

THE RIGHT TO BE PROTECTED AGAINST POVERTY AND SOCIAL EXCLUSION UNDER THE EUROPEAN SOCIAL CHARTER



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1. *The Charter and its procedures*

The European Social Charter is a human rights treaty which is a complement to the European Convention on Human Rights with both treaties being rooted in the Universal Declaration of Human Rights.

The Charter was adopted in 1961 and revised in 1996. It is one of the Council of Europe's most widely ratified human rights treaties; it is currently ratified by 43 out of the 47 member States. 33 States are bound by the Revised Charter and 10 are still bound by the 1961 Charter.

The material scope of the Charter is very wide. The Revised Charter contains 31 Articles and 98 numbered paragraphs covering everything that is traditionally regarded as social rights: housing, health, employment, education, social protection, non-discrimination. Within these areas there are also provisions that protect specific target groups such as children, the disabled, the elderly and migrants.

At the time of ratification, a country can choose which provisions of the Charter to accept as long as it chooses a certain minimum number (not less than 16 articles including 6 so-called 'hard core provisions' or 63 numbered paragraphs). This means that different States are bound by different obligations.

Supervision of the application of the Charter takes place on the basis of two procedures, a reporting procedure and a collective complaints procedure. In both procedures the supervisory or regulatory body is the European Committee of Social Rights ("The Committee"), which is composed of 15 independent and impartial experts. It is a quasi-judicial body and it began adopting "conclusions" on state compliance with the Charter more than 40 years ago (in 1968) on the basis of the national reports. In addition, since 1998 it has handed down "decisions" in collective complaints cases. These conclusions and decisions containing the legal assessments of state compliance make up what is commonly called the Committee's "case law".

The reporting procedure is mandatory for all States Parties. In conformity with the decision of the Committee of Ministers of 2 April 2014, each accepted provision should be the subject of a report every 4 years in the case of states that are not bound by the collective complaints procedure. The articles are divided into 4 thematic groups with a report on one theme every year. The thematic groups are: (1) *Employment, training and equal opportunities*; (2) *Health, social security and social protection*; (3) *Labour rights* and (4) *Children, families and migrants*.

States which have accepted the collective complaints procedure will submit a simplified report every two years in which they indicate what follow-up action has been taken in response to the decisions of the Committee on collective

complaints and reply to any questions put in the event of deferrals for the relevant provisions. The new system enters into force for all States which have already accepted the procedure from October 2014 onwards and, for other states, one year after acceptance of the collective complaints procedure.

The collective complaints procedure, which was adopted in 1995 and entered into force in 1998, allows certain trade unions, employers' organisations and NGOs to lodge complaints alleging violations of the Charter. The procedure is facultative (as opposed to the reporting procedure) and so far only 15 out of the 43 States Parties are bound by it.

The complaints procedure constitutes an important instrument for enforcing the rights guaranteed by the Charter, not least in respect of poverty reduction and social exclusion. The impact of this procedure is growing steadily. It is a speedy and transparent procedure and it is easily accessible (for example, no requirement for exhausting domestic remedies).

2. Inclusion of the right to protection against poverty and social exclusion into the Revised Charter

The Revised Charter is the result of a process which started in the late 1980s, and continued in the 1990s, to modernise and increase the impact of the Charter. The first measure taken in the reform direction was the adoption, in May 1988, of the Additional Protocol to the Charter ("1st Protocol") which introduced four new rights. The Amending Protocol of 1991 ("2nd Protocol"), reformed the reporting system of the Charter. Then in 1995 came the Protocol providing for a system of collective complaints ("3rd Protocol"). And finally, the culmination of this reform process came in 1996 with the adoption of the Revised Charter, which added another set of new rights, including Article 30 on the right to protection against poverty and social exclusion.

By introducing a new Article 30, the Council of Europe member states considered that living in a situation of poverty and social exclusion violates the dignity of human beings. Its inclusion in the Revised Charter shows that the drafters of this instrument believed that it was important to take a legal initiative in this area. As a result, Article 30 of the Charter is the first binding human rights provision for the protection against poverty and social exclusion.

With the updating of the list of social rights and the inclusion of new provisions such as Article 30, the Revised Charter has therefore become a more complete treaty and with a higher level of protection, when compared to the original 1961 Charter.

