



Equality and Human Rights Based approach to sustainable economic and social recovery

What role for National Human Rights Institutions and National Equality Bodies?

10th Meeting (online) of the CoE-FRA-ENNHRI-EQUINET Collaborative Platform on Social and Economic Rights

9 July 2020

14.30-17.00 (French time)

MAIN OBJECTIVES

The main objectives of the meeting were to identify, analyse, and share new lines of thinking for strengthening the protection of equality and human rights in response to the profound and transformative societal challenges triggered by the COVID-19 outbreak and for an effective role of National Human Rights Institutions and National Equality Bodies as key players in the ongoing recovery efforts in their social, economic and environmental dimensions.

The event aimed to:

- Highlight what lessons the experience of National Human Rights Institutions and Equality Bodies during the COVID-19 crisis reveals about specific risks and vulnerabilities, which recovery and rebuilding initiatives at both European and national level need to address;
- Discuss the necessary components of an “Equality and Human Rights Based Approach to Recovery” in the context of COVID-19 and how the current situation might be different from previous periods of economic crisis and reform;
- Identify what are the likely difficulties and challenges related to the actual implementation of an “equality and human rights approach to recovery” on the ground at both national and European levels and how could these challenges be overcome or, at least, mitigated;
- Identify a possible role for National Human Rights Institutions and Equality Bodies in promoting and implementing an “equality and human rights approach to recovery” and clarify and delineate the specific tasks and responsibility, which this role will entail, including the extent to which these tasks are adequately covered by their existing mandate and resources.

The event brought together representatives of Council of Europe (COE) and European Union (EU) institutions and agencies, national human rights institutions, national equality bodies, trade unions and civil society for a discussion on strengthening the protection of equality and human rights in Europe through and during the economic, social and environmental recovery processes following the COVID-19 outbreak.

KEYNOTE SPEECHES

Participants were welcomed by Tanya Montanari, coordinator of the [COE-FRA-ENNHRI-EQUINET Platform on Social and Economic rights](#) from the Council of Europe.

Keynote interventions were made by Aoife Nolan, member of the [European Committee of Social Rights \(ECSR\)](#) and Professor of International Human Rights Law, and Katarina Ivanković-Knežević, Director for Social Affairs, [DG EMPL](#), European Commission.

Aoife Nolan emphasised the need to use the [European Social Charter \(ESC\)](#) as a framework for a human rights-consistent recovery for Europe.

COVID-19 pandemic had a disproportionate impact on areas such as education, healthcare, housing. All European countries have been facing with a different degree of difficulty:

- shortcomings in healthcare including important mental care impacts due to lockdown conditions and social isolation;
- direct and indirect impacts of COVID-19 on healthcare due to cancellation of preventive and curative care not related to COVID;
- wide-ranging impacts for poor households including deprivation and reduced access to food;
- job losses and negative changes to work conditions especially for women;
- increase of domestic violence and child abuse;
- school closures;
- disproportionate impact on socially vulnerable groups (e.g. people with disabilities, people living in poverty, women, Roma, migrants, refugees, older persons, ethnic and other minorities, people in care).

Aoife Nolan underlined the rights that have been affected by COVID-19 and that are covered by relevant provisions of the ESC:

- Article 11 and the related [Statement of Interpretation of the ECSR on the right to protection of health](#), adopted on 21 April 2020;
- Article 3 - The right to safe and healthy working conditions;
- Article 7 - Right of children and young persons to a special protection against physical and moral hazards;
- Article 8 - Right to special protection of employed women in case of maternity;
- Article 12 - Workers and their dependents have the right to social security;
- Article 13 - The right to social and medical assistance;
- Article 15 - Right of disabled persons to independence, social integration and participation in the life of the community;
- Article 16 - Right to social, legal and economic protection of families;
- Article 17 - Right to social, legal and economic protection of children;
- Article 23 - Right of elderly people to social protection;
- Article 30 - Right to protection from poverty and social exclusion;
- Article 31 - Right to housing.

Relationship between human rights and economic policy: we have the standards

The conceptual understanding of the connection between human rights and economic policy is well known since the economic crises in 2007-2008. This is largely a result of the upskilling on human rights and economic policy work amongst NGOs, academics, National Human Rights Institutions and international human rights organisations. Both the ECSR and belatedly the UNCESCR directly engaged with this relationship between economic policy and human rights. Therefore, the existing standards can be used and adapted to the COVID-19 situation.

