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EUROPEAN SOCIAL CHARTER

Comments submitted by
the Norwegian National Human Rights Institution (NHRI)
concerning the 20th National Report on the implementation of
the European Social Charter

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Supplementary report from Norway's NHRI to the European Committee of Social Rights in relation to the consideration of Norway's 20th national report in 2023

The Norwegian National Human Rights Institution (NHRI) hereby provides inputs to the Committee in relation to the consideration of Norway's 20th national report addressing group 4: children, families and migrants, in December 2023.

The Norwegian NHRI was established 1 July 2015 as an independent institution under new legislation adopted by Parliament. The Norwegian NHRI has a specific mandate to protect and promote human rights in Norway, as well as to monitor how the authorities respect Norway's international human rights obligations. Submitting supplementary reports to international human rights monitoring bodies is an essential tool of this mandate.

In October 2022, we were re-accredited with A-status by the Global Alliance of National Human Rights Institutions (GANHRI), thus being recognised as fully compliant with the UN Paris Principles. We are also a member of the European Network of National Human Rights Institutions (ENNHRI) and would like to recognize the Committee's efforts to support and facilitate increased engagement with the European Social Charter. This is our first submission to this committee, and we found the Guide on how to engage with the Committee very helpful.

Please note that we have limited our contribution to three issues of concern.

Please feel free to contact us at info@nhri.no in case of questions.

Best regards
Norwegian National Human Rights Institution

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Contents

1. CHILDREN MISSING FROM RECEPTION CENTRES	2
2. DIFFERENTIAL CARE FOR ASYLUM SEEKING MINORS AGED 15-18.....	3
3. RIGHT TO SHELTER FOR HOMELESS EEA MIGRANTS	4

1. Children missing from reception centres

Reference is made to Article 7, section 10, Question a), d), Conclusions 2015 paras. 1, 3 on protection against sexual or other forms of exploitation and State Report p. 15 – new issue.

The Norwegian NHRI is concerned about the protection of unaccompanied asylum-seeking children missing from reception centres.

Figures from the Directorate of Immigration per 6 December 2022 show that 411 unaccompanied minor asylum-seeking children have disappeared from reception centres since 2015 and are still missing. Norway has over time received recommendations from UN Treaty Bodies to examine and investigate the causes of these disappearances. Guidelines have been issued to follow-up on missing children. The Minister of Justice has announced that the Police Directorate and the Attorney General have commissioned the National Group for Investigation Management to update and further develop the current guidelines.

This is a welcome development, as there is a clear need for an overarching framework and guidelines for reviewing cases, as well as an assessment of whether these are complied with in practice and followed up through effective control mechanisms. As far as the Norwegian NHRI is aware, the Higher Prosecuting Authorities have not examined the quality of the conducted investigations and should be encouraged to do so. Further information on follow-up was provided by the Ministry of Justice to the Parliament in relation to a private motion in the Norwegian Parliament.¹

Suggested recommendation to Norway:

- The State Party should continue its efforts to strengthen protection of unaccompanied minor asylum-seekers, including prevention of, and effective follow-up, on disappearances.

¹ Vedlegg til Innst. 42 S (2022-2023).

2. Differential care for asylum seeking minors aged 15-18

Reference is made to Article 31, section 2, Question h) and State Report p. 77.

We would like to supplement the information provided by the State on this issue since the difference in level of care for children under the age of 15 and those between 15-18 is not explained.

The Norwegian Directorate of Immigration has the responsibility for providing care to unaccompanied asylum-seeking minors aged 15–18 who reside in reception centres. The Child Welfare Service has the responsibility for providing care to unaccompanied asylum-seeking minors under 15 years of age, as well as other children in Norway without adequate caregivers.

The Child Welfare Act and the associated regulations set out general requirements for child welfare institutions, including those related to staffing and competence. The Immigration Act sets out general requirements for the care of asylum-seeking children aged 15-18 residing in reception centres. Under both systems, child welfare institutions and reception centres are required to provide “proper care”.

However, the regulations on requirements for child welfare institutions are more extensive regarding what constitutes proper care with respect to qualified staff, single rooms, and outdoor areas, among other things. It also seems that child welfare institutions regularly monitor whether children under their care receive help, care and treatment adapted to their individual needs.

In 2016, the Norwegian NHRI documented the significant differences between the care provided to unaccompanied asylum-seeking minors under 15 and those aged 15 –18.² The report argued that Article 22(2) in conjunction with Article 2 of the UN Convention on the Rights of the Child obliges the authorities to provide an equivalent standard of care and protection to unaccompanied asylum-seeking minors aged 15-18.

The Norwegian Ministry of Justice and Public Security acknowledged in 2021 that care provided to asylum-seeking minors aged 15-18 years was more limited but did not consider that the differential treatment constituted unlawful discrimination. The Ministry emphasised that the care provided for minors must be tailored to their needs and circumstances.

The Norwegian NHRI is concerned about the State Party’s interpretation and practice of “proper care” when considering the obligations set out in the Convention on the Rights of the Child. We do not believe there is a sound basis for concluding that asylum-seeking children aged 15-18 in general have less need of care than other children under public

² Thematic report [Omsorg for enslige mindreårige asylsøkere](#), 2016 (in Norwegian).

care in Norway of the same age. In case of traumatised children, the needs and vulnerability may be higher and the effects of differential treatment more severe.

