



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

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PRESS BRIEFING ELEMENTS

Conclusions 2021

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The European Committee of Social Rights' Conclusions 2021: press briefing elements

The European Committee of Social Rights (ECSR) in 2021 examined reports submitted by 33 States Parties on the provisions of the Charter relating to “Health, social security and social protection”:

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 23/ Article 4 of the 1988 Additional Protocol),
- the right to protection against poverty and social exclusion (Article 30).

The reports covered the reference period 1 January 2016 to 31 December 2019.

The following 33 countries were examined:

[Albania](#), [Andorra](#), [Armenia](#), [Austria](#), [Azerbaijan](#), [Bosnia and Herzegovina](#), [Croatia](#), [Cyprus](#), [the Czech Republic](#), [Denmark](#), [Estonia](#), [Georgia](#), [Hungary](#), [Latvia](#), [Lithuania](#), [Luxembourg](#), [Malta](#), [the Republic of Moldova](#), [Montenegro](#), [the Netherlands](#), [North Macedonia](#), [Norway](#), [Poland](#), [Romania](#), [the Russian Federation](#)¹, [Serbia](#), [the Slovak Republic](#), [Slovenia](#), [Spain](#), [Sweden](#), [Turkey](#), [Ukraine](#) and the [United Kingdom](#).²

Comments from civil society

For its examination of the State reports, the Committee also had at its disposal comments on the reports submitted by different trade unions, national human rights institutions and non-governmental organisations. These comments were often crucial in gaining a proper understanding of the national situations concerned.

The outcome: key figures

The ECSR adopted 401 conclusions in respect of the 33 States, including 165 conclusions of non-conformity and 110 conclusions of conformity.

In 126 cases, the ECSR was unable to assess the situation due to lack of information (“deferrals”).

Main findings

- Problems identified

The problems highlighted in respect of the Charter provisions examined appear in **Appendix I**.

¹ These conclusions were adopted while the Russian Federation was a Contracting Party to the European Social Charter. The information set out herein reflects that fact. However, subsequently, by decision of 16 March 2022 of the Committee of Ministers of the Council of Europe, on that day the Russian Federation ceased to be a member of the Council of Europe.

² Germany and Iceland also submitted reports, however they arrived too late to be examined by the Committee.

The ECSR posed a **general question** to States Parties under Article 11§1 of the Revised Charter/1961 Charter (The right to protection of health):

- **General Question on Article 11 and gender identity**

The Committee recalls that respect for physical and psychological integrity is an integral part of the right to the protection of health guaranteed by Article 11. Article 11 imposes a range of positive and negative obligations, including the obligation of the state to refrain from interfering directly or indirectly with the enjoyment of the right to health. Any kind of unnecessary medical treatment can be considered as contrary to Article 11, if accessing another right is contingent upon undergoing that treatment (Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2015, decision on the merits of 15 May 2018, §§74, 79, 80).

The Committee recalls that state recognition of a person's gender identity is itself a right recognised by international human rights law, including in the jurisprudence of the European Court of Human Rights, and is important to guaranteeing the full enjoyment of all human rights. It also recalls that any medical treatment without free informed consent (subject to strict exceptions) cannot be compatible with physical integrity or with the right to protection of health. Guaranteeing free consent is fundamental to the enjoyment of the right to health and is integral to autonomy and human dignity and the obligation to protect the right to health (Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2015, decision on the merits of 15 May 2018, §§78 and 82).

The Committee invites States Parties to provide information on the access of transgender persons to gender reassignment treatment (both in terms of availability and accessibility). It asks whether legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other medical requirements which could impair their health or physical and psychological integrity.

The Committee also invites States Parties to provide information on measures taken to ensure that access to health care in general, including sexual and reproductive healthcare, is provided without discrimination on the basis of gender identity.

The Committee also adopted a number of **statements of interpretation**:

- **Statement of interpretation on Article 3§2 (The right to safety and healthy working conditions) - Digital disconnect and electronic monitoring of workers**

The Covid-19 pandemic has changed the way many people work, and many workers now telework or work remotely. Lockdown and movement restrictions also expanded or intensified considerably the phenomenon of remote working, including outside of normal work hours. The Committee's Statement on Covid-19 and social rights notes that teleworking or remote working in the Covid-19 pandemic may be associated with specific health and safety risks, including unsuitable workplace ergonomics and psychosocial stress factors such as isolation, electronic surveillance and "hyperconnected" working methods ([Statement on Covid-19 and social rights](#), March 2021). Teleworking or remote working may also lead to excessive working hours.

The Committee considers that, consistent with States Parties' obligations in terms of Article 3§2, in order to protect the physical and mental health of persons teleworking or working remotely and to ensure the right of every worker to a safe and healthy working environment, it is necessary to

enable fully the right of workers to refuse to perform work outside their normal working hours (other than work considered to be overtime and fully recognised accordingly) or while on holiday or on other forms of leave (sometimes referred to as the ‘right to disconnect’). The Committee recalls that one of the primary aims of Article 2 of the Charter - which guarantees the right of all workers to just working conditions, including reasonable daily and weekly working hours (Article 2§1), annual holiday with pay (Article 2§3), and weekly rest periods (Article 2§5) - is to protect a worker’s safety and health.

States Parties should ensure there is a legal right not to be penalised or discriminated against for refusing to undertake work outside normal working hours. States must also ensure that there is a legal right to protection from victimisation for complaining when an employer expressly or implicitly requires work to be carried out outside working hours. The expectation from the employers that workers will be available outside their working hours, if implemented in practice, is hazardous to the workers’ health. States Parties must ensure that employers have a duty to put in place arrangements to limit or discourage unaccounted for out-of-hours work, especially for categories of workers who may feel pressed to overperform (e.g. those during probationary periods or for those on temporary or precarious contracts).