COVID-19 crisis led a much broader awareness of social rights. Social rights are mentioned in social and political discourse far more than before the COVID crisis.

What are the challenges?

- The ongoing resistance to human rights (and particularly to social rights ostensibly because of their resource-demanding nature) on the part of key national and supranational economic policy actors (e.g., IFIs, central banks and treasury civil servants);
- The absence of a positive attitude towards social rights in decision making across Europe;
- The historic and ongoing marginalisation of social rights in the European Semester and the work of key EU institutions and actors focused on economic policy;
- The ongoing marginalisation of social rights in the COE system and lack of mainstreaming of social rights in other non-social rights COE entities;
- Social rights have thus played a very limited role in mitigating the negative impacts of COVID-19 and state responses thereto.

What do we need?

In the context of economic recovery, it is essential to use the ESC as a framework for a proactive design, implementation and monitoring of law, policy and budget making. Therefore, there is a need to develop tools to:

- integrate the ESC rights into law, policy and budgeting – at a national and supranational level (i.e. to support state efforts);
- develop data and alternative ‘recovery models’ to serve as the basis for challenges to budgetary/economic choices that contravene the rights enshrined in the ESC (i.e. to review state efforts and provide accountability).

One of the key tools is the [UN Guiding Principles for Human Rights Impact Assessment](#) (HRIA) of Economic Policy Reforms. It requires the conduct of *ex ante* and *ex post* HRIA of economic reforms (a) to assess the foreseeable impacts of proposed policy changes and (b) looking back to assess the actual impacts of policy change and implementation, in order to address such impacts.

HRIA can be carried out by governments, advisory bodies, parliamentary committees, National Human Rights Institutions, courts, international financial institutions, private creditors, international human rights mechanisms, academic institutions or civil society organisations.

A good governance approach would imply that HRIA are based on participation, transparency and access to information.

What role for National Human Rights Institutions and Equality Bodies?

- National Human Rights Institutions and Equality Bodies can advise states how to use and integrate HRIA in their economic reforms;
- National Human Rights Institutions and Equality Bodies could send additional information (the so-called “shadow reports”) to the ECSR on the next reporting cycle on health, social security and social protection by 30 June 2021;
- National Human Rights Institutions must lobby at national level for broader acceptance of the ESC provisions and the collective complaints procedure.

More information: [How can \(I\)NGOs engage with the European Committee of Social Rights under the monitoring procedures of the European Social Charter](#)

Conclusion: COVID-19 crisis reflects long standing systemic shortcomings. It is essential to use the European Social Charter as a framework for a proactive design, implementation and monitoring of law, policy and budgeting.

Katarina Ivanković-Knežević pointed out that there is an important increase in the number of social rights related country specific recommendations (CSRs) since the proclamation of the [European Pillar of Social Rights](#) in 2017. Around 40 % of the CSRs are of some kind of social nature. This increase shows the positive impact of the Pillar and the European Semester on social rights.

What are the challenges?

Katarina Ivanković-Knežević mentioned that the deterioration of the economic and social situation will be much more serious than expected. The average decline of GDP is expected to be 8% in 2020 and the average unemployment rate to be 9% (6.7% in 2019).

COVID-19 has put, as never before, much more pressure on the capacity of public policies, including employment and social policies, to respond to the public needs. The difficulty for the EU was to ensure cohesion and address poverty and inequality. It became clear that the European economic and social policies should be based on the Pillar's principles.

COVID-19 had a disproportionate impact on:

- families which had to work and, at the same time, support their children with their schooling;
- children who had to adapt to new learning methods and even more on children living in poverty;
- migrants and third country nationals;
- people with disabilities and elderly population.

What was the response of the European Union?

The response of the EU to the coronavirus crisis was made through the [Coronavirus Response Investment Initiative](#) (CRII) and the [Coronavirus Response Investment Initiative Plus](#) (CRII+), adopted in March and April 2020. The objective was to secure a fast relocation of resources between different funds. The co-financing rate was increased and new areas for funding were introduced.

The [EU Recovery Package](#) was published on 27 May 2020. It is the EU's major recovery plan, which includes the Multiannual Financial Frame (MFF) and also different aspects on how to address the post-COVID period.

