase in the budget for active labour market policy in 2009 by comparison with 2008).<sup>165</sup>

### iii) Training and awareness-raising on the Charter

159. Every year, a number of seminars and training events on the Charter and ECSR decisions and conclusions are held in various countries<sup>166</sup> with the participation of former or current members of the ECSR; some of them are organised by the Conference of INGOs in association with the Charter Department. The ECSR is also regularly represented at international conferences and events on human rights.<sup>167</sup>

160. In addition, a course on labour rights<sup>168</sup> has been developed for the European Programme for Human Rights Education for Legal Professionals in the 28 EU Member States (“HELP in the 28”), with the objective of assisting them in the

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<sup>165</sup> See Conclusions 2012 of 07/12/2012 – Sweden – Article 1-1; and Conclusions XX-1 of 07/12/2012 – Austria – Article 1-1.

<sup>166</sup> Examples from 2016: Training event for NGOs on the collective complaints procedure (Brussels, 22 January 2016), conference on Charter implementation in Andorra (Andorra la Vella, 28 April 2016) and seminar on the collective complaints procedure for representatives of various Serbian institutions working on social rights (Belgrade, 25 October 2016). All the training and awareness-raising events on the Charter that took place in 2016 are listed in the ECSR's Activity Report 2016, Appendix 3.

<sup>167</sup> A list of these events can equally be found in the annual activity reports, see, for instance, the ECSR's Activity Report 2016.

<sup>168</sup> <http://www.coe.int/en/web/help/help-courses>: This course comprises the following modules: right to work; employment relationship and working time; pay and insolvency; termination of employment; discrimination and equal opportunities; collective labour rights; and health and safety (physical and mental) at work. Events organised under this programme included a course on capacity-building for labour rights on 9 November 2016 in Greece, a seminar on how labour rights need more protection in times of crisis and austerity on 29 September 2016 in Slovenia, a course on labour rights for judges and lawyers on 12 September 2016 in Lithuania and a trainer training session on labour rights on 3 and 4 March 2016 in Strasbourg.

national implementation of the European Social Charter, the Convention and the EU Charter of Fundamental Rights. In the context of this HELP programme, for instance, a European Seminar on Labour Rights was held on 26 and 27 September 2016, organised by the Council of Europe Human Rights National Implementation Division in association with the Judicial Training Centre of Slovenia.

161. Finally, a number of books and articles on the Charter have recently been published.<sup>169</sup>

#### e) The European Union law and the Charter

162. To date, all 28 EU Member States have ratified either the 1961 Charter or the Revised Charter; eight of them have not ratified the Revised Charter<sup>170</sup>. Fourteen EU Member States accepted the procedure of collective complaints provided for in the 1995 Additional Protocol Providing for a System of Collective Complaints.<sup>171</sup> It will be recalled that the Charter is based on an “à la carte” system, under which States are able, under certain circumstances, to choose the provisions they are willing to accept as binding.<sup>172</sup> To date, only France and Portugal have accepted all the provisions of the Charter, in contrast to the other EU Member States where there are significant disparities in terms of commitments.<sup>173</sup>

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<sup>169</sup> A list of these publications can also be found in the annual activity reports, see ECSR's Activity Report 2015, Annex 13 and ECSR's Activity Report 2016, Appendix 5.

<sup>170</sup> Namely: Croatia, the Czech Republic, Denmark, Germany, Luxembourg, Poland, Spain and the United Kingdom (see the Treaty Office's homepage for the Chart of signatures and ratifications of the 1961 Charter and the Chart of signatures and ratifications of the 1996 revised Charter).

<sup>171</sup> Namely: Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Portugal, Slovenia and Sweden.

<sup>172</sup> See L1.(b)(i) above.

<sup>173</sup> See the table providing an overview of EU Member States' acceptance of Charter provisions, available at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations/esc>; only the right to protection of health (Article 11 of the Charter) has been accepted by all EU Member States.

163. EU law has been one of the sources of inspiration for the Revised Charter. The Explanatory Report to the Revised Charter contains several references to the fact that the wording of the Revised Charter was based on EU Directives.<sup>174</sup> Likewise, the ECSR takes account of EU law in its decisions and conclusions when interpreting the Charter.<sup>175</sup> There is, however, no presumption of conformity of EU law with the Charter.<sup>176</sup> In other words, the ECSR does not assume that social rights enjoy equivalent protection within the EU. The ECSR, however, has stated that it was willing to “review its assessment” once the

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<sup>174</sup> Accordingly, in the explanatory report to the Revised Charter, it is stated that:

- Article 2 § 6 on the right to just conditions of work was inspired by Council Directive 91/533 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship;
- Article 7 § 2 of the Charter prohibiting the employment of persons under the age of 18 was inspired by Council Directive 94/33 on the protection of young people at work;
- Article 8 § 4 of the Charter on the right of employed women to protection of maternity borrows the idea from Council Directive 92/85 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers;
- Article 25 on workers' right to the protection of their claims in the event of the insolvency of their employer was inspired by Community Directive 80/987 on the harmonisation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer;
- Article 29 of the Charter on the right to information and consultation in collective redundancy procedures was drafted with reference to Community Directive 92/56 on the harmonisation of the laws of the Member States relating to collective redundancies.

<sup>175</sup> For example, the ECSR has taken account of a number of judgments of the CJEU in its interpretation of the right to a healthy environment (in particular in *FIDH v. Greece*, Complaint No. 72/2011, decision on the merits of 23 January 2013, which refers to the CJEU judgment of 2 December 2010 in *European Commission v. Hellenic Republic*, C-534/09). Furthermore, in its 2012 Conclusions, the ECSR referred to the CJEU judgment of 2 August 1993 in *Marshall v. Southampton*, C-271/91, regarding the upper limits on compensation in discrimination cases.

<sup>176</sup> See *CFE-CGC v. France*, Complaint No. 56/2009, decision on the merits of 23 June 2010, §§ 32 to 36, and *CGT v. France*, Complaint No. 55/2009, decision on the merits of 23 June 2010, §§ 34 to 38: while the European Court of Human Rights accepts that in certain circumstances there may be a presumption of conformity of EU law with the Convention, the same cannot be said for EU provisions with regard to the Charter. In these cases, the ECSR found that there had been a violation of the Charter (the right to reasonable working hours and the right to rest periods) as regards the transposition of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 (it was not the Directive per se that was considered contrary to the Charter but rather the possible combination of the numerous exceptions and exemptions provided for therein).

European Social Charter is taken into account in EU law in a more systematic and faithful manner.<sup>177</sup>

164. The EU, for its part, has procedures and instruments specific to its own legal order which sometimes refer to the Charter, either mentioning it explicitly or taking it into account implicitly as supplementary law. In this context, a distinction should be made between the references to the Charter in primary and secondary EU law and references made in the case-law of the Court of Justice of the European Union (CJEU) and in other EU acts or initiatives.<sup>178</sup>

165. As regards references to the Charter in primary EU law, it is to be noted that the Treaty on European Union (1992) refers to the European Social Charter in § 5 of its Preamble: “Confirming their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers”.<sup>179</sup>

166. The Treaty on the Functioning of the European Union (2007) equally refers, in Article 151 § 1, to the European Social Charter:

“The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment,

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<sup>177</sup> *Ibid.*

<sup>178</sup> On this subject, see the ECSR working document entitled “Relationship between European Union law and the European Social Charter” of 15 July 2014, available at: <https://rm.coe.int/16806544ec>; Part III of this working document looks at the links between the provisions of the Charter, secondary law and the case-law of the CJEU. A more comprehensive list can be found in Appendix 2 to that document on provisions of the Charter and corresponding sources of primary law and secondary law of the EU and on the link between these provisions, secondary law and the CJEU’s case-law.

<sup>179</sup> This 1989 Community Charter established core principles for minimum social rights common to all EU Member States. Its provisions were replicated by the Lisbon Treaty (Article 15) and the EU Charter of Fundamental Rights.

improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.”

167. The EU Charter of Fundamental Rights (2000) is a catalogue of human rights protected under EU law which became a binding instrument on 1 December 2009 with the entry into force of the Lisbon Treaty. This Charter was the EU’s first binding legal instrument in the field of fundamental rights and covers civil, political, economic, social and cultural rights. Article 6 § 1 of the Treaty on European Union provides in this respect:

*“... The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.”*

168. The EU Charter of Fundamental Rights distinguishes between “rights” and “principles”. Legislative and executive acts implementing the “principles” may be interpreted or reviewed by the courts of law, but those “principles” do not give claims for positive action either by the European Union institutions or by its Member States. That is consistent with the approach of the EU “Member States’ constitutional systems to ‘principles’ particularly in the field of social law”.<sup>180</sup>

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<sup>180</sup> Interpretation of Article 52(5) of the EU Charter of Fundamental Rights with due regard to the explanations referred to in Article 6 § 1 of the Treaty on European Union: “Declaration concerning the explanations related to the Charter of Fundamental Rights”, Official Journal of the European Union, 16.12.2004, pp. C 310/458-C 310/459: “Paragraph 5 clarifies the distinction between ‘rights’ and ‘principles’ set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51 (1)). Principles may be implemented through legislative or executive acts (adopted by the Union in accordance with its powers, and by the

**169.** Although the EU Charter of Fundamental Rights does not specifically refer to the provisions of the European Social Charter, the latter is nevertheless cited as a source of inspiration in the explanations of many of its articles. However, certain rights included in the European Social Charter are not contained in the EU Charter, such as the right to a fair remuneration, the right to protection against poverty and social exclusion and the right to housing.

**170.** Furthermore, it is also worth noting that whereas the provisions of the European Social Charter are binding on those EU Member States which have accepted them, these States are required to comply with the EU Charter of Fundamental Rights only when they are implementing EU law, with the result that the rights in question apply only in certain areas.

**171.** As for references to the Charter in secondary EU law, the latter mainly consists of legal acts – which are adopted by the European institutions – covering regulations, directives and decisions (all of which are binding) but also “atypical” acts such as communications and recommendations (which are non-binding). In this respect, a Directive of the European Parliament and of the Council of 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, for instance, “should apply without prejudice to the rights and principles contained in the European Social Charter of 18 October 1961”.<sup>181</sup> Moreover, a European Parliament Resolution of 2015 “calls on the Member States to ensure that all EU legislation, including the economic and

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Member States only when they implement Union law); accordingly, they become significant for the Courts only when such acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union's institutions or Member States authorities. This is consistent both with case-law of the Court of Justice ... and with the approach of the Member States' constitutional systems to 'principles' particularly in the field of social law. For illustration, examples for principles, recognised in the Charter include e.g. Articles 25, 26 and 37. In some cases, an Article of the Charter may contain both elements of a right and of a principle, e.g. Articles 23, 33 and 34.”

<sup>181</sup> Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, § 44.

financial adjustment programmes, is implemented in accordance with the Charter of Fundamental Rights and the European Social Charter”.<sup>182</sup> It further “calls on the Commission to consider proposing accession to the European Social Charter, in order effectively to safeguard the social rights of European citizens”.<sup>183</sup>

172. Generally, it may be noted that according to the Memorandum of Understanding between the Council of Europe and the EU of 23 May 2007, the Council of Europe is recognised “as the Europe-wide reference source of human rights”.<sup>184</sup> The EU is thus called upon to, for example, cite Council of Europe norms as a reference in its documents, take into account the decisions and conclusions of the Council of Europe monitoring structures and to ensure coherence of its law with the relevant Council of Europe conventions. The Memorandum also requires both the EU and the Council of Europe, when preparing new initiatives in the field of human rights, to draw on their respective expertise as appropriate through consultations.

173. As for references made in the case-law of the Court of Justice of the European Union to the Charter, the CJEU refers to the European Social Charter only where the rights protected under the EU Charter of Fundamental Rights are inspired by the former,<sup>185</sup> as is the case, in particular, with Chapter IV of the EU Charter, entitled “Solidarity”.

174. The European Social Charter is then cited as a “direct” source of inspiration for determining whether a right is recognised as a fundamental right which forms an integral part of the general principles of Community law,<sup>186</sup> for identifying

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<sup>182</sup> European Parliament Resolution “The situation of fundamental rights in the EU (2013–2014)”, 8 September 2015, § 2.

<sup>183</sup> *Ibid.*, § 142.

<sup>184</sup> Available at: [https://eeas.europa.eu/sites/eeas/files/mou\\_2007\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/mou_2007_en.pdf).

<sup>185</sup> See for example, CJEU, *Commission v. Strack*, C-579/12 RX-II, 19 September 2013: “According to the explanations relating to Article 31 of the [EU] Charter [of Fundamental Rights], which (...) must be taken into account in the interpretation of the Charter, (...) Article 2 of the European Social Charter” (§ 27).

<sup>186</sup> CJEU (Grand Chamber), *International Transport Workers’ Federation and The Finnish Seamen’s Union v. Viking Line APB*, C-438/05, 11 December

“particularly important mechanism[s] of protection under employment law”,<sup>187</sup> and lastly, for interpreting “the principle[s] of Community social law” in the light of the European Social Charter<sup>188</sup>.

175. Moreover, the European Social Charter can be an “indirect” source of inspiration when the CJEU refers to the case-law of the European Court of Human Rights, which has itself drawn on the Charter in order to determine what is meant by a particular fundamental right.<sup>189</sup> It is noted that the number of cases in which the CJEU has referred to the European Social Charter remains rather limited.<sup>190</sup>

176. As for further EU activities relating to the Charter it shall be recalled that the EU can make observations and/or attend hearings as a third party in the collective complaints procedure, on a proposal from the Rapporteur or the President of the ECSR in order to support a complaint or have it dismissed. The European Commission submitted observations for the first time in order to support Greece in collective complaint No. 111/2014 relating to the impact of austerity measures on numerous workers’ rights.<sup>191</sup> The EU may also, if it so wishes, submit

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2007, §§ 43–44; CJEU (Grand Chamber), *Laval un Partneri Ltd v. Svenska Byggnadsarbetareförbundet*, C-341/05, 18 December 2007, §§ 90–91: the CJEU mentioned the European Social Charter among the sources of inspiration for it to identify the fundamental rights recognised in the EU legal order.

<sup>187</sup> CJEU, *Sari Kiiski v. Tampereen Kaupunki*, C-116/06, 20 September 2007, §§ 48 and 49.

<sup>188</sup> CJEU (Grand Chamber), *Impact v. Minister for Agriculture and Food and Others*, C-268/06, 15 April 2008, §§ 113 and 114.

<sup>189</sup> CJEU, *Werhof*, C-499/04: in a judgment of 9 March 2006, the CJEU drew on the European Court of Human Rights judgment of 30 June 1993 in *Sigurjonsson v. Iceland*, in which the European Court of Human Rights had adopted the ECSR’s interpretation with regard to Article 5 of the Charter.

<sup>190</sup> A list of CJEU judgments referring explicitly to the European Social Charter can be compiled using the “InfoCuria – Case-law of the Court of Justice” search engine.

<sup>191</sup> See the observations submitted by the European Commission on 26 January 2016 on Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805a25cb>; and the decision on the merits adopted by

observations under the State reporting procedure, although it has not yet availed itself of this option.<sup>192</sup>

## **2. The European Convention on Human Rights**

### **a) Relevant provisions and case-law of the European Court of Human Rights**

**177. The Convention and its Protocols, while essentially protecting civil and political rights, contain some provisions which are related to social rights protected under the Charter. These aspects of social rights are thus directly protected by the Convention and its Protocols. Moreover, several further rights laid down in the Convention and its Protocols, while not being social rights as such, also cover certain aspects of social, economic and cultural rights in the interpretation given to them by the Court, which leads to an indirect protection of a number of social rights by these instruments.<sup>193</sup> As the Court itself found, “[w]hilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature” and an interpretation of the Convention may extend into the sphere of social and economic rights as “there is no water-tight division separating that sphere from the field covered by the Convention.”<sup>194</sup>**

**178. It is noted at the outset that a detailed analysis of the Court’s case-law providing for a direct or indirect protection of certain aspects of social rights is contained in two CDDH reports (documents CDDH(2006)022 and CDDH(2008)006). The present report shall give a couple of examples of the protection of social rights in the Court’s more recent case-law; more references to**

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the ECSR on 23 March 2017, available at: <http://hudoc.esc.coe.int/eng?i=cc-111-2014-dmerits-en>.

<sup>192</sup> See also chapter III.1. below.

<sup>193</sup> See for the distinction between a direct and an indirect protection of social rights by the Convention and the Court’s case-law already the Background paper on “Recent developments in the field of social rights” prepared by the Rapporteur on Social Rights, Ms Chantal Gallant, for the CDDH, document CDDH(2006)022, paragraphs 03 and 06–07.

<sup>194</sup> See *Airey v. Ireland*, 9 October 1979, § 26, Series A no. 32.

further relevant judgments of the Court are contained in Appendix II to the present report.

**i) Direct protection of certain aspects of social rights**

**179.** A direct protection of certain aspects of social rights by the Convention and its Protocols is provided by Article 4 of the Convention on the prohibition of slavery, servitude and forced labour, by Article 11 of the Convention on freedom of association and by Article 2 of Protocol No. 1 to the Convention on the right to education.<sup>195</sup>

**Prohibition of slavery and forced labour (Article 4 of the Convention)<sup>196</sup>**

**180.** As regards the prohibition of slavery, servitude and forced labour (Article 4 of the Convention) the Court has dealt with cases concerning notably (i) duties to perform certain work for professionals and for the unemployed; (ii) work in prison and the possibility of affiliating working prisoners to the old-age pension system; (iii) domestic work and the legislation criminalising domestic slavery as a specific offence distinct from trafficking and exploitation; and (iv) trafficking in human beings.

**181.** As regards the duty to perform certain work, the Court found, for instance, in the case of *Steindel v. Germany* that the obligation for a medical practitioner to participate in an emergency-service scheme did not amount to compulsory or forced labour.<sup>197</sup> It further held that the obligation of lawyers and public notaries – but not other categories of persons who had studied law – to act as unpaid guardians to mentally ill persons complied with Article 4 alone and taken in conjunction with Article

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<sup>195</sup> It should be recalled that these rights are also guaranteed by the Charter (mainly by Articles 1 § 2, 5, 6, 15 § 1 and 17).

<sup>196</sup> See also the Court Press Unit's Factsheet on slavery, servitude and forced labour (March 2017).

<sup>197</sup> *Steindel v. Germany* (dec.), no. 29878/07, 14 September 2010. See also the inadmissibility decisions in *Mihal v. Slovakia* (dec.), no. 31303/08, 28 June 2011 (concerning a judicial enforcement officer) and *Bucha v. Slovakia* (dec.), no. 43259/07, 20 September 2011 (concerning a lawyer).

