



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

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Case Document No. 4

International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece
Complaint No.173/2018

**OBSERVATIONS BY THE EUROPEAN
TRADE UNION CONFEDERATION**

Registered at the Secretariat on 30 July 2019

ETUC OBSERVATIONS

Collective Complaint

***International Commission of Jurists (ICJ) and
European Council for Refugees and Exiles (ECRE)
v. Greece***

Complaint No. 173/2018

(30/07/2019)

**Observations
by the
European Trade Union Confederation
(ETUC)**

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1 In availing itself of the opportunity provided in the Collective Complaints Procedure Protocol (CCPP - Article 7§2) the European Trade Union Confederation (ETUC) would like to submit the following observations. The ETUC welcomes the fact that the respondent State has ratified not only the Revised European Social Charter (RESC)¹ but also the Collective Complaints Procedure Protocol (CCPP). However, the ETUC would invite the Government to take the appropriate steps to accept all provisions of the RESC.

Introduction

2 The complainant organisations (ICJ and ECRE, the complainants), allege that serious systemic flaws in Greek law, policy and practice, which deprive unaccompanied children in Greece (both on the mainland and islands) and accompanied migrant children on the Greek islands of rights to housing, health, social and medical assistance, education, and social, legal and economic protection, are contrary to the obligations of Greece under the European Social Charter. More specifically the complaint relates to

- Article 7§10 (the right of children and young persons to protection),
- Article 11§§1 and 3 (the right to protection of health),
- Article 13 (right to social and medical assistance),
- Article 16 (right to appropriate social, legal and economic protection for the family),
- Article 17 (right of children and young persons to appropriate social, legal and economic protection) and
- Article 31§§1 and 2 (right to housing).

3 The Committee declared the complaint admissible on 22.5.2019 and decided that it was necessary to indicate to the Government immediate measures which should be adopted.

4 From the very outset, the ETUC would like to highlight that it is strongly committed to the full and effective enjoyment of human rights in general and fundamental social rights in particular. More specifically, in the context of this complaint aiming at the protection of migrant children, the ETUC General Secretary Luca Visentini in his opening speech to the most recent ETUC Congress held in Vienna in May 2019 referred to the importance of human rights in the context of migration:²

And last but not least – fair mobility and migration, putting an end to the scandal of closed borders and fences – and implementing a fair and inclusive labour mobility and **migration** policy in Europe, **based on solidarity and respect of human rights**, on integration and full equal treatment for all.

5 In a Conference in 2016 devoted to migration issues trade union leaders underlined the trade union support for a humanitarian and European response to the many men, women and children seeking shelter from conflict in the EU.

¹ Unless indicated otherwise, these Observations, for reasons of practicability, will only refer to the ESC (in the content of the RESC).

² <https://www.etuc.org/en/speech/etuc19-congress-opening-speech-luca-visentini-etuc-general-secretary>

In particular, the leaders highlighted European trade unions' call for the EU and its **Member States** to

- **support individuals** and organisations that are working to give asylum-seekers a **safe and decent life** in Europe;
- allocate EU funding to countries receiving refugees;
- open legal safe routes for asylum-seekers and stop paying Turkey to escape their own international obligations;
- integrate migrants and refugees into the labour market, ensuring equal pay and conditions for local and migrant workers;
- **invest in public services** and economic growth to benefit both refugees and local communities.³

6 Against this background, these Observations aim at fulfilling these objectives by providing the European Committee of Social Rights (ECSR or Committee) with as much as possible additional information on the problems at issue. As the complaint is very well reasoned and documented the ETUC will limit itself to new (i.e. consisting of material arisen mainly after the introduction of the complaint) or additional information (see below I.) and arguments (see below II.).⁴

I. Additional (new) information

A. *International law and material*

7 The importance and legal significance of international standards and their interpretation and application is generally recognised, in particular by the ECSR.⁵ Accordingly, the complaint refers very extensively and in a nearly exhaustive manner to all relevant international standards and the respective case law. Nevertheless, the ETUC would like to add some pertinent references to international law and material to the description provided in the complaints.

1. United Nations

8 Having been extensively referred to, the quotations and references to UN instruments are not repeated here. Nevertheless, the main provision of the Universal Declaration of Human Rights (UDHR) should be recalled in particular in the context of the present complaint because it requires in its very first article that human dignity has to be respected. This is in particular relevant for the protection of (one of) the most vulnerable group of persons, the migrant children.