The [Action Plan to implement the European Pillar of Social Rights](#) is going to be adopted in early 2021. Diverse actions will be taken under the different Pillar principles. For the European Commission it is important to continue the social dialogue and to include civil society and social partners as much as possible in the implementation and monitoring of the Pillar at national level.

At the day of the meeting, several initiatives are announced under the Pillar, some of them adopted at Commission level. Among them are the:

- new and reinforced [Youth Guarantee](#);
- vocational and educational training recommendations along with the new skills agenda;
- [minimum wages initiative and consultations](#);
- [European Semester package](#).

Ms Ivanković-Knežević pointed out that eradication of poverty is of major concern for the European Commission. A new, comprehensive approach will be put in place which includes not only funding but also other actions such as active inclusion measures (especially in employment), improving services, expanding the child guarantee and introducing a minimum income.

Other issues of concern, which require a profound reflexion are healthcare, long-term care and housing.

It is important to develop community-based services in particular for people with disabilities and persons in care, taking into account the impact of the confinement on such services.

Conclusion: A coordinated multi-level approach must be applied to the EU's response to the COVID crisis. The European economic and social policies should be based on the Pillar's principles.

PANEL DISCUSSION

List of panellists:

- Grigorios Tsioukas, European Union [Agency for Fundamental Rights](#)
- Sandra Konstatzky, [Austrian Ombud for Equal Treatment](#)
- Michael Windfuhr, [German Institute for Human Rights](#) / Member of the [UN Committee on Economic, Social and Cultural Rights](#) (UNCESCR)
- Kim van Sparrentak, [Member of the European Parliament](#), Greens/EFA
- Stefan Clauwaert, [European Trade Union Confederation](#) (ETUC)

Question 1: What challenges have you faced by the COVID-19 crisis?

Grigorios Tsioukas referred to the FRA monthly [bulletins](#) and country studies, based on information collected by the Agency through its network of national experts across the EU.

With regard to social rights, he underlined the following challenges:

1. Access to healthcare for all, including to medical treatment and preventive care.

Many healthcare systems were unprepared to deal with the pandemic. This unpreparedness led to the general lockdown with many implications for human rights.

2. Access to social security and social assistance, in particular for vulnerable groups.

Groups in a vulnerable situation including women, single parents, migrant workers, Roma, self-employed persons, gig-economy workers and people working in the tourism sector were hit by a high level of unemployment and states had to respond to the emergency to assist them financially.

3. Access to education.

Very few were prepared to study online. Distance learning generally requires access to appropriate equipment, a good internet connection, good digital skills of parents and teachers. There was a significant gap between those from privileged and disadvantaged backgrounds, which has led to the exclusion of many disadvantaged children from the education system. It became clear that distance learning cannot substitute school and mainstream education.

4. Respect of the rights of older persons, in particular those living in institutions.

Many older persons face serious health issues and, as a consequence, they experienced a high level of mortality. The isolation and lack of digital equipment and skills provoked high psychological stress for many older persons and their families.

Conclusion: The unpreparedness of healthcare systems to deal with the emergency led to the general lockdown impacting many human rights, including social rights. Well-functioning public health systems are crucial to deal with emergencies.

Kim van Sparrentak (Rapporteur on adequate and affordable housing at the European Parliament) focused her thoughts on the right to housing. She pointed out that there is a discrepancy between the way the EU is approaching housing and the fact that housing is a fundamental human right.

The housing crisis existed already before the pandemic, but with the pandemic many people became poorer and indebted. Some people lost their houses when, at the same time, they had to shelter-in-place. Homeless people couldn't self-isolate and states had to find solutions to provide housing facilities. This situation reinforced the idea that housing is a human right.

What can we do?

- Housing must be recognised as a fundamental human right and not seen as a commodity nor an investment;
- A human rights-based approach must be applied to policy development;
- Poverty and housing are two sides of the same coin. Therefore, homelessness has to be treated as extreme poverty;
- Use the European Green Deal to build a climate- and socially responsible continent and get people out of poverty.

Kim van Sparrentak stressed the importance of placing environmental protection and the respect for social rights at the core of EU policies. A climate crisis can affect people's lives in the same way as the pandemic. It would be desirable to make EU funding conditional to climate and environmental objectives of the European Green Deal.

