



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

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**European Committee of Social Rights (ECSR)
position paper on follow-up to the report and proposals
of the Steering Committee for Human Rights (CDDH)**

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Preliminary remarks

The ECSR welcomes the Committee of Ministers' determination to improve the implementation of social rights within the Council of Europe. This determination had been evidenced by the Committee of Ministers repeated decisions, including at the 129th Ministerial Session (Helsinki, May 2019)¹ and, more specifically, by the terms of reference given to the CDDH to "make, as appropriate, proposals with a view to improving the implementation of social right".² The same commitment to the advancement of social rights within the Council of Europe system has been reflected in the work of successive chairmanships of the Committee of Ministers and by the Secretary General. The Parliamentary Assembly and the Commissioner for Human Rights have also repeatedly supported the case for the reinforcement of social rights.

The second report³ of the CDDH (a report adopted by the senior officials and human rights experts representing the governments of the 47 Council of Europe member states) clearly shows the need, the opportunity and also points to ways to improve the implementation of social rights in a Council of Europe context. This involves primarily reinforcing the European Social Charter system and encouraging state compliance. Moreover, the CDDH report shows broad and solid support of member states for this objective.

The ECSR will first offer some reactions in respect of the Committee of Ministers' decisions of 11 December 2019,⁴ and will then briefly make additional comments on the CDDH proposals.

Committee of Ministers decisions of 11 December 2019

In its decisions, the Committee of Ministers "took note with interest of the steps taken by the ECSR to **simplify the reporting procedure** under the European Social Charter, focusing on issue-based questions on selected provisions, and invited the ECSR and the Governmental Committee to consider further ways of streamlining the procedure, including the advisability of reviewing the current system of thematic reports as detailed in document CM(2014)26" (emphasis added).⁵

In practice, the ECSR has already taken a first step in this direction. It is currently working on conclusions that focus on 11 out of the 21 provisions scheduled for examination in 2020 (the thematic group "employment, training and equal opportunities"). To the maximum extent possible, the Committee is seeking to provide shorter and more targeted analyses. It is doing so through, amongst other things, the development of explanatory/pedagogical language in

¹ Decl(17/05/2019) and CM/Del/Dec(2019)129/2a https://www.coe.int/en/web/cm/-/129th-session-of-the-committee-of-ministers-17-may-2019-#44140822_43507071_True

² Terms of reference adopted by the Committee of Ministers at its 1300th meeting, 21 to 23 November 2017.

³ The CDDH reports (Volume I, Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe and Volume II, Report identifying good practices and making proposals with a view to improving the implementation of social rights in Europe) can be downloaded from <https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/human-rights-development-cddh/social-rights-in-europe>

⁴ CM/Del/Dec(2019)1363/4.1c https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680993bba

⁵ CM/Del/Dec(2019)1363/4.1c, paragraph 2, and also CDDH, Volume II, paragraphs 12, 121, 122.

the context of conclusions to aid state understanding of what specific Charter provisions require.

The questionnaire submitted by the ECSR to states parties in 2020 for the Conclusions 2021 also focussed on a limited number of provisions, covering only around 60% of those in the group.⁶

The ECSR is resolved to pursue and intensify the process of simplifying the reporting procedure. It considers that the current system of thematic reports as set out in document CM(2014)26 could be rendered more flexible, perhaps even phased out. This would allow the ECSR to examine the issues that it considers to be of particular importance in view of the prevailing social, economic and policy considerations. This might sometimes involve addressing provisions across the four thematic groups rather than following the current supervision cycle approach. Urgent or emerging issues—of which the Covid-19 pandemic and the rapidly changing employment environments are examples—also require greater flexibility in respect of the reference periods. Setting priorities and identifying issues could involve consultation or dialogue with the Governmental Committee.

There is also room for improvement in the quality of national reports submitted to the ECSR. Reports should respond precisely to questions raised by the Committee and ensure the necessary level of detail, including as regards applicable legislation and policies. Access to the sources of information could also on occasion be helpful. To assist states parties improve the quality of their reports, the ECSR used its latest questionnaire to provide those drafting reports with a clear understanding of key priority areas in terms of Charter realisation for the purposes of the provisions involved. The timeliness in the submission of national reports is also a relevant factor. Subject to availability of resources, capacity building could be offered to national administrations in this connection.