Article 1

³ <https://www.etuc.org/en/pressrelease/trade-unionists-unite-rome-refugees-rights>

⁴ At an editorial level, it is indicated that emphases in the following quotations added by the ETUC are highlighted in bold (respective footnotes are, in principle, omitted), whereas the emphasis in the original texts are highlighted in italics.

⁵ See Council of Europe (ESC), Digest of Decisions and Conclusions of the European Committee of Social Rights ([Digest](#) 2018), Part II, vii.

All human beings are born **free and equal in dignity and rights**. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. [...]

2. International Labour Organisation

a) Fundamental Declarations

- 9 On the basis of the devastating consequences of World War II the ILO has developed (already in 1944) in its 'Declaration of Philadelphia' the fundamental principles and aims by which the organisation should be governed throughout all its future activities. Already at that time it devoted specific interest to the 'provision for child welfare'⁶ In its 1998 'Declaration on Fundamental Principles and Rights at Work and its Follow-up' it enshrined 'the effective abolition of child labour'⁷ as one of the four the principles concerning the fundamental rights.

b) Convention No. 182⁸

- 10 Out of the eight core Conventions, the two conventions protecting children are Conventions No. 138 and 182; in particular the latter is of specific relevance for this complaint. In order to better explain the context, the main provisions are quoted in full. In particular the references to trafficking and education should be noted.

(1) Text

Article 1

Each Member which ratifies this Convention shall take immediate and effective measures to secure the **prohibition and elimination of the worst forms of child labour as a matter of urgency**.

Article 2

For the purposes of this Convention, the term **child** shall apply to all persons under the age of 18.

Article 3

For the purposes of this Convention, the term **the worst forms of child labour** comprises:

- (a) all forms of slavery or practices similar to slavery, such as the sale and **trafficking of children**, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

⁶ [ILO Declaration of Philadelphia, Authentic text](#) under III(h).

⁷ [ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up](#) under 2.(c).

⁸ [C182 - Worst Forms of Child Labour Convention, 1999 \(No. 182\)](#); ratified by Greece on 06.11.2001.

- (d) work which, by its nature or the circumstances in which it is carried out, is **likely to harm the health, safety or morals of children**.

Article 7

1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.

2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:

- o (a) prevent the engagement of children in the worst forms of child labour;
- o (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
- o (c) ensure **access to free basic education**, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
- o (d) **identify and reach out to children at special risk**; and
- o (e) take account of the special situation of girls.

3. Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

(2) Interpretation

(a) *General Survey 2012*

- 11 In its General Survey 2012,⁹ the Committee on the Application of Conventions and Recommendations (CEACR) described the requirements which derive from Convention No. 182 in relation to Article 7(2) as follows:

Moreover, consistent with the holistic approach of Convention No. 182, Article 7(2) requires Member States to take effective and time-bound measures to address the worst forms of child labour, taking into account the **importance of education** in eliminating child labour.¹⁰

(b) *In relation to Greece*

- 12 In 2015, the CEACR addressed a 'direct request' to Greece in relation to Article 7 Clause (d) ('Identifying and reaching out to children at risk'):¹¹

2. *Unaccompanied minors*. In its previous comments, the Committee noted that the Committee on the Rights of the Child (CRC) expressed concern about the great number

⁹ Report III(1B): [Giving globalization a human face](#), General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, 2012.

¹⁰ Para. 431, see also paras. 439 and 460.

¹¹ [Direct Request](#) (CEACR) - adopted 2015, published 105th ILC session (2016) Worst Forms of Child Labour Convention, 1999 (No. 182) - Greece (Ratification: 2001)

of migrant and asylum-seeking children, including unaccompanied children, arriving daily at Greece's borders, the lack of reception facilities and the poor quality of the existing ones.