In some cases, arrangements may be necessary to ensure the digital disconnect in order to guarantee the enjoyment of rest periods. This may have a positive effect on workers’ health, since it is likely to reduce burn-outs and overload.

Being connected outside normal working hours also increases the risk of electronic monitoring of workers during such periods, which is facilitated by technical devices and software. This can further blur the boundaries between work and private life.

The Committee recalls that it has already stated that under Article 1§2 of the Charter individuals must be protected from interference in their private or personal lives associated with or arising from their employment situation, in particular through modern electronic communication and data collection techniques.³

The Committee notes that in addition to interfering with the right to privacy the electronic monitoring of workers may have implications for the health of workers, including their physical and mental health. Therefore, the Committee considers that States Parties must take measures to limit and regulate the electronic monitoring of workers.

- **Statement of interpretation on Article 12§3 (The right to social security) - Social coverage for digital platform workers**

The Committee recalls that it put a question to all States Parties under Article 12§3 of the Charter on social security coverage for persons employed or whose work is managed through digital platforms. There may be (or there are) cases where platform work (also referred to as “gig work”) is a legitimate response to the nature of the tasks and the needs of employer and worker. However, developments in the platform economy have led in particular to a practice of fragmenting work that has resulted in contracting for services for (micro) tasks. This fragmentation bears the danger of disguising that workers perform a job and have an employment relationship by being misclassified as self-employed workers.

³ [Conclusions 2006, Statement of Interpretation on Article 1§2](#); [Conclusions 2012, Statement of Interpretation on Article 1§2](#)

The use of algorithmic management by digital platforms (or employing entities) often leads to a weakening of the position of workers. In particular, platform work may have an adverse impact on access to and enjoyment of a range of rights guaranteed under the Charter for the workers concerned. This includes not least the right to social security under Article 12 of the Charter.

In order to counteract these negative effects, States Parties must take all necessary steps to ensure that all workers in new forms of employment such as platform work have a legal status (employee, self-employed or other category) and that this status is in line with the actual situation thus avoiding abuse (such as the use of “bogus” or “false” self-employed status to circumvent the applicable social security regulations) and conferring adequate social security rights as guaranteed by Article 12 of the Charter on the platform workers concerned.

- **Statement of interpretation on Article 12§4 (The right to social security) - Child benefits**

As regards equal treatment in respect of family benefits, the Committee recalls that the purpose of child benefits is to compensate the costs of maintenance, care and education of children. Such costs primarily occur in the State where the child actually resides.

The Committee further recalls that child benefits are covered by different provisions of the Charter, and in particular by Article 12§1 and Article 16 of the Charter. Under Article 12§1 States Parties have an obligation to establish and maintain a social security system including a family benefits branch. Under Article 16 States Parties are required to ensure the economic protection of the family by appropriate means. The primary means should be child benefits provided as part of social security, available either universally or subject to a means-test. States Parties have a unilateral obligation to pay child benefits in respect of all children resident in their territory on an equal footing, whether they are nationals or have moved from another State Party.

The Committee is aware that States Parties that are also EU Member States, on the basis of the EU legislation on coordination of the social security system are obliged to apply coordination rules which to a large extent prescribe exportability of child benefits and family allowances. When the situation is covered by the Charter, and the EU legislation does not apply, the Committee has regard to its interpretation according to which the payment of child benefits to all residing children, as a starting point, is a unilateral obligation for all States Parties. The Committee decides no longer to examine the issue of exportability of child benefits under Article 12§4a.

Under Article 12§4a of the Charter the Committee will only examine whether child benefits are paid to children, having moved from another State Party, on an equal footing with nationals, thus ensuring equal treatment of all resident children. Under Article 16 the Committee will examine equal treatment of families as regards access to family benefits and whether the legislation imposes length of residence requirement on families for entitlement to child benefit.

- **Statement of interpretation on Article 23 (The right of elderly persons to social protection) – Ageism**

The Committee recalls that Article 23 of the Charter requires State Parties to undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular to enable older persons to remain full members of society for as long as possible. The expression “full members of society” used in Article 23 requires that older persons must suffer no ostracism on account of their age. The right to take part in society’s various fields of activity should be ensured to everyone active or retired, living in an institution or not.

The Committee takes due account of contemporaneous definitions of ageism which refer to the stereotypes, prejudices and discrimination directed towards other or oneself based on age (see for example WHO report on Ageism, 2021, p. XIX) As the World Health Organisation has noted, "... ageism has serious and far-reaching consequences for people's health, well-being and human rights" (WHO report on Ageism, 2021, p. XVI).

The Covid-19 crisis has exposed and exacerbated a lack of equal treatment of older persons. This has included in the healthcare context, where there have been instances of rationing of scarce resources (e.g., ventilators) based on stereotyped perceptions of quality of life, vulnerability and decline in old age.

Equal treatment calls for an approach based on the equal recognition of the value of older persons' lives in all the areas addressed by the Charter.

Article 23 of the Charter requires the existence of an adequate legal framework for combating age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services, such as insurance and banking products, allocation of resources and facilities. Discrimination against older persons in terms of social rights enjoyment, is also contrary to Article E.

The overall emphasis in the Charter on using social rights to underpin personal autonomy and respect the dignity of older persons and their right to flourish in the community requires a commitment to identifying and eliminating ageist attitudes and those laws, policies and other measures which reflect or reinforce ageism. The Committee considers that States Parties, in addition to adopting comprehensive legislation prohibiting discrimination on grounds of age, must take a wide range of measures to combat ageism in society. Such measures should include reviewing (and as necessary amending) legislation and policy for discrimination on grounds of age, adopting action plans to ensure the equality of older persons, promoting positive attitudes towards ageing through activities such as society-wide awareness campaigns, and promoting inter generational solidarity.