Conclusion: Environment and social rights are interdependent and mutually reinforcing.

Sandra Konstatzky underlined that the first challenge for Equality Bodies was how to continue supporting victims of discrimination while in confinement and working from home and how to make already existing phenomena visible from a new perspective, how to collect data and evidence being confined.

Issues put forward by the Austrian Ombud for Equal Treatment:

- Organisation of home schooling and provision of equipment for children;
- Support of children whose mother tongue is not German;
- Employment related issues such as cases of dismissal of pregnant women, older persons, employees forced to use their annual leave for self-isolation, discriminatory treatment of employees with family responsibilities such as teleworking mothers with children at home;
- Gender pay gap to show the variations in remuneration;
- Situation of vulnerable groups, such as victims of domestic violence, homeless persons, persons deprived of liberty (prisoners and migrants).

Achievements of the Austrian Ombud for Equal Treatment:

- Participation in the elaboration of the [Equinet database on COVID-19 cases](#);
- [Equinet database on activities from National Equality Bodies](#) across Europe.

The most frequently encountered grounds of discrimination remain disability, followed by age, racism and xenophobia. Sandra Konstatzky pointed out that the socio-economic situation must be made a prohibited ground of discrimination.

Conclusion: Old familiar social rights' violations reappear in an exacerbated form.

COMMENT:

Aoife Nolan commented that currently there is a broader integration of **older people** as a group into a human rights language and there are more outputs from human rights bodies. The focus has been on older people this year because of the pandemic. While a lot of the issues related to the rights of older persons are systemic, the challenge is that the tools are missing or they are much less developed compared to other groups, to challenge what has happened in the context of the COVID. It is important to ensure that those who are at risk have the protection and the attention they need from international and national bodies responsible for ensuring that human rights are respected.

Michael Windfuhr underlined that the COVID-19 pandemic had a differentiated impact in Germany, namely:

- very good response from the government to the formal sector of employment with the provisions of short-term working allowances, which can be prolonged up to two years;
- satisfactory response in relation to social security rights through the provision of extra allowances for persons with children, rent allowance, heating allowance, easy access for the self-employed to social security;
- insufficient response regarding the situation of people employed in the informal sector (at least 5% of the workforce in Germany), such as people working as homecare workers, in tourism or agriculture sectors. These workers are often from Poland, Romania, Bulgaria.

The government made efforts to respond to the crisis as efficiently as possible. The government's response was facilitated by the fact that Germany still has an important healthcare infrastructure throughout the country which was not affected by the economic crisis of 2007-2008 as compared to other European countries (Spain, Italy or France). Nevertheless, the authorities responded to the crisis by doing things and learning from the field. As a result, some vulnerable groups were overseen. The use of HRIA would have been very helpful in order to evaluate the policies and measures put in place and to guarantee that economic responses do not leave anyone behind, especially people from disadvantaged groups. HRIA would have helped the government to allocate funds where they are most necessary and include all the groups of people affected. The first groups whose needs were addressed were older persons, children and people with disabilities.

Specific response was also needed for groups which were already in a difficult situation, such as refugees living in refugee centres, older persons in care homes, women victims of domestic violence, homeless persons and frontline workers.

The German Human Right Institute published several documents relating to the impact of the COVID-19 crisis on specific groups. This was seen as a positive contribution to the situation. At the same time, NHRIs are more familiar with civil and political rights and still have to learn how to deal with economic and social rights which are, for some institutions, quite new. NHRIs should learn to have a systematic approach to economic and social rights.

At European level, the debate around the question of mutual support between states is also part of the response to the crisis. The question arises as to whether support can be offered to other European countries and under what conditions. At more global level, one could observe that the international response to the COVID crisis was insufficient, inappropriate and without ownership. Linkages between different regions were broken. The nationalistic response to shut borders, ban exports and cancel orders of some products (especially in the textile industry) were painfully in full display. Many Asian countries, such as Bangladesh, Vietnam and India, which supply the European market with textiles, suddenly found themselves isolated from the global trade and supply chains. People lost their jobs without any social protection offered. This showed how unprepared states were to react in a human rights-compliant way.

Conclusion: National Human Rights Institutions must learn how to deal with economic and social rights. Human Rights Impact Assessments must be carried out in a systematic way by national authorities, NHRIs, NGOs.