14 (see *Graziani-Weiss v. Austria*).<sup>198</sup> Moreover, in *Schuitemaker v. the Netherlands*, the Court found that the duty under a law of 2004 requiring the applicant to take up “generally accepted” employment (the exceptions being employment which is not socially accepted or to which the person concerned may have conscientious objections) or otherwise have her unemployment benefit reduced was compatible with Article 4.<sup>199</sup> According to the Court, if a State set up a social security system, it was entitled to lay down conditions for persons claiming benefits.<sup>200</sup>

182. As regards prison work, the Court found in its Grand Chamber judgment in the case of *Stummer v. Austria*<sup>201</sup> that the respondent State’s refusal to take work performed in prison into account in the calculation of the applicant’s pension rights had neither breached Article 4 nor Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1. The Court took note of the fact that the applicant was not without social cover on his release from prison. He had not been entitled to a pension, but notably received unemployment benefits following his prison work. The Court considered that, by not having affiliated working prisoners to the old-age pension system, Austria had not exceeded its margin of appreciation. In its judgment, the Court referred to the ECSR’s interpretation of Article 1 § 2 of the Charter.<sup>202</sup>

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<sup>198</sup> *Graziani-Weiss v. Austria*, no. 31950/06, 18 October 2011.

<sup>199</sup> *Schuitemaker v. the Netherlands* (dec.), no. 15906/08, 4 May 2010.

<sup>200</sup> The ECSR also approves of the requirement to accept the offer of a job or training or otherwise lose entitlement to unemployment benefit, although it sets out a number of exceptions to this rule, see Conclusions 2012, Statement of Interpretation on Article 1 § 2 of the Charter. In its Conclusions 2015 – Netherlands – Article 12-1, the ECSR concluded, for instance, that the Dutch legislation, which provides for an initial period of one year during which unemployed persons can refuse an unsuitable job offer without losing their entitlement to unemployment benefit, was reasonable (finding of conformity with Article 12 § 1 of the Charter).

<sup>201</sup> *Stummer v. Austria* [GC], no. 37452/02, ECHR 2011.

<sup>202</sup> See *Stummer*, cited above, § 59. The ECSR had found that Article 1 § 2 of the Charter required that prisoners’ working conditions had to be properly regulated, in terms of pay, working hours and social security, particularly if they were working, directly or indirectly, for employers other than the prison service, see Conclusions XX-1 (2012) – Statement of interpretation – Article 1 § 2.

183. With regard to domestic work, mention can be made of the C.N. and V. v. France judgment of 11 October 2012, in which, following up to the leading case of *Siliadin v. France*,<sup>203</sup> the Court found that there had been a violation of Article 4 with regard to the first applicant (aged 16) as the State had failed to provide a legislative and administrative framework capable of effectively combating servitude and forced labour.<sup>204</sup> The Court further found in the C.N. v. the United Kingdom judgment of 13 November 2012 that there had been a violation of Article 4 because there was no legislation making domestic servitude a specific offence (distinct from trafficking and exploitation) and therefore the investigation into the applicant's allegations of domestic servitude had been ineffective.<sup>205</sup>

184. As for trafficking in human beings, the Court ruled on this subject for the first time in its *Rantsev v. Cyprus and Russia* judgment of 7 January 2010. Holding that Article 4 prohibited this type of trafficking, the Court concluded that Cyprus had not complied with its positive obligations because it had failed to put in place an appropriate legal and administrative framework to combat trafficking and the police had failed to take operational measures to protect the applicant's daughter (in the light of the suspicions that she was a victim of trafficking). The Court also found that there had been a violation of Article 4 by Russia because it had not conducted an effective investigation into the recruitment of the woman concerned.<sup>206</sup> Moreover, in the *Chowdury and Others v. Greece* judgment of 30 March 2017, the Court found a violation of Article 4 § 2 in view of the authorities' failure to prevent a trafficking situation (as regards 42 Bangladeshi nationals), to protect the victims, to conduct an effective investigation into the acts committed and to punish the perpetrators.<sup>207</sup>

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<sup>203</sup> *Siliadin v. France*, no. 73316/01, ECHR 2005-VII.

<sup>204</sup> C.N. and V. v. France, no. 67724/09, 11 October 2012, in particular §§ 88, 92 and 105–108.

<sup>205</sup> C.N. v. the United Kingdom, no. 4239/08, 13 November 2012.

<sup>206</sup> *Rantsev v. Cyprus and Russia*, no. 25965/04, ECHR 2010 (extracts).

<sup>207</sup> *Chowdury and Others v. Greece*, no. 21884/15, ECHR 2017.

**Freedom of assembly and association (Article 11  
of the Convention)<sup>208</sup>**

185. With regard to freedom of assembly and association (Article 11 of the Convention), the Court had to address cases regarding notably (i) the right to join a trade union, *inter alia* for civil servants and the refusal to register trade unions; (ii) the right to collective bargaining; and (iii) the right to strike.

186. With regard to the right to join a trade union, reference can be made to the *Danilenkov and Others v. Russia* judgment of 30 July 2009, in which the Court found that there had been a violation of Article 14 taken in conjunction with Article 11 as the State had failed to afford clear and effective judicial protection against discrimination on the ground of trade-union membership (dismissal of members of the Dockers' Union of Russia after a two-week strike).<sup>209</sup> With regard to civil servants, the Court found in *Demir and Baykara v. Turkey* that civil servants, except in very specific cases, should enjoy the right to form and to join trade unions for the protection of their interests and held that the ban on founding a trade union imposed on the applicants, who were municipal workers, had violated Article 11.<sup>210</sup> The Court further found in *Matelly v. France* that while the freedom of association of military personnel could be subject to legitimate restrictions, a blanket ban on forming or joining a trade union was incompatible with the Convention. In its judgment, the Court referred to Article 5 of the Charter while going beyond the ECSR's requirements.<sup>211</sup>

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<sup>208</sup> See the Court Press Unit's Factsheet on Trade union rights (May 2016).

<sup>209</sup> *Danilenkov and Others v. Russia*, no. 67336/01, ECHR 2009 (extracts).

<sup>210</sup> See *Demir and Baykara v. Turkey* [GC], no. 34503/97, ECHR 2008, in particular §§ 154 and 127. It should be noted that in its defence, the Turkish Government invoked the absence of political support on the part of Member States, in the context of the work of the CDDH, for the creation of an additional protocol to extend the Convention system to certain economic and social rights. The Court observed, however, that this attitude of Member States was accompanied by a wish to strengthen the mechanism of the European Social Charter – an argument in support of the existence of a consensus among Contracting States to promote economic and social rights. The Court also pointed out that nothing prevented it from taking this wish into account when interpreting the provisions of the Convention (§ 84).

<sup>211</sup> See *Matelly v. France*, no. 10609/10, 2 October 2014, in particular §§ 31–33. According to the ECSR, States are permitted to restrict or suppress entirely

As to the right not to join an association, the Court found in its *Vörður Ólafsson v. Iceland* judgment of 27 April 2010 that there had been a violation of Article 11 because a non-member was required by law to pay a contribution to a private industrial federation (the judgment includes a reference to Article 5 of the Charter).<sup>212</sup>

187. As to the refusal to register trade unions, the Court, in its Grand Chamber judgment of 9 July 2013 in the case of *Sindicatul 'Pastorul cel Bun' v. Romania*, reiterated that no occupational category should be excluded from the scope of Article 11. It found, however, that there had been no violation of Article 11 on account of the refusal by the respondent State of an application for registration of a trade union formed by priests of the Romanian Orthodox Church in view of the principle of the autonomy of religious communities. The judgment refers to Article 5 of the Charter.<sup>213</sup>

188. As regards the right to collective bargaining, the Court notably found in its Grand Chamber judgment in the case of *Demir and Baykara v. Turkey* that the annulment, with retrospective effect, of a collective agreement between a trade union and the employing authority that had been the result of collective bargaining had breached Article 11. In its judgment, which referred to Articles 5 and 6 of the Charter, the Court considered that the right to bargain collectively with the employer had, in principle, become one of the essential elements of the right to form and to join trade unions for the protection of one's interests under Article 11.<sup>214</sup>

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the freedom to organise of the armed forces (*EUROFEDOP v. France*, Complaint No. 2/1999, decision on the merits of 4 December 2000, § 28). However, it must be verified that bodies defined by domestic law as belonging to the armed forces do indeed perform military tasks (see Conclusions XVIII-1 (2006) – Poland – Article 5).

<sup>212</sup> *Vörður Ólafsson v. Iceland*, no. 20161/06, ECHR 2010, in particular § 22.

<sup>213</sup> *Sindicatul "Păstorul cel Bun" v. Romania* [GC], no. 2330/09, ECHR 2013 (extracts), in particular § 58.

<sup>214</sup> *Demir and Baykara*, cited above, in particular §§ 154 and 169–170.

189. Concerning the right to strike, the Court found, for instance, in its judgment in the case of *Enerji Yapi-Yol Sen v. Turkey*, that sanctioning officials for their participation in a national strike day had been in breach of Article 11; it had again referred to the Charter.<sup>215</sup> In contrast, in its judgment of 8 April 2014 in the case of *National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, it held that there had been no violation of Article 11 by the ban for the applicant trade union on taking secondary industrial action (that is, against an employer not involved in an industrial dispute). It appears that the ECSR, to which the Court referred, interprets the right to strike under Article 6 § 4 of the Charter as including the right to participate in secondary action.<sup>216</sup> Moreover, as for civil servants, the Court found in the *Junta Rectora Del Ertzainen Nazional Elkartasuna v. Spain* judgment of 21 April 2015 that there had been no violation of Article 11 with regard to the authorities' refusal to authorise a police trade union to go on strike. It considered that the restriction in question, imposed exclusively on members of the State security forces, had been necessary to ensure national security, public safety and the prevention of disorder (a reference is also made to Article 5 of the Charter).<sup>217</sup>

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<sup>215</sup> *Enerji Yapi-Yol Sen v. Turkey*, no. 68959/01, 21 April 2009, in particular § 24.

<sup>216</sup> *National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, no. 31045/10, ECHR 2014, in particular §§ 34–37. See also ECSR, Conclusions XX-3 (2014) – the United Kingdom – Article 6 § 4: “the Court found that secondary action was protected under ... the European Social Charter, and that it would be inconsistent for the Court to take a narrower view of freedom of association of trade unions than that which prevailed in international law. However, because the right to organise had still been partially effective, the United Kingdom's legislation was found by the Court to be within the margin of appreciation within the framework of the ... Convention ... The Committee notes that Article 6 § 4 of the Charter is more specific than Article 11 of the Convention. ... while the rights at stake may overlap, the obligations on the State under the Charter extend further in their protection of the right to strike, which includes the right to participate in secondary action”.

<sup>217</sup> See *Junta Rectora Del Ertzainen Nazional Elkartasuna (ER.N.E.) v. Spain*, no. 45892/09, 21 April 2015, in particular § 15. According to the ECSR, while States may restrict the police's right to organise, police officers must nonetheless be able to benefit from most trade union rights including the right to negotiate their pay and their working conditions and freedom of assembly (*CESP v. Portugal*, Complaint No. 11/2001, decision on the merits of 21 May

**Right to education (Article 2 Protocol of No. 1 to the Convention)<sup>218</sup>**

**190.** As to the right to education (Article 2 of Protocol No. 1 to the Convention), the Court has recently dealt with cases concerning notably (i) the right to respect for parents' religious and philosophical convictions; (ii) the right to schooling of Roma children; (iii) the setting up of educational facilities in prisons; (iv) the right of children with disabilities to education without discrimination and (v) the requirement for aliens without a permanent residence permit to pay secondary-school fees.

**191.** As for the parents' right to respect for their religious and philosophical convictions in education and teaching guaranteed by Article 2 of Protocol No. 1, the Court found in its *Mansur Yalçın and Others v. Turkey* judgment of 16 September 2014 that there had been a breach of this right with regard to compulsory religious culture and ethics classes in school. It considered that the Turkish education system did not offer sufficient options for the children of parents who had a conviction other than that of Sunni Islam and that the procedure for exemption from the religion and ethics classes was likely to subject pupils' parents to the need to disclose their religious or philosophical convictions in order to have their children exempted.<sup>219</sup> In contrast, the Court considered that the presence of a crucifix in the classrooms of an Italian state school, an essentially passive symbol, complied with the respondent State's obligation under Article 2 of Protocol No. 1 to respect the right of parents to ensure education and teaching in conformity with their own religious and philosophical convictions (see *Lautsi v. Italy*).<sup>220</sup>

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2002, §§ 25–26 and 40). More recently, the ECSR interpreted Article 6 § 4 of the Charter more extensively, finding that it had been violated by the prohibition to strike of members of the police (*EuroCOP v. Ireland*, Complaint No. 83/2012, decision on admissibility and the merits of 2 December 2013, §§ 201–214).

<sup>218</sup> See also the Court Press Unit's Factsheet on Children's rights (January 2018), in particular pp. 14–18.

<sup>219</sup> *Mansur Yalçın and Others v. Turkey*, no. 21163/11, 16 September 2014.

<sup>220</sup> *Lautsi and Others v. Italy* [GC], no. 30814/06, ECHR 2011 (extracts).

192. With regard to education for Roma children,<sup>221</sup> mention should be made of the Grand Chamber's *Oršuš and Others v. Croatia* judgment of 16 March 2010 concerning 15 Croatian nationals of Roma origin placed in Roma-only classes during their schooling owing to their allegedly poor command of the Croatian language. The Court, which did not refer to Article 17 § 1 of the Charter in that context, found that there had been a violation of Article 14 taken in conjunction with Article 2 of Protocol No. 1 as there were no clear or transparent criteria for the applicants' transfer to mixed classes.<sup>222</sup>

193. The Court further pointed out that Article 2 of Protocol No. 1 did not require States to set up educational facilities in prisons (see *Velyo Velev v. Bulgaria*). However, the refusal to enrol the applicant in the existing prison school had violated his right to education under Article 2 of Protocol No. 1 as it not been sufficiently foreseeable and had not pursued a legitimate aim to which the refusal would have been proportionate.<sup>223</sup>

194. As for the right of children with disabilities to education without discrimination the Court held in its *Çam v. Turkey* judgment that the refusal by the national music academy to enrol the applicant because she was blind (despite the fact that she had passed the entrance examination) and its failure to make reasonable accommodation to facilitate access by persons with disabilities to education had breached Article 14 taken in conjunction with Article 2 of Protocol No. 1. In its judgment the Court referred, *inter alia*, to Article 15 of the Charter.<sup>224</sup>

195. The Court finally held in the case of *Ponomaryovi v. Bulgaria* that the requirement for aliens without a permanent residence permit to pay secondary-school fees while Bulgarian nationals and certain other categories of aliens were entitled to secondary education free of charge was in breach of Article 14

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<sup>221</sup> See also the Court Press Unit's Factsheet on Roma and Travellers (February 2018).

<sup>222</sup> *Oršuš and Others v. Croatia* [GC], no. 15766/03, §§ 143–185, ECHR 2010.

<sup>223</sup> See *Velyo Velev v. Bulgaria*, no. 16032/07, ECHR 2014 (extracts).

<sup>224</sup> *Çam v. Turkey*, no. 51500/08, 23 February 2016, in particular §§ 37 and 53. See also the Court Press Unit's Factsheet on "Persons with disabilities and the European Convention on Human Rights" (January 2018).

taken in conjunction with Article 2 of Protocol No. 1; it referred to Article 17 of the Revised Charter in its judgment.<sup>225</sup>

## **ii) Indirect protection of social rights**

196. A number of further rights laid down in the Convention and its Protocols, while not being social, economic or cultural rights as such, extend into the sphere of social rights by the interpretation given to these provisions by the Court. The Court has thereby built up an indirect protection of a number of other social rights in its case-law.

197. The following provisions have been interpreted by the Court in a manner so as to cover certain aspects of social rights: the right to life (Article 2 of the Convention), the prohibition of torture and inhuman or degrading treatment (Article 3 of the Convention), the right to a fair trial (Article 6 of the Convention), the right to respect for private and family life (Article 8 of the Convention), freedom of thought, conscience and religion (Article 9 of the Convention), freedom of expression (Article 10 of the Convention), the protection of property (Article 1 of Protocol No.1 to the Convention) and the prohibition of discrimination (Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention).

### **Right to life (Article 2 of the Convention)**

198. Concerning the right to life (Article 2 of the Convention), the Court has been called upon to examine cases concerning notably medical liability, access to health care, environmental risks and the protection of minors.

199. The Court had a number of cases before it concerning State responsibility in the context of deaths resulting from alleged medical negligence. It notably confirmed in its Grand Chamber judgment in the case of *Lopes de Sousa Fernandes v. Portugal* that the States were under a substantive positive obligation under Article 2 to put in place a regulatory framework both in the public and the private sector for securing the protection of the

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<sup>225</sup> *Ponomaryovi v. Bulgaria*, no. 5335/05, ECHR 2011, in particular § 35.

patients' lives<sup>226</sup> and under a procedural obligation to set up an effective and independent judicial system apt to determine the cause of the death of patients and to make those responsible accountable.<sup>227</sup>

200. As for access to adequate health care, the Court found breaches of Article 2 (under its substantive and procedural heads) in that the authorities had failed to take the necessary steps to protect the lives of children or young adults who had been entrusted to the care of a specialist public facility and had failed to carry out an effective investigation into these circumstances in the cases of *Nencheva and Others v. Bulgaria* (regarding the deaths of 15 children and young adults with physical and mental disabilities in a home on account of the cold and a lack of food, medicines and basic necessities)<sup>228</sup> and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* (regarding the death of the applicant, aged 18, in a psychiatric hospital for lack of appropriate care, heating and food).<sup>229</sup>

201. With regard to environmental risks, the Court further found a violation of Article 2 (under its substantive and procedural heads) on account of the State's failure to protect the applicants' lives in the context of a heavy flash flood and failure to secure the full accountability of the officials or authorities in charge (*Kolyadenko and Others v. Russia*).<sup>230</sup> In contrast, the Court found no breach of Article 2 (procedural head) in the case of *Smaltini v. Italy*, considering that the applicant, who had died

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<sup>226</sup> See for cases in which that substantive obligation had not been complied with, for instance, *Mehmet Şentürk and Bekir Şentürk v. Turkey*, no. 13423/09, ECHR 2013; *Asiye Genç v. Turkey*, no. 24109/07, 27 January 2015; and *Aydoğdu v. Turkey*, no. 40448/06, 30 August 2016.

<sup>227</sup> *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, ECHR 2017, in particular §§ 166 and 214. In the case at issue, the Court found a violation of the procedural limb of Article 2 of the Convention, but not of the substantive limb of that provision.

<sup>228</sup> *Nencheva and Others v. Bulgaria*, no. 48609/06, 18 June 2013.

<sup>229</sup> *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, ECHR 2014.