- **Statement on Covid-19 and Social Rights**

The Committee adopted a [Statement on Covid-19 and social rights \(March 2021\)](#).

- *Progress identified*

The Conclusions 2021 also show a number of positive developments which have taken place during the period under consideration. They appear in **Appendix II**.

Appendix I: Summary of main findings

Article 3 -The right to safe and healthy working conditions

By accepting **Article 3§1** of the Charter, States Parties undertake, in consultation with employers' and workers' organisations, to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment.

The ECSR had addressed a targeted question to States Parties about policy formulation processes and practical arrangements made to identify new or emerging situations, that represent a challenge to the right to safe and healthy working conditions, and the results of such processes and of intended future developments.

The ECSR had also addressed a targeted question to States Parties on Covid-19, States were asked about the protection of frontline workers, including instructions and training, quantity and adequacy of the personal protective equipment provided to workers, and the effectiveness of those measures within the framework of the Covid-19 pandemic.

Of the 21 conclusions under Article 3§1 of the Charter, the ECSR considered that the situation was in conformity with the requirements of this provision in eleven cases (**Austria, Estonia, Hungary, Lithuania, Malta, Montenegro, the Netherlands, Romania, Slovenia, Sweden, and Turkey**), out of which four were “pending receipt of the information requested” (**Montenegro, Romania, Slovenia, and Sweden**).

The ECSR deferred its conclusion for four countries (**Andorra, Latvia, the Republic of Moldova, the Russian Federation**).

In four cases (**Albania, Armenia, Cyprus and Ukraine**), the ECSR found that the situation was not in conformity with this provision of the Charter. The grounds of non-conformity are the following:

- employers' and workers' organisations are not consulted by the public authorities in practice (**Albania**);
- there is no clearly defined policy on occupational health and safety, and public authorities are not involved in research relating to occupational health and safety, training of qualified professionals, definition of training programmes or certification of processes (**Armenia**);
- it has not been established that safety representatives and safety committees are consulted in the implementation of national policies and strategies at company level (**Cyprus**);
- there are no funds provided to implement the National Programme on the Improvement of Occupational Safety and Health and the Working Environment 2014–2018 (National Programme); it has not been established that initiatives in the injury-prone sectors other than coal mining have helped to create a culture of prevention in respect of occupational health and safety in practice; it has not been established that Ukraine has carried out activities in terms of research, knowledge and communication relating to psychosocial risks; it has not been established that there have been resources allocated or materials developed for the improvement of occupational safety and health aimed at undertakings

in the private sector; it has not been established that consultation with the competent occupational health and safety bodies within enterprises, in particular enterprises where there are no workers' representatives is being carried out (**Ukraine**).

Article 3§2 (Article 3§1 of the 1961 Charter) requires States to adopt safety and health regulations.

During the monitoring cycle 2021, the ECSR examined 28 situations and adopted conclusions as follows: five conclusions of conformity, ten conclusions of non-conformity and thirteen conclusions were deferred.

The ECSR examined the information provided by States in response to the targeted question, as well as, where applicable, previous conclusions of non-conformity or deferrals.

In a targeted question for this provision, the ECSR asked for information on regulations adopted to improve health and safety in evolving new situations such as in the digital and platform economy by, for example, strictly limiting and regulating electronic monitoring of workers, by recognising a right to disconnect, right to be unavailable outside agreed working and standby time, mandatory digital disconnection from the work environment during rest periods. The ECSR also requested information on regulations adopted in response to emerging occupational risks.

The main issues resulting in non-conformity were related to the fact that self-employed and domestic workers were not covered by the occupational health and safety regulations (the **United Kingdom, Hungary, Andorra** – only self-employed) or it had not been established that self-employed workers (**the Republic of Moldova, the Slovak Republic, Ukraine**), domestic workers (**Romania, Serbia, the Slovak Republic, Ukraine**) or temporary, interim workers and workers on fixed-term contracts (**Serbia, Ukraine**) were covered by these regulations.

Also, for some States the reasons for non-conformity were that the health and safety regulations did not cover a majority of the risks (**Andorra, Ukraine**) or it had not been established that there were such regulations (**Albania, the Republic of Moldova**). Also, it had not been established that levels of prevention and protection required by the legislation and regulations in relation to the establishment, alteration and upkeep of workplaces were in line with the level set by international standards (the **Republic of Moldova, Montenegro, Ukraine**).

Some non-conformities resulted from the fact that consultation with employers' and workers' organisations was not ensured (**Albania**) or it had not been established that such consultation was ensured (**Serbia, the Slovak Republic, Ukraine**).

The ECSR also noted that in some States the level of protection against asbestos (**Albania**), asbestos and ionising radiation was inadequate (**Andorra**) or it did not find it established that the levels of protection against ionising radiation was adequate (**Ukraine**).

Article 3§3 (Article 3§2 of the 1961 Charter)

Under **Article 3§3 (Article 3§2 of the 1961 Charter)** the States undertake to provide for the enforcement of safety and health regulations by measures of supervision with a view to ensuring the effective exercise of the right to safe and healthy working conditions.

During the monitoring cycle 2021, the ECSR examined the situation regarding 21 countries with respect of Article 3§3 of the Charter and six countries with respect to Article 3§2 of the 1961

Charter. The ECSR examined the situation with regard to the accidents at work and occupational diseases with a focus on measures taken to reduce the number of accidents and occupational diseases. The situation was also examined as regards the efficiency of the activities of the labour inspectorate, with regard in particular to the organisation of the labour inspectorate and its human and financial resources.

The ECSR examined the information provided by States in response to the targeted questions, as well as, where applicable, previous conclusions of non-conformity or deferrals.