The Committee notes the Government's statement that identification and support of unaccompanied minors is a major priority, as it is the main group at risk of being trafficked and exploited. Towards this end, potential victims of child trafficking are protected in 11 shelters, while the National Centre for Social Solidarity (EKKA) manages all relevant applications. The Committee further notes the Government's information with regard to the system of handling of requests for housing made by asylum seekers and unaccompanied minors by the EKKA. The Government indicates that according to EKKA statistics, 823 requests for housing of unaccompanied minors have been recorded in 2012, 1,150 requests in 2013 and 2,390 requests in 2014. The Committee further notes from the Government's report that the International Organization for Migration (IOM) has been running a programme for voluntary return and reintegration for unaccompanied minors funded by European Union (EU) countries. In addition, the IOM provides funding to three NGOs which run a total of four centres for unaccompanied minors. These centres provide legal and psychosocial support as well as health services. However, the Committee notes the Government's statement that due to the large number of requests for housing of unaccompanied minors, there is a long waiting period since the available accommodation centres are not enough to meet the needs. *The Committee requests the Government to continue to take the necessary measures to provide appropriate support and assistance to unaccompanied minors so as to prevent them from engaging in the worst forms of child labour. It also requests the Government to provide information on measures taken in this regard as well as on the number of unaccompanied children who had been provided protection and assistance at the accommodation centres or provided with appropriate shelter.*¹²

3. Council of Europe

- 13 The Council of Europe (CoE) is characterised by the two main human rights instruments, the European Convention on Human Rights (ECHR, see below a)) and the European Social Charter (ESC, see below b)) which is at the very core of this complaint. However, there are also other relevant documents (see below 27).

*a) European Convention on Human Rights*¹³

- 14 The complaint refers extensively to the relevant provisions of the ECHR and the respective ECtHR's case law. Nevertheless, there are new developments which the Committee should also take account of:
- 15 First, there are two new judgments concerning Greece:
- 16 The first case concerned the placement of nine migrants, unaccompanied minors, in different police stations in Greece, for periods ranging between 21 and 33 days. The migrants were

¹² Nevertheless, it should be noted that in 2018 the CEACR stated: 'The Committee notes the information provided by the Government, which answers the points raised in its previous direct request, and has no further matters to raise in this regard.'

¹³ http://www.echr.coe.int/Documents/Convention_ENG.pdf

subsequently transferred to the Diavata reception centre and then to special facilities for minors. In a Chamber judgment of 28.02.2019 in the case of [H.A. and Others v. Greece](#) (no. 19951/16) the ECtHR has unanimously held that there had been:

- a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights on account of the conditions of the applicants' detention in the police stations;
- no violation of Article 3 as regards the living conditions in the Diavata centre;
- a violation of Article 13 (right to an effective remedy) taken together with Article 3;
- a violation of Article 5 §§ 1 and 4 (right to liberty and security / right to a speedy decision on the lawfulness of a detention measure).

17 The core in relation to the present case are the living conditions in the Diavata centre. While noting that there was a difference in describing the facts the ECtHR did not find a violation taking into account several factors such as¹⁴

- The center
 - o was an open structure, where the applicants could leave and enter as they wished,
 - o (its safe zone) was managed by a non-governmental organization.
- The migratory flows to Greece (2015/16) created an unprecedented migration and humanitarian crisis that called for the adoption of urgent measures with a sharp increase in requests for accommodation.
- The United Nations High Commissioner for Refugees did not issue criticism in this respect.

18 The main problem in this assessment is that the ECtHR has not taken into account other relevant factors (such as the over-crowding in the center or obligations deriving from the CRC, albeit quoted as such in para. 135 of the judgment).

19 But even assuming that these factors would be sufficient to deny a violation of Article 3 ECHR it is clear that the influx situation has dramatically decreased in the meantime and the situation is still insufficient.

20 Moreover, this is only one specific situation which the ECtHR had to deal with. In the present case the general ('collective') situation is at stake. This is demonstrated by the following judgment in which the First Section came to the opposite conclusion:

¹⁴ 174. De son côté, la Cour note que le centre de Diavata était une structure ouverte, où les requérants pouvaient sortir et entrer à leur guise. Par ailleurs, la Cour ne peut négliger le fait qu'entre janvier 2015 et mars 2016, les flux migratoires vers la Grèce ont créé une crise migratoire et humanitaire sans précédent qui appelait l'adoption des mesures urgentes (voir, mutatis mutandis, *Khlaifia et autres c. Italie* [GC], no 16483/12, CEDH 2016). Dans ce contexte, il y a eu une augmentation brutale des demandes d'hébergement adressées à l'EKKA, l'organisme chargé de gérer ce type de demandes de la part des demandeurs d'asile et des mineurs non accompagnés (paragraphe 129-130 ci-dessus). La « safe zone » du centre de Diavata, gérée par une organisation non gouvernementale, avait été créée afin de répondre aux besoins des mineurs non accompagnés qui se trouvaient dans certains secteurs du nord de la Grèce (paragraphe 101 ci-dessus). La Cour note aussi que, dans son intervention devant la Cour, le Haut-Commissaire des Nations Unies pour les Réfugiés qui évoque la création des « safe zones » dans des centres situés près de Thessalonique, dont celle de Diavata, n'émet pas des critiques à leur égard (paragraphe 163 ci-dessus).