The ECSR would be pleased to **increase dialogue** with national authorities when necessary.⁷ It would welcome the initiative of relevant national authorities when they feel that “enhanced dialogue” is desirable. It is also open to making “full use of existing modalities for receiving all information needed for the examination of a collective complaint”.⁸ The Committee, with the assistance of the Secretariat, seeks out the information it finds relevant and which is accessible, but would welcome additional input from the respondent state and other relevant actors in the process. The ECSR will consider the possibility of organising, in case of need, direct consultations with the parties to a collective complaint by the rapporteur, in particular when examining the merits of a complaint. It should, however, be borne in mind that increasing dialogue will have an impact on ECSR members’ and the Secretariat’s workload. This will in turn impact on the Committee’s ability to carry out its other functions.

As regards knowledge and understanding of **admissibility criteria** and **legal standards** applied by the ECSR,⁹ there is merit in making additional efforts to develop and keep the Charter **Digest** and other **communication** tools up to date,¹⁰ and also to render accessible specific aspects of the ECSR’s case law in separate reference documents such as fact sheets or general guidance for member states (and the international community). The latter could be achieved, for example, in the form of Committee of Ministers recommendations under the

⁶ <https://www.coe.int/en/web/european-social-charter/-/states-parties-to-the-european-social-charter-are-invited-to-report-on-health-social-security-and-social-protection-by-31-december-2020>

⁷ CM/Del/Dec(2019)1363/4.1c, paragraph 5 and 7, and also CDDH, Volume II, paragraphs 8, 96, 101, 133, 134, 135, 186

⁸ CM/Del/Dec(2019)1363/4.1c, paragraph 8, and also CDDH, Volume II, paragraphs 8, 97.

⁹ CM/Del/Dec(2019)1363/4.1c, paragraph 7, and also CDDH, Volume II, paragraphs 8, 15, 96, 97, 133, 135.

¹⁰ CM/Del/Dec(2019)1363/4.1c, paragraph 11, and also CDDH, Volume II, paragraphs 18, 19, 21, 185, 188, 190, 191.

terms of Article 15. b of the Statute of the Council of Europe,¹¹ based on the Charter's case law.

The Committee of Ministers also invited the ECSR "to make full use of the opportunities for dialogue offered by **Article 22** (non-accepted provisions) of the European Social Charter of 1961 (ETS No. 35), and to include in this exercise a dialogue with the member States that are not yet Party to the Revised Charter, with a view to encouraging them to ratify it" (emphasis added).¹² The ECSR welcomes this invitation which is consistent with its own understanding of Article 22 being part of the broader review or oversight procedures under the Charter intended to encourage full alignment of the situation of states parties with all of the Charter provisions.

Indeed, the "Contracting Parties accept[ed] 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 [all of the] rights and principles [listed under Part I of the Charter] may be effectively realised".¹³ This general undertaking is consistent with the principles of universality, indivisibility and interconnectedness or interdependence of human rights, including in their social rights dimension, which the Charter's "a la carte" system does not set aside.

The ECSR will continue its reflection on "how to **simplify follow-up reporting in the context of the collective complaints procedure**" (emphasis added).¹⁴ A decision to limit the reporting on follow-up to two cycles could already be taken by the Committee of Ministers. However, the ECSR considers that this measure should be coupled with the Committee of Ministers exercising effectively its own role in the follow-up of collective complaints by addressing recommendations to states as provided for in Article 9 of the 1995 Protocol. To avoid weakening this follow-up, the Committee of Ministers should embrace fully its responsibility under Article 9.¹⁵ Inspiration could be drawn from the procedure followed in the execution of judgements of the European Court of Human Rights in order to reinforce the Committee of Ministers procedures under the Charter.