Under Article 3§3 of the Charter, among the 21 countries examined by the ECSR, there are twelve countries with non-conformity conclusions, eight countries with deferral conclusions and one country, the situation of which was found to be in conformity. Under Article 3§2 of the 1961 Charter (six countries), there are five deferrals and one non-conformity (**Spain**).

The non-conformity conclusions are based on:

- high and increasing numbers concerning fatal and non-fatal accidents at work and occupational diseases (or the repetitive absence of information in this regard) and the inefficiency of measures taken to reduce those numbers (**Albania, Hungary, Latvia, Lithuania, Malta, the Republic of Moldova, Montenegro, Romania, the Russian Federation, Turkey, Spain**),
- lack of measures taken against underreporting practices of accidents at work and occupational diseases (**Estonia, the Republic of Moldova**),
- inefficiency of the activities of the labour inspectorate, because of, for instance, understaffing (the **Russian Federation, Turkey**), low number of inspected entities compared to the total number of entities (**Lithuania, the Republic of Moldova, Montenegro**), repetitive absence of information on the proportion of workers who are covered by inspection (**Malta**) and absence of information on the trends in resources allocated to labour inspection services, including human resources (**Malta, Montenegro, Ukraine**).

In the context of **Albania**, having taking note, from ILO 2019 Labour Force Survey, that informal employment in Albania is 56.7% of the total number of employees, the Committee asked specifically information on regulatory measures in particular, to reduce informality in labour sector and to ensure that the numbers on work accidents they provide also cover the informal employment sector.

Article 11 - The right to protection of health

Article 11§1 enshrines the right to the highest possible standard of health and the right of access to health care.

During the monitoring cycle 2021, the ECSR examined 32 situations and adopted conclusions as follows: seven conclusions of conformity, eleven conclusions of non-conformity and fourteen conclusions were deferred.

The ECSR examined the information provided by States in response to the targeted questions, as well as, where applicable, previous conclusions of non-conformity or deferrals.

In a targeted question, the ECSR asked for overall and disaggregated statistical data on life expectancy across the country and different population groups and on the prevalence of particular diseases among relevant groups (e.g., cancer) or blood borne infectious diseases (e.g., new

cases HIV or Hepatitis C among people suffering from substance use disorders or who are held in prison).

With regard to life expectancy, the information provided by States and other sources reveal that wide gaps/differences exist between men and women, regions, urban and rural areas, income and level of education (**the Czech Republic, Estonia, Hungary, Latvia, Lithuania, the Republic of Moldova, the Netherlands, Poland, Romania, the Russian Federation, Serbia, Slovak Republic, Turkey, Ukraine, the United Kingdom**).

The ECSR also asked for information about sexual and reproductive health-care services for women and girls (including access to abortion) and statistical information about early (underage or minor) motherhood, as well as child and maternal mortality.

A recurring problem of non-conformity under this provision were the high infant and maternal mortality rates in several countries, which when examined together with other basic health indicators, pointed to weaknesses in the health system. The ECSR found that the situation was not in conformity with Article 11§1 of the Charter on the ground that the measures taken to reduce infant and maternal mortality had been insufficient (e.g., **Azerbaijan, Georgia, Hungary** (only for maternal mortality), **Latvia** (only maternal mortality), the **Republic of Moldova, Romania, Turkey, Ukraine**).

Other grounds of non-conformity concerned the public healthcare expenditure which was too low (e.g., **Albania, Azerbaijan**) or the long waiting times in the provisions of healthcare (**Albania, Azerbaijan** (not established), **Georgia** (not established), **Turkey** (not established)). The ECSR asked updated information on the public health expenditure as a share of GDP to all States.

The ECSR also found that insufficient measures had been taken to effectively guarantee the right of access to health care in several countries (**Latvia, Lithuania, Ukraine, the Republic of Moldova** (not established)); and that insufficient measures had been taken to reduce the number of premature deaths in one country (the **Slovak Republic**). In another country, the ECSR found that the situation was not in conformity with Article 11§1 on the ground that transgender people had to undergo sterilisation in order to receive legal recognition (**Romania**).

In the context of the Covid-19 crisis, the ECSR asked States Parties to evaluate the adequacy of measures taken to limit the spread of virus in the population, as well as the measures taken to treat the sick.

There are two obligations under **Article 11§2**: (1) education and awareness raising, and (2) doctor's consultations and screening.

Under the first obligation, States Parties must demonstrate that they implement a public health education policy in favour of the general population and population groups affected by specific problems.

In this connection, the ECSR found that the situation of three out of 32 States Parties examined (**Albania, Malta and the Russian Federation**) was not in conformity with the Charter. In respect of **Albania**, the ECSR found that it has not been established that health education is incorporated into the school curriculum. In respect of the **Russian Federation**, the ECSR found that it has not been established that sexual and reproductive education is provided in schools. The conclusion for non-conformity formulated with regard to **Malta** is motivated by the lack of information on this

provision in the report (it has not been established that public information and awareness raising are public health priorities and that health education is incorporated into the school curriculum).

As regards the second obligation (counselling and screening), under Article 11§2, States should provide free and regular consultation and screening for pregnant women and children throughout the territory. Moreover, free medical checks for children must be carried out throughout the period of schooling.

In this context, six out of 32 States Parties (**Albania, Bosnia and Herzegovina, Georgia, the Republic of Moldova, Serbia and Ukraine**) were considered to be in violation of Article 11§2, but several of these conclusions were due to a repeated lack of information. However, the following conclusions deserve mention:

- In **Bosnia and Herzegovina and Ukraine**, screening policies were not systematically in place.
- In **Georgia**, measures for counselling and screening of pregnant women and children were not adequate.