3. Content and limits of the right to protection against poverty and social exclusion

Article 30 reads as follows:

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;*
- b to review these measures with a view to their adaptation if necessary.*

The primary obligation for States Parties under Article 30 is the adoption of a “comprehensive and co-ordinated approach” which explicitly aims at combating poverty and social exclusion. The latter will imply the taking of measures in particular as regards employment, housing, education, culture and social and medical assistance. The measures taken for such a purpose should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned. And the measures should be reviewed and adapted to new situations.

The purpose of Article 30 is not to repeat the juridical aspects of the protection covered by other Articles of the Revised Charter (namely, Articles 1§1, 9, 10, 13, 14, 17§2 and 31), although the links should be always kept in mind, recalling that the Committee’s conclusions under these other articles may have an impact or even determine the assessment under Article 30 (statement of interpretation of 2013, see below). All these provisions are essential in fighting against poverty and social exclusion but experience has proved that they are not sufficient.

The term “poverty” in this context covers persons who find themselves in various situations ranging from severe poverty, to temporary situations entailing a risk of poverty. The term “social exclusion” refers to persons who find themselves in a position of extreme poverty through an accumulation of disadvantages, who suffer from degrading situations or events or exclusion, whose rights to benefits may have expired a long time ago or for reasons of concurring circumstances. Social exclusion also strikes or risks to strike persons who without being poor are denied access to certain rights or services as a result of long periods of illness, the breakdown of their families, violence, release from prison or marginal behaviour as a result for example of alcoholism or drug addiction.

Among the obligations subscribed to under Article 30, a series of different measures can be foreseen, which may or may not imply financial benefits, and which concern both persons in a situation of exclusion and those who risk finding themselves in such a situation. States subscribing to this provision

are encouraged to restrict financial benefits to those who cannot help themselves by their own means.

There must be adequate institutional and organisational arrangements to implement the objectives and measures, that is, the overall and coordinated approach must link and integrate policies in a consistent way, moving beyond a purely sectorial or target group approach. Normally, some sort of coordinating mechanisms, including at the level of delivery of assistance and services to those living in or at risk of poverty, should be provided. At the very least, governments should demonstrate that poverty and social exclusion reduction is an embedded aspect of all the relevant strands of public policy.

A central aspect of Article 30 is allocation of funding necessary for the realisation of the objectives set. Adequate resources should be allocated to the main elements of the overall strategy fighting social exclusion and poverty.

Monitoring mechanisms to review the strategy should also be in place. Such review may include consultations with the social partners and various other organisations, including civil society and persons affected by poverty and exclusion.

4. Statement of interpretation on Article 30

In 2013, the Committee discussed on the need of developing the case law on this provision, and adopted a statement of interpretation.

The statement of interpretation illustrates the dual nature of Article 30: on the one hand requirements to poverty reduction policies and on the other hand a guarantee of human rights. As regards the relationship of Article 30 with other articles of the Charter, the statement recalls that an assessment under another article may impact the assessment under Article 30 (*"a conclusion of non-conformity under another provision will not automatically or necessarily lead to a violation of Article 30, but such a conclusion may, depending on the circumstances, be relevant in assessing conformity with Article 30"*).

The interpretative statement adopted was the following:

"The Committee has reiterated that living in a situation of poverty and social exclusion violates the dignity of human beings and that Article 30 of the Revised Charter requires States Parties to give effect to the right to protection against poverty and social exclusion by adopting measures aimed at preventing and removing obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance (Statement of interpretation on Article 30, Conclusions 2003).

Furthermore, the ECSR has emphasised that these measures should not only strengthen entitlement to social rights but also improve "their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions" (Statement of

interpretation on Article 30, Conclusions 2003). In this respect, in its decision on the merits of 19 October 2009 in ERRC v. France, Complaint No. 51/2008, the ECSR also emphasised the importance of dialogue with representatives of the civil society as well as persons affected by poverty and exclusion (para. 93).

Based on these premises, the ECSR in interpreting Article 30 has taken into account a set of indicators in order to assess in a more precise way the effectiveness of policies, measures and actions undertaken by States Parties within the framework of this overall and co-ordinated approach. One of the key indicators in this respect is the level of resources (including any increase in this level) that have been “allocated to attain the objectives of the strategy” (Statement of interpretation on Article 30, Conclusions 2005), in so far as “adequate resources are an essential element to enable people to become self-sufficient” (Statement of Interpretation of Article 30, Conclusions 2003). In addition, the main indicator used to measure poverty is the relative poverty rate (this corresponds to the percentage of people living under the poverty threshold, which is set at 60% of the equivalised median income).