Some of the developments mentioned above and many other proposals made by the CDDH entail added costs. The CDDH referred several times the question of **adequate resources**,¹⁶ acknowledging in particular that the ECSR's monitoring activities require **additional staff**. Increasing the number of Committee members should not be discarded as a means of increasing the ECSR's capacity. It came to a similar conclusion as regards providing support to member states and developing visibility and awareness raising activities. Resources should indeed be central to any reform process designed to strengthen the Charter system and to improve the implementation of social rights.

At present, because of staff cuts and reliance by the Department of the European Social Charter on temporary staff, the Committee is facing significant challenges in terms of its resourcing. Under-resourcing limits considerably the Committee's operational capacity as well as its ability to implement other proposals made by the CDDH. Reforms and additional demands placed on the ECSR and its Secretariat without adequate resourcing threatens to overwhelm, weaken and ultimately undermine, rather than strengthen, the Charter system. This

¹¹ Statute of the Council of Europe (CETS 001), London, 5 May 1949, Article 15. b: "In appropriate cases, the conclusions of the Committee may take the form of recommendations to the governments of members, and the Committee may request the governments of members to inform it of the action taken by them with regard to such recommendations."

¹² CM/Del/Dec(2019)1363/4.1c, paragraph 9, and also CDDH, Volume II, paragraphs 6, 92, 121.

¹³ European Social Charter, introductory paragraph to Part I. See also Part III, Article A.1.a of the Revised Charter (Part III, Article 20.1.a of the 1961 Charter).

¹⁴ CM/Del/Dec(2019)1363/4.1c, paragraph 3.

¹⁵ Cf. Article 9 of the 1995 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, incorporated into Part IV, Article D, of the Revised European Social Charter (1996).

¹⁶ Cf. CDDH, Volume II, paragraphs 12, 15, 124, 143, 223.

is particularly so given that the Committee's capacity is inevitably limited due to its status as a part-time body.

Other proposals made by the CDDH related to the work of the ECSR

Many of the proposals made by the CDDH which concern the ECSR's work (enhanced dialogue, simplifying procedures including as regards the reporting procedure, ...) are work in progress.

The CDDH reports and proposals assert that there is a need to **“reassure” member states** of the fair and efficient functioning of the collective complaints procedure and, to this end, increase both the legal certainty and the efficiency of that procedure to improve the implementation of social rights.¹⁷

More particularly, the CDDH encouraged the ECSR to consider: a more adversarial conduct of the collective complaints procedure; to increase the exchange of arguments with the parties on the admissibility of complaints; the possibility for States to comment on questions of admissibility; the possibility for States to comment on third-party interventions; increasing dialogue (in written and oral proceedings) on questions of fact and law; transmitting to the parties specific questions that require clarification; relying on sufficient data and accurate information; encouraging written observations (Rule 32A) by the Commissioner and the Conference of INGOs.

The ECSR wishes to point out that it is already attentive to the adversarial nature of the collective complaints procedure and that many other of the CDDH's proposals are already in place, including a closer scrutiny of complaints at the admissibility stage.

It should also be recalled that, following the seminar on “reinforcing social rights protection in Europe to achieve greater unity and equality”, organised under the auspices of the French Presidency of the Committee of Ministers on 19 September 2019, representatives of the fifteen Council of Europe member states that already accept collective complaints prompted others to reinforce social rights protection by accepting this monitoring procedure.¹⁸ This public call shows a strong support for the collective complaints procedure. Other countries might wish to be “reassured” and inspired by, or follow the informed advice of, those that have a hands-on experience with the procedure.

That said, the ECSR is willing and it is permanently attentive to the possibilities to improve its working methods and to enhancing communication with member states and other interlocutors. As indicated earlier, it also considers that it will be useful to enhance the dissemination of information about criteria, standards and case law, activities that would benefit from additional resources.

The ECSR looks forward to pursuing its **dialogue with the Governmental Committee**, exchanges that were slowed down due to the pandemic. The range of topics is wide and includes the “desirability and potential modalities for the ECSR to have the assistance of an ad hoc expert, who should satisfy the requisite criteria for ECSR membership, in proceedings concerning a specific collective complaint where no national of the respondent State is a member of the ECSR at that time”.¹⁹

¹⁷ Cf. CDDH, Volume II, paragraph 96, and also paragraphs 8, 15, 133, 135.