In 2021, under Article 11§2, the Committee also examined information about awareness and education with respect to sexual orientation and gender identity (SOGI) and to gender-based violence. One of the common points for deferrals (11 out of 32 cases: **Azerbaijan, Cyprus, the Czech Republic, Hungary, Latvia, the Netherlands, Poland, Romania, the Slovak Republic Sweden and Turkey**) was the lack of information in the report on the aforementioned SOGI issue.

Furthermore, the Committee found that the situation in 13 States Parties of 32 (**Andorra, Austria, Croatia, Denmark, Estonia, Lithuania, Luxembourg, North Macedonia, Montenegro, Norway, Slovenia, Spain and the United Kingdom**) was in conformity with Article 11§2.

Article 11§3 refers to the obligation to take measures to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

Of the 32 situations examined during the 2021 monitoring cycle, the ECSR adopted four conclusions of conformity, 11 conclusions of non-conformity, and 17 conclusions of deferral.

The ECSR had asked several targeted questions under this paragraph as follows.

First, the ECSR asked for a general overview of health care services in places of detention, in particular prisons.

Second, the ECSR asked for information regarding the availability and extent of community-based mental health services and on the transition to community-based mental health from former large-scale institutions.

Third, the ECSR asked for information about drug-related deaths and transmission of infectious diseases among people who use or inject psychoactive substances both in the community and in custodial settings. The ECSR also asked for an overview of the national policy designed to respond to substance use and related disorders.

Fourth, the ECSR asked for information on the measures taken to prevent exposure to air, water or other forms of environmental pollution, as well as on the measures taken to address the health

problems of the populations affected, and to inform the public, including pupils and students, about general and local environmental problems.

The main grounds of non-conformity were related to the lack of efficient immunisation and epidemiological monitoring programmes (**Albania, Bosnia and Herzegovina, and Romania**), the lack of legislation prohibiting the sale and use of asbestos (**Azerbaijan and the Republic of Moldova**), the lack of necessary measures to prevent smoking and/or alcohol consumption (**Bosnia and Herzegovina, the Republic of Moldova**), or the lack of sufficient measures to ensure access to safe drinking water in rural areas (**Georgia**).

A range of conclusions of non-conformity resulted from the States' failure to provide sufficient information on the existence of efficient immunisation and epidemiological monitoring programmes (**Malta, Serbia and the Slovak Republic**), on the measures taken to overcome environmental pollution (**Albania, Azerbaijan, Georgia, the Republic of Moldova, Malta, the Russian Federation, Serbia and the Slovak Republic**), to prevent smoking and/or alcohol consumption (**Albania, Malta and Serbia**) or to prevent accidents (**Albania, Azerbaijan, Cyprus, Georgia and Malta**).

In the context of the Covid-19 crisis, and insofar as relevant for the purposes of Article 11§3, the ECSR asked States Parties to evaluate the adequacy of measures taken to limit the spread of the Covid-19 virus in the population (testing and tracing, physical distancing and self-isolation, provision of surgical masks, disinfectant, etc.).

Article 12 - The right to social security

Article 12§1 of the Charter guarantees the right to social security for all workers and their dependents. In the current cycle the ECSR has, again, found that the situation in many States Parties had not changed and very little or no progress had been made in bringing the situation into conformity. Inadequate minimum levels of income-replacement benefits have remained to be the main ground of non-conformity. The minimum levels of unemployment benefit, sickness benefit and disability benefit in many countries still fall below 40% of the median equivalised income. The ECSR has also observed that in some States the levels have risen at a higher rate than the median income. However, they remain low or sometimes fall between 40 and 50% of the median income.

25 national situations were examined in 2021 of which 21 were found not to be in conformity and the ECSR deferred its position in respect of four situations.

As regards the material and personal coverage of the social security system, the situation is in conformity in the majority of States as around 90% of active population is covered. There has not been little progress in two national situations (**Armenia and Georgia**), where the right to social security is still not guaranteed for all workers and their dependents, due to the absence of a number of branches, such as unemployment benefit, employment injury benefit and family benefit.

The ECSR held that the situation was in conformity with **Article 12§2** in 17 States out of a total of 22. In other words, these States were found to maintain their social security systems at a satisfactory level, i.e., at least equal to the level required for the ratification of the European Code of Social Security.

With regard to **Article 12§3**, the ECSR considered that in one case, the situation was not in conformity on the ground that efforts made to progressively raise the system of social security to a higher level were inadequate (**Romania**) and in three cases, it had not been established that steps had been taken to raise the social security systems to a higher level during the reference period (**Armenia, the Republic of Moldova and Serbia**).

With regard to this provision, the ECSR had put a targeted question to all States on social security coverage for persons employed or whose work is managed through digital platforms. For a majority of States (13 out of a total of 25), the ECSR was unable to assess the situation due to a complete absence of information or lack of sufficient information, which suggests that States are lagging behind in developing their social security systems in response to changes in the labour market (emergence of new types of employment).

As regards the export of social security benefits under **Article 12§4** as well as the accumulation of accruing periods, some new bilateral agreements have been signed during the reference period to ensure the maintenance and export of old age, sickness and disability benefits. However, there are still only few agreements signed on social security between EU and non-EU States, sometimes due to lack of cooperation because of insufficient exchange of labour force.

22 national situations were examined in 2021 of which 13 were found not to be in conformity, two in conformity and seven deferred.

Article 13 - The right to social and medical assistance

Under **Article 13**, social and medical system of assistance must be universal in the sense that benefits must be payable to any person on the sole ground that he/she is in need. The text of **Article 13§1** clearly establishes that this right to social and medical assistance takes the form of an individual right of access to social and medical assistance in circumstances where the basic condition of eligibility is satisfied, which occurs when no other means of reaching a minimum income level consistent with human dignity are available to the person concerned.