<sup>230</sup> *Kolyadenko and Others v. Russia*, nos. 17423/05 and 5 others, 28 February 2012. See also the Court Press Unit's Factsheet on Environment and the European Convention on Human Rights (February 2018).

from leukaemia and had alleged harmful effects of the activity of a steelworks on her health, had not demonstrated that in the light of the scientific data available at the time of the events the authorities had failed in their obligation to protect her right to life.<sup>231</sup>

202. As for the protection of minors, the Court found a breach of Article 2 in the case of *Kayak v. Turkey*, concerning the murder at 15 of the applicants' son and brother, who was stabbed by a pupil in front of the school at which the perpetrator was a boarder. Highlighting the key role of the school authorities in protecting the health and welfare of pupils, it found that the authorities had failed in their duty to provide supervision protecting pupils from any form of violence to which they might be subject at school.<sup>232</sup>

#### Prohibition of torture or inhuman or degrading treatment (Article 3 of the Convention)

203. With regard to the prohibition of torture or inhuman or degrading treatment (Article 3 of the Convention), the Court has dealt with cases concerning notably general conditions of detention, the access of prisoners to health care, detention of persons with disabilities, the right to health in the context of asylum and immigration and social benefits.

204. The Court has dealt with numerous cases in recent years concerning prison overcrowding and poor hygiene conditions entailing a breach of Article 3 of the Convention; pilot judgments against several States<sup>233</sup> revealed structural problems in this area. The Court has further handed down a number of judgments

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<sup>231</sup> See *Smaltni v. Italy* (dec.), no. 43961/09, 24 March 2015.

<sup>232</sup> *Kayak v. Turkey*, no. 60444/08, 10 July 2012.

<sup>233</sup> See *Rezmiveş and Others v. Romania*, nos. 61467/12 and 3 others, 25 April 2017; *Neshkov and Others v. Bulgaria*, nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, 27 January 2015; *Varga and Others v. Hungary*, nos. 14097/12 and 5 others, 10 March 2015; *Torreggiani and Others v. Italy*, nos. 43517/09 and 6 others, 8 January 2013; *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012; and *Orchowski v. Poland*, no. 17885/04, 22 October 2009 and *Norbert Sikorski v. Poland*, no. 17599/05, 22 October 2009. See as a recent leading judgment also *Muršić v. Croatia* [GC], no. 7334/13, ECHR 2016.

on prisoners' access to health care,<sup>234</sup> which included several findings of violations of Articles 3 and 34 of the Convention for failure of the respondent State to comply with interim measures the Court had ordered under Rule 39 of the Rules of Court.<sup>235</sup>

205. As for the detention of persons with disabilities,<sup>236</sup> the Court found, for instance, in the cases of *Helhal v. France* (concerning a paraplegic prisoner with incontinence)<sup>237</sup> and *Z.H. v. Hungary* (concerning a deaf and mute person with a learning disability, incapable of communicating)<sup>238</sup> that the inadequate premises or treatment in prison had led to a breach of Article 3.

206. Furthermore, the Court has come to a number of findings of violations of Article 3 with regard to the expulsion of migrants in a poor state of health.<sup>239</sup> Moreover, breaches of Article 3 have been found with regard to the conditions of detention of migrants, notably in its Grand Chamber judgment in the case of *MS.S. v. Belgium and Greece*.<sup>240</sup> More importantly, the Court had also

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<sup>234</sup> See, *inter alia*, *Poghosyan v. Georgia*, no. 9870/07, 24 February 2009 (concerning the transmission of viral hepatitis C in prisons); *V.D. v. Romania*, no. 7078/02, 16 February 2010 (concerning the failure to provide the applicant with dentures); and *Wenner v. Germany*, no. 62303/13, 1 September 2016 (concerning the refusal to provide drug substitution therapy in prison). See also the Court Press Unit's Factsheet on Prisoners' health-related rights (November 2017).

<sup>235</sup> See, for instance, *Aleksanyan v. Russia*, no. 46468/06, §§ 228–232, 22 December 2008; *Salakhov and Islyamova v. Ukraine*, no. 28005/08, §§ 212–224, 14 March 2013; and *Yunusova and Yunusov v. Azerbaijan*, no. 59620/14, §§ 109–120, 2 June 2016.

<sup>236</sup> See also the Court Press Unit's Factsheet on "Persons with disabilities and the European Convention on Human Rights" (January 2018).

<sup>237</sup> *Helhal v. France*, no. 10401/12, 19 February 2015.

<sup>238</sup> *Z.H. v. Hungary*, no. 28973/11, 8 November 2012.

<sup>239</sup> See, for instance, *D. v. the United Kingdom*, 2 May 1997, Reports of Judgments and Decisions 1997-III (concerning a person suffering from AIDS); and *Paposhvili v. Belgium* [GC], no. 41738/10, ECHR 2016.

<sup>240</sup> *MS.S. v. Belgium and Greece* [GC], no. 30696/09, ECHR 2011. See also *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, 24 January 2008 (detention of the applicants in an airport transit zone with a total lack of regard for their basic needs); *Rahimi v. Greece*, no. 8687/08, 5 April 2011 (unaccompanied Afghan minor seeking asylum); *Aden Ahmed v. Malta*, no. 55352/12, 23 July 2013 (inadequate detention conditions for asylum seeker of fragile health). See for further references the Court Press Unit's Factsheet on Migrants in detention (January 2018).

found in that judgment that the applicant's living conditions as an asylum seeker in Greece, where he spent months living in extreme poverty, unable to cater for his most basic needs – food, hygiene and a place to live – while in fear of being attacked and robbed, had equally been in breach of Article 3.<sup>241</sup>

207. Finally, with regard to social benefits, it is noteworthy that the Court accepted in the case of *Budina v. Russia* that State responsibility could arise under Article 3 where an applicant who was totally dependent on State support found himself or herself faced with official indifference when in a situation of serious deprivation or want incompatible with human dignity.<sup>242</sup> In its inadmissibility decision of 28 July 2016 in *Hunde v. the Netherlands*, the Court found that Article 3 required State Parties to take action in situations of the most extreme poverty (such as the situation in the *MS.S.* judgment), but there was no right to social assistance as such under the Convention. This case concerned an irregular migrant who was no longer entitled to state-sponsored care and accommodation for asylum seekers.<sup>243</sup>

#### Right to a fair trial (Article 6 of the Convention)

208. Concerning the right to a fair trial (Article 6 of the Convention), the Court has also dealt with the fairness of proceedings in which social rights were at issue, notably disputes on social benefits, labour law (private and public sector), the right to have final judgments enforced, and court fees/legal aid.<sup>244</sup>

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<sup>241</sup> *MS.S. v. Belgium and Greece*, cited above, §§ 249–264.

<sup>242</sup> *Budina v. Russia* (dec.), no. 45603/05, 18 June 2009.

<sup>243</sup> See *Hunde v. the Netherlands* (dec.), no. 17931/16, §§ 53–60, 5 July 2016. The Court did not accept the applicant's argument that the findings by the ECSR under the Charter (in *CEC v. the Netherlands* and *FEANTSA v. the Netherlands*) should be considered to lead automatically to a violation of Article 3 of the Convention. The Court considered the actions by the Netherlands and concluded that it could not be said that the Netherlands authorities have fallen short of their obligations under Article 3 by having remained inactive or indifferent. See, similarly, *Said Good v. the Netherlands* (dec.), no. 50613/12, §§ 20–24, 23 January 2018.

<sup>244</sup> See Appendix II for examples.

209. In this context, the Court found, for example, in *Howald Moor and Others v. Switzerland* that in view of the exceptional circumstances (applicants' exposure to asbestos – a disease for which the latency period could be several decades), the application of limitation periods had restricted the applicants' access to a court in breach of Article 6 § 1.<sup>245</sup> In the field of housing, it further held in the case of *Tchokontio Happi v. France* that the failure to enforce a decision ordering that the applicant be re-housed as a matter of urgency had been in breach of Article 6, noting that it was not open to a State authority to cite lack of funds or other resources, such as a shortage of available housing, as an excuse for not honouring a judgment debt.<sup>246</sup>

#### **Right to respect for private and family life (Article 8 of the Convention)**

210. As to the right to respect for private and family life (Article 8 of the Convention) the Court has dealt with cases covering a large variety of subject-matters relating to social rights, such as the right to protection of mental and physical health, particularly at work; the right to a healthy environment; the right to housing; the right to integration of people with disabilities; the right to protection of and respect for minorities' ways of life; and the right to protection in cases of termination of employment.<sup>247</sup>

211. In particular, with respect to health and safety at work, the Court examined cases concerning the State's responsibility for adequately protecting workers from serious health risks and for providing access to information regarding risks inherent in certain types of work. It found, for instance, in *Brincat and Others v. Malta* that the respondent State had not complied with its positive

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<sup>245</sup> *Howald Moor and Others v. Switzerland*, nos. 52067/10 and 41072/11, 11 March 2014.

<sup>246</sup> *Tchokontio Happi v. France*, no. 65829/12, 9 April 2015, in particular § 50. See also *International Movement ATD Fourth World v. France* and *FEANTSA v. France*, Complaints Nos. 33/2006 and 39/2006, decisions on the merits of 5 December 2007, where the ECSR found that there had been several violations of the Charter in the field of housing.

<sup>247</sup> See in detail Appendix II.

obligation under Article 8 to ensure, by legislation or other practical measures, that the applicants, shipyard workers exposed to asbestos, were adequately protected and informed of the risk to their health and lives.<sup>248</sup>

212. Moreover, with regard to housing, the Court found on several occasions the forced eviction of Roma or Travellers to be in breach of Article 8. It found, for instance, in its judgment in *Yordanova and Others v. Bulgaria* that in exceptional cases, Article 8 can give rise to an obligation to secure shelter to particularly vulnerable individuals and that evicting the applicants from a settlement (makeshift homes built without permission and with no sewage or plumbing) would breach Article 8, particularly in the absence of any alternative housing proposal; it referred to the Charter in that context.<sup>249</sup>

213. The Court was further called upon to determine the compatibility with Article 8 of the termination or non-renewal of employment contracts for reasons relating to the private life of the persons concerned. These included the church's dismissal of a parish organist on account of a stable extramarital relationship (*Schüth v. Germany* – violation of Article 8)<sup>250</sup>, the non-renewal of the employment contract of a religious education teacher, a married priest and father of five children having accepted a publication about his family circumstances and his association with a meeting opposed to official Church doctrine (*Fernández Martínez v. Spain* – no violation of Article 8)<sup>251</sup>, or the dismissal of a judge in particular on account of her close relationship with a lawyer and her unsuitable clothing and make-up (*Özpınar v. Turkey* – violation of Article 8)<sup>252</sup>. Furthermore, the Court found in *Bărbulescu v. Romania* that in the case of the dismissal by a

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<sup>248</sup> *Brincat and Others v. Malta*, nos. 60908/11 and 4 others, 24 July 2014.

<sup>249</sup> *Yordanova and Others v. Bulgaria*, no. 25446/06, 24 April 2012, in particular § 73. See also *Winterstein and Others v. France*, no. 27013/07, 17 October 2013; and *Bagdonavicius and Others v. Russia*, no. 19841/06, 11 October 2016.

<sup>250</sup> *Schüth v. Germany*, no. 1620/03, ECHR 2010. See also *Obst v. Germany*, no. 425/03, 23 September 2010 (Mormon Church's dismissal without prior notice of a director for adultery – no violation of Article 8).

<sup>251</sup> *Fernández Martínez v. Spain* [GC], no. 56030/07, ECHR 2014 (extracts).

<sup>252</sup> *Özpınar v. Turkey*, no. 20999/04, 19 October 2010.

private company of an employee for having used company resources for private purposes against the employer's instructions, after having monitored the employee's electronic communications and accessing their contents, the domestic authorities had not adequately protected the employee's right to respect for his private life and correspondence.<sup>253</sup>

### **Freedom of thought, conscience and religion (Article 9 of the Convention)**

**214. Regarding the freedom of thought, conscience and religion (Article 9 of the Convention), the Court treated cases concerning in particular dismissals relating to the employee's religious affiliation or his or her wearing religious symbols at work.**

**215. The Court found, for instance, in *Siebenhaar v. Germany* that there had been no violation of Article 9 concerning the church's dismissal of the applicant, a childcare assistant and, later, kindergarten manager, for belonging to a different religious community.<sup>254</sup> The case of *Eweida and Others v. the United Kingdom* concerned restrictions placed on wearing religious symbols at work in respect of two of the applicants (a British Airways employee and a geriatric nurse) and the dismissal of the other two applicants for refusing to carry out duties which they considered would condone homosexuality. The Court held that there had been a violation of Article 9 only in the case of the British Airways employee as the domestic courts had attached too much importance to her employer's wish to project a certain corporate image and a fair balance between the applicant's wish to manifest her religion by wearing a cross around the neck and the interest of the private employer had not been struck.<sup>255</sup> Furthermore, the Court found in its judgment of 26 November 2015 in *Ebrahimian v. France* that there had been no violation of Article 9 in respect of the decision not to renew the employment contract of a hospital social worker because of her refusal to stop**

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<sup>253</sup> *Bărbulescu v. Romania* [GC], no. 61496/08, ECHR 2017 (extracts).

<sup>254</sup> *Siebenhaar v. Germany*, no. 18136/02, 3 February 2011.

<sup>255</sup> *Eweida and Others v. the United Kingdom*, nos. 48420/10 and 3 others, §§ 89 et seq., ECHR 2013 (extracts).

wearing the Muslim headscarf, because the authorities had not exceeded their margin of appreciation in deciding to give precedence to the requirement of neutrality and impartiality of the State.<sup>256</sup>

### Freedom of expression (Article 10 of the Convention)

216. As to the right to freedom of expression (Article 10 of the Convention), the Court recently dealt with cases notably concerning sanctions against persons following critical statements they had made in connection with their work.

217. In relation to trade union members, in particular, the Court found in the case of *Csánics v. Hungary* that ordering a trade union leader to rectify comments he had made during a demonstration, which were considered harsh, but having a factual basis and reflecting the tone commonly used by trade unions, had violated Article 10.<sup>257</sup> In contrast, in the Grand Chamber's *Palomo Sánchez and Others v. Spain* judgment of 12 September 2011, the Court found that there had been no violation of Article 10 concerning trade unionists' dismissal for publishing articles deemed offensive to colleagues, considering that, even though freedom of expression was closely related to that of freedom of association in a trade-union context, there were limits to that right, one of those limits being the specific features of labour relations, as they had to be based on mutual trust.<sup>258</sup>

218. In the context of whistle-blowing, that is, disclosure by an employee of deficiencies in companies or institutions, such as illegal conduct on the part of the employer, the Court held in the case of *Heinisch v. Germany* that the dismissal of a geriatric nurse for having lodged a criminal complaint against her employer alleging shortcomings in the care provided had been a disproportionately severe sanction and therefore entailed a

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<sup>256</sup> *Ebrahimian v. France*, no. 64846/11, §§ 46 et seq., ECHR 2015.

<sup>257</sup> *Csánics v. Hungary*, no. 12188/06, 20 January 2009.

<sup>258</sup> *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06 and 3 others, ECHR 2011.

violation of her right to freedom of expression under Article 10. Given the particular vulnerability of elderly patients and the need to prevent abuse, the public interest in being informed about shortcomings in the provision of institutional care for the elderly by a State-owned company outweighed the interest in protecting the latter's business reputation and interests. In its decision, the Court referred to Article 24 of the Charter.<sup>259</sup>

219. Reference shall also be made to the Grand Chamber's *Baka v. Hungary* judgment of 23 June 2016 in which the Court found that the dismissal of the President of the Supreme Court was in breach of Article 10, given that it was a consequence of the opinions and criticisms he had expressed publicly, rather than of a reform of the judiciary.<sup>260</sup>

#### **Protection of property (Article 1 of Protocol No. 1 to the Convention)**

220. Concerning the protection of property (Article 1 of Protocol No. 1 to the Convention), the Court delivered several judgments and decisions concerning notably pensions as well as austerity measures introduced by Member States to cope with the economic crisis.

221. As for cases concerning retirement pensions, the Court found, for instance, in *Apostolakis v. Greece* that the full and automatic withdrawal of the right to a pension and social cover as a result of a criminal conviction had breached Article 1 of Protocol No. 1.<sup>261</sup> In contrast, in *Philippou v. Cyprus*, where the applicant had lost his civil servant's pension following disciplinary proceedings against him which had led to his dismissal, but had retained the right to a social security pension while his wife was granted a widow's pension, the Court found no violation of Article 1 of Protocol No. 1.<sup>262</sup> Moreover, the reduction, by a law of 2009, of the pensions of ex-employees of the State Security Service of

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<sup>259</sup> *Heinisch v. Germany*, no. 28274/08, ECHR 2011 (extracts), in particular § 38.

<sup>260</sup> *Baka v. Hungary* [GC], no. 20261/12, ECHR 2016.

<sup>261</sup> *Apostolakis v. Greece*, no. 39574/07, 22 October 2009.

<sup>262</sup> *Philippou v. Cyprus*, no. 71148/10, 14 June 2016.

the former communist regime with the aim of putting an end to pension privileges and ensuring greater fairness of the pension system was found to be compatible with Article 1 of Protocol No. 1 (*Cichopek and 1,627 other applications v. Poland*).<sup>263</sup>

222. With regard to invalidity pensions, the Court notably found in the Grand Chamber case of *Bélané Nagy v. Hungary* that the complete loss by the applicant of her invalidity pension following the introduction of new criteria had led to the applicant having to bear an excessive and disproportionate individual burden and had therefore been in breach of Article 1 of Protocol No. 1.<sup>264</sup>

223. Furthermore, most of the cases concerning austerity measures during the economic crisis concerned alleged violations of Article 1 of Protocol No. 1.<sup>265</sup>

#### Prohibition of discrimination (Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention)

224. As regards the prohibition of discrimination (Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention), the Court notably had to treat cases concerning alleged violations of Article 14 taken in conjunction with Article 8 (relating to parental leave, child allowances, and dismissals) and Article 1 of Protocol No. 1 (relating notably to pensions and social benefits). No specific noteworthy case-law relating to social rights has been developed yet under Article 1 of Protocol No. 12.

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<sup>263</sup> *Cichopek and 1,627 other applications v. Poland* (dec.), nos. 15189/10 and others, 14 May 2013.

<sup>264</sup> *Bélané Nagy v. Hungary* [GC], no. 53080/13, ECHR 2016.

<sup>265</sup> See for a number of examples Introduction, 2. b) above, as well as *Mockienė v. Lithuania* (dec.), no. 75916/13, 4 July 2017, in which the Court found that the reduction of a service pension on a temporary basis by a law aimed to decrease State expenses during the economic crisis and to ensure the State's continued ability to provide protection to the most vulnerable groups was considered to comply with Article 1 of Protocol No. 1 to the Convention.