The at-risk-of-poverty rate before and after social transfers (Eurostat) is also used as a comparative value to assess national situations, without prejudice to the use of other suitable parameters that are taken into account by national anti-poverty strategies or plans (e.g. indicators relating to the fight against the ‘feminization’ of poverty, the multidimensional phenomena of poverty and social exclusion, the extent of ‘inherited’ poverty, etc.).

This interpretation plays a very important role in a context of economic crises. From this perspective, the ECSR has stated in the General Introduction to Conclusions XIX-2 (2009) on the repercussions of the economic crisis on social rights, that, while the “increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increase while tax and social security contribution revenues decline”, by acceding to 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.” Accordingly, it has concluded that “the economic crisis should not have as a consequence the reduction of the protection of the rights recognised 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”. Moreover, the ECSR has concluded that “what applies to the right to health and social protection should apply equally to labour law and that while it may be reasonable for the crisis to prompt changes in current legislation and practices in one or other of these areas 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” (GENOP-DEI and ADEDY v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, para. 17).

The ECSR also considers necessary to recall that “the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact” (International Commission of Jurists v. Portugal, Complaint No. 1/1999, decision on the merits of 9 September 1999, para. 32). In light of this approach, it considers that assessments of the ECSR concerning Article 30, like those concerning the other substantial provisions of the Charter, must be based on this human rights approach, which has been recently reaffirmed by the Guiding Principles on extreme poverty and human rights (submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona

and adopted by the United Nations Human Rights Council on 27 September 2012) and which has consistently been applied by the ECSR (*COHRE v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, para. 107, Defence for Children International v. The Netherlands, Complaint No. 69/2011, decision on the merits of 23 October 2013, para. 81*).

In particular, the ECSR has interpreted the scope of Article 30 as relating both to protection against poverty (understood as involving situations of social precarity) and protection against social exclusion (understood as involving obstacles to inclusion and citizen participation), in an autonomous manner or in combination with other connecting provisions of the Charter:

- Concerning the first dimension, the ECSR has focused on poverty as involving “deprivation due to a lack of resources” (Statement of interpretation on Article 30, Conclusions 2005), which can arise *inter alia* from the failure of States Parties to fulfil the obligation “to ensure that all individuals have the right of access to health care and that the health system must be accessible to the entire population” (*DCI v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, par. 100; violation of Article 11*); to provide a minimum income to persons in need (*ERRC v. Bulgaria, Complaint No. 48/2008, decision on the merits of 18 February 2009; violation of Article 13*), or to adopt a co-ordinated approach to promoting effective access to housing for persons who live or risk living in a situation of social exclusion (*International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, paras. 169-170; violation of Articles 30 and 31*).
- Concerning the second dimension, the ECSR has held that “Under Article 30, States have the positive obligation to encourage citizen participation in order to overcome obstacles deriving from the lack of representation of Roma and Sinti in the general culture, media or the different levels of government, so that these groups perceive that there are real incentives or opportunities for engagement to counter the lack of representation” (*COHRE v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, para. 107; violation of Article E in conjunction with Article 30*). The ECSR had also already considered that “the reference to the social rights enshrined in Article 30 should not be understood too narrowly. In fact, the fight against social exclusion is one area where the notion of the indivisibility of fundamental rights takes a special importance. In this regard, the right to vote, as with other rights relating to civic and citizen participation, constitutes a necessary dimension in social integration and inclusion and is thus covered by Article 30” (*ERRC v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, para. 99*).

These two dimensions of Article 30, poverty and social exclusion, constitute an expression of the principle of indivisibility which is also contained in other provisions of the Charter (for example, enjoyment of social assistance without suffering from a diminution of “political or social rights”, Article 13.)]

In this context, by reaffirming this human rights approach, the ECSR emphasizes the very close link between the effectiveness of the right recognized by Article 30 of the Charter and the enjoyment of the rights recognized by other provisions, such as the right to work (Article 1), access to health care (Article 11), social security allowances (Article 12), social and medical assistance (Article 13), the benefit from social welfare services (Article 14), the rights of persons with disabilities (Article 15), the

social, legal and economic protection of the family (Article 16) as well as of children and young persons (Article 17), right to equal opportunities and equal treatment in employment and occupation without sex discrimination (Article 20), the rights of the elderly (Article 23) or the right to housing (Article 31), without forgetting the important impact of the non-discrimination clause (Article E), which obviously includes non-discrimination on grounds of poverty.