25 countries were assessed by the ECSR in 2021. Violations were found in 22 countries: **Croatia, Czech Republic, Denmark, Spain, the United Kingdom, Andorra, Armenia, Austria, Bosnia and Herzegovina, Estonia, Hungary, Latvia, Lithuania, Malta, the Republic of Moldova, Montenegro, North Macedonia, Norway, Romania, Serbia, the Slovak Republic, Turkey**.

Only one State was found to be in conformity (**the Netherlands**).

The assessment under Article 13§1 and the conclusions of non-conformity concern inter alia the following grounds:

- the level of social assistance paid to a single person without resources is not adequate (below the poverty threshold): **Armenia, Bosnia and Herzegovina, Croatia, Czech Republic, Denmark, Estonia, Hungary, Latvia, Lithuania, Malta, the Republic of Moldova, Montenegro, North Macedonia, Norway, Romania, Serbia, the Slovak Republic, Spain, Turkey, the United Kingdom**.
- the right to social and/or medical assistance is not guaranteed to any person in need (**the Republic of . Moldova, Montenegro, Romania, Spain, the United Kingdom**)
- excessive conditions of residence to access social and medical assistance for foreigners lawfully resident (**Andorra, Austria, Croatia, Latvia, Lithuania, North Macedonia, Romania and Serbia**)

- social assistance is withdrawn as penalty for having refused a job offer and the person remains with no other means (**Malta, Serbia**).

Article 13§2 one conclusion of non-conformity on the ground that it has not been established that there is no discrimination in the effective exercise of social and political rights (**the Republic of Moldova**).

Article 13§3 concerns free services offering advice and personal assistance specifically addressed at persons without adequate resources or at risk of becoming so. The social services covered by this Article must play a preventive, supportive and treatment role.

As there were no targeted questions put to States under this provision in the present supervision cycle, only deferrals and non-conformities from the previous cycle have been examined.

All deferrals were due to the lack of information as to whether there were mechanisms to ensure that those in need may receive help and personal advice services free of charge and whether such services and institutions are adequately distributed on a geographical basis. **The Republic of Moldova, Poland and Malta** failed to provide the requested information and it could not be established that the situation is in conformity with the Charter.

Bosnia and Herzegovina was found not to be in conformity, as it could not be established that there are mechanisms in place to ensure that persons in need can benefit from free counselling and personal advice services or that the competent services and institutions are adequately distributed on a geographical basis.

Under **Article 13§4**, two State Parties were found to be in violation with the Charter on the ground that not all non-resident foreign nationals in need who are lawfully present in the territory are entitled to emergency social assistance (**Croatia and Montenegro**).

Article 14 - The right to benefit from social welfare services

Article 14§1 guarantees the right to general social welfare services. The right to benefit from social welfare services requires States Parties to set up a network of social services to help people to reach or maintain well-being and to overcome any problems of social adjustment.

In the 2021 monitoring cycle, the States were asked to reply to a targeted question, namely how and to what extent the operation of social services was maintained during the Covid-19 crisis and whether specific measures were taken in view of possible similar crises arising in the future.

The situation in **Turkey** was found not to be in conformity with the Charter on the ground that it has not been established that there is an adequate number of staff providing social services.

A problematic issue was the access to social services by nationals of other States Parties. The problem of restrictive access to such services to foreigners remained in **Azerbaijan, the Czech Republic, Hungary, Latvia, Poland, Serbia and Turkey**.

Article 14§2 requires States Parties to provide support for voluntary associations seeking to establish social welfare services. The ECSR examines all forms of support and care mentioned under Article 14§1, as well as financial assistance or tax incentives. States Parties must ensure that private services are accessible on an equal footing to all and are effective.

A targeted question was put to the State Parties concerning the user involvement in social services and, in particular on how such involvement is ensured and promoted in legislation, in budget allocations and decision-making at all levels, as well as in the design and delivery of services in practice.

The ECSR concluded that it had not been established that public participation in creating and maintaining social services is effectively guaranteed in law and in practice (**Armenia**), monitored (**Bosnia and Herzegovina**) and accessible to all on an equal footing (**Azerbaijan and Serbia**).

Article 23 - The right of elderly persons to social protection

Article 23 covers a wide variety of aspects related to the protection of rights of older persons.

In 2021, 15 countries were examined. The ECSR considered that the situation was not in conformity with the requirements of this provision in 12 cases (**Bosnia and Herzegovina, the Czech Republic, Denmark, Malta, Montenegro, the Netherlands, Norway, Serbia, the Slovak Republic, Spain, Turkey and Ukraine**). The main reasons for the findings of non-conformity were:

- lack of legislation prohibiting discrimination on grounds of age outside employment: **Denmark, Malta, the Netherlands and Norway**.
- Inadequate resources (pension levels, social assistance for those not in receipt of a pension): **Bosnia and Herzegovina, the Czech Republic, Montenegro, Serbia, the Slovak Republic, Spain, Turkey and Ukraine**.

The ECSR also examined the situation in the States Parties as regards measures taken:

- to prevent abuse of older persons,
- to provide housing suited to the needs and state of health of older persons or of adequate support for adapting their housing,
- to provide older persons with adequate health care and related services,
- to guarantee older persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in their institution.

The ECSR noted the devastating effects of Covid-19 on the rights of older persons in particular on their right to protection of health, with consequences in many cases for their rights to autonomy and to make their own decisions and life-choices, their right to continue to live in the community with adequate and resilient supports to enable them to do so, as well as their right to equal treatment in terms of Article E when it comes to the allocation of health care services including life-saving treatments (e.g., triage and ventilators).

It also emphasised the importance of moving away from institutionalisation towards community-based care and independent living and adopting assisted decision making procedures.