- 21 In the second and very recent judgment of 13.06.2019 in the case of [Sh.D. and Others v. Greece and 6 other States](#) (no. 14165/16)¹⁵ concerning the living conditions in Greece of five unaccompanied migrant minors from Afghanistan, the ECtHR unanimously held that there had been a violation of Article 3 ECHR (prohibition of inhuman or degrading treatment):
- Firstly, the Court held that the conditions of detention of three of the applicants in various police stations amounted to degrading treatment, observing that being detained in these places was liable to arouse in the persons concerned feelings of isolation from the outside world, with potentially negative repercussions on their physical and mental well-being.
 - Secondly, the Court held that the authorities had not done all that could reasonably be expected of them to fulfil the obligation to provide for and protect four of the applicants, who had lived for a month in the Idomeni camp in an environment unsuitable for adolescents. That obligation was incumbent on the Greek State with regard to persons who were particularly vulnerable because of their age.¹⁶
- 22 These two judgments, in particular the last one, continue to shed light on the most serious problems unaccompanied minors are faced with in Greece and that the Greek State is definitively lacking even minimal protection for this specifically vulnerable group of migrants. They also highlight the procedural aspects which have to be taken seriously, too.
- 23 Moreover, it should be taken into account that a further application in the case [M.C. v. Greece](#) (no. 42565/16) has been lodged to the ECtHR on 25.07.2016 and was communicated to the Greek Government on 13.02.2019. Although only indirectly dealing with the human rights of unaccompanied minors it demonstrates that even lawyers assisting the latter might face inhuman or degrading treatment (in this case while being on the premises of the Athens Asylum Service).
- 24 Second, also **other States** are faced with similar applications. The case of [Khan v. France](#) concerned the failure by the French authorities to provide an unaccompanied foreign minor with care before and after the dismantling of the makeshift camps set up in the southern section of the "lande de Calais" ("Calais heath"). In its judgment of 28.02.2019 (application no. 12267/16) the ECtHR held that there had been a violation of Article 3 ECHR (prohibition of inhuman and degrading treatment).
- 25 In particular, the Court was not convinced that the authorities had done all that could reasonably be expected of them to fulfil the obligation of protection and care incumbent on the respondent State vis-à-vis an unaccompanied foreign minor unlawfully present on French

¹⁵ To which the complainants have submitted a third party intervention (see also para. 5 of the complaint).

¹⁶ 60. Or, ces circonstances conduisent en elles-mêmes à s'interroger sur le respect à leur égard, par l'État défendeur, de l'obligation de protection et de prise en charge des mineurs isolés étrangers qui résulte de l'article 3 de la Convention (voir, *mutatis mutandis*, *Khan*, précité, § 88).

61. Les requérants ont ainsi vécu durant un mois dans le camp d'Idomeni, dans un environnement inadapté à leur condition d'adolescents, que ce soit en termes de sécurité, de **logement**, d'hygiène ou d'accès à la nourriture et aux **soins**, et dans une précarité incompatible avec leur jeune âge. Eu égard à ce constat, la Cour n'est pas convaincue que les autorités ont fait tout ce que l'on pouvait raisonnablement attendre d'elles pour répondre à l'obligation de prise en charge et de protection des requérants susmentionnés, qui pesait sur l'État défendeur s'agissant des personnes particulièrement vulnérables en raison de leur âge.

territory, that is to say an individual belonging to the category of the most vulnerable persons in society. For several months the applicant had thus lived in the “lande de Calais” shanty town, in an environment completely unsuited to his status as a child and in a situation of insecurity rendered unacceptable by his young age.

- 26 In conclusion, in the most recent judgment the ECtHR has found a violation of Article 3 by Greece because of the degrading living conditions the minors were confronted with. But even assuming that there are situations which might not have exceeded the threshold of gravity required by Article 3 ECHR to be described as inhuman or degrading treatment the ESC offers a much higher level of protection in several respects.

b) European Social Charter (ESC)¹⁷

- 27 Again, the complaint refers extensively [and even exhaustively] to the relevant material.