The Norwegian NHRI is also concerned about the lack of guarantees and sufficiently effective control mechanisms to ensure that each asylum-seeking child above the age of 15 is given proper care. After the Immigration Act was amended in July 2021, the County Governors have responsibility to oversee the care of unaccompanied minors living in asylum reception centres. Media reports concerning the County Governors' findings indicate that asylum-seeking children aged 15-18 in some cases are not given proper care.³ Furthermore, the body with supervisory authority over the County Governors' inspections has expressed in a letter dated 1 February 2023 that they will not be able to secure the rights of unaccompanied minors during their stay in reception centres without an increase in funding.⁴

The Norwegian NHRI has not analysed the State's obligations under the ESC in relation to asylum-seeking minors aged 15-18 and would encourage the Committee to seek further details and clarification from the State Party on this issue.

Suggested recommendation to Norway:

- The State Party should ensure that the regulations, guidelines and control mechanisms for care in asylum reception centres secure care equivalent to that of children under the responsibility of the Child Welfare Services.

3. Right to shelter for homeless EEA migrants

Reference is made to Article 31, section 2, Question i), Conclusions 2015, para. 4 right to shelter and State Report p. 78.

There are at all times migrants from the European Economic Area (EEA) staying legally in Norway. The duration of their stay and the grounds of residence vary depending on their employment status. The Norwegian National Human Rights Institution (NHRI) notes that EEA nationals who work in Norway for some time have the right to shelter under Articles 13 and 31 of the revised European Social Charter because they are "lawfully resident or working regularly" in Norway. However, there is reason to believe that these rights may not be complied with in current regulations and practice.

The Church City Mission (Norwegian: Kirkens Bymisjon), a voluntary organisation that provides one of the few emergency accommodation services in Norway, recently published a survey of homeless EU-migrants in Oslo, where the majority of this group

³ Article in Aftenposten, published 18 January 2023.

⁴ Norwegian Board of Health Supervision 1 February 2023.

resides.⁵ The survey was completed in November 2021, and pertained to 209 EU migrants (during the COVID-19 pandemic). The respondents can be grouped into two broad categories depending on the length of their stay. Among those on short stays of less than 3 months, 70% were acutely homeless and 90% were Romanian citizens. Among those on long-term stays, 30% were acutely homeless. Longer-term EU migrants also had more varied countries of origin (40% from Poland as the largest group), 1 in 4 had a permanent job and 20% had received social services and benefits from Norway.

In 2022, based on dialogue with organisations that provide emergency accommodation in Oslo, including the Church City Mission, the Norwegian NHRI looked into the obligations of the Norwegian authorities to provide accommodation to homeless EEA migrants in Norway.⁶ The revised European Social Charter contains provisions on basic medical assistance and the right to housing (Articles 13 and 31 respectively), which the Norwegian NHRI interprets as establishing an obligation to provide certain minimum shelter rights.

The organisations that provide emergency accommodation in Norway have raised concerns regarding their limited capacity, both in terms of places and funding, and the lack of suitable services for particularly vulnerable people who have substance abuse and/or health challenges.⁷

Under Norwegian law, the right to receive social services and benefits is linked to a condition of "domicile" or "permanent residence".⁸ The Norwegian NHRI is concerned that this condition may be applied too strictly in relation to the objectives and obligations contained in the European Social Charter.

In addition to the year-round emergency accommodation mentioned above, the Salvation Army (Norwegian: Frelsesarmeen) offers accommodation to people without legal residence and/or social rights on cold winter nights. The service is financed by the City of Oslo and the Health Agency decides when to offer the service, when the experienced ("feels-like") temperature is minus 10°C. The Norwegian NHRI is concerned that the threshold applied by the City of Oslo for offering the accommodation is inappropriately high.

⁵ The Church City Mission (Kirkens bymisjon), "I Count, Bostedsløse EU-migranter i Norge", May 2023 (only available in Norwegian).

⁶ The Norwegian NHRI, "Bostedsløse EØS-migranternes rett til husly", December 2022 (only available in Norwegian).

⁷ The Church City Mission (Kirkens bymisjon) 2023, chapter 3.5 and 5.3.

⁸ See for example Section 2 of the Social Services Act (sosialtjenesteloven) and Section 2 of the Regulations relating to the right to health and care services for persons without permanent residence in Norway (Forskrift om rett til helse- og omsorgstjenester til personer uten fast opphold i riket).

The Norwegian NHRI is in dialogue with the Ministry of Labour and Social Inclusion and the City of Oslo about how the authorities should fulfil their human rights obligations related to the right to housing and emergency accommodation.

Suggested recommendations to Norway:

- The State Party should ensure that the rights recognised in the European Social Charter that are applicable to EEA migrants who are "lawfully resident or working regularly" in Norway are implemented in practice.
- The State Party should provide suitable emergency accommodation services to EEA migrants in Norway.
- The State Party should ensure that laws, regulations and practices concerning EEA migrants and the right to receive social security benefits are in line with the obligations under the European Social Charter.