Article 30 - The right to be protected against poverty and social exclusion

Living in a situation of poverty and social exclusion violates the dignity of human beings. With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, **Article 30** requires States parties to adopt an overall and coordinated approach, which shall consist of an analytical framework, a set of priorities and corresponding measures to prevent and remove obstacles to fundamental social rights. There should also exist monitoring

mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion.

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

In 2021, the ECSR examined the application of Article 30 by eleven States Parties (many States have opted not to be bound by Article 30 for the time being).

In respect of five states (**the Netherlands, Norway, Slovak Republic, Slovenia and Sweden**), the ECSR found that the situation was in conformity with Article 30.

In respect of five other States (**Estonia, Latvia, Serbia, Turkey and Ukraine**), the ECSR found that the situation was not in conformity with Article 30 on the ground that there is no adequate overall and coordinated approach in place to combat poverty and social exclusion. While the specifics of the situation in these five states varied greatly, notably poverty rates, the ECSR took into account that poverty rates were generally high, in a few States extremely high, and/or not decreasing, that the measures taken were not properly coordinated and targeted and that the resources allocated were not adequate in view of the extent of the poverty problem.

Appendix II: Positive Developments

Conclusions 2021: examples of progress in the application of the European Social Charter relating to “Health, social security and social protection”:

In its Conclusions 2021/XXII-2, the European Committee of Social Rights noted a number of positive developments in the application of the Charter, either through the adoption of new legislation or changes to practice in the States Parties or in some cases on the basis of new information clarifying the situation as regards issues raised in previous examinations (thereby reducing the number of conclusions deferred for lack of information). Below follows a selection of examples.

Article 3§2

Denmark

In 2019 the executive order on carcinogens and mutagens was amended to implement Directive (EU) 2017/2398 of the European Parliament and of the Council of 12 December 2017 amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work. A national provision regarding prohibition of recirculation on building sites of local exhaust air from work processes was amended to allow for recirculation as long as the air is effectively cleaned.

Poland

Between 2016 and 2019 the National Labour Inspection developed a programme “Prevention of harmful effects of stress and other psychosocial risks in the workplace”. The Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation was transposed into Polish law on 13 June 2019.

Spain

The Law on Data Protection and Guarantee of Digital Rights (No. 3/2018) acknowledged the right to disconnect.

Estonia

On 1 January 2019 amendments to the Occupational Health and Safety (OHS) Act came into force. One of the amendments to the Act is related to psychosocial hazards. The term “psychological hazards” was replaced with the term “psychosocial hazards”. The definition of the term is specified in greater detail in the Act, as are the measures to be applied for preventing damage to health caused by psychosocial hazards.

Hungary

The amendment to the Labour Safety Act, that came into force on 1 January 2008, introduced the employer’s obligation of dealing with psychosocial risk factors.

The Recommendations of the International Commission on Radiological Protection (ICRP Publication No. 103, 2007) have been integrated into Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, which Hungary transposed into national law.

Lithuania

In order to help identify investigation process of the psychosocial risk factors to the changing working conditions and to simplify the provisions in order to help small and medium enterprises to investigate such risks Regulations on investigation of psychosocial occupational risks were

changed by the order No. V-153/A1-77 of the Minister of Health and the Minister of Social Security and Labour of 5 February 2019. Also, on 1 May 2019 the Minister of Health adopted the order No. V-590 which relates to improving competencies of workers' mental health and which is directed towards reducing the impact of stress at work to the workers' health.

Montenegro

Domestic workers are now protected by occupational safety and health regulations.

Article 3§3

Estonia

The Labour Inspectorate have been developing a new information system, which increases the efficiency of inspections, allows for automated supervision and saves time. The new system, operational since the first quarter of 2020 allows Labour Inspectorate to cover more companies and workers with the inspections and helps Labour Inspectorate to communicate with companies faster and more effectively.

Sweden

The Government has allocated increasing resources to the work environment area. A total of 100 million SEK (9.7 million €) per year was invested in 2015-2018. During the same period the Government increased the SWEA (Swedish Work Environment Authority)'s allocation with approximately 110 million SEK (10.7 million €) including to enable hiring more inspectors. Following the appropriation increase the SWEA has employed more than 150 new inspectors and the number of inspections has consequently increased.

Turkey

The "Occupational Exposure Data Package" software, prepared in 2017, aims at ensuring early detection of occupational exposures and increase occupational disease awareness.

Article 11§1

Montenegro

A real-time e-Referral and e-Prescription system was implemented radically reducing waiting times.

Norway

In July 2016, a Gender Recognition Act was adopted which allows one to change legal gender (male/female) without the previously required sterilisation.

Poland

Waiting times for a number of medical services decreased significantly compared to the previous reference period.

Article 11§2

Czech Republic

Since 2019, the Ministry of Health has been implementing the project "Expanding Access and Creating Healthcare Opportunities for the Homeless" (abbreviated as "Doctor's Office for the

Homeless”) aimed at people living on the streets who are at risk of losing their refuge or living in socially excluded communities. Its main purpose is to provide medical assistance to target groups who do not seek medical and social care and who do not participate in preventive check-ups and programmes.

Lithuania

In Lithuania, as regards health education in schools, schools implement the general Programme for Health and Sexuality Education and Preparation for Family Life (PHSEPFL), approved by Order No. V-941 of the Minister of Education and Science of 25 October 2016, in order to develop, *inter alia*, healthy lifestyle skills and activities of health promotion and prevention of harmful habits. The Programme covers a wide range of topics, such as self-awareness, gender identity, bullying, the social-emotional state of a child, sexual development (SOGI, responsible sexual behaviour, sexual diversity, discrimination, exclusion), etc.