(1) Digest 2018

- 28 In its Digest 2018, the ECSR described its ‘*Interpretation of the Charter in light of the European Convention on Human Rights and the case-law of the European Court of Human Rights*’ in detail by i.a. referring to the ‘Right of foreign minors to protection’. In accordance with the findings of the Court in the case of *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* of 2006, the Committee considered ‘that foreign minors, especially if unaccompanied, should not be deprived of the protection their status warrants in order to reconcile the protection of fundamental rights and the constraints imposed by a state’s immigration policy.’

- 29 More concretely, in relation to **Article 17(1) and the ‘Right to assistance’** it stated:

Article 17 guarantees the right of children, including children in an irregular situation and non-accompanied minors to care and assistance, including medical assistance and **appropriate accomodation**.

Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

Application of paragraph 1 (b) of Article 17 is of particular importance, because failure to apply it will obviously expose a number of children and young persons to **serious risks to their lives or physical integrity**.

States Parties must take the necessary and appropriate measures to guarantee the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for **human dignity**.

The system for the reception of unaccompanied foreign minors must respect the dignity of the children and the detention of a minor in waiting areas, together with adults, and/or accommodated in hotels, deprived by the assistance of a guardian cannot be in the best interest of the child.

¹⁷ [European Social Charter \(Revised\)](#), 03.05.1996, European Treaty Series - No. 163.

Medical age assessments can have serious consequences for minors and that the use of bone testing to determine the age of unaccompanied foreign minors is inappropriate and unreliable. The use of such testing therefore violates Article 17§1 of the Charter.

Immediate **assistance is essential** since it allows assessing material needs of young people, the need for medical or psychological care in order to set up a child support plan.

- 30 In relation to the personal scope the Committee dealt more extensively with '*Foreigners in an irregular situation*' in the following terms which are quoted in full because of their fundamental character (also for interpretation purposes):

The restriction of the personal scope included in the Appendix should not be read in such a way as to deprive foreigners coming within the category of unlawfully present migrants of the protection of the **most basic rights** enshrined in the Charter or to impair their fundamental rights such as the right to life or to physical integrity or the **right to human dignity**.

Beyond the letter of paragraph 1 of the Appendix, the restriction on personal scope should be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose and in harmony with other relevant and applicable rules of international law (Vienna Convention on the Law of Treaties, 23 May 1969, Article 31, paragraphs 1 and 3), including first and foremost the peremptory norms of general international law (*jus cogens*), which take precedence over all other international norms and from which no derogation is permitted (Vienna Convention on the Law of Treaties, 23 May 1969, Article 53).

The Charter is a **human rights treaty** which aims to implement at a European level, as a complement to the European Convention on Human Rights, the rights guaranteed to all human beings by the Universal Declaration of Human Rights of 1948. The purpose of the Charter, as a **living instrument** dedicated to the **values of dignity, equality and solidarity**, is to give life and meaning in Europe to the fundamental social rights of all human beings. It is precisely in the light of that finding that a teleological approach should be adopted when interpreting the Charter, i.e. it is necessary to seek the interpretation of the treaty that is most appropriate in order to realise the aim and achieve the object of this treaty, not that which would restrict the Parties' obligations to the greatest possible degree. This teleological approach leads the Committee not to interpret paragraph 1 of the Appendix in such a way as to deny **foreign minors unlawfully present** in a country (whether accompanied or unaccompanied) the **guarantee of their fundamental rights**, including the right to preservation of their **human dignity**.

In addition, a strict interpretation of the Appendix, which would deprive foreign minors unlawfully present in a country of the guarantee of their fundamental rights, would not be in harmony with the **United Nations Convention on the Rights of the Child**, which all Member States of the Council of Europe have ratified. It is therefore justified for the Committee to have regard to this convention, adopting the interpretation given to it by

the United Nations Committee on the Rights of the Child, when it rules on an alleged violation of any right conferred on children by the Charter.

Furthermore, this choice in applying the Charter follows from the legal need to comply with the peremptory norms of **general international law (jus cogens)** such as the rules requiring each state to respect and safeguard each individual's right to life and physical integrity. A strict interpretation of paragraph 1 of the Appendix, which would result in the non-recognition of the States Parties' obligation to guarantee foreign minors unlawfully present in their territory the enjoyment of these fundamental rights, would be incompatible with international jus cogens.