Stefan Clauwaert pointed out that workers' rights and trade unions' rights were again put at risk during the pandemic. Many of those rights suffered as a result of the 2007-2008 economic crises and have since not been recovered. Therefore, the challenges were manifold, and they were not new. But they have all been aggravated by the pandemic for different reasons and this has brought about important challenges. The COVID crisis is not only a social and economic crisis, but many civil and political rights have also been affected (prohibition of demonstrations, freedom of expression, etc), which automatically have an impact on the society.

Another challenge was the speed at which the pandemic hit the whole society. It had an effect on the way measures were announced, adopted and introduced. A huge number of the so called "emergency" decrees and rules were introduced through processes where trade unions, human rights defenders and NGOs didn't have the possibility, for different reasons, to comment or were unable to challenge them. One of the reasons was that institutions were closed, and citizens lost contact with their natural interlocutors. This had severe consequences for the monitoring and supervising procedures in relation to social rights.

Stefan Clauwaert underlined:

- the work of the Steering Committee for Human rights (CDDH) on [older persons](#) and stressed the need to initiate a discussion on the need for more binding rules on the rights of the elderly;
- the question of health and safety at work, which entered a new dimension as a result of COVID-19, and the right to health in general;
- the issue of artificial intelligence (AI) and human rights and the need to elaborate a legally binding instrument which protects the rights of everyone and in particular of those in new forms of work: gig-economy workers, self-employed, teleworking people. The use of various applications and social media platforms puts at risk our privacy and therefore our dignity and security.

More information: [COVID-19 ETUC briefing notes](#)

Question 2: What is your vision of a post-COVID Europe? What would you like to see achieved in the coming years at both national and European level? Can the instruments presented by the keynote speakers contribute to your endeavours?

Stefan Clauwaert pointed out that a post-COVID sustainable economic recovery cannot be achieved without adopting a human rights-based approach.

The current overall approach is recovery through austerity which has been shown to be a total failure. The new approach has to be investment in structures (public service in general, health sector in particular), investment in actors (labour inspectorates, National Human Rights Institutions, social partners and trade unions) and investment in people.

Both structures and actors have been severely affected by the financial crisis of 2008. They must be rebuilt or at least strengthened. Social partners played an important role during and after the first lockdown in many countries with regard to health and safety at work and the return to work.

Concerning people, the approach cannot be only economic, but it must be based on human rights and equality.

Concrete proposals put forward:

1. The different emergency measures that have been adopted and put in place must be removed.
2. Human Rights Impact Assessments must be introduced. ETUC has already called for the use of HRIA in the [second CDDH Report](#) in particular in relation to social rights. The impact has to be assessed both on collective and on individual social rights.
3. Enhanced multilateral and bilateral partnerships at European and global level must be established.
4. The use of the European Social Charter, which is well equipped as it stands now, must be strengthened.
5. Social rights must be at the forefront in every initiative that is taken.
6. The European Social Charter monitoring mechanisms must be reinforced and, in relation to this, the Governmental Committee must take seriously its role as it is a question of rights.
7. The European Committee of Social Rights should issue more often statements of interpretation in order to make the ESC a living instrument responding to current challenges.
8. New legally binding instruments must be developed urgently (on AI for instance).
9. The COE instruments must serve as a benchmark to the EU actions.
10. The EU accession to the ESC is urgently needed.

Stefan Clauwaert also pointed out that social rights have been omitted or largely forgotten in several of the latest EU initiatives which deal with the rule of law, democracy and human rights such as the Action Plan on Human Rights and Democracy or the European Democracy Plan.

COMMENT:

Aoife Nolan clarified that the ECSR's statements of interpretation respond meaningfully not just to the short-term crisis, but to the longer-term context. A statement must be based to some degree on state practice and on the understanding of where things are going before the Committee responds.

In addition, she pointed out that social rights are neglected at European level (in law teaching, advocacy initiatives, social rights language, etc) and the ESC is relegated within the Council of Europe activities. This makes clear that there has to be a shift at the domestic level. The European Committee of Social Rights can lead, can play a role, but the shift has to come from the ground up. This is why strategic thinking and engagement at all levels are crucial.

Michael Windfuhr added that growth alone will not help our societies to get out of the crisis, but it needs to be a sustainable growth.