Consequently, together with the indicators mentioned above, when assessing the respect of Article 30, the ECSR also takes into consideration the national measures or practices which fall within the scope of other substantive provisions of the Charter in the framework of both monitoring systems (the reporting procedure and the collective complaint procedure). This approach does not mean that a conclusion of non-conformity or a decision of violation of one or several of these provisions automatically or necessarily lead to a violation of Article 30 (EUROCEF v. France, Complaint No. 82/2012, decision on the merits of 19 March 2013, para. 59); but such a conclusion or decision may, depending on the circumstances, be relevant in assessing conformity with Article 30.

Indeed, the conclusion reached by the ECSR on the existence of one or several violations of these provisions should not be conceived as an exception which confirms the existence of a generally satisfactory overall and co-ordinated approach, but rather as a substantial weakness affecting an essential pillar (or several) of the fundamental obligations of States Parties contained in Article 30 in relation to protection against poverty and social exclusion.”

5. Examples of violations of Article 30 in the reporting and collective complaints procedures

In reaching its conclusions and decisions, the Committee examines a number of indicators pertaining to the economic situation, the employment and unemployment situation. As regards income poverty, the ECSR looks at the “at-risk-of poverty” threshold (60% of the median equivalised income) which is available from Eurostat for many countries.

It is also important to stress the links between Article 30 and the collective complaints procedure: when the ECSR finds a violation of Article 30 in a decision on the merits in a complaint, follow-up must be carried out in the conclusion on Article 30, and will of course also entail a breach if the information provided in the national report does not demonstrate that sufficient progress has been made.

In its 2013 Conclusions on Article 30, the Committee found that the situation was in breach of the Charter in the following countries (worth noting that many of these violations were linked to decisions taken in the collective complaints procedure):

- Belgium: “during the reference period there was a lack of a co-ordinated policy, in particular in housing matters, with regard to Travellers in order to prevent and combat poverty and social exclusion”;

- France: “follow-up of decisions on the merits of Collective Complaints No. 33/2006 and 51/2008 remains unsatisfactory; and there was discrimination of migrant Roma in respect of housing policy during the reference period (Collective Complaint No. 67/2011);
- Italy: “it has not been established that there is an overall and coordinated approach to combating poverty and social exclusion; and there is discriminatory treatment of migrant Roma and Sinti with regard to citizen’s participation;
- Ukraine: “it has not been established that there is an effective overall and coordinated approach to combat poverty and social exclusion”.

As regards a number of other countries, the ECSR was unable to take a decision on the basis of the information provided in the reports (deferral of the conclusion). In such cases, it asks the Governments to submit the missing information in their next report, sometimes warning them that the absence of that information could lead to a conclusion of non-conformity in the next assessment. For example, in Conclusions 2013 Andorra was asked to indicate what indicators were used in the country to determine the extent of poverty and social exclusion as well as to provide full information on all the budgetary resources deployed to combat poverty. In the case of the Slovak Republic and Turkey, the deferrals were also based on lack of information concerning methodology and indicators as well as on monitoring and evaluation of poverty reduction measures.

In its examination of state reports for Conclusions 2013, the European Committee of Social Rights also noted a number of positive developments in the application of the Charter, either through the adoption of new legislation or changes to practice in the States Parties. Below are some examples concerning Article 30:

- Finland: A guarantee pension was introduced in March 2011 which as a result increased the income level of poor elderly people, especially women and immigrants.
- Norway: In 2011 a grant scheme was established to promote the development of social entrepreneurs as a means of combating poverty and social exclusion.
- Norway: In 2008, the Government appointed the Allocations Committee to examine the development in income inequalities over time, what factors affect allocations and what measures can contribute to a more even distribution. The recommendations of the Committee are currently being followed up by Parliament.

6. Conclusion

It is essential to mobilize civil society – a basic pillar in the promotion of human rights – around the Social Charter in the context of its supervisory and monitoring mechanisms, including in relation to Article 30. Two avenues are possible for NGOs to make their concerns known:

- In the framework of the reporting system, providing the Committee with comments on national reports containing information on matters related to Article 30, and which may show the national situation under another light than the official report, enabling the Committee to have a more comprehensive view of the situation and reach an informed conclusion.
- Through the lodging of a collective complaint on specific issues coming within the scope of Article 30 (limited of course to the situation in the 15 States Parties to this procedure).