In addition, paragraph 1 of the Appendix should not be interpreted in such a way as to expose foreign minors unlawfully present in a country to serious impairments of their fundamental rights on account of a failure to give guarantee to the social rights enshrined in the revised Charter.

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

Moreover, the risk of impairing fundamental rights is all the more likely where children – a fortiori migrant children unlawfully present in a country – are at stake. This is due to their condition as "children" and to their specific situation as "unlawful" migrants, **combining vulnerability and limited autonomy**. As a result, in particular, of their lack of autonomy children cannot be held genuinely responsible for their place of residence. Children are not able to decide themselves whether to stay or to leave. Furthermore, if they are **unaccompanied**, their situation becomes **even more vulnerable** and the State should be managed entirely by the State, which has a duty to care for children living within its territory and not to deprive them of the most basic protection on account of their "unlawful" migration status.

4. European Union (EU)

- 31 In relation to EU law the complaint is also very extensive and thorough. Nevertheless, it should be recalled that Article 3(3)(2) TEU explicitly refers to the right of the child as one of the Union's objectives:

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and **protection of the rights of the child**.

32 Moreover, In aiming at giving social rights a new impetus the three EU institutions have proclaimed the [Interinstitutional Proclamation on the European Pillar of Social Rights](#) (November 2017).¹⁸ Its first recital refers to the above mentioned Article 3 TEU including the protection of the rights of the child. Moreover, its Chapter III 'Social Protection and Inclusion' starts with Principle 11.

11. Childcare and support to children

a. Children have the right to **affordable early childhood education and care of good quality**.

b. Children have the right to protection from poverty. Children from **disadvantaged backgrounds** have the right to **specific measures** to enhance equal opportunities.

33 Bearing in mind in particular the EU legislation on asylum and all the further material and argumentation in the complaint, the question arises, why the Commission has not yet started an infringement procedure against Greece. This question appears all the more pertinent as the Commission has recently done so in relation to Bulgaria:

On 8 November 2018 the Commission launched an **infringement procedure** against Bulgaria on the incorrect implementation of EU asylum legislation. Concerns relate in particular to the accommodation and legal representation of **unaccompanied minors**, the identification and support of vulnerable asylum seekers, the provision of adequate legal assistance, the detention of asylum seekers and safeguards within the detention procedure.¹⁹

B. Further pertinent material

1. Information provided by Governments

a) Greece

34 Besides the fact that Greece has submitted its report in relation to **Group 4: Children, families, migrants** which the ECSR is currently examining and which deals most Articles at stake in the present complaint²⁰ the Greek Government has very recently submitted its report in relation to the CRC. Here, it admits its insufficient provision in respect of shelter in the following terms:

238. The capacity in appropriate shelters for UAMs in Greece has increased from 423 beds in March 2016 to 1118 today. However, they are **still not enough** as they cover only about 1/3 of the needs.²¹

¹⁸ OJ C 428/10, 13.12.2017.

¹⁹ http://europa.eu/rapid/press-release_MEMO-18-6247_en.htm

²⁰ [2nd National Report by Greece](#) in relation to Articles 7, 8, 16, 17, 19, 27 and 31; only Article 11 and 13 are not examined in this XXI-4 cycle. Specifically, in relation to the 'Protection of Unaccompanied Minors' the Greek Government reports under Article 17(1) of the Charter.

²¹ [Report by Greece 21.12.2018 - CRC/C/GRC/4-6](#).

b) United States

35 In its Report of March 2019 on the Human Rights situation in Greece for 2018,²² the US State Department criticised the situation in several respects:

36 Shelter:

Government-run **institutions were understaffed**, however, and NGOs reported **insufficient space**, including for unaccompanied minors who by law are entitled to special protection and should be housed in special shelters. (p. 21)

37 Labour exploitation:

There were reports that unaccompanied migrant children were **particularly vulnerable to labour exploitation** and worked mainly in the agricultural and, to a lesser extent, manufacturing sectors. On June 11, NGO ARSIS reported there were approximately 300 minors selling small items or begging on street corners in Thessaloniki. (p. 33)

38 “Protective custody”:

Throughout the year, NGOs such as HRW reiterated findings from previous reports that unaccompanied minors under protective custody often lived in **unsanitary conditions** and faced **problematic access to medical treatment**, psychological counselling, or legal aid. (p. 3)

2. Information provided by NGOs

39 Several NGOs report on the current situation of (in particular unaccompanied) minor migrants.

a) ARSIS

40 The Greek NGO ARSIS (to which the complaint also refers) recently launched a new project “ORION – Actions for the Prevention of the Minors Marginalization and for the Protection of the Child”²³

The project of ARSIS – Association for the Social Support of Youth, titled “ORION – **Actions for the Prevention of the Minors Marginalization and for the Protection of the Child**” has been integrated in the Operational Program “Central Macedonia 2014-2020” ... and it is co-financed by Greece and the European Union (European Social Fund).