What has to be done?

- the loopholes need to be identified;
- the social protection systems have to be reviewed and adapted properly;
- Human Rights Impact Assessments of economic reforms must be introduced.

Who should conduct HRIA?

HRIA should be conducted by an executive or a legislative body (in Germany this could be the Office of the President or the Chancellery). At the same time, they need to be participatory and include victims, beneficiaries, NGOs, social movements, social partners, trade unions.

How HRIA should be conducted?

Through the [UN Guiding Principles](#) or through methodologies developed by the UN Committee on Economic Social and Cultural Rights.

Human and financial resources must be available in order to conduct HRIA.

What role for National Human Rights Institutions and Equality bodies?

National Human Rights Institutions and Equality Bodies have neglected social and economic rights for a long period. They need to strengthen their knowledge on economic and social rights. Moreover, National Human Rights Institutions and Equality Bodies can encourage the public and private sectors to give due consideration to the UN Guiding Principles for Human Rights Impact Assessments in their work and policy design.

Grigorios Tsioukas shared with the participants the EU vision of a green, digital and social Europe through several mechanisms such as the European Green Deal, Digital Europe agenda and Social Europe action.

In addition:

- the marginalisation of social rights must be tackled through active participation in the consultations, in the design of policies, in the implementation of policies and in the monitoring of policies;
- the challenges known before the crisis need to be resolved, namely those related to education, health and employment;
- funding must be secured, but the main question is how these funds will be distributed.

What role for National Human Rights Institutions and Equality Bodies?

National Human Rights Institutions and Equality bodies, civil society and trade unions can play an important role in the design, implementation and monitoring of the programmes that will be funded by the EU under the 2021-2027 Multiannual Financial Framework¹ and the temporary recovery instrument Next Generation EU. It was agreed to make EU funding conditional on respect for the rule of law and for fundamental rights.

National Human Rights Institutions and Equality Bodies can advocate for a human rights-based approach to budgeting at national level, which means distributing resources in a way that puts people first.

Take-away messages

Although social rights are often relegated at European level, the COVID-19 crisis reminded us of the importance of ensuring lasting progress with respect to social rights enjoyment, particularly through the development of universal public health services. The pandemic showed in practical terms the indivisibility of human rights.

- ✓ The ESC must be used as a framework for a proactive design, implementation and monitoring of law, policy and budget making in order to shape human rights-compliant responses to the COVID-19 pandemic and to take stock once the crisis is over. The ESC, together with its monitoring mechanisms - reporting and collective complaints - are excellent tools for the reconstruction efforts that will follow.

¹ On 2 May 2018, the European Commission submitted legislative proposals for a new MFF for the period 2021-2027. On 27 May 2020, the Commission submitted an updated proposal for the [MFF](#) together with a proposal for a recovery instrument, Next Generation EU, in the wake of the COVID-19 outbreak.

- ✓ The UN Guiding Principles for Human Rights Impact Assessments of economic reform policies are another tool that can be used by governments, human rights defenders, civil society, trade unions. HRIA is a process for identifying, understanding, assessing and addressing the adverse effects of policy decisions or activities on the human rights enjoyment of impacted rights-holders such as workers and community members. HRIAs can take various shapes and be led by different stakeholders but should share the ultimate goal of protecting human rights and improving accountability of duty bearers for their adverse impacts on human rights.
- ✓ The EU Charter of Fundamental Rights brings together the most important personal freedoms and rights enjoyed by citizens of the EU into one legally binding document.
- ✓ The European Pillar of Social Rights and its implementation at national level is going to be crucial for the protection of social rights in the EU in the coming years.
- ✓ National Human Rights Institutions and Equality Bodies have a huge role to play at national level in favour of social rights protection. For this, they need to improve their knowledge about social rights mechanisms and their monitoring capacities.
- ✓ National Human Rights Institutions and Equality Bodies have the responsibility to identify negative trends at national level, but also outside the national territory. National Human Rights Institutions have the obligation to be vigilant when human rights are in danger at home and abroad. It is extremely important to collaborate with other National Human Rights Institutions, not only at European level, but at global level.

Questions for the future

How to encourage governments to adopt a human rights-based approach to economic recovery?

What National Human Rights Institutions and Equality bodies are going to do about the European Social Charter and COVID-19?