225. With regard to workers with family responsibilities, reference shall be made first to the Grand Chamber's judgment of 22 March 2012 in *Konstantin Markin v. Russia*, in which it found that the gender-based difference in treatment among military staff concerning the right to parental leave amounted to discrimination on grounds of sex and had breached Article 14 taken in conjunction with Article 8. In its judgment, the Court referred to Article 27 of the Charter.<sup>266</sup> The Court further held in several judgments that the refusal to grant a child allowance to the applicants on the ground that they were foreigners had violated the Convention (see *Dhahbi v. Italy*, *Fawsie v. Greece* and *Saidoun v. Greece*).<sup>267</sup> Moreover, in the case of *Emel Boyraz v. Turkey* the Court found a breach of Article 8 taken in conjunction with Article 14 by the dismissal of the applicant, a female security guard, on grounds of sex.<sup>268</sup>

226. A number of decisions under Article 14 in conjunction with Article 1 of Protocol No. 1 concerned retirement pensions. In its Grand Chamber judgment in *Fábián v. Hungary* the Court found, for instance, that the different treatment of pensioners employed in the public sector (who could not accumulate a pension and a salary) as opposed to those employed in the private sector had not breached Article 14 taken together with Article 1 of Protocol No. 1 notably as pensioners employed in the public and the private sector had not been shown to be in a relevantly similar situation.<sup>269</sup> Moreover, in *Vroutou v. Cyprus*

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<sup>266</sup> *Konstantin Markin v. Russia* [GC], no. 30078/06, ECHR 2012 (extracts), in particular § 55.

<sup>267</sup> *Dhahbi v. Italy*, no. 17120/09, 8 April 2014; *Fawsie v. Greece*, no. 40080/07, 28 October 2010; and *Saidoun v. Greece*, no. 40083/07, 28 October 2010.

<sup>268</sup> *Emel Boyraz v. Turkey*, no. 61960/08, 2 December 2014.

<sup>269</sup> *Fábián v. Hungary* [GC], no. 78117/13, ECHR 2017 (extracts). See also *Andrejeva v. Latvia* [GC], no. 55707/00, ECHR 2009 (concerning the refusal to take account of the periods during which the applicant had worked in the former Soviet Union when calculating her retirement pension, on the ground that she did not have Latvian citizenship – violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1); and *Carson and Others v. the United Kingdom* [GC], no. 42184/05, ECHR 2010 (no violation of Article 14 in conjunction with Article 1 of Protocol No. 1 with regard to the refusal to index-link the pensions of persons resident in overseas countries which had no reciprocal arrangements with the United Kingdom).

the Court held that the discriminatory refusal to grant a housing assistance to the children of displaced women as opposed to the children of displaced men had been in breach of Article 14 read in conjunction with Article 1 of Protocol No. 1.<sup>270</sup>

**b) Execution of the judgments of the Court concerning social rights**

227. States' undertaking to abide by the final judgments of the Court in cases to which they are parties (Article 46 § 1 of the Convention), which comprises an obligation to implement appropriate general measures to solve the problems that have led to the Court's finding of a violation also in respect of other persons in the applicants' position,<sup>271</sup> have resulted in numerous reforms in the social domain. There have notably been a number of reforms aimed at strengthening the protection of substantive rights, such as the rights to a pension, to appropriate conditions of detention or, in the case of refugees, to minimum living conditions. They include measures to remove discrimination and prevent undue interference with acquired rights, particularly through judicial proceedings, as well as measures to restrict such interference to situations where there are compelling grounds of general interest. Migrants have also been given greater social protection, in connection with conditions of detention and in other fields.

228. The following is a non-exhaustive illustrative list of legal reforms which have been carried out or are being considered in response to Court judgments in the field of social rights:

- Improvement of conditions of detention in many countries, including access to appropriate medical care, irrespective of whether the detention is on

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<sup>270</sup> *Vrountou v. Cyprus*, no. 33631/06, 13 October 2015.

<sup>271</sup> See, inter alia, *Lukenda v. Slovenia*, no. 23032/02, § 94, ECHR 2005-X; *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 134, ECHR 2008; and *Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, § 132, ECHR 2014.

criminal or medical grounds or concerns migrants, asylum-seekers or others;<sup>272</sup>

- Abolition of discrimination between employees in Austria, which reserved certain benefits under the unemployment system to Austrian nationals, even though all employees contributed to the system on an equal footing;<sup>273</sup>
- Ensuring the implementation of final judgments in Greece, particularly judicial decisions in the social field regarding, *inter alia*, education and retirement benefits;<sup>274</sup>
- Abolition of discrimination between nationals and other persons residing in Italy regarding entitlement to family allowances;<sup>275</sup>
- Numerous reforms to implement the Court's judgments regarding instances of discrimination on grounds of sexual orientation in the field of social rights;<sup>276</sup>

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<sup>272</sup> Criminal law grounds: Committee of Ministers final resolutions (2015)169 in *Kirkosyan v. Armenia*; (2016)28 in *Torreggiani and Others v. Italy*; (2016)254 in *Orchowski v. Poland* and (2016)278 in *Kaprykowski v. Poland*. Execution measures have been adopted and others are in preparation in the cases of *Vasilescu v. Belgium*, *Kehayov/Neshkov v. Bulgaria*, *Nisiotis v. Greece*, *Istvan Gabor and Kovacs/Varga v. Hungary*, *Becciev/Ciorap/Paladi/Shishanov v. Moldova*, *Bragadireanu v. Romania*, *Mandic and Jovic v. Slovenia*, *Nevmerzhitsky/Yakovneko/Melnik/Logvinenko/Isayev v. Ukraine*, and *Kalashnikov/Ananyev v. Russia*. Medical grounds: Execution measures have been adopted and others are in preparation in the cases of *LB. and W.D. v. Belgium* and *Ticu and Gheorghe Predesco v. Romania*. Migrants: Final resolutions in the cases of *Suso Musa v. Malta*, (2016)277; and *Al-Agha v. Romania*, (2016)110.

<sup>273</sup> Committee of Ministers Final Resolution (1998)372 in *Gaygusuz v. Austria*.

<sup>274</sup> Committee of Ministers Final Resolution (2004)81 in *Hornsby v. Greece* and other cases.

<sup>275</sup> Committee of Ministers Final Resolution (2015)203 in the case of *Dhahbi v. Italy*.

<sup>276</sup> See, for example, Final Resolution (2013)81 in *Kozak v. Poland* (same-sex couples' entitlement to succession of tenancy), and Final Resolution (2002)35

- Various measures in Romania to reduce discrimination against persons of Roma origin following acts of violence involving the destruction of Roma homes;<sup>277</sup>
- Various measures introduced or in preparation in the Czech Republic, Greece and Hungary to eliminate all forms of discrimination against Roma children exercising their right to education;<sup>278</sup>
- Adoption, in several countries, of special legislation to ensure the effective and rapid implementation of decisions under the 1980 Hague Convention on the Civil Aspects of International Child Abduction, or revision of the relevant legislation and procedures in line with the Hague Convention;<sup>279</sup>
- Reforms to ensure payment of retirement pensions in several countries;<sup>280</sup>
- Reforms introduced and in preparation in Russia to remedy the problem of non-execution of judicial decisions relating to obligations in kind, such as the provision of housing.<sup>281</sup>

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in *Smith and Grady v. the United Kingdom* (homosexuals' entitlement to serve in the armed forces).

<sup>277</sup> Final Resolution (2015)238 in *Tănase and others v. Romania*; and (2016)39 in *Moldovan and Others v. Romania*.

<sup>278</sup> See the Committee of Ministers Final Resolution (2017)96 in *Sampani and Others v. Greece*; and the information on the execution of the cases of *D.H. v. the Czech Republic* and *Horvath and Kiss v. Hungary*.

<sup>279</sup> See, in particular, Final Resolutions (2010)84 in *Sylvester v. Austria* and (2015)185 in *Ignaccolo-Zenide v. Romania*. Measures have also been introduced and others are in preparation in the cases of *Bajrami v. Albania*, *Karadzic v. Croatia* and *Hromadka and Hromadkova v. Russia*.

<sup>280</sup> Final Resolution (2012)148 in *Karanovic v. Bosnia and Herzegovina*, and (2017)427 in *Grudić v. Serbia*.

<sup>281</sup> Execution measures in preparation in connection with *Gerasimov and Others v. Russia*.

## **II. THE COUNCIL OF EUROPE'S FURTHER ACTION FOR SOCIAL RIGHTS**

### **1. The Secretary General and the “Turin Process”**

**229.** In 2014 political awareness grew of the need to uphold and promote social rights in a global environment affected by the economic crisis. In this context, the Secretary General of the Council of Europe, Mr Thorbjørn JAGLAND, in his strategic vision for his second term (2014–2019), made an enhanced role for the Charter one of his seven priorities (Priority No. 5).<sup>282</sup> Following up to this priority, the Secretary General launched the “Turin Process” at the High-level Conference on the European Social Charter organised by the Council of Europe, the Italian Presidency of the Council of the European Union and the City of Turin, which took place in Turin on 17 and 18 October 2014 (“Turin I”).<sup>283</sup>

**230.** The Secretary General outlined the following imperatives as regards the European Social Charter: First, all Member States should ratify the Revised Charter and accept the collective complaints procedure. Second, follow-up had to be given to the decisions and conclusions of the ECSR by State Parties. Third, strong synergies were needed between the Charter and European Union law to avoid any legal conflict. Fourth, co-operation activities around the Charter had to be enhanced, including through national action plans and targeted training activities.<sup>284</sup>

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<sup>282</sup> See document [SG/Inf\(2014\)34](#) of 16 September 2014 – The seven priorities identified are: 1) Continuing to strengthen the Convention and the principle of shared responsibility; 2) Continuing to strengthen and expand co-operation with Member States; 3) Reinforcing the role of the Council of Europe when it comes to upholding democratic principles; 4) Upholding assistance to neighbouring countries; 5) Making the role of the Social Charter stronger; 6) Strengthening the cohesion of the organisation, and 7) Increasing its operational capacity.

<sup>283</sup> See the European Social Charter's website for more information on the “Turin Process” for the European Social Charter.

<sup>284</sup> See the following link to the Secretary General's speech at the “Turin I” Conference 2014.

231. The “Turin I” Conference was followed on 12 and 13 February 2015 by the Brussels High-level Conference on “The Future of the Protection of Social Rights in Europe”, organised by the Belgian Chairmanship of the Council of Europe, at which the achievement of the objectives of the Turin process were discussed by academic experts, social partners, civil society organisations and representatives of international and political institutions.<sup>285</sup> The “Brussels Document”, i.e. a synthesis of the discussions prepared by experts, was handed over to the Belgium Chairmanship to provide input for the activities of the Council of Europe in the field of social rights.<sup>286</sup>

232. In 2016, two further high-level meetings, organised by the Council of Europe, the Italian Chamber of Deputies and the City of Turin, marked the Turin process: the Interparliamentary Conference on the European Social Charter, held in Turin on 17 March 2016, and the Forum on Social Rights in Europe, held in Turin on 18 March 2016 (“Turin II”).

233. The Interparliamentary Conference on the European Social Charter allowed members of national parliaments of Council of Europe Member States to discuss the implementation of the rights guaranteed by the treaty system of the European Social Charter at national level in the current international context. It focussed on the processes of ratification of the Revised Charter and the Protocol on the collective complaints procedure, on the consideration of the (revised) Charter’s provisions in the national legislative process and on the results of the monitoring activities of the ECSR.<sup>287</sup> The public Forum gave an opportunity to take stock of the implementation of social rights in Europe, having regard to the main challenges in the present international context and to the risks to democratic security of societies in which these fundamental rights are not fully

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<sup>285</sup> See the following link for further information on the Brussels Conference (February 2015).

<sup>286</sup> See the following link to the 2015 “Brussels Document”.

<sup>287</sup> See the following link for further information on the Turin II Conference (March 2016).

**guaranteed. At the Forum, the European Commission presented its draft European Pillar of Social Rights.<sup>288</sup>**

**234. On 24 February 2017 a further Conference on “Social rights in today’s Europe: the role of domestic and European Courts” was held as part of the Turin Process in Nicosia, Cyprus. It was organised by the Supreme Court of Cyprus in cooperation with the Council of Europe in the framework of the Cypriot Chairmanship of the Council of Europe’s Committee of Ministers. The aim of the Conference was to examine the role and contribution of domestic and European jurisdictions to the enforcement of social rights in Europe. Judges, representatives of European monitoring and advisory bodies and academics held an exchange on the relevant case-law of the Court, of the Court of Justice of the European Union and of a number of national courts.<sup>289</sup>**

**235. As regards the current status of the “Turin Process”, the situation is assessed in the 2017 Report of the Secretary General on the “State of democracy, human rights and the rule of law” as follows.<sup>290</sup> Three measurement criteria are mentioned in the Report: 1) the ratification of the Charter, the number of adopted key provisions of the Charter and the acceptance of the collective complaints procedure; 2) the number of findings of non-conformity relating to the thematic group “employment, training and equal opportunities”; and 3) the measures adopted by State Parties showing compliance with the requirements of the Charter.<sup>291</sup>**

**236. As for the first criterion, the ratification of the Charter and the acceptance of the collective complaints procedure, it is noted that Greece ratified the Revised Charter on 18 March 2016; it entered into force on 1 May 2016. Greece accepted 96 out of the**

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<sup>288</sup> **Ibid.**; see also III.1. below.

<sup>289</sup> See the following link for further information on the Nicosia Conference (February 2017).

<sup>290</sup> See the following link to the Secretary General’s 2017 Report on the “State of democracy, human rights and the rule of law – Populism – How strong are Europe’s checks and balances?”.

<sup>291</sup> **Ibid.**, Chapter 5 – Inclusive societies, Social Rights, p. 98.

Charter's 98 paragraphs.<sup>292</sup> Since the beginning of the Turin Process in October 2014 no further State ratified either the (revised) Charter or the 1995 Protocol Providing for a System of Collective Complaints.<sup>293</sup> Nevertheless, as shown above, the (revised) Charter is currently in force in almost all Member States of the Council of Europe (43 out of 47), fifteen of whom are equally bound by the 1995 Additional Protocol.<sup>294</sup> Furthermore, the Secretary General observed that in 2016, the ECSR registered 21 collective complaints, as compared with only 6 in 2015.<sup>295</sup>

237. As for the second criterion of the number of findings of non-conformity relating to the thematic group “employment, training and equal opportunities” – the group of rights examined in the State reporting procedure in 2016 – in the ECSR's conclusions, the Secretary General noted that the ECSR found 166 cases of non-conformity with the Charter and 262 situations of conformity out of 513 conclusions on the rights examined in 2016, in 85 cases the ECSR was unable to examine the situation due to lack of information.<sup>296</sup>

238. As for the third criterion of the measures adopted by State Parties showing compliance with the requirements of the Charter, the Secretary General noted, in particular, that the ECSR welcomed several positive developments such as the adoption of anti-discrimination legislation or jurisprudential developments leading to increased protection against discrimination in the field of employment in many States as well as legislative developments in a number of States increasing the protection of people with disabilities against discrimination. Moreover, the ECSR considered that the right of women and men to equal opportunities was adequately covered in newly

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<sup>292</sup> *Ibid.*, Chapter 5 – Inclusive societies, Social Rights, p. 98.

<sup>293</sup> See the Treaty Office's homepage for the Chart of signatures and ratifications of the 1996 revised Charter and the Chart of signatures and ratifications of the 1995 Additional Protocol.

<sup>294</sup> See L1.(a).

<sup>295</sup> *Ibid.*, Chapter 5 – Inclusive societies, Social Rights, p. 99.

<sup>296</sup> *Ibid.*, Chapter 5 – Inclusive societies, Social Rights, p. 98. See also L1.(c)(iii) above.

adopted legislation in several States and noted that vocational guidance and training systems were well established in the majority of the States examined.<sup>297</sup>

**239.** In the light of these findings, the Secretary General, in his “Proposals for Action”, suggests that his recommendations aimed at strengthening Member States’ democratic institutions and practices are consolidated notably through safeguarding social rights as guaranteed by the European Social Charter as well as in the conclusions and decisions of the ECSR.<sup>298</sup>

## **2. The Committee of Ministers**

**240.** As shown above, the Committee of Ministers of the Council of Europe has, first of all, an important role to play in the direct implementation of the social rights enshrined in the (revised) Charter as it is entrusted, both in the reporting system and under the collective complaints procedure, to adopt resolutions and, if necessary, individual recommendations addressed to the States concerned on the application of the (revised) Charter in the light of the ECSR’s findings.<sup>299</sup> As equally addressed above, the Committee of Ministers further takes indirect action in the field of social rights in the framework of the execution of judgments of the Court concerning social rights.<sup>300</sup>

**241.** Furthermore, in recent years the Committee of Ministers has adopted, in particular, the following action plans, recommendations and other instruments concerning, and aimed at reinforcing social rights:

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<sup>297</sup> *Ibid.*, Chapter 5 – Inclusive societies, Social Rights, pp. 98–99. See also L1.(c)(iii) above.

<sup>298</sup> *Ibid.*, Proposals for Action, p. 10.

<sup>299</sup> See L1.(b) above. Recommendations addressed to individual States by the Committee of Ministers following the ECSR’s finding of non-conformity of a situation with the (revised) Charter are rare in practice, see L1.(b)(iii) above.

<sup>300</sup> See L2.(b) above.

- **Council of Europe Action Plan for Social Cohesion, 7 July 2010;**
- **Guidelines on Improving the situation of low-income workers and on the empowerment of people experiencing extreme poverty, 5 May 2010;**
- **CM/AS(2010)Rec1912 – Reply to the PACE Recommendation on “Investing in family cohesion as a development factor in times of crisis”;**
- **Recommendation CM/Rec(2010)2 on deinstitutionalisation and community living of children with disabilities;**
- **CM/AS(2011) Rec1976 – Reply to the PACE Recommendation on the role of parliaments in the consolidation and development of social rights in Europe;<sup>301</sup>**
- **CM/AS(2011) Rec1958 – Reply to the PACE Recommendation on monitoring of commitments concerning social rights;<sup>302</sup>**
- **Reply CM/AS(2011) Rec1963 to the PACE Recommendation on “Combating poverty”;**
- **Recommendation CM/Rec(2011)12 on children’s rights and social services friendly to children;**

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<sup>301</sup> In its reply, the Committee of Ministers fully endorsed the PACE’s view that national parliaments can play an important role in consolidating and developing social rights. It stressed the importance for parliaments to take steps to ensure full implementation of the standards provided for in international agreements, including in the field of social rights, when designing policy measures.

<sup>302</sup> In its reply, the Committee of Ministers referred mainly to the Declaration it adopted on the 50th anniversary of the Charter. As regards the PACE’s request to adopt a decision, pending the entry into force of the 1991 Protocol, to enable it to elect the members of the ECSR, the Committee of Ministers did not consider it appropriate, at this stage, to adopt this decision. The same applied to the PACE’s request to revise the collective complaints Protocol to enable it and other actors to intervene as a third party.