¹⁸ Call by the representatives of the 15 States Parties to the European Social Charter having accepted the 1995 Additional Protocol and the collective complaints procedure to reinforce social rights protection in Europe <https://rm.coe.int/call-by-the-representatives-of-the-15-states-parties-to-the-esc-for-ac/1680983870>

¹⁹ CM/Del/Dec(2019)1363/4.1c, paragraph 8, and CDDH, Volume II, paragraph 143.

The CDDH suggested various ways of improving synergy and **coherence between different legal instruments or systems**, and avoid uncertainty.²⁰ When interpreting and applying Charter provisions, while the ECSR is bound by and stays within its mandate, it is mindful of and relies where appropriate on EU, ILO and other relevant standards. Regard to other legal instruments or systems and “harmonisation” cannot be at the expense of undermining the Charter. As regards more particularly disagreement of some states parties with the ECSR’s interpretation of the personal scope of the Charter, it is the Committee’s mandate to assess from a legal standpoint the compliance of national law and practice with the obligations arising from the Charter.

On the other hand, it would also be desirable that those other organisations and entities are aware of the European Social Charter provisions and the case law developed by the European Committee of Social Rights. There is already a growing body of case law at national level in some member states, and some—albeit scarce—references to the Charter in the case law of the European Court of Human Rights. Reciprocal awareness is necessary.

Further remarks on matters raised by the CDDH

The CDDH strongly encouraged that concrete action be taken towards reinforcing the implementation of social rights. The senior officials and human rights experts who represent the 47 Council of Europe member states in the CDDH agreed that *“European States should be proud of their traditional and consolidated high standards in the protection of social rights and that strengthening the system of the Charter, which reflects the most complete and up-to-date expression of the European perception of social rights, strengthens the European model”*.²¹

The ECSR welcomes this positive message and is eager to be apprised of the follow-up given by the Committee of Ministers to the **CDDH’s calls for political support**, also in light of the declared EU priorities for cooperation with the Council of Europe (which include social rights and the Charter).^{22, 23, 24} The EU priorities resonate positively with the CDDH proposals.²⁵ The ECSR is also intrigued by the question of **accession by the European Union to the European Social Charter**, not only raised by the CDDH but also encouraged by certain EU institutions.²⁶

The ECSR has taken note of the many and valuable proposals made by the CDDH in respect of **follow-up to the Committee’s conclusions and decisions or findings**, and as regards **implementation of social rights by member states** generally.²⁷ While noting that much of the action proposed in this respect does not fall within the Committee’s own remit, it can broadly support these suggestions. The production of Charter **related communication and**

²⁰ Cf. CDDH, Volume II, paragraphs 33, 34, 35, 249, 250, 251, 253, 254, 255.

²¹ Cf. CDDH, Volume II, paragraphs 7, 91.

²² Cf. CDDH, Volume II, paragraphs 6, 92, 100, 221.

²³ Council conclusions on EU priorities for cooperation with the Council of Europe 2020-2022, approved by the Council (Foreign Affairs) on 13 July 2020; the EU Council’s conclusions can be downloaded from <https://www.consilium.europa.eu/media/45002/st09283-en20.pdf>

²⁴ Cf. also CDDH, Volume II, paragraphs 9, 37, 98, 142 (a concrete common work programme, or process, aimed at: obtaining further commitments by the member States under the treaty system of the Charter; further acceptance by member States of the collective complaints procedure; addressing queries on and objections to States’ further commitments; improving the implementation of social rights in Europe by a strengthened Charter treaty system; implementing the CDDH proposals based on a clear road map).

²⁵ Cf. CDDH, Volume II, paragraphs 100, 251, 254, 255.

²⁶ For example: European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights; and FRA Director, Chairman’s statement, Fundamental Rights Forum, 2018.