But both supervisory procedures may be useful in signalling problems and shortcomings in national policies. It is however, most likely, that the collective complaints procedure would be the most effective way for promoting the right to be protected against poverty and social exclusion. There have already been a number of cases in which the finding of a violation on this provision has triggered considerable public debate, contributing to an advancement of rights. For instance, in the case *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, the French Government announced in the follow-up phase to the complaint that: “A major effort had been made in response to the Committee’s comments on the gaps in public policy on co-ordination and the collection of data for the purposes of evaluation. The Prime Minister had singled out access to housing as one of the government’s priority projects for 2008-2012 and a “super-prefect” had been appointed to co-ordinate the public authorities' work in the housing sector.”

Finally, it should be recalled that Article 30 has only been accepted by 13 States. It would therefore be desirable if all States accepted this provision, as well as the complaints procedure, which would enable more involvement of NGOs in the areas covered under this essential provision of the European Social Charter.

POSTFACE

*Annelise Oeschger
Chair of the Human Rights Committee
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Despite proclaiming the grand ideals of humanity, international instruments did not, at first, really help to improve the lives of the very poor. As Joseph Wresinski, Founder of the International Movement ATD Fourth World, remarked at the Council of Europe in 1981, “Why do our deepest convictions not apply to those on the lowest rung of the social ladder? How can it be that an entire sector of the population should find itself on the outside of our social structures, outside the law, outside of society and on the outside of democracy?” In 1982, he appealed for extreme poverty to be recognised as a human rights violation under international instruments. The appeal, which was signed by thousands of people across the world, many of them living in poverty, was submitted to the UN Secretary General and the Secretary General of the Council of Europe, among others.

This call for action was heard by the bodies of the Council of Europe. As the Director of Political Affairs remarked in 1989: “At the Council of Europe, we believe it is high time to establish a genuine partnership, to listen to the poor and their representatives, and to recognise them as legitimate interlocutors demanding and enforcing their own rights vis-à-vis their fellow citizens and the authorities which, all too easily, claim for themselves the right to think and act on the poor’s behalf. Recognition is the very foundation of joint action.”

On 17 October 1993, International Day for the Eradication of Poverty, Catherine Lalumière, Secretary General of the Council of Europe, declared: “For us, at the Council of Europe, it is very important that we be able to affirm, loud and clear, that human rights will never be respected as long as some people continue to live in poverty. Extreme poverty is the greatest human rights violation of all. And as representatives of an organisation whose primary goal is to defend the individual, we at the Council of Europe can only be appalled at poverty and its consequences”.

Over the period 1989-98, the Council of Europe conducted a project entitled “Human dignity and social exclusion” in which individuals living in poverty and organisations working with them played a significant part. This partnership between some of the poorest people in Europe and the Council of Europe helped to provide a better understanding of the indivisible and universal nature of human rights. It led to the adoption of Article 30 of the Revised European Social Charter (1996), the first article to introduce the right to protection against poverty in an international human rights instrument.

The European Committee of Social Rights has always emphasised the need, at national level, to involve persons living in poverty. In the case of ATD Fourth World v. France, the Committee itself organised a hearing, during which Cécile Reinhardt, an ATD Fourth World activist, declared: “We have

great expectations of this claim. I lived half my life in poor quality housing. When can we ensure that our children will have decent housing? **How can we live as citizens if we cannot enjoy our rights as citizens?**"

On 17 October 2013, Luis Jimena Quesada, President of the European Committee of Social Rights, referred to the Committee's decisions in relation to Greece (collective complaints Nos. 76 to 80) concerning the plight of retired persons whose pensions had been drastically reduced because of the austerity measures imposed on Greece by the Troika: "The Committee has found that anti-crisis measures cannot reverse the legal rights acquired in this area. The cumulative effect of the restrictions introduced as "austerity measures", together with the procedures applied may amount to a violation of human rights".

In May 2014, in his report on the state of democracy, human rights and the rule of law in Europe, Thorbjørn Jagland, Secretary General of the Council of Europe, observed that: "Therefore, the Council of Europe must make reducing and ending poverty an urgent priority."

On 17 October, International Day for the Eradication of Poverty, the Conference of INGOs of the Council of Europe organises a meeting on the eradication of extreme poverty which brings together people living in poverty, government officials and civil society representatives to discuss the issue. On 17 October 2012, the Presidents of the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities and the INGO Conference signed a declaration entitled "Acting together to eradicate extreme poverty". 17 October provides an opportunity, at European as well as national level, to review the progress made and to highlight the kind of policies and measures required, drawing always on contributions from people who are themselves living in poverty.

Article 30 of the European Social Charter can be a formidable tool in the effort to eradicate extreme poverty in Europe if it is fully observed by national and local authorities and used with vigour and determination by citizens, NGOs and trade unions.

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