- **Joint Declaration by the Presidents of the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities and the Conference of INGOs on the International Day for the Eradication of Poverty entitled “Acting together to eradicate extreme poverty in Europe” (17 October 2012);**<sup>303</sup>
- **Recommendation CM/Rec(2014)2 on the promotion of human rights of older persons;**
- **Recommendation CM/Rec(2015)3 on the access of young people from disadvantaged neighbourhoods to social rights.**<sup>304</sup>

**242. Moreover, in order to mark the 50<sup>th</sup> anniversary of the European Social Charter, the Committee of Ministers adopted a Declaration on 12 October 2011, in which it notably:**

- **reaffirmed the paramount role of the Charter in guaranteeing and promoting social rights;**
- **called on all the States to consider ratifying the Revised Charter and the Protocol on the collective complaints procedure;**
- **expressed its resolve to secure the effectiveness of the Charter (through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure);**
- **affirmed its determination to support States in bringing their domestic situation into conformity with the**

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<sup>303</sup> See the following link to the [joint Declaration of the Presidents of the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities and the Conference of INGOs](#) of the Council of Europe of 17 October 2012.

<sup>304</sup> This follows on from the ENTER project launched in 2009 to develop social-rights-based policy responses to the exclusion/discrimination/violence experienced by young people in vulnerable situations. It is planned to revise the Recommendation every 3 or 4 years. As part of the follow-up to the Recommendation, various activities are being conducted, including notably local co-operation projects, developing guidelines, new long-term training courses and a database listing the different practices.

Charter and to ensure the expertise and independence of the ECSR;

- invited States and relevant bodies of the Council of Europe to increase their efforts to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.<sup>305</sup>

243. In the framework of the “Turin Process”, the Committee of Ministers has notably regularly exchanged views on this process<sup>306</sup> and reinforced the budget of the Secretariat of the Charter.<sup>307</sup> Furthermore, in reply to the Parliamentary Assembly Recommendation 2112 (2017) on “The ‘Turin Process’: reinforcing social rights in Europe”, the Committee of Ministers declared that it shared the Parliamentary Assembly’s engagement with regard to strengthening social and economic rights in Europe and recalled that it regularly invited the Member States who had not yet done so to consider ratifying the Revised Charter.<sup>308</sup>

244. Furthermore, the Committee of Ministers decided to set up a European Social Cohesion Platform (PECS) in the form of an ad hoc committee for the period 2016–2017.<sup>309</sup> The aim of

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<sup>305</sup> See the following link to the [Declaration of the Committee of Ministers on the 50<sup>th</sup> anniversary of the European Social Charter](#).

<sup>306</sup> See, in particular, the exchanges of views on 4 February 2015, 26 May 2015, 30 March 2016 and 22 March 2017.

<sup>307</sup> In its Programme and Budget 2016–2017, it reinforced the Secretariat of the Charter affected to the collective complaints procedure and the Secretariat of the Social Cohesion Platform and increased the funding for the purpose of co-operation activities relating to the Charter system. See also the meeting of 19 January 2016 of the CM’s Rapporteur Group on Social and Health Questions (GR-SOC) which identified the following priorities relating to the Charter: strengthening the application of the Charter; dialogue with the EU on this matter; improvement of the implementation of social rights at national level; simplification of the monitoring procedures to make further ratifications of the Revised Charter and the Additional Protocol on collective complaints more attractive; and enhance targeted co-operation with Member States in the field of social rights (cf. doc. GR-SOC(2016) CB1).

<sup>308</sup> See the Reply adopted by the Committee of Ministers on 13 December 2017 on Parliamentary Assembly Recommendation 2112 (2017) on “The ‘Turin Process’: reinforcing social rights in Europe”, document [CM/AS\(2017\)Rec2112-final](#).

<sup>309</sup> See 1241th (Budget) Meeting of the Committee of Ministers of 24–26 November 2015, document CM(2015)161 final, 26 November 2015.

this committee is to reinforce the intergovernmental component of the Secretary General's strategy to develop the Council of Europe's activities in the field of social cohesion, in particular through the promotion of the European Social Charter and its collective complaints procedure in order to ensure equal and effective access to social rights.<sup>310</sup>

### **3. The Parliamentary Assembly**

**245.** Pursuant to the Charter, the Parliamentary Assembly receives via the Secretary General of the Council of Europe the reports of the ECSR and of the Governmental Committee, as well as the resolutions of the Committee of Ministers, with a view to the holding of periodical plenary debates. The Parliamentary Assembly (PACE) promotes the ratification and implementation of the European Social Charter in close partnership with the ECSR. Since 2013, the latter formally addresses its yearly conclusions to the Parliamentary Assembly by letter of the ECSR President to the PACE President; these are then shared with Committees in charge of the follow-up of the European Social Charter, in particular the Committee on Social Affairs, Health and Sustainable Development.

**246.** Since 2013, this Committee, and its Sub-Committee on the European Social Charter, have also organised specific capacity-building seminars, concerning selected articles of the (revised) Charter for which situations of non-conformity were noted by the ECSR in its yearly conclusions, in order to address specific social rights challenges with parliamentarians from different Member States. After two initial seminars in Paris (in 2013 and 2014 respectively) a third, regional seminar for the promotion of social rights was organised in May 2015 in Chisinau (Republic of Moldova) under the Council of Europe-EU Eastern Partnership Programme.<sup>311</sup>

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<sup>310</sup> See the following link for information, on the European Social Charter's website, on the European Social Cohesion Platform (PECS).

<sup>311</sup> The respective issues addressed by these seminars were in 2013: Improving employment conditions of young workers (under the age of 18); in 2014: Ensuring safe and healthy working conditions; and in 2015: Fostering social rights in the Eastern Partnership area: focus on the European Social Charter.

**247. In recent years, the Parliamentary Assembly addressed social rights in a number of reports in order (a) to stress legislative and political action required by Member States to comply with the highest social rights standards as enshrined in the European Social Charter treaty system; (b) to advise States on the promotion of decent work and youth employment and (c) to address certain problems such as the increase in child poverty and the impact of austerity measures.**

**248. Among the numerous texts adopted recently by the PACE, the following could be cited:**

- **Resolution 1792 (2011) and Recommendation 1958 (2011)** on “Monitoring of commitments concerning social rights”;
- Resolution 1793 (2011) on “Promoting active ageing – capitalising on older people’s working potential”;
- **Resolution 1824 (2011) and Recommendation 1976 (2011)** on “The role of parliaments in the consolidation and development of social rights in Europe”;
- Resolution 1881 (2012) on “Promoting an appropriate policy on tax havens”;
- **Resolution 1882 (2012) and Recommendation 2000 (2012)** on “Decent pensions for all”;
- Resolution 1884 (2012) on “Austerity measures – a danger for democracy and social rights”;
- **Resolution 1885 (2012) and Recommendation 2002 (2012)** on “The young generation sacrificed: social, economic and political implications of the financial crisis”;
- Resolution 1905 (2012) on “Restoring social justice through a tax on financial transactions”;

- Resolution 1993 (2014) on “Decent work for all”;
- **Resolution 1995 (2014) and Recommendation 2044** (2014) on “Ending child poverty in Europe”;
- Resolution 2007 (2014) on “Challenges for the Council of Europe Development Bank”;
- **Resolution 2024 (2014) and Recommendation 2058** (2014) on “Social exclusion: a danger for Europe’s democracies”;
- Resolution 2032 (2015) on “Equality and the crisis”;
- Resolution 2033 (2015) on the “Protection of the right to bargain collectively, including the right to strike”;
- **Resolution 2039 (2015) and Recommendation 2064** (2015) on “Equality and inclusion for people with disabilities”;
- **Resolution 2041 (2015) and Recommendation 2065** (2015) on “European institutions and human rights in Europe”,<sup>312</sup>
- **Resolution 2049 (2015) and Recommendation 2068** (2015) on “Social services in Europe: legislation and **practice of the removal of children from their families** in member states”;
- Resolution 2068 (2015) entitled “Towards a new European Social Model”;

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<sup>312</sup> It should be noted that reference is made to this Recommendation in the aforementioned CDDH feasibility study on the impact of the economic crisis and austerity measures on human rights in Europe: in this Recommendation, the Assembly calls on the Committee of Ministers “to undertake, in co-operation with the Council of Europe’s Commissioner for Human Rights, an expert study to prepare a catalogue of “criteria for the imposition of austerity measures”, in compliance with requirements of the European Social Charter (revised)”, as determined by the ECSR: CDDH(2015)R84, Addendum IV, § 43.

- Resolution 2130 (2016) on “Lessons from the ‘Panama Papers’ to ensure fiscal and social justice”;
- Resolution 2139 (2016) on “Ensuring access to health **care for all children in Europe**”;
- Resolution 2146 (2017) on “Reinforcing social **dialogue as an instrument for stability and decreasing** social and economic inequalities”;
- Resolution 2152 (2017) on “‘New generation’ trade **agreements and their implications for social rights, public health and sustainable development**”;
- Resolution 2158 (2017) on “Fighting income **inequality: a means of fostering social cohesion and** economic development”;
- Resolution 2167 (2017) on “The employment rights of domestic workers, especially women, in Europe”;
- Resolution 2168 (2017) on “Human rights of older persons and their comprehensive care”.

**249.** As regards the “Turin Process” in particular, the **Parliamentary Assembly had declared its willingness to support this initiative from its very start in 2014.**<sup>313</sup> Accordingly, it regularly participated in related events (such as the Brussels Conference organised by the Belgian Chairmanship in February 2015 and the March 2016 Turin II Conference). Moreover, on 30 June 2017 the Parliamentary Assembly adopted Resolution 2180 (2017) on “The ‘Turin process’: reinforcing social rights in Europe” in which it expressed concern about the current level of compliance with major European social rights standards such as the (revised) European Social Charter and considered that the potential of this social rights instrument was not fully exploited, in particular as ratifications were still pending from several Member States. It called on the Member States to contribute to

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<sup>313</sup> See in this connection the Declaration of the Sub-Committee on the European Social Charter, on behalf of the PACE, at the Turin I Conference, document AS/Soc/ESC(2014)03rev, 17 October 2014.

strengthening the Charter as a normative system, to strengthen the pan-European dialogue on social rights and the co-ordination of legal and political action with other European institutions, notably the European Union, and to improve compliance with the highest social rights standards at the national level.<sup>314</sup> Moreover, in the above-mentioned Recommendation 2112 (2017) on “The ‘Turin process’: reinforcing social rights in Europe” adopted on the same day, it notably invited the Committee of Ministers to take steps to ensure more rapid progress with regard to the ratification and implementation of the Revised Charter and its Protocols and to make social rights a priority for the next biennium.<sup>315</sup>

#### **4. The Congress of Local and Regional Authorities**

**250.** The Congress of Local and Regional Authorities is a pan-European political assembly of 648 members representing over 200,000 authorities of the 47 Member States. Its role is to promote local and regional democracy, improve local and regional governance and strengthen authorities’ autonomy.<sup>316</sup>

**251.** In the activities of the Congress, local and regional authorities have repeatedly addressed human rights issues they were faced with. As authorities closest to the citizens and important service providers, they have indeed a prominent role to play in protecting and promoting human rights and are to implement in practice many of the standards of international treaties, such as the European Social Charter or the Convention.

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<sup>314</sup> See the following link to [PACE Resolution 2180 \(2017\)](#) of 30 June 2017.

<sup>315</sup> See [PACE Recommendation 2112 \(2017\)](#) of 30 June 2017.

<sup>316</sup> See for more information the website of the [Congress of Local and Regional Authorities](#).

**252. Social rights, such as the right to housing, to protection of health, to social and medical assistance and to social welfare services, often play an important role in the day-to-day decision-making of local and regional authorities. Moreover, the rights of people with disabilities, the right of the family, children and teenagers to social, legal and economic protection, the rights of elderly persons as well as citizens' right to protection against poverty and social exclusion are often of particular concern for local and regional authorities.**

**253. Accordingly, the Congress has stressed the important role of local and regional authorities in the protection of children<sup>317</sup> and in the promotion of the rights of people with disabilities.<sup>318</sup> The Congress has also taken action in regard to the right to protection of health and to social and medical assistance.<sup>319</sup> In addition, the Congress has been working on the topic of migration, which is of increasing relevance to local authorities, and has adopted 20 Resolutions and Recommendations on the issue in the past years.<sup>320</sup> Moreover, with regard to the right to benefit from social welfare services in the context of the economic crisis, the Congress encouraged the States:**

***“to exclude priority social services such as health, education and social protection for vulnerable groups (...) from local and regional***

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<sup>317</sup> See especially its Recommendations 272 (2009) on “Preventing Violence against children”, 332 (2012) on “Legislation and regional action to combat sexual exploitation and abuse of children” as well as their contribution to the ONE on FIVE Campaign, in the form of a Strategic Action Plan.

<sup>318</sup> See especially its Resolution 153 (2003) on “Employment and vulnerable groups” and its Recommendations 208 (2007) on “Access to public spaces and amenities for people with disabilities” and 361 (2014) on “Promoting equal opportunities for people with disabilities and their participation at local and regional levels”.

<sup>319</sup> See especially its Recommendations 223 (2007) on “Balanced distribution of health care in rural regions” and 212 (2007) on “E-health and democracy in the regions”.

<sup>320</sup> See especially, the Resolution 218 (2006) on “Effective access to social rights for immigrants: the role of local and regional authorities” and the March 2017 report of the Congress entitled “From reception to integration: the role of local and regional authorities facing migration”.

*budget expenditure limits, and (...) ensure that vulnerable groups are well protected and that their opportunities in life are not diminished by budgetary measures”.<sup>321</sup>*

## **5. The Commissioner for Human Rights**

**254. The activities of the Commissioner for Human Rights (“the Commissioner”) focus on three major, closely related areas: 1) country visits and dialogue with national authorities and civil society; 2) thematic studies and advice work and; 3) awareness-raising activities.<sup>322</sup>**

**255. In the context of his country work, the Commissioner regularly carries out field visits and meets with individuals experiencing difficulties in exercising their social rights, for instance in Roma settlements, institutions for persons with disabilities or refugee camps.<sup>323</sup>**

**256. During his mandate from April 2012 to March 2018, former Commissioner Nils MUIŽNIEKS, in particular, has constantly promoted the indivisibility and interdependence of human rights and has regularly called upon States to honour their international commitments in this sphere.<sup>324</sup> His approach has generally been to cover access to social rights of specific groups, among others children, women, elderly people, LGBTI persons, persons with disabilities, migrants, asylum seekers and refugees, Roma and other ethnic or religious minority groups, stateless persons, victims of trafficking in human beings and Internally Displaced Persons (IDPs).<sup>325</sup>**

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<sup>321</sup> See Recommendation 340 (2013) of the Congress, § 15(h).

<sup>322</sup> See the following link to the [Mandate of the Commissioner for Human Rights](#).

<sup>323</sup> See the following link for more information on the [Commissioner’s country monitoring activities](#).

<sup>324</sup> See, *inter alia*, the [Commissioner’s Comment on “Preserving Europe’s social model”](#).

<sup>325</sup> See the following link for more information on the [Commissioner’s thematic work](#).

257. The Commissioner frequently referred to the (revised) Charter and to the conclusions and decisions of the ECSR, as well as to other international and European binding instruments as interpreted by their bodies, such as for example the aforementioned ICESCR.<sup>326</sup> He further promotes soft law tools dealing with social rights, including a wide range of Recommendations of the Committee of Ministers. Finally, the Commissioner expressed his full support for the “Turin Process” in his Comment entitled “*Preserving Europe’s social model*” (2014).<sup>327</sup>

258. A number of the Commissioner’s country reports, Human Rights Comments and Issue Papers concerning, in particular, the right to work, education and health care, demonstrate that ensuring respect for social rights is often at the heart of the Commissioner’s activities.<sup>328</sup>

259. As for the right to work, for instance, the Commissioner stressed in his Comment on “Improving protection for victims of forced labour and human trafficking” published in November 2015 that everyone should be protected against forced labour and trafficking in human beings. The Commissioner recommended the swift ratification of the Protocol of 2014 to the 1930 ILO Forced Labour Convention (providing their victims with similar rights as the ones of human trafficking) and also, when speaking in defence of irregular migrants, of the 2011 ILO Convention 189 on Decent Work for Domestic Workers.<sup>329</sup> Finally, in a Comment on “Child labour in Europe: a persisting challenge” published in 2013, the Commissioner stressed that

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<sup>326</sup> See, *inter alia*, the Commissioner’s Comment on “Preserving Europe’s social model”.

<sup>327</sup> See the link to the Commissioner’s Comment on “Preserving Europe’s social model”.

<sup>328</sup> All the country visit reports, thematic work, Human Rights comments and letters mentioned in this Analysis are available on the Commissioner’s website: <https://www.coe.int/en/web/commissioner/home>.

<sup>329</sup> See the following link to the Commissioner’s Comment on “Improving protection for victims of forced labour and human trafficking” of 12 November 2015.

child labour continued being a challenge which might be growing in the context of the economic crisis.<sup>330</sup>

260. As regards the right to education, the Commissioner constantly stressed that there is a universal right to education for all children irrespective of their legal status. In that sense, he has frequently addressed the problem of Roma segregation in school in all its forms. Children with disabilities are also segregated in many countries, either because they attend special schools or classes or no school at all. The Commissioner regularly recalls in this respect the need to go beyond desegregation and promote inclusive education. He issued a Comment entitled “Inclusive education vital for social cohesion in diverse societies” in May 2015 on the need to promote inclusive education as a means of strengthening social cohesion.<sup>331</sup>

261. Concerning access to social protection, including social security, the Commissioner has encouraged the creation and enhancement by States of social safety nets for the most socially vulnerable groups of the population, such as children, particularly in times of economic crisis. Social safety nets should be part of national social protection systems and readily and systematically available in the form of cash transfers, transfers in kind, income support or fee waivers for essential services such as health, education or heating. Moreover, in times of migration crisis, the Commissioner paid increased attention to reception conditions of migrants and refugees. In addition, migrant integration is an essential tool for protection of their social rights as shown in the Issue Paper “Time for Europe to get migrant integration right” (2016).

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<sup>330</sup> See the following link to the [Commissioner's Comment on “Child labour in Europe: a persisting challenge” of 20 August 2013](#).

<sup>331</sup> See the following link to the [Commissioner's Comment entitled “Inclusive education vital for social cohesion in diverse societies” of 5 May 2015](#).

**262.** In his Human Rights Comment entitled “Maintain universal access to health care” (2014), the Commissioner further stated that everyone’s access to health care without **discrimination is a core element of this right.**<sup>332</sup> He also made **recommendations on how to improve access to the right** to health of intersex people in his Issue Paper on “Human rights and intersex people” of 2015.<sup>333</sup>

## **6. The Conference of INGOs**

**263.** The Council of Europe’s work benefits, to a large extent, **from contact and co-operation with NGOs, as one of the driving forces in society. In this connection, it maintains relations with INGOs (international non-governmental organisations) enjoying participatory status which form the “Conference of INGOs”, one of the pillars of the Council of Europe. The INGO Conference meets twice a year in Strasbourg and currently comprises 288 INGOs. They are playing an active part in the decision-making process within the Council of Europe and in the implementation of its programmes.**<sup>334</sup>

**264.** In all its work, the Conference of INGOs constantly stresses the importance of the indivisibility of human rights. It accordingly conducts activities which show the interrelated nature of economic, social, cultural, civil and political rights.