The goal of this project is the support of a Child Protection structure for the period of 30 months, aiming to offer improved multidisciplinary services. As a result it is pursued that the structure will have the ability to welcome and provide services to at least 1200 children and adolescents in total, developing an **holistic scheme of actions** intending to protect them, to cover their needs and to operate as a center of mobilization and

²² United States Department of State, [Greece 2018 Human Rights Report](#) (March 2019).

²³ 4 April 2019; Duration of the implementation: 30 months, January 2019 – June 2021, <http://www.arsis.gr/en/orion-actions-for-the-prevention-of-the-minors-marginalization-and-for-the-protection-of-the-child/>.

awareness raising for the local community, regarding children's rights. In this context the program implements and promotes a structure of holistic **social care and protection of minors**, providing essential support to children, adolescents and their families.

The program "Orion" pursues as results:

- To cover the needs of children regarding in kind support and to improve their quality of life.
- To provide psychosocial care to children and adolescents, and also **specialized services of child care** and protection.
- To defend the children right in **education**, decreasing the school drop-out rates, reinforcing their integration in the education system. In the same time to investigate the school drop-out reasons and to promote the methods for eliminating it.
- To detect and to protect children who live or work in the street.
- To provide as many as possible chances and experiences to the children in order to develop skills and abilities that later (during adolescence and adulthood) will help them to support and protect themselves.
- To assist the family environment of the child, so that it will be able to support him/her, or stopping the child rising within it in cases when the family environment threatens the child.
- To raise awareness and to mobilize the local community regarding the children's rights.

b) METAdrasi

- 41 According to their internet-presentation METAdrasi– Action for Migration and Development – is a Greek NGO founded in 2010 that focuses on services not covered by the Public Authorities or other NGOs in Greece and is the only organization that retains a permanent front-line presence in all key entry and exit locations. In its latest press release it states: ²⁴

Currently, more than *3,700 unaccompanied refugee children* are found in our country, and although a solution to the issue of their escorting has been found, 6 out of 10 children still live under precarious and inappropriate, for their age, conditions, due to the lack of proper accommodation facilities.

II. The Law

- 42 In the same vein as the description of the factual situation having been limited to new and certain additional information (see above Additional (new) information under I.) it will not be helpful for the ECSR to repeat the whole set of legal arguments as developed in the complaint. The ETUC would like to limit itself to some additional legal arguments by following the order of the complainants' presentation.

²⁴ METAdrasi, [Eight years by the side of unaccompanied minor refugees](#), Press release 16.5.2019.

A. General considerations

- 43 From the outset, the ETUC would like to support the complainants' approach that the 'General principles' have to be governed by 'the best interests of the child' (paras. 109 ff. of the complaint). This requirement applies to all situations and irrespective of the origin of the child. Nevertheless, it is obvious that migrant children in general and unaccompanied minors in particular need special protection and support. This is all the more necessary as the failure to protect and support children will have much more negative consequences than this would have on adult persons who will be better equipped to cope with difficult situations. Accordingly, the the ETUC will focus its considerations on this most vulnerable group.
- 44 Alongside with its principles of interpretation (see also above para. 29), the Committee will continue to refer to international and EU law sources and developments (see above paras. 7 ff.). Accordingly, the respect and protection of 'human dignity' (see above para. 8) should be the starting point for any interpretation and application of the respective Charter provisions. The respective sources and developments referred to also in the complaint will assist the Committee in finding an interpretation which avoids as much as possible fragmentation by providing a minimal level of protection but on the other hand does not prevent any development an ESC interpretation securing a higher level protection.
- 45 Finally, for the interpretation of the Charter it is of utmost importance that the rights guaranteed therein are 'concrete and effective'. This is explicitly stated by the ECSR in the following terms:²⁵
- the Committee wishes to emphasise that implementation of the Charter requires state parties not merely to take legal action but also to **make available the resources** and introduce the **operational procedures** necessary to **give full effect** to the rights specified therein.
- 46 Accordingly, also procedural rights have to be given specific emphasis (see above para. 22). They must be specifically adjusted to the situation of the migrant children otherwise they would become illusory.

