



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

**Statement of interpretation
on the right to protection of health in times of pandemic**

(adopted by the Committee on 21 April 2020)

This text may be subject to editorial revision

The function of the European Committee of Social Rights is to rule on the conformity of States Parties' national law and practice with the European Social Charter (revised), the 1988 Additional Protocol and the 1961 European Social Charter.

The Committee is composed of 15 independent, impartial members who are elected by the Committee of Ministers of the Council of Europe for a term of office of six years, renewable once.

It adopts conclusions within the framework of the reporting procedure and decisions under the collective complaints procedure.

Its conclusions and decisions are available on the website of the European Social Charter and in the case law database available on this site.

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Article 11 of the European Social Charter (“the Charter”) enshrines the right to protection of health. In terms of that right, States Parties have undertaken to take appropriate measures designed, inter alia, to prevent epidemic diseases (Article 11§3), remove the causes of ill health (Article 11§1), and provide advisory facilities for the promotion of health and the encouragement of individual responsibility in matters of health (Article 11§2).

In times of pandemic, during which the life and health of many people are under serious threat, guaranteeing the right to protection of health is of crucial importance, and governments should take all necessary steps to ensure that it is effectively guaranteed.

In the light of this, States Parties must ensure that the right to protection of health is given the highest priority in policies, laws and other actions taken in response to a pandemic.

First, States Parties must take all necessary emergency measures in a pandemic. This includes adequate implementation of measures to prevent and limit the spread of the virus. Such measures may include, as in the present Covid-19 crisis, testing and tracing, physical distancing and self-isolation, the provision of adequate masks and disinfectant, as well as the imposition of quarantine and ‘lockdown’ arrangements. All such measures must be designed and implemented having regard to the current state of scientific knowledge and in accordance with relevant human rights standards.

Furthermore, States Parties must take all necessary measures to treat those who fall ill in a pandemic, including ensuring the availability of a sufficient number of hospital beds, intensive care units and equipment. All possible measures must be taken to ensure that an adequate number of healthcare professionals are deployed and that their working conditions are healthy and safe (see also Article 3 of the Charter). This includes the provision of necessary personal protective equipment.

In line with Article 11§2, States Parties must take all necessary measures to educate people about the risks posed by the disease in question. This entails carrying out public awareness programmes so as to inform people about how to mitigate the risks of contagion and how to access healthcare services as necessary.

Further, as regards prevention, the Committee recalls that precautionary measures are a key aspect of the right to protection of health. This implies that when a preliminary scientific evaluation indicates that there are reasonable grounds for concern regarding potentially dangerous effects of virus or other factors on human health, then the States Parties must take adequate measures to prevent those risks (see *International Federation for Human Rights (FIDH) v. Greece*, Complaint No. 72/2011, decision on the merits of 23 January 2013, §150).

The Committee wishes to recall that many of the above measures are required to comply not only with the obligation to protect the right to protection of health under Article 11, but also with other Charter obligations related to health, including obligations in respect of the right of workers to safe and healthy working conditions (Article 3), the right of persons in need of social and medical assistance (Article 13), the rights of the elderly to protection and health care (Article 23), the right of children and young persons to protection and health care (Article 7§§9-10 and Article 17§1).

During a pandemic, States Parties must take all possible measures as referred to above in the shortest possible time, with the maximum use of available financial, technical and human resources, and by all appropriate means both national and international in character, including international assistance and cooperation.

Furthermore, States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for other persons affected, including especially their families on whom falls the heaviest burden in the event of institutional shortcomings (*International Association Autism-Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53).

In this regard, the Committee recalls that the right to protection of health includes the right of access to healthcare, and that access to healthcare must be ensured to everyone without discrimination. This implies that healthcare in a pandemic must be effective and affordable to everyone, and that groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status must be adequately protected by the healthcare measures put in place.

When seeking to give effect to the right to protection of health during a pandemic, health equity as defined by the World Health Organisation (WHO) should be the goal: specifically, the absence of avoidable, unfair, or remediable differences among groups of people, whether those groups are defined socially, economically, demographically or geographically or by other means of stratification. States Parties must take specific, targeted measures to ensure enjoyment of the right to protection of health of those whose work (whether formal or informal) places them at particular risk of infection.

In addition, under Article 11§3 States Parties must operate widely accessible immunisation programmes. They must maintain high coverage rates not only to reduce the incidence of these diseases, but also to neutralise the reservoir of virus and thus achieve the goals set by the WHO to eradicate a range of infectious diseases. Vaccine research should be promoted, adequately funded and efficiently coordinated across public and private actors.

The Committee deems it necessary to emphasise that the right to protection of health must be protected not merely theoretically, but also in fact. Implementation of the Charter requires States Parties not only to take legal action but also practical action making available the resources and the operational procedures necessary to give full effect to the rights specified therein (International Commission of Jurists (ICJ) v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32; European Federation of National Organisations working with the Homeless (FEANTSA) v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009, §28; International Association Autism-Europe v. France, Complaint No.13/2002, decision on the merits of 4 November 2003, §53).

All this is particularly true and absolutely crucial with regard to the right to protection of health in times of pandemic, in order for the States Parties to act in conformity with their obligations under the Charter and, most importantly, to limit the number of deaths and health problems caused in such situations.

In this regard the Committee recalls that the right to protection of health guaranteed in Article 11 of the Charter complements the fundamental rights enshrined in Articles 2 and 3 of the European Convention on Human Rights, and that the rights relating to health embodied in the two treaties are inextricably linked, since “human

dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention of Human Rights – and healthcare is a prerequisite for the preservation of human dignity” (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of 3 November 2004, §31).

While this statement of interpretation focuses on the right to protection of health, the Committee wishes to point out that pandemics – and state responses thereto – can pose significant risks to a wide range of rights set out under the Charter. These include, inter alia: the right to safe and health working conditions (Article 3); the right of children to protection from physical and moral hazards (Article 7§10); the right to social security (Article 12); the right to social and medical assistance (Article 13); the rights of persons with disabilities (Article 15); the right of families and children to social legal and economic protection, including education (Articles 16 and 17) and the rights of the elderly (Article 23). Furthermore, historic and ongoing shortcomings in state efforts to secure Charter rights such as the right to housing (Article 31) and the right to freedom from poverty and social exclusion (Article 30) feed directly into the vulnerability of particular social groups in a pandemic. The major impact of a pandemic and of state measures in response to it on employment and labour rights, both individual and collective, should also not be overlooked. People must not be left without minimum means of subsistence due to the lockdowns and lack of economic activity during a pandemic. A further statement of interpretation will address these issues in greater detail.

Finally, the Committee wishes to emphasise that it will closely monitor the situation, and the measures taken by the States Parties, within the framework of the Charter’s procedures, the reporting procedure and the collective complaints procedure (as the case may be). More particularly as regards the reporting procedure, the Committee will focus its examination of state reports for Conclusions 2021 on the right to protection of health and for this purpose, in the coming weeks, it will address a set of targeted questions to States, including questions on epidemiological readiness and immunisation measures generally and – in view of the exceptional situation – specifically on the immediate response to the current Covid-19 pandemic.