**265.** Among the various texts adopted by the Conference of INGOs in the field of social rights, the following deserve special mention:<sup>335</sup>

- Declaration adopted in January 2017 entitled “The European Social Charter is central to the dialogue between the Council of Europe and the European Union”;

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<sup>332</sup> See the following link to the Commissioner’s Human Rights Comment entitled “Maintain universal access to health care” of 7 August 2014.

<sup>333</sup> See the following link to the Commissioner’s Issue Paper on “Human rights and intersex people” of 2015.

<sup>334</sup> See for further information the link to the “Conference of INGOs: Participatory status” on the Council of Europe’s website.

<sup>335</sup> See <http://www.coe.int/en/web/ingo/texts-adopted>.

- **Recommendation CONF/PLE(2016)REC2 on health care and socio-medical conditions and respect of human rights of older persons in Europe;**
- **Recommendation CONF/PLE(2015)REC1 on “The violation of economic, social and cultural rights by austerity measures: a serious threat to democracy”;**
- **Recommendation to the Committee of Ministers CONF/PLE(2015)REC2 on a “New disability strategy”;**
- **Resolution CONF/PLE(2013)RES1 on “Acting together to eradicate extreme poverty in Europe”.**

**266. Furthermore, as for publications produced by the Conference of INGOs on the subject of social rights, mention may be made of the following:<sup>336</sup>**

- **Rights of persons with disabilities: Article 15 of the European Social Charter in the light of the UN Convention on the Rights of Persons with Disabilities – 2015;**
- **Booklet on Article 30 (right to protection against poverty and social exclusion) – published in co-operation with the Social Charter Department – 2014;**
- **Human Rights in times of crisis: contribution of the European Social Charter – 2011;<sup>337</sup>**
- **The Charter of Fundamental Rights of the European Union: a reading guide in the light of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter (revised) – 2008;**

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<sup>336</sup> <http://www.coe.int/en/web/ingo/publications>.

<sup>337</sup> See the following link to **Human Rights in times of crisis: contribution of the European Social Charter** (Proceedings of the Round Table organised jointly by the Conference of INGOs of the Council of Europe and the Social Charter Department at the Ecole Nationale d'Administration, Strasbourg, 17 October 2011).

- The contribution of NGOs to the fight against poverty and social exclusion in Europe – 2007;
- Compendium of texts regarding the eradication of poverty (adopted by the Committee of Ministers, PACE and the Congress of Local and Regional Authorities): Commitments entered into by member States – 2014.<sup>338</sup>

267. The INGO Conference further issued a Call to Action to support the “Turin Process” in January 2016<sup>339</sup> and created a Coordination Committee to work on a permanent basis with the INGOs on the promotion of this process.

### **III. ACTIONS OUTSIDE THE COUNCIL OF EUROPE CONCERNING THE SOCIAL RIGHTS PROTECTED WITHIN THE COUNCIL**

268. A number of non-Council of Europe actors can equally adopt measures which concern or have an impact on the protection of social rights within the Council of Europe, particularly by the European Social Charter. Therefore, a few examples of European Union actions in the field of social rights, of the impact of instruments elaborated by different international organisations (in particular, instruments of the International Labour Organisation) and by international organisations of employers and workers shall be given below.

#### **1. The European Union**

269. The relationship between EU law and the Charter has already been described in more detail above.<sup>340</sup> As regards more general actions taken by the EU concerning social rights guaranteed by the Charter, the following examples shall be mentioned.

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<sup>338</sup> See the following link to the Conference of INGO’s publication entitled “Eradicate the poverty – Commitments of States within the framework of the Council of Europe”.

<sup>339</sup> See the following link to the “Conference of INGO’s Call to action to support “Turin process” for European Social Charter” of January 2016.

<sup>340</sup> See I1.(e) above.

270. In September 2015 the President of the European Commission, Jean-Claude Juncker, announced the creation of a “European Pillar of Social Rights”.<sup>341</sup> This Pillar is to underline the relevance of social rights in the EU institutions and policies. During the consultation process, the Secretary General of the Council of Europe, in particular, published his Opinion on the European Union initiative to establish a European Pillar of Social Rights. Welcoming this initiative, the Secretary General stressed the importance of legal certainty and coherence between European standard-setting systems protecting fundamental social rights. He further stated that ensuring that the European Social Charter was central to the Pillar would contribute to this objective and make Europe not only more prosperous, but also more equitable and united.<sup>342</sup>

271. Moreover, on 19 January 2017, the European Parliament has adopted a Resolution on “The European Pillar of Social Rights”. It makes explicit reference to “the European Social Charter, its Additional Protocol and its revised version, which entered into force on 1 July 1999, in particular its Part I, its Part II and Articles 2, 4, 16 and 27 of the latter, on the right of workers with family responsibilities to equal opportunities and equal treatment” and it “calls on the Member States to sign and ratify the revised European Social Charter and the European Convention on Social Security (ETS No 078); encourages the Commission to examine the steps required for accession of the European Union to the revised Charter and to propose a timeline for this objective”. More generally, the Resolution calls on the Commission, the European External Action Service and the Member States to pursue external action coherent with the

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<sup>341</sup> President of the European Commission, Jean-Claude Juncker, State of the Union address, 9 September 2015.

<sup>342</sup> See the following link to the [Secretary General's Opinion on the EU initiative to establish a European Pillar of Social Rights](#) of 2 December 2016. In the Secretary General's view “it is necessary – with due regard for the competences and applicable law of the European Union – that: ...the provisions of the European Social Charter (Revised) should be formally incorporated into the European Pillar of Social Rights as a common benchmark for states in guaranteeing these rights; (...) The collective complaints procedure (...) should be acknowledged by the European Pillar of Social Rights.”

“European Pillar of Social Rights”, by promoting, *inter alia*, the implementation of the relevant Council of Europe conventions.

272. The European Pillar of Social Rights was proclaimed and signed by the Council of the EU, the European Parliament and the Commission on 17 November 2017. Referring, *inter alia*, to the European Social Charter<sup>343</sup>, its objective is to contribute to social progress by supporting fair and well-functioning labour markets and welfare systems. It sets out 20 key principles in the following three categories: 1) equal opportunities and access to the labour market; 2) fair working conditions; and 3) social protection and inclusion.<sup>344</sup>

273. Moreover, the European Parliament published a study in 2016 on the European Social Charter in the context of the implementation of the EU Charter of Fundamental Rights. The study identified the main obstacles to defining a common approach to social rights in the EU, in particular the Charter’s “à la carte” system, encourages EU Member States to harmonise their commitments under the Charter and analyses the benefits to be gained from the EU’s accession to the European Social Charter.<sup>345</sup>

274. Furthermore, the European Union Agency for Fundamental Rights (FRA), which is a member of the CoE-FRA-

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<sup>343</sup> E.g. paragraph 16 of the Pillars’ Preamble states “16. The European Pillar of Social Rights shall not prevent Member States or their social partners from establishing more ambitious social standards. In particular, nothing in the European Pillar of Social Rights shall be interpreted as restricting or adversely affecting rights and principles as recognised, in their respective fields of application, by Union law or international law and by international agreements to which the Union or all the Member States are party, including the European Social Charter signed at Turin on 18 October 1961 and the relevant Conventions and Recommendations of the International Labour Organisation.”

<sup>344</sup> See the following link to the text of the “European Pillar of Social Rights”, in particular §§ 3 and 16 of the Preamble.

<sup>345</sup> See the European Parliament study on the European Social Charter in the context of the implementation of the EU Charter of Fundamental Rights, European Parliament, Committee on Constitutional Affairs, Olivier De Schutter, 12 January 2016, 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).

ENNHRI-EQUINET Collaborative Platform on economic and social rights, publishes data and objective assessments in its reports and makes recommendations to EU Member States also where social rights are concerned. Accordingly, a FRA report of 2016, for instance, revealed that people living in the EU are not equally entitled to fair working conditions, contrary to Article 2 of the European Social Charter and Article 31 of the EU Charter of Fundamental Rights. The FRA therefore recommended that EU institutions and EU Member States review the relevant directives and provisions with a view to granting equivalent and effective protection to all workers, including notably against severe forms of labour exploitation.<sup>346</sup>

## 2. Other international instruments and organisations

275. As shown above,<sup>347</sup> the (revised) Charter is also interpreted in the light of other international treaties relating to the field of the rights guaranteed by the (revised) Charter, in particular the International Covenant on Economic, Social and Cultural Rights,<sup>348</sup> the instruments of the International Labour Organisation (ILO),<sup>349</sup> the United Nations Convention on the Rights of the Child,<sup>350</sup> the United Nations Convention on the rights of persons with disabilities and the International

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<sup>346</sup> See the FRA report entitled “Severe labour exploitation: workers moving within or into the European Union”, March 2016.

<sup>347</sup> See I1.(c)(ii) above.

<sup>348</sup> The ECSR, for example, referred to Article 11 of the Covenant and General Comments Nos. 4 and 7 of the UN Committee on Economic, Social and Cultural Rights with regard to the right to housing in general – see *ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 68–71. It further referred to forced expulsions in *COHRE v. Italy*, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 20–21. With regard to education, the ECSR referred to the UN Committee’s General Comment No. 13, see *MDAC v. Bulgaria*, Complaint No. 41/2007, decision on the merits of 3 June 2008, § 37.

<sup>349</sup> See, for instance, *POPS v. Greece*, Complaint No. 77/2012, decision on the merits of 7 December 2012, § 30 on the reform of pensions, and *Bedriftsforbundet v. Norway*, Complaint No. 103/2013, decision on the merits of 17 May 2016, § 27 on trade union monopolies.

<sup>350</sup> See, for example, *DCI v. the Netherlands*, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 29; and *OMCT v. Ireland*, Complaint No. 18/2003, decision on the merits of 7 December 2004, §§ 34 and 55.

Convention on the Elimination of All Forms of Racial Discrimination.<sup>351</sup>

276. It is worth recalling in this context the adoption in 2008 of an Optional Protocol to the ICESCR which provides for the possibility for individuals to submit communications alleging violations of the rights set forth in the respective Covenant. Moreover, the UN General Assembly and the Human Rights Council adopt each year a large number of resolutions in the field of social rights.<sup>352</sup>

277. Regarding, in particular, the relationship between the ILO and the Charter, it is to be noted that the ILO has the right to participate in a consultative capacity in the deliberations of the ECSR within the framework of the reporting procedure (Article 26 of the Charter) and it may be invited, together with other organisations, to submit observations on complaints submitted through the collective complaints procedure.

278. In addition, it may be mentioned that in 2015 the Commissioner for Human Rights has recommended the swift ratification by the Council of Europe Member States of two ILO Conventions relevant for the interpretation of the social rights in the Charter, namely of the Protocol of 2014 to the 1930 ILO Forced Labour Convention (providing their victims with similar rights as the ones of human trafficking) and of the 2011 ILO Convention 189 on Decent Work for Domestic Workers.<sup>353</sup>

### 3. International workers and employers' organisations

279. International social partners, in particular, are important stakeholders in the system of protection of human rights in general and fundamental social rights as enshrined in the

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<sup>351</sup> See, for instance, *ERRC v. Portugal*, Complaint No. 61/2010, decision on the merits of 30 June 2011, § 12.

<sup>352</sup> See in this respect the website of the UN General assembly on UN General Assembly Resolutions.

<sup>353</sup> See the following link to the Commissioner's Comment on "Improving protection for victims of forced labour and human trafficking" of 12 November 2015.

(revised) Charter in particular. This is demonstrated especially by the privileged role these social partners, comprising the European Trade Union Confederation, the International Organisation of Employers and Business Europe, have in both the reporting and the collective complaints procedure of the (revised) Charter.

**280.** The European Trade Union Confederation (ETUC) comprises 89 national trade union confederations in 39 countries plus 10 European trade union federations. ETUC speaks with a single voice on behalf of European workers and defends fundamental social values such as solidarity, equality, democracy, social justice and cohesion.

**281.** The International Organisation of Employers (IOE), for its part, is the largest network of the private sector in the world, with more than 150 business and employers' organisation members. The IOE is the recognised voice of business in social and labour policy debate taking place in the International Labour Organisation, in the United Nations and in the G20.

**282.** The lobby group Business Europe is the leading advocate for growth and competitiveness at European level, standing up for companies across the continent and campaigning on the issues that most influence their performance. As a recognised social partner, it speaks for enterprises of all sizes in 34 European countries whose national business federations are its direct members.

**283.** The ETUC, in particular, has been involved in the implementation of the European Social Charter from the outset and actively participated in the "Charte-Rel" Committee on the "relaunch of the 1961 Charter". More generally, the ETUC is involved in political activities of the Council of Europe, in particular in the work of the CDDH (subgroups) and the PACE (in particular its Sub-Committee on the European Social Charter). In the CDDH framework, ETUC actively contributed to many issues dealt with by the CDDH(-subgroups)<sup>354</sup>. In the PACE framework,

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<sup>354</sup> E.g. on the Convention system in general and the reform of the Court; the EU's accession to the Convention; the (draft) recommendations on Human

it provided input for the elaboration of resolutions concerning the “Turin Process” and austerity measures. As a human rights defender organisation, the ETUC uses the Charter and the Convention in its daily work<sup>355</sup> and some topical campaigns<sup>356</sup> or activities against austerity measures. This is also highlighted by references in different Resolutions, Declarations and press releases<sup>357</sup> as well as further awareness raising measures, inter alia, internal trainings and publications of the ETUC and/or its research institute, the ETUI<sup>358</sup>

284. The ETUC, IOE and Business Europe all enjoy special consultative status within the framework of the Charter. Like trade unions, they are entitled to lodge collective complaints on one or more unsatisfactory application(s) of the Charter. Moreover, they receive copies of State reports and collective complaints on which they may comment. They are further invited as observers in a consultative capacity to the meetings of the Governmental Committee where they have the opportunity to share opinions which will be further distributed to the Committee of Ministers and the ECSR.

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Rights of Older Persons (CDDH-AGE) and on Human rights and Business (CDDH-CORP); the place of the ECHR in the international and European legal order (CDDH-SYSC-II); and the present Analysis on the legal protection of social rights in the framework of the Council of Europe.

<sup>355</sup> In particular in the framework of its permanent committees; for example the works of its Advisory Group on fundamental rights and disputes.

<sup>356</sup> See for example, the ETUC Campaign “Trade union rights are human rights”, 2016, available at <https://www.etuc.org/campaign/turights#.WoRiv3xG1aQ>; and the ETUC Campaign “Social Rights First”, 2017, available at <https://socialrightsfirst.eu/>.

<sup>357</sup> See, for instance, the ETUC Declaration on the 50<sup>th</sup> Anniversary of the European Social Charter (19–20/10/2011); and the ETUC Position on the European Pillar of Social Rights – Working for a Better Deal for All Workers (06/09/2016).

<sup>358</sup> See for example: N. Bruun/K. Lörcher/L. Schömann, *The European Convention on Human Rights and the Employment Relation*, Hart Publishing, Oxford, 2013; and N. Bruun/K. Lörcher/L. Schömann/ S. Clauwaert, *The European Social Charter and the Employment Relation*, Hart Publishing, Oxford, 2017.

## CONCLUSIVE REMARKS

**285.** Since the entry into force of the European Convention on Human Rights in 1953 and of the European Social Charter in 1965 which was subsequently revised in 1996, the protection of social rights within the legal framework of the Council of Europe has constantly evolved.

**286.** On the one hand, the European Committee of Social Rights, in the State reporting and collective complaints procedures, has contributed to the development of the protection of social rights in a number of Council of Europe Member States. The rights covered by the (revised) Charter notably relate to employment and health, education and social protection and welfare. The (revised) Charter further provides for specific protection for a number of groups including young persons, employed women, families, persons with disabilities or migrants.

**287.** On the other hand, the European Court of Human Rights has provided for an evolving protection of the – few – aspects of social rights directly guaranteed by the Convention, namely the prohibition of slavery and forced labour (Article 4), the right to freedom of assembly and association, including the right to form and join trade unions (Article 11), and the right to education (Article 2 of Protocol No. 1). Moreover, the Court, which has interpreted the rights laid down in the Convention “in the light of present-day conditions”,<sup>359</sup> today grants an indirect protection of a number of particular aspects of different social rights by its case-law on Convention rights which are not social rights in the first place.

**288.** Both the implementation of the ECSR’s conclusions and decisions and the implementation of the Court’s judgments in the field of social rights have entailed a number of amendments in national law and practice which led to an enhanced social rights protection in the Council of Europe Member States.

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<sup>359</sup> See, *inter alia*, *Demir and Baykara v. Turkey* [GC], no. 34503/97, §§ 68 and 146, ECHR 2008; and *Stummer v. Austria* [GC], no. 37452/02, § 129, ECHR 2011.

289. However, certain limitations of the framework of protection of social rights within the Council of Europe equally became apparent. The impact of the treaty system of the European Social Charter, which contains a comprehensive catalogue of social rights, is limited by the “à la carte” system of acceptance of its provisions, which allows States to choose to a certain extent the provisions they are willing to accept as obligations under international law. Moreover, the (revised) Charter is not in force in all of the 47 Member States of the Council of Europe: four Member States have neither ratified the Charter nor the Revised Charter, nine Member States are bound only by the original 1961 Charter and 34 Member States are bound by the 1996 revised Charter. As regards the supervisory procedures under the (revised) Charter, only 15 States are currently bound by the 1995 Additional Protocol Providing for a System of Collective Complaints. It has also been advanced that the impact of the Charter system for the protection of social rights is restricted by the limited scope of application of the Charter in terms of the persons protected by it (see paragraph 1 of the Appendix to the Charter). However, it has not been analysed if and to what extent this restricts the effective protection of social rights in view of the protection under other instruments. In addition, and from a different perspective, it is to be noted that recommendations addressed to individual States by the Committee of Ministers following the ECSR’s finding of non-conformity of a situation with the Charter remain rare.

290. The Convention as interpreted by the Court in its binding judgments, executed by the 47 Contracting Parties under the supervision of the Committee of Ministers, is essentially designed to protect civil and political rights and thus covers only some aspects of the different social rights.