Austria

Two legal acts concerning diverse sexualities and gender identities in the classroom were adopted: the “Reflexive Gender Pedagogy and Equality Act” of 2018 (Circular No. 21/2018) and “Sexuality Education Act” of 2015 (Circular No. 13/2015). The latter establishes the basis and content of sex education, highlighting a positive approach to human sexuality. It also addresses homophobia and transphobia and encourages schools to adopt a universal pedagogical stance that should be geared towards the principle of gender equality and the diversity of lifestyles. The former addresses, among other things, the issue of gender-based violence in all its facets (e.g., sexual harassment, homophobia, gender-related innuendos, gender-related stereotypes, honour-based violence).

Luxembourg

The first National Action Plan for the promotion of LGBTI rights was adopted on 13 July 2018. This multi-year plan sets out a comprehensive approach in the field. It includes eight thematic chapters covering different spheres of life, including education, employment and work, health, family, reception and integration, discrimination, hate crimes and hate speech, transgender equality and intersex equality. The plan consists of numerous awareness-raising and training activities on the issues of sexual orientation, gender identity and gender variations. These measures are aimed at the general public and specific groups (e.g., children, young people and health professionals).

Article 11§3

Montenegro

In 2019, Montenegro adopted the Law on the restriction of the use of tobacco products, which provides, among other measures, for a ban on smoking at work and in public places, with fines for non-compliance ranging from €500 to €20,000.

Article 12§3

Lithuania

A reform was initiated at the beginning of 2017 to modernise the social security system. This reform aims, among other goals, to integrate self-employed persons into the state social security system and include the different groups of platform workers (such as persons working in the

bicycle delivery service sector) in the "self-employed persons" category in order to expand their social security coverage and improve their social insurance benefits.

Montenegro

The Law on mediation for job placement and rights during unemployment came into force on 30 April 2019. This law reduced the length of insurance contributions required to be entitled to unemployment benefits. In addition, the amount of unemployment benefits was increased and the duration of benefit payments was extended for some categories of jobseekers.

The adjustment of retirement and disability pensions, which had been suspended throughout the previous reference period (2012-2015) due to poor economic conditions, resumed in 2016.

Poland

The minimum retirement pension was increased in 2016 and 2018, and the adjustment mechanism was modified. As a result of these changes, the minimum retirement pension has increased by 25% since 2016.

Implementation of the Retirement Pension+ programme began in 2019. This programme provides for the payment of a one-off supplementary benefit to any person in receipt of a retirement or other pension, regardless of its amount. In 2019, 9.74 million people received this benefit (including 6.7 million retired persons, 2.62 million pensioners and 282,000 persons in receipt of social assistance pensions).

Ukraine

Ukraine accepted Article 12§3 of the Charter in 2017.

Article 13§3

North Macedonia

The services provided in social action centres are free of charge for beneficiaries.

Romania

According to Article 113 of the Social Assistance Law, all local public administration authorities are required to set up specialised structures called public social assistance services (PSAS) in urban and in rural areas.

Article 23

The Czech Republic

Legislation prohibiting discrimination on grounds of age outside of employment was adopted since the last examination on the situation by the ECSR.

The Slovak Republic

Priority has been given to developing community-based care as an alternative to institutional care.

Sweden

Legislation prohibiting discrimination on grounds of age outside of employment was adopted since the last examination on the situation by the ECSR.

Article 30

The Netherlands

Two specific measures were launched during the reference period: the Comprehensive Approach to Tackling Debt (*Brede Schuldenaanpak*) and Child Poverty Ambitions (*Ambities Kinderarmoede*).

As regards the former initiative, since 2018, the government, in cooperation with municipalities, implementing organisations and civil society organisations, have been working on rolling out the Action Plan, which includes more than 40 measures to tackle debt problems.

As regards the latter initiative, in 2019, four objectives were set to further reduce child poverty: (1) every child growing up in a low-income family is eligible for social assistance; (2) the number of low-income households with children is to be reduced over the next few years; (3) there will be regular reviews of social exclusion among children; and (4) good practices and initiatives are to be identified by municipalities and other local and national organisations, aimed in order to prevent child poverty and its adverse effects on children.

Norway

As regards children and young people in low-income families, the Government's strategy, "Children Living in Poverty" for the 2015-2017 period, was followed by a new cooperation strategy, "Equal Opportunities for Children" for the 2020-2023 period. The new strategy emphasises the importance of increasing the participation of children and young people from low-income families with other children and young people allowing them to develop on an equal footing, with a view to stimulating social mobility and breaking the generational cycle of poverty and low incomes.

Slovak Republic

The National Framework Strategy for the Promotion of Social Inclusion and the Fight against Poverty is the main strategic document in this area. It systematises approaches to tackling poverty and social exclusion. The first National Framework Strategy was prepared and approved by the government in 2015. It reflected the situation in the fight against poverty and social exclusion. In 2017, the Strategy was updated to include some additional key areas for the implementation of social inclusion and anti-poverty measures, such as supporting the integration of the long-term unemployed, promoting youth employment, supporting increased targeting in the social benefit system, supporting the integration of marginalised Roma communities, etc.

Slovenia

As of 1 January 2019, all family-related austerity measures were abolished (after six years): the paternity and parental allowance are back to 100% of the person's average salary for the last 12 months (previously it was 90%); the large family allowance is once again a universal entitlement and can be granted to all large families regardless of their income (previously it was limited to a certain income threshold); the maternity allowance is not limited and the parental allowance is 2.5 times the average salary (previously it was twice the average wage). As of 1 July 2019, child benefits, state scholarships, childcare allowance, large family allowance, birth allowance and parental allowance were increased.

Sweden

The Swedish Government made significant investments in health care and education. Since 2017, the Government has strengthened basic protection and reduced income tax for pensioners, increased the level of unemployment insurance benefits and increased housing, maintenance and children's allowances.