B. Specific considerations

1. Article 31(1) and (2)

- 47 On the basis of their very thorough examination in factual and legal terms, the complainants rightly come to the conclusion that Article 31(1) and (2) ESC are violated (paras. 152 ff. of the complaint).²⁶ The ETUC would like to add even the Greek Government itself, in its most recent report to the CRC, admits that appropriate shelters for UAMs in Greece are still not enough as they cover only about 1/3 of the needs (see above para. 34). Moreover, this ongoing lack of sufficient and adequate accommodation has most recently been confirmed by the US State

²⁵ [Digest](#) 2018, n. 5, Part II, iv.

²⁶ The following reference to the complaint are focused on the respective Conclusions but are to be understood to include the respective factual information and documentation as well as the relevant legal arguments developed before.

Department (albeit in general terms, see above para. 36) and by the NGO METAdrasi (see above para. 41).

2. Article 17(1)

48 Referring again positively to the respective complainants' Conclusions (paras. 167 ff. of the complaint) the ETUC would like to add the obligations which derive from ILO Convention No. 182 (see above para. 10) and which have led the CEACR to request the Greek Government 'to take the necessary measures to provide appropriate support and assistance to unaccompanied minors so as to prevent them from engaging in the worst forms of child labour' (see above para. 12). Moreover, in its most recent judgment concerning the situation of unaccompanied migrants in Greece the ECtHR has held that the situation in a specific camp has violated Article 3 ECHR (see above para. 21 and in particular note 16).

3. Article 16

49 In the continuation of the complainants' argumentation (see paras. 169 ff. of the complaint) it appears illustrative that an NGO called upon to organise a project called 'Actions for the Prevention of the Minors Marginalization and for the Protection of the Child' (see above para. 40). It shows the wide range of necessities to try to cope with the specific needs of migrant children but cannot ensure a total coverage in quantitative and qualitative terms.

4. Article 7(10)

50 The physical and moral dangers to which migrant children are exposed in Greece is well documented in the complaint (see paras. 184 ff. of the complaint) which refers in several respects also to trafficking of children and other abuses (see e.g. paras. 37, 83f., 181f.) such as labour exploitation which is in particular violation of ILO Convention No. 182 (see above paras. 10 ff.). Moreover, the US State Department refers also to Labour exploitation in this respect (see above para. 37). This confirms the violation of Article 7(10) concluded by the complainants.

5. Article 11(1) and (3)

51 Besides providing appropriate accommodation (see above para. 47) and free and quality education (see below para. 53) the protection of health is of fundamental importance in particular for children not the least because of the possible far-reaching and long-term consequences. Accordingly, the well-developed documentation and argumentation by the complainants clearly illustrates the violation of the respective provisions by Greece (see paras. 202 ff. of the complaint). Its importance is also recognised by the Committee in particular in the situation of migrants in an irregular situation (see above para. 30).

6. Article 13

52 Without giving a clear indication which provision of Article 13 would be violated the complaint comes to the conclusion that the Article is violated in total (see paras. 211-12 of the complaint). However, the focus might be on Article 13(1) according to which 'any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition'. The

main problem is that despite the Government's activities and the tremendous efforts of several NGOs the adequate social and medical assistance is not at all guaranteed for migrant children.

7. Article 17(2)

- 53 Article 17(2) aims at ensuring free primary and secondary education. In substance, this is also recognised by Article 7(2)(c) of ILO Convention No. 182 (see above para. 10) by which Greece has to 'ensure access to free basic education'. In stressing 'the importance of education in eliminating child labour' (see above para. 11) the CEACR has highlighted this important preventive additional dimension of education. Moreover, the European Pillar of Social Rights has even stressed the importance of early childhood education (see above para. 32). These elements confirm the complainants' conclusions that Greece has violated Article 17(2) of the Charter (see paras. 219 ff. of the complaint).

III. Conclusions

- 54 In view of the information and argumentation developed above the ETUC would like to support the conclusions of the complainants in relation to a violation of Articles 7(10), 11(1) and (3), 13, 16, 17(1) and (2) as well as Article 31 of the Charter by Greece.