291. Against the background of a growing political awareness of the need to uphold and promote social rights in a global environment affected by the economic crisis, the Secretary General launched the “Turin Process” in 2014, which is aimed at strengthening the treaty system of the European Social Charter within the Council of Europe and in its relationship with the law of the European Union. Since the start of this process, a number of

Council of Europe organs and institutions as well as civil society actors, in addition to a number of measures they have taken in the field of social rights, have repeatedly called for an enhanced role of the Charter. Member States have been invited, in particular, to ratify the Revised Charter and accept further provisions and the collective complaints procedure, albeit with limited success.<sup>360</sup> Moreover, they have been called upon to implement the decisions and conclusions of the ECSR.

292. As regards Member States' compliance with the social rights laid down in the (revised) Charter, in its recent conclusions on the rights laid down in the Charter, the ECSR found a majority of situations in the Member States in conformity with the Charter, but also numerous cases of non-conformity in the past years. Whereas positive developments were observed in some areas (for instance with regard to the right to protection in cases of termination of employment, the right of workers to the protection of their claims in the event of the insolvency of the employer and the right of access to education), problems remained in other areas (for instance with regard to discrimination in employment, insufficient integration of persons with disabilities into the ordinary labour market and the right to equality of opportunities for women and men). In the collective complaints procedure, the ECSR found one or more violation(s) of the (revised) Charter in the vast majority of its decisions.

293. In accordance with the mandate given by the Committee of Ministers to the CDDH for the biennium 2018–2019 in the field of social rights, the CDDH, on the basis of the present Analysis as well as other relevant sources, is called upon to identify good practices and make, as appropriate, proposals with a view to improving the implementation of social rights and to facilitate in particular the relationship between the Council of Europe instruments with other instruments for the protection of social rights.<sup>361</sup> These issues shall be addressed in a further report.

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<sup>360</sup> Since the beginning of the "Turin Process", only Greece ratified the Revised Charter (in March 2016). Belgium and Ukraine have accepted further provisions thereof.

<sup>361</sup> See Document [CM\(2017\)131-addfinal](#).

## **APPENDIX I**

### **Acronyms used in this study**

<b>ADEDY</b>	<b>Confederation of Greek Civil Servants' Trade Unions</b>
<b>AEH</b>	<b>European Action of the Disabled</b>
<b>Approach</b>	<b>Association for the Protection of All Children</b>
<b>ATE</b>	<b>Pensioners' Union of the Agricultural Bank of Greece</b>
<b>CDDH</b>	<b>Steering Committee for Human Rights</b>
<b>CDDH-SOC</b>	<b>Drafting Group on Social Rights of the Steering Committee for Human Rights</b>
<b>CEC</b>	<b>Conference of European Churches</b>
<b>CFE-CGC</b>	<b>Confédération française de l'Encadrement</b>
<b>CGIL</b>	<b>Confederazione Generale Italiana del Lavoro</b>
<b>C.G.S.P.</b>	<b>Centrale générale des services publics</b>
<b>CGT</b>	<b>Confédération Générale du Travail</b>
<b>"Charte-Rel" Committee</b>	<b>Committee on the European Social Charter</b>
<b>Charter</b>	<b>European Social Charter as adopted in 1961</b>
<b>CJEU</b>	<b>Court of Justice of the European Union</b>
<b>CM</b>	<b>Committee of Ministers</b>
<b>COHRE</b>	<b>Centre on Housing Rights and Evictions</b>

<b>Convention</b>	<b>Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)</b>
<b>Court</b>	<b>European Court of Human Rights</b>
<b>DCI</b>	<b>Defence for Children International</b>
<b>ECSR</b>	<b>European Committee of Social Rights</b>
<b>ENNHRI</b>	<b>European Network of National Human Rights Institutions</b>
<b>EQUINET</b>	<b>European Network of Equality Bodies</b>
<b>ERRC</b>	<b>European Roma Rights Centre</b>
<b>ETUC</b>	<b>European Trade Union Confederation</b>
<b>ETUI</b>	<b>European Trade Union Institute</b>
<b>EU</b>	<b>European Union</b>
<b>EuroCOP</b>	<b>European Confederation of Police</b>
<b>Eurofedop</b>	<b>European Federation of Public Service Employees</b>
<b>FAFCE</b>	<b>Federation of Catholic Families in Europe</b>
<b>FEANTSA</b>	<b>European Federation of National Organisations working with the Homeless</b>
<b>FIDH</b>	<b>Fédération Internationale des Ligues des Droits de l'Homme (International Federation for Human Rights)</b>
<b>FRA</b>	<b>European Union Agency for Fundamental Rights</b>
<b>GENOP-DEI</b>	<b>General Federation of employees of the national electric power corporation</b>

<b>Governmental Committee</b>	<b>Governmental Committee of the European Social Charter and the European Social Security Code</b>
<b>GR-SOC</b>	<b>Committee of Ministers' Rapporteur Group on Social and Health Questions</b>
<b>GSEE</b>	<b>Greek General Confederation of Labour</b>
<b>HELP</b>	<b>European Programme for Human Rights Education for Legal Professionals</b>
<b>ICCPR</b>	<b>International Covenant on Civil and Political Rights</b>
<b>ICESCR</b>	<b>International Covenant on Economic, Social and Cultural Rights</b>
<b>ICJ</b>	<b>International Commission of Jurists</b>
<b>IDPs</b>	<b>Internally Displaced Persons</b>
<b>INGOs</b>	<b>international non-governmental organisations</b>
<b>ILO</b>	<b>International Labour Organisation</b>
<b>IOE</b>	<b>International Organisation of Employers</b>
<b>IS.A.P.</b>	<b>Pensioners' Union of the Athens-Piraeus Electric Railways</b>
<b>LGBTI</b>	<b>lesbian, gay, bisexual, transgender and intersex</b>
<b>LO</b>	<b>Swedish Trade Union Confederation</b>
<b>MDAC</b>	<b>Mental Disability Advocacy Centre</b>
<b>MFHR</b>	<b>Marangopoulos Foundation for Human Rights</b>
<b>NGOs</b>	<b>non-governmental organisations</b>
<b>NHRIs</b>	<b>National Human Rights Institutions</b>

<b>PACE</b>	<b>Parliamentary Assembly</b>
<b>PECS</b>	<b>European Social Cohesion Platform</b>
<b>POPS</b>	<b>Panhellenic Federation of Public Service Pensioners</b>
<b>POS-DEI</b>	<b>Panhellenic Federation of pensioners of the public electricity corporation</b>
<b>OMCT</b>	<b>Organisation mondiale contre la Torture (World Organisation against Torture)</b>
<b>Revised Charter</b>	<b>European Social Charter as revised in 1996</b>
<b>(revised) Charter</b>	<b>European Social Charter as adopted in 1961 and/or European Social Charter as revised in 1996</b>
<b>SAGES</b>	<b>Syndicat des Agrégés de l'Enseignement Supérieur</b>
<b>TCO</b>	<b>Swedish Confederation of Professional Employees</b>
<b>UNIA</b>	<b>(Belgian) Interfederal Centre for Equal Opportunities</b>

## **APPENDIX II**

### **Further case-law of the European Court of Human Rights relating to the protection of social rights**

#### **I. Direct protection of certain aspects of social rights**

##### **1. Prohibition of slavery and forced labour (Article 4 of the Convention)**

- **J. and Others v. Austria, no. 58216/12, ECHR 2017 (extracts): decision of prosecutor not to pursue investigation into alleged human trafficking offences committed abroad by non-nationals: no violation of Article 4 and no violation of Article 3;**
- **Meier v. Switzerland, no. 10109/14, ECHR 2016: requirement for prisoners to work after having reached retirement age; no violation of Article 4;**
- **LE. v. Greece, no. 71545/12, 21 January 2016: investigation into a case of human trafficking and administrative and judicial proceedings concerning the granting of the status of human-trafficking victim; violation of Article 4;**
- **Chitos v. Greece, no. 51637/12, ECHR 2015 (extracts): requirement for an army officer to pay a fee to be allowed to resign before the end of his period of service; violation of Article 4 § 2;**
- **Floroiu v. Romania (dec.), no. 15303/10, 12 March 2013: remuneration of a detainee for work performed in prison in the form of a reduction in sentence; no breach of Article 4.**

##### **2. Freedom of assembly and association (Article 11 of the Convention)**

- **Unite the Union v. the United Kingdom (dec.), no. 65397/13, 3 May 2016: alleged inability of a trade union to engage in collective bargaining owing to the abolition of the relevant wages council; no breach of Article 11;**

- *Manole and “Romanian Farmers Direct” v. Romania*, no. 46551/06, 16 June 2015: refusal to register a group of self-employed farmers as a trade union; no violation of Article 11;
- *İsmail Sezer v. Turkey*, no. 36807/07, 24 March 2015: punishment of a teacher performing trade union functions; violation of Article 11;
- *Hrvatski liječnički sindikat v. Croatia*, no. 36701/09, 27 November 2014: ban of nearly four years on strikes by a healthcare trade union; violation of Article 11;
- *Veniamin Tymoshenko and Others v. Ukraine*, no. 48408/12, 2 October 2014: complete ban on strikes for the staff of an airline company; violation of Article 11;
- *Şişman and Others v. Turkey*, no. 1305/05, 27 September 2011: posting of trade union notices by civil servants calling for a worker’s demonstration on 1 May; violation of Article 11.

### 3. Right to education (Article 2 of Protocol No. 1 to the Convention)

- *Memlika v. Greece*, no. 37991/12, 6 October 2015: exclusion from school following mistaken medical diagnosis and delays in reintegration; violation of Article 2 of Protocol No. 1;
- *Lavida and Others v. Greece*, no. 7973/10, 30 May 2013: Roma children who were restricted to attending a primary school in which the only pupils were other Roma children; violation of Article 2 of Protocol No. 1 taken in conjunction with Article 14;
- *Horváth and Kiss v. Hungary*, no. 11146/11, 29 January 2013: placement of Roma children in special schools without taking account of their special needs as members of a disadvantaged group; violation of Article 2 of Protocol No. 1 read in conjunction with Article 14;

- **Catan and Others v. the Republic of Moldova and Russia [GC], nos. 43370/04 and 2 others, ECHR 2012 (extracts):** forced closure of schools as a result of the separatist authorities' language policies and their acts of harassment after they reopened; no violation of Article 2 of Protocol No. 1 by the Republic of Moldova; violation of Article 2 of Protocol No. 1 by the Russian Federation;
- **Ali v. the United Kingdom, no. 40385/06, 11 January 2011:** exclusion from school during an investigation into a fire at the school but alternative schooling proposed and attempt at reintegration made; no violation of Article 2 of Protocol No. 1;
- **Hasan and Eylem Zengin v. Turkey, no. 1448/04, 9 October 2007:** limited procedure for exemption from compulsory religious culture classes of children of parents who had a conviction other than that of Sunni Islam; violation of Article 2 of Protocol No. 1;
- **Folgerø and Others v. Norway [GC], no. 15472/02, ECHR 2007-III:** refusal to grant full exemption from instruction in Christianity, religion and philosophy in State primary schools; violation of Article 2 of Protocol No. 1.

## **II. Indirect protection of social rights**

### **1. Right to life (Article 2 of the Convention)**

- **M. Özel and Others v. Turkey, nos. 14350/05 and 2 others, 17 November 2015:** deaths of the applicants' family members, who were buried under collapsed buildings following an earthquake in a region classified as a "major risk zone"; violation of Article 2 (procedural head);
- **Altuğ and Others v. Turkey, no. 32086/07, 30 June 2015:** death as the result of an allergic reaction; violation of Article 2;

- Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea v. Romania, no. 2959/11, 24 March 2015: lack of appropriate medical treatment of a deceased mentally ill detainee and poor living conditions in placement facilities; violation of Article 2 (procedural head);
- Panaitescu v. Romania, no. 30909/06, 10 April 2012: authorities' failure to provide the applicant's father with the anti-cancer medicines he had needed; violation of Article 2 (procedural head);
- Jasinskis v. Latvia, no. 45744/08, 21 December 2010: death while in police custody of a deaf and mute man; violation of Article 2 (substantive and procedural heads);
- Oyal v. Turkey, no. 4864/05, 23 March 2010: applicant infected with HIV by blood transfusions at birth; violation of Article 2;
- *Eugenia Lazăr v. Romania*, no. 32146/05, 16 February 2010: investigation into the death of the applicant's son hampered by inadequate rules on forensic medical reports; violation of Article 2 (procedural head);
- G.N. and Others v. Italy, no. 43134/05, 1 December 2009: persons infected with HIV following blood transfusions; violation of Article 2 (procedural head);
- *Šilih v. Slovenia* [GC], no. 71463/01, 9 April 2009: conduct of proceedings concerning a death allegedly occurred as a result of medical negligence; violation of Article 2;
- Colak and Tsakiridis v. Germany, nos. 77144/01 and 35493/05, 5 March 2009: refusal to award compensation to an applicant who complained that her doctor had not informed her that her companion suffered from AIDS; no violation of Article 2;

- **Budayeva and Others v. Russia**, nos. 15339/02 and 4 others, ECHR 2008 (extracts): no emergency relief policies or subsequent investigation with regard to a natural disaster; violation of Article 2;
- **Nitecki v. Poland** (dec.), no. 65653/01, 21 March 2002: authorities' refusal to refund the full price of a life-saving drug; no breach of Article 2.

## **2. Prohibition of torture or inhuman or degrading treatment (Article 3 of the Convention)**

- **V.K. v. Russia**, no. 9139/08, 4 April 2017: ill-treatment of a four-year-old boy by his teachers in his public kindergarten; violation of Article 3 (substantive and procedural heads);
- **Khlaifia and Others v. Italy** [GC], no. 16483/12, ECHR 2016 (extracts): conditions of detention of the applicants during a short stay in Lampedusa in a humanitarian emergency context; no violation of Article 3;
- **Kondrulin v. Russia**, no. 12987/15, 20 September 2016: failure to comply with a request for an independent medical examination of the applicant, a prisoner who had then died of cancer; violation of Article 3 taken in conjunction with Article 34;
- **W.D. v. Belgium**, no. 73548/13, 6 September 2016: structural deficiency in the Belgian detention system; violation of Article 3;
- **A.B. and Others v. France**, no. 11593/12, 12 July 2016: detention of a four-year-old migrant child for 18 days; violation of Article 3;
- **Topekhin v. Russia**, no. 78774/13, 10 May 2016: conditions of detention and transfer of a paraplegic remand prisoner; violation of Article 3;
- **Murray v. the Netherlands** [GC], no. 10511/10, ECHR 2016: life sentence effectively without remission and no provision of treatment for the applicant's mental condition; violation of Article 3;

- **M.G.C. v. Romania**, no. 61495/11, 15 March 2016: lack of effective protection of children against rape and sexual abuse in Romanian law and practice; violation of Article 3;
- **Senchishak v. Finland**, no. 5049/12, 18 November 2014: refusal to grant the applicant, aged 72, a residence permit for medical reasons; no violation of Article 3;
- *Dvořáček v. the Czech Republic*, no. 12927/13, 6 November 2014: surgical castration of the applicant following informed consent; no violation of Article 3 (under its substantive or procedural heads);
- **Asalya v. Turkey**, no. 43875/09, 15 April 2014: detention of paraplegic migrant in a wheelchair; violation of Article 3;
- *O'Keeffe v. Ireland* [GC], no. 35810/09, ECHR 2014 (extracts): sexual abuse in a primary school; substantive violation of Article 3 and no procedural violation of Article 3;
- **Fedosejevs v. Latvia** (dec.), no. 37546/06, 19 November 2013: lack of antiretroviral therapy for prisoner whose HIV infection had not reached the threshold for such treatment under WHO guidelines; no breach of Article 3;
- **Zarzycki v. Poland**, no. 15351/03, 12 March 2013: detention of person with both forearms amputated who was provided with basic mechanical prostheses free of charge; no violation of Article 3;
- **Gülay Çetin v. Turkey**, no. 44084/10, 5 March 2013: inadequacy of procedure for protecting health of remand prisoner suffering from serious illness: violation of Article 3;
- **Mahmundi and Others v. Greece**, no. 14902/10, 31 July 2012: detention of migrant eight-month pregnant woman with four minor children; violation of Article 3;

- *Dorđević v. Croatia*, no. 41526/10, ECHR 2012: serious harassment directed at a person with physical and mental disabilities; violation of Article 3;
- *I.G. v. Moldova*, no. 53519/07, 15 May 2012: no effective investigations into allegations of rape of a minor; violation of Article 3;
- *P.M. v. Bulgaria*, no. 49669/07, 24 January 2012: no effective investigations into allegations of child rape; violation of Article 3;
- *Popov v. France*, nos. 39472/07 and 39474/07, 19 January 2012: detention of migrant family with children aged five months and three years; violation of Article 3;
- *Stanev v. Bulgaria* [GC], no. 36760/06, ECHR 2012: living conditions (insufficient, poor quality food, inadequate heating, insufficient hygienic conditions) in social care homes for persons with mental disorders; violation of Article 3;
- *V.C. v. Slovakia*, no. 18968/07, ECHR 2011 (extracts): sterilisation of Roma women without informed consent; violation of Article 3 (substantive head) and violation of Article 8;
- *Cocaign v. France*, no. 32010/07, 3 November 2011: medical supervision of prisoner with mental disorder; no violation of Article 3;
- *Elefteriadis v. Romania*, no. 38427/05, 25 January 2011: exposure to passive smoking in detention; violation of Article 3;
- *Raffray Taddei v. France*, no. 36435/07, 21 December 2010: failure to take sufficient account of the need for specialised care of an applicant suffering from conditions including anorexia and Munchausen's syndrome; violation of Article 3;

- **Florea v. Romania**, no. 37186/03, 14 September 2010: exposure to passive smoking in detention; violation of Article 3;
- **E.S. and Others v. Slovakia**, no. 8227/04, 15 September 2009: courts' refusal to order individual who had been convicted of domestic violence and sexual abuse of a minor to leave the family home; violation of Articles 3 and 8;
- **Paladi v. Moldova [GC]**, no. 39806/05, 10 March 2009: insufficient medical treatment in detention; violation of Article 3;
- **Śławomir Musiał v. Poland**, no. 28300/06, 20 January 2009: inappropriate conditions of detention for person with mental disorder; violation of Article 3;
- **Dybeku v. Albania**, no. 41153/06, 18 December 2007: inappropriate conditions of detention and inadequate medical treatment in detention; violation of Article 3;
- **Yakovenko v. Ukraine**, no. 15825/06, 25 October 2007: medical treatment in detention; violation of Article 3;
- **Trepashkin v. Russia**, no. 36898/03, 19 July 2007: right to conditions of detention respecting human dignity; violation of Article 3;
- **Larioshina v. Russia (dec.)**, no. 56869/00, 23 April 2002: allegedly insufficient old-age pension and additional social benefits; no breach of Article 3.