²⁷ Cf. for example, CDDH, Volume II, paragraphs 18, 19, 20, 21, 22, 23, 26, 27, 28, 99, 185, 188, 189, 190, 191, 192, 193, 211, 212, 214, 215, 216, 217, 218, 219, 220.

training material, including further HELP modules, should be high on the priority list.²⁸ Knowledge sharing among member states and the dissemination of information on good practice can also contribute to improving the implementation of social rights.²⁹ As noted above, the possibility of providing general guidance to member states based on the Committee's case law under the terms of Article 15. b of the Statute of the Council of Europe deserves consideration.

Finally, the ECSR strongly supports the suggestions concerning the European Court of Human Rights, in particular on **training and awareness raising on the Charter for ECHR judges and lawyers**, incorporating Charter issues into ECHR fact sheets and developing Charter information notes focussed on matters of potential interest for the Court. Further awareness raising is indeed necessary. The secondment of a lawyer from the Court to the Charter Department since mid-2019 was a welcome and valuable experience that should provide future returns. Further secondments might usefully be encouraged.

Conclusion

The European Committee of Social Rights (ECSR) will continue its efforts to simplify and improve the reporting and collective complaints procedures. In this connection it invites the Committee of Ministers to:

- Support the steps being taken by the ECSR with a view to offering more flexibility to the current system of thematic reports and reference periods provided for in document CM(2014)26 in order to allow the ECSR to set, in consultation with the Governmental Committee, priorities and targeting emerging issues which may sometimes involve provisions across the Charter and require further dialogue with states parties.
- Reconsider the Committee of Minister's own approach to making recommendations to states parties to the Charter when the ECSR has found grounds for non-conformity on serious or persistent matters (Article 28 of the 1961 Charter or Part IV, Article C, Article 28 of the Revised Charter) or when it found violations of the Charter in decisions on collective complaints (Article 9 of the 1995 Protocol), and instruct the Governmental Committee and GR-SOC (and the Secretariat) entrusted with the preparation of its decisions accordingly.
- Subject to implementing the preceding proposal so as not to weaken the follow-up process in respect of collective complaints, limit reporting to two cycles, or adjust the procedure in order to ensure enhanced dialogue with the authorities of the state party concerned during the preparation of Committee of Ministers decisions on follow-up.
- Increase the resources allocated to work related to the European Social Charter, especially the ECSR, as regards staff, so that resources and implementation capacity reflect the priority that the Council of Europe accords to this treaty system, to increasing the number of parties that accept collective complaints and to social rights generally.

The ECSR would also invite the Committee of Ministers and Council of Europe member states to translate their declared support for improving the implementation of social rights into action. A top priority should be to encourage member states that have not yet done so to ratify the Revised Charter, to accept additional Charter provisions (preferably all of them) and to embrace the collective complaints procedure.

²⁸ Cf. for example, CDDH, Volume II, paragraphs 28, 218.

²⁹ Cf. CDDH, Volume II, paragraphs 18, 19, 20, 21, 185, 188, 190, 191, 192.

Given the magnitude of the challenge to improve the implementation of social rights and the political complexity of these objectives, the ECSR would suggest that the Committee of Ministers consider pursuing the discussion on strengthening the Charter system through an ad hoc Conference of the parties aimed at giving impulse to the reform process. The Conference could be invited to confirm ongoing developments, adopt decisions needed in the short term and set the bases for longer term developments. The agenda might also include consideration of the desirability for a new Protocol to the Charter, fit for the social challenges of the third decade of the 21st century. The following could be among the topics to address, with a possible new Protocol in mind:

- improving the “à la carte” system (under Part III, Article A, of the Revised Charter) by expanding the number of the Charter’s “core provisions” and increasing the minimum number of such provisions to be accepted by States parties;
- overcoming the optional nature of the collective complaints procedure (under Part IV, Article D, of the Revised Charter);
- increasing the number of ECSR members and improving the shaping of their profile (under Part IV, Article C of the Revised Charter); and also
- adding new rights to those listed in the Revised Charter (for example, the right to a healthy or decent environment, and the right to food and water), and extending the scope of application of the Charter in terms of persons protected (Article 1 of the Appendix to the Charter).