### **3. Right to a fair trial (Article 6 of the Convention)**

- **Gerasimov and Others v. Russia**, nos. 29920/05 and 10 others, 1 July 2014: non-enforcement or delayed enforcement of judgments ordering the allocation of housing or obligations in kind; violation of Articles 6, 13 and Article 1 of Protocol No. 1;

- **Dhahbi v. Italy**, no. 17120/09, 8 April 2014: court's failure to give reasons for refusing a request for a preliminary ruling from the CJEU in a case concerning the refusal to grant social benefits to foreigners; violation of Article 6;
- **García Mateos v. Spain**, no. 38285/09, 19 February 2013: failure to execute final judgment in the employment field providing the applicant with compensation (where the Spanish Constitutional Court had already declared that the response to the applicant's request for a reduction in working time so that she could look after her child amounted to discrimination on grounds of sex); violation of Article 6;
- **Wallishauser v. Austria**, no. 156/04, 17 July 2012: proceedings brought by embassy employees with a view to obtaining compensation for dismissal; violation of Article 6 (right of access to court);
- **K.M.C. v. Hungary**, no. 19554/11, 10 July 2012: dismissal of a civil servant without giving any reasons; violation of Article 6;
- **Sabeh El Leil v. France [GC]**, no. 34869/05, 29 June 2011: proceedings brought by embassy employees with a view to obtaining compensation for dismissal; violation of Article 6 (right of access to court);
- **Apanasewicz v. Poland**, no. 6854/07, 3 May 2011: failure to execute final judgment ordering the closure of a production plant; violation of Article 6;
- **Farcaş v. Romania (dec.)**, no. 32596/04, 14 September 2010: alleged lack of access to court for a person with a physical disability; no breach of Article 6;

- **Cudak v. Lithuania [GC], no. 15869/02, ECHR 2010: proceedings brought by embassy employees with a view to obtaining compensation for dismissal; violation of Article 6 (right of access to court);**
- **Levishchev v. Russia, no. 34672/03, 29 January 2009: duration of four years to allocate housing after a final judgment; violation of Article 6 and Article 1 of Protocol No. 1;**
- **Vilho Eskelinen and Others v. Finland [GC], no. 63235/00, ECHR 2007-II: criteria for the applicability of Article 6 to cases involving civil servants.**

#### **4. Right to respect for private and family life (Article 8 of the Convention)**

- **Otgon v. the Republic of Moldova, no. 22743/07, 25 October 2016: amount of compensation awarded for harm caused to health (dysentery from infected tap water); violation of Article 8;**
- **Vukota-Bojić v. Switzerland, no. 61838/10, 18 October 2016: reduction in the applicant's invalidity pension following his placement under secret surveillance by an insurer; violation of Article 8;**
- **L.A.A. and Others v. United Kingdom (dec.), no. 25960/13, 31 March 2016: refusal of five Somali nationals' application to join their mother in the UK; no breach of Article 8;**
- **Dolopoulos v. Greece (dec.), no. 36656/14, 17 November 2015: allegedly insufficient protection of the physical and mental well-being of a bank branch manager at work; no violation of Article 8;**
- **Mugenzi v. France, no. 52701/09; Tanda-Muzinga v. France, no. 2260/10; and Senigo Longue and Others v. France, no. 19113/09, all of 10 July 2014: refusal of family reunion; violation of Article 8;**

- **McDonald v. the United Kingdom**, no. 4241/12, 20 May 2014: reduction by a local authority of the amount allocated for the weekly care of the elderly applicant with severely limited mobility; violation of Article 8 only during the period in which the interference with her rights had not been in accordance with domestic law;
- **Durisotto v. Italy (dec.)**, no. 62804/13, 6 May 2014: refusal to authorise the applicant's daughter to undergo an experimental treatment for her degenerative cerebral illness; no breach of Article 8;
- **Radu v. the Republic of Moldova**, no. 50073/07, 15 April 2014: hospital's disclosure of medical information to the applicant's employer in the context of a sick note; violation of Article 8;
- *İhsan Ay v. Turkey*, no. 34288/04, 21 January 2014: non-renewal of a teacher's employment contract related to a safety investigation; violation of Article 8;
- **Vilnes and Others v. Norway**, nos. 52806/09 and 22703/10, 5 December 2013: failure to ensure that divers employed by North Sea oil companies had access to essential information regarding the risks associated with the use of rapid decompression tables; violation of Article 8 in this respect;
- **Berisha v. Switzerland**, no. 948/12, 30 July 2013: refusal of family reunion; no violation of Article 8;
- **R.M.S. v. Spain**, no. 28775/12, 18 June 2013: placement of a child aged 3 years in public care on account of her mother's poor financial situation; violation of Article 8;
- **Oleksandr Volkov v. Ukraine**, no. 21722/11, ECHR 2013: dismissal of a Supreme Court judge; violation of Article 8;

- **D.M.T. and D.K.I. v. Bulgaria, no. 29476/06, 24 July 2012: suspension of a civil servant for more than six years with a ban on gainful employment; violation of Article 8;**
- **Hristozov and Others v. Bulgaria, nos. 47039/11 and 358/12, ECHR 2012 (extracts): anti-cancer drug not authorised in other countries; no violation of Article 8;**
- **Di Sarno and Others v. Italy, no. 30765/08, 10 January 2012: prolonged inability of the public authorities to ensure the proper functioning of the waste collection, treatment and disposal service; violation of Article 8;**
- **Osman v. Denmark, no. 38058/09, 14 June 2011: refusal to renew the residence permit of the applicant following the passing of a law that limited the right to family reunion to children under 15; violation of Article 8;**
- **Deés v. Hungary, no. 2345/06, 9 November 2010: nuisance caused to a resident by heavy road traffic in his street situated near a motorway toll; violation of Article 8;**
- **Köpke v. Germany (dec.), no. 420/07, 5 October 2010: dismissal without notice of a supermarket cashier suspected of theft following covert video surveillance; no breach of Article 8;**
- **Greenpeace e.V. and Others v. Germany (dec.), no. 18215/06, 12 May 2009: authorities' refusal to take specific measures relating to environmental issues (particle emissions of diesel vehicles); no breach of Article 8;**
- **Saviny v. Ukraine, no. 39948/06, 18 December 2008: children placed in public care on account of the inability of their parents, both blind, to provide them with adequate care and upbringing; violation of Article 8;**

- **Lemke v. Turkey**, no. 17381/02, 5 June 2007: continuing operation of goldmines despite the withdrawal of permits; violation of Article 8;
- **Wallová and Walla v. the Czech Republic**, no. 23848/04, 26 October 2006: placement of five children in care because of their inadequate and unstable housing; violation of Article 8;
- *Mółka v. Poland* (dec.), no. 56550/00, 11 April 2006: Lack of public assistance to a handicapped person rendering it impossible for him to cast a vote in local elections; no breach of Article 8;
- *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, ECHR 2004-VIII: employment restrictions on former employees of the KGB; violation of Article 8 in conjunction with Article 14.

#### **5. Freedom of thought, conscience and religion (Article 9 of the Convention)**

- **Aktas v. France** (dec.), no. 43563/08; **Bayrak v. France** (dec.), no. 14308/08; **Gamaleddyn v. France** (dec.), no. 18527/08; **Ghazal v. France** (dec.), no. 29134/08; **Jasvir Singh v. France** (dec.), no. 25463/08; and **Ranjit Singh v. France** (dec.), no. 27561/08, all of 30 June 2009: expulsion of pupils from school for refusing to remove conspicuous symbols of religious affiliation during lessons: no breach of Article 9 taken alone or in conjunction with Article 14;
- **Dogru v. France**, no. 27058/05, 4 December 2008, and **Kervanci v. France**, no. 31645/04, 4 December 2008: refusal by the applicants to take off their headscarves during physical education classes; no violation of Article 9;

- **Blumberg v. Germany (dec.), no. 14618/03, 18 March 2008: dismissal of a doctor for refusing to perform a medical examination owing to a “moral dilemma”; no breach of Article 9;**
- **Ivanova v. Bulgaria, no. 52435/99, 12 April 2007: employment terminated on account of religious beliefs (membership of a Christian Evangelical Group); violation of Article 9.**

## **6. Freedom of expression (Article 10 of the Convention)**

- ***Tešić v. Serbia*, nos. 4678/07 and 50591/12, 11 February 2014: award of damages for defamation against the applicant leading to a precarious financial situation: violation of Article 10;**
- ***Szima v. Hungary*, no. 29723/11, 9 October 2012: imposition of a fine on a police trade union leader following critical statements; no violation of Article 10;**
- ***Vejdeland and Others v. Sweden*, no. 1813/07, 9 February 2012: applicants’ convictions for having distributed homophobic leaflets in an upper secondary school; no violation of Article 10;**
- ***Vellutini and Michel v. France*, no. 32820/09, 6 October 2011: conviction for public defamation of a mayor following remarks made by the applicants in their capacity as trade union officials; violation of Article 10;**
- ***Lombardi Vallauri v. Italy*, no. 39128/05, 20 October 2009: refusal to allow the applicant to apply for a teaching post at a denominational university on account of his allegedly heterodox views; violation of Articles 10 and 6 § 1;**

- **Peev v. Bulgaria, no. 64209/01, 26 July 2007: unlawful dismissal of a civil servant following a search of his office in apparent retaliation for a letter he had published in the press criticising the chief prosecutor; violation of Articles 10, 8 and 13;**
- **Kern v. Germany (dec.), no. 26870/04, 29 May 2007: dismissal of a municipal employee for issuing a press release that appeared to vindicate the attacks on the World Trade Centre and the Pentagon; no breach of Article 10.**

#### **7. Protection of property (Article 1 of Protocol No. 1 to the Convention)**

- **Mauriello v. Italy (dec.), no. 14862/07, 13 September 2016: non-reimbursement of the retirement contributions made by a civil servant because she had not paid in enough to qualify for a pension; no breach of Article 1 of Protocol No. 1;**
- **Markovics and Others v. Hungary (dec.), nos. 77575/11, 19828/13 and 19829/13, 24 June 2014: restructuring of the retired servicemen's pensions (not subject to income tax) and replacement by an equivalent but taxable allowance; no breach of Article 1 of Protocol No. 1;**
- **Berger-Krall and Others v. Slovenia, no. 14717/04), 12 June 2014: higher rents and less security of tenure for tenants and holders of "specially protected tenancy" agreements under the former socialist regime following the housing reform; no violation of Article 1 of Protocol No. 1 or of Article 8;**
- **Paulet v. the United Kingdom, no. 6219/08, 13 May 2014: confiscation of the applicant's wages following his conviction; violation of Article 1 of Protocol No. 1;**

- **Stefanetti and Others v. Italy, nos. 21838/10 and 7 others, 15 April 2014: loss of two-thirds of the applicants' retirement pensions following a change in the law whereby pensions were no longer calculated on the basis of earnings but on the basis of contributions; violation of Article 1 of Protocol No. 1;**
- **N.K.M. v. Hungary, no. 66529/11, 14 May 2013: higher rate of taxation applied to the applicant's severance pay as the result of a new law raising the level of tax on severance pay in the public sector; violation of Article 1 of Protocol No.1;**
- **E.B. (No. 2) v. Hungary (dec.), no. 34929/11, 15 January 2013: new legislation in Hungary on private pension funds entitling the applicant to future pension payments through the contributions she had made during the entire period of her employment; no violation of Article 1 of Protocol No. 1;**
- **Torri and Others v. Italy (dec.), no. 11838/07, 24 January 2012: reduction of the applicants' pensions due to changes in their pension scheme; no breach of Article 1 of Protocol No. 1;**
- ***Lakićević and Others v. Montenegro and Serbia, nos. 27458/06 and 3 others, 13 December 2011: suspension of pension payments following change in legislation regarding the right to do part-time work: violation of Article 1 of Protocol No. 1 as regards Montenegro;***
- **Valkov and Others v. Bulgaria, nos. 2033/04 and 8 others, 25 October 2011: cap on the pensions paid under one of three pensions systems; no violation of Article 1 of Protocol No. 1;**

- **Almeida Ferreira and Melo Ferreira v. Portugal, no. 41696/07, 21 December 2010: statutory bar to terminating a long-term lease based on a commitment to protect a section of society deemed by the State to require special protection; no violation of Article 1 of Protocol No. 1;**
- **Société Cofinfo v. France (dec.), no. 23516/08, 12 October 2010: authorities' refusal to execute a court decision ordering the evacuation of a block of flats on the ground that its unlawful occupants were in a situation of insecurity and vulnerability; no breach of Article 1 of Protocol No. 1 or of Article 6;**
- **Wieczorek v. Poland, no. 18176/05, 8 December 2009: withdrawal of the applicant's invalidity pension on the ground that she was no longer unfit to work; no violation of Article 1 of Protocol No.1;**
- **Moskal v. Poland, no. 10373/05, 15 September 2009: revocation of an early retirement pension which had been granted by mistake several months previously and constituted the applicant's sole source of income; violation of Article 1 of Protocol No. 1;**
- **Luczak v. Poland, no. 77782/01, 27 November 2007: person's exclusion from a social security scheme because of his nationality must not leave him bereft of any social security cover, thereby posing a threat to his livelihood; violation of Article 1 of Protocol No. 1 taken in conjunction with Article 14;**
- **Chekushkin v. Russia, no. 30714/03; Danilchenko v. Russia, no. 30686/03; Gavrilenko v. Russia, no. 30674/03; Gorbachev v. Russia, no. 3354/02; Gorlova v. Russia, no. 29898/03; Grebenchenko v. Russia, no. 30777/03; Knyazhichenko v. Russia, no. 30685/03; Septa v. Russia, no. 30731/03; and Vasilyev v. Russia, no. 30671/03, all of 15 February 2007: quashing of judgments finding that a reduction in the applicants' special monthly disability allowances following their participation in emergency operations at the Chernobyl**

**nuclear plant was unlawful; violation of Article 1 of Protocol No. 1 and Article 6;**

- **Evaldsson and Others v. Sweden, no. 75252/01, 13 February 2007: deductions to wages of non-unionised workers to finance a union's wage monitoring activities; violation of Article 1 of Protocol No. 1;**
- **Stec and Others v. the United Kingdom (dec.) [GC], nos. 65731/01 and 65900/01, ECHR 2005-X: Article 1 of Protocol No. 1 found to be applicable also to "non-contributory" benefits.**

**8. Prohibition of discrimination (Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention)**

- **Guberina v. Croatia, no. 23682/13, ECHR 2016: failure to take account of the needs of a child with disabilities when determining applicant father's eligibility for tax relief on the purchase of suitably adapted property: violation of Article 14 in conjunction with Article 1 of Protocol No. 1;**
- **Biao v. Denmark [GC], no. 38590/10, ECHR 2016: conditions relating to family reunion more favourable for persons who had held Danish citizenship for at least 28 years; violation of Article 14 taken in conjunction with Article 8;**
- **Di Trizio v. Switzerland, no. 7186/09, 2 February 2016: method of calculation of invalidity benefits which in practice was discriminatory against women; violation of Article 14 taken in conjunction with Article 8;**
- **Martzaklis and Others v. Greece, no. 20378/13, 9 July 2015: isolation or segregation of HIV-positive prisoners; violation of Article 14 taken in conjunction with Article 3;**
- **Sidabras and Others v. Lithuania, nos. 50421/08 and 56213/08, 23 June 2015: failure to repeal legislation banning former KGB agents from working in certain spheres of the private sector; violation of Article 14 in conjunction with Article 8 in respect of one of the three applicants;**

- **S.S. and Others v. the United Kingdom (dec.), nos. 40356/10 and 54466/10, 21 April 2015: alleged discrimination in entitlement to social security benefits of prisoners in psychiatric care compared to other persons detained for psychiatric treatment; no breach of Article 14 read in conjunction with Article 1 of Protocol No. 1;**
- **Naidin v. Romania, no. 38162/07, 21 October 2014: bar on former collaborators of the political police from public-service employment; no violation of Article 14 taken in conjunction with Article 8;**
- **Pichkur v. Ukraine, no. 10441/06, 7 November 2013: termination of payment of a retirement pension on the ground that the beneficiary was permanently resident abroad; violation of Article 14 in conjunction with Article 1 of Protocol No. 1;**
- **Efe v. Austria, no. 9134/06, 8 January 2013: refusal to grant the applicant (who held both Austrian and Turkish nationality) a family allowance once a social security agreement between Austria and Turkey had been terminated on the grounds that his children were not resident in Austria; no violation of Article 14 and Article 1 of Protocol No. 1;**
- **Sampani and Others v. Greece, no. 59608/09, 11 December 2012: education for Roma children; violation of Article 14 taken in conjunction with Article 2 of Protocol No. 1;**
- **Bah v. the United Kingdom, no. 56328/07, ECHR 2011: refusal to take account of the presence of a minor, who had been given permission to join the applicant on condition that he did not have recourse to public funds, in determining whether the applicant was in priority need of social housing; no violation of Article 14 taken in conjunction with Article 8;**

- **Andrle v. the Czech Republic, no. 6268/08, 17 February 2011: difference in the pensionable age for women and men caring for children; no violation of Article 14 in conjunction with Article 1 of Protocol No. 1;**
- **J.M. v. the United Kingdom, no. 37060/06, 28 September 2010: possibility for a non-resident parent who had formed a new relationship to obtain a reduction in the amount of child maintenance not available for parent living with a person of the same sex; violation of Article 14 in conjunction with Article 1 of Protocol No. 1;**
- **Grzelak v. Poland, no. 7710/02, 15 June 2010: lack of ethics classes for a pupil who chose not to attend religious-education classes; violation of Article 14 taken in conjunction with Article 9;**
- **Kozak v. Poland, no. 13102/02, 2 March 2010: refusal to recognise the right of a partner in a same-sex couple to take over the tenancy of a flat after the other partner's death; violation of Article 14 taken in conjunction with Article 8;**
- **Muñoz Díaz v. Spain, no. 49151/07, ECHR 2009: refusal to recognise the validity of the applicant's Roma marriage and to pay her a survivor's pension on the death of her husband; violation of Article 14 in conjunction with Article 1 of Protocol No. 1;**
- **Glor v. Switzerland, no. 13444/04, ECHR 2009: distinction made by the authorities between persons unfit for military service who were not required to pay the military-service exemption tax and those also declared unfit but obliged to pay it (in the case in question the applicant suffered from diabetes); violation of Article 14 taken in conjunction with Article 8.**

## How can the protection of social rights in Europe be improved?

On the request of the Committee of Ministers of the Council of Europe, the Steering Committee for Human Rights (CDDH) addressed this question in two steps. It first drew up an analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (Volume I). On the basis of that analysis, it then identified good practices and made proposals with a view to improving the implementation of social rights in Europe (Volume II).

In the present Volume I, the CDDH describes the legal framework of the Council of Europe for the protection of social rights, both by the (revised) European Social Charter and by the European Convention on Human Rights. It then gives an overview over the Council of Europe's further action for social rights taken by the Secretary General, the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities, the Commissioner for Human Rights and the Conference of INGOs. Short consideration is also given to actions outside the Council of Europe, taken by the European Union, other international instruments and organisations or international workers and employers' organisations concerning the social rights protected within the Council.

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