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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

DRAFTING GROUP ON SOCIAL RIGHTS
(CDDH-SOC)

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Draft report of the Steering Committee for Human Rights (CDDH) on the legal framework of the Council of Europe for the protection of social rights

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CONTENTS

c. Examples of execution of social rights judgments
d. Findings
e. Possible action

B. **European Social Charter ("The Charter")**

a. State of signatures, ratifications and number of provisions accepted
b. Conclusions and decisions of the European Committee of Social Rights (ECSR)
   (i) Nature of ECSR conclusions and decisions
   (ii) State reporting procedure
   (iii) Collective complaints procedure
c. Standards and practices concerning the functioning of these procedures
d. Examples of ECSR decisions and conclusions
   (i) Reminder of the major ECSR rules of interpretation and implementation of the Charter
   (ii) References to the case law of the Court and other international instruments
   (iii) Overview of the collective complaints submitted so far
   (iv) Examples of significant decisions and conclusions
e. The ECSR faced with economic crisis and austerity measures
f. Examples of national implementation of the Charter
   (i) Examples of significant reforms further to ECSR decisions and/or conclusions
   (ii) Examples of positive national responses to the crisis
   (iii) Debate in national assemblies
   (iv) Examples the Charter's applicability by national courts
   (v) National training and awareness-raising on the Charter
   (vi) Some key problems encountered by States when implementing the Charter
g. Exchange of good practice between the states concerning the Charter
h. Findings
i. Possible action

III. <u>Other Council of Europe activities relating to the protection of social rights</u>

A. Committee of Ministers
a. Main activities relating to social rights/the Charter
b. Findings
c. Possible action

B. Parliamentary Assembly
a. Main activities relating to social rights/the Charter
b. Findings
c. Possible action

C. Congress of Local and Regional Authorities
a. Main activities relating to social rights/the Charter
b. Findings
c. Possible action

D. The Commissioner for Human Rights
a. Main activities relating to social rights/the Charter
b. Findings

I. INTRODUCTION

1. Background of the work and methodology of the report

1. This report has been drawn up on the basis of the mandate given by the Committee of Ministers to the Steering Committee for Human Rights (CDDH) to : "*Undertake an analysis of the legal framework of the Council of Europe for the protection of social rights in Europe, in particular the jurisprudence of the European Court of Human Rights as well as other relevant sources e.g. reports and decisions of those Council of Europe bodies having a mandate relating to social rights and their implications for the respective States Parties* ".

2. Then, in accordance with the terms of reference, the CDDH is invited to : "*On this basis, identify good practices and make, as appropriate, proposals with a view to improving the implementation of social rights and to facilitate in particular the relationship between the various European instruments for the protection of social rights* ".

3. It is recalled that the "background" of the analysis requested is the wish of the Committee of Ministers to know "*who does what and with what impact*" in the field of social rights. This is directly linked to the political objective of the "Turin Process" - aimed at strengthening the Charter's normative system within the Council of Europe, its relations and synergies with the European Union and at improving the implementation of social rights at national level - and to a more global awareness of the need to strengthen the protection of social rights (see above, point 4 : its 2011 Declaration on the Charter and the priority 5, for 2014 -2019, of the strategic vision of the Secretary General/CoE).

4. It should be recalled that the Committee of Ministers, on 3 February 2016 (1246th meeting), took note of the CDDH feasibility study on the impact of the economic crisis and austerity measures on human rights in Europe – inviting it to take it into account, where appropriate, in its work on social rights. On 3 March 2016, the Conference of INGOs addressed a request in this regard to the CDDH – reminding it of the proposals made at the end of this study, in particular the drafting of a new non-binding instrument (Guidelines or Recommendation) which could be supplemented by other measures, such as, for example, a Declaration of Principles of the Committee of Ministers, a Compilation of existing standards or a Guide of good practices[1].

5. In order to carry out its work, the CDDH set up a Drafting Group on Social Rights (CDDH-SOC), which held its first meeting from 19 to 21 April 2017. The Rapporteur, Chantal Gallant (Belgium), presented a report corresponding to the analysis requested by the Committee of Ministers. This report was discussed at length during this meeting.

6. The report was adopted as of X 2017 by the CDDH-SOC and X by the CDDH.

7. This report has been prepared on the basis of an original work by the Rapporteur, taking due account of the contributions of various Council of Europe actors and services. Its content was discussed and reworked by the CDDH-SOC members. Reference may be made expressly to the contributions received from the following actors : the Registry of the Court for its reading of the part devoted to the case-law of the Court ; the Department for the execution of judgments ; the Department of the European Social Charter ; the Parliamentary Assembly ;

[1] CDDH(2015)R84 – Addendum IV, §48.

the Congress of local and regional authorities ; the Office of the Commissioner for Human Rights ; the Conference of INGOs ; ENNHRI (the European Network of National Human Rights Institutions) and ; the European Trade Union Confederation (ETUC).

8. Since the work of the CDDH-SOC is linked to the "Turin Process", the draft report as a whole was transmitted to the Department of the European Social Charter for reactions at the beginning of February. Subsequently, on 24 March, the draft report (French and English versions) was sent to the members of the CDDH-SOC and also to all members of the CDDH, so that they could react from the start of the work of the CDDH- SOC.

9. This report, as presented to the CDDH for its June meeting, contains updates of its March version (including some new judgments and references to the February Cyprus Conference) and incorporates the main comments and concerns of the members of the CDDH-SOC – as expressed at its first meeting (19-21 April 2017). In particular, it is important to underline that a new chapter has been included in the report (Part III, point F) to highlight the particular role played by international social partners in the implementation of social rights (contributions received from them).

2. The two main legal instruments: the Convention and the Charter[2]

10. The Council of Europe has adopted two major treaties in the area of fundamental rights. In 1950 it adopted the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter referred to as "the Convention",[3] see below, Part II, A), which mainly enshrines "civil and political" rights. Then, in 1961, it adopted the European Social Charter, which was revised in 1996 (hereafter referred to as "the Charter", see below, Part II, B), which enshrines "economic, social and cultural" rights.

11. The first point to note is that these treaties are complementary and interdependent (see below, Part I, section 2) and that many of the rights protected by the Convention are also protected by the Charter, sometimes in greater detail.[4] For instance, trade union rights are protected under Article 11 of the Convention, but are also covered by specific positive obligations in the Charter (Articles 5, 6 and 28).

12. The right to life and the right to protection against inhuman or degrading treatment or punishment (Articles 2 and 3 of the Convention) are also included in several articles in the Charter, relating for instance to specific measures to be applied in the workplace to protect the life and health of workers, including in the case of maternity leave or young or disabled workers (Articles 3, 7, 8 and 15); the protection against domestic violence (Article 16); the right to social and urgent medical assistance for anyone who needs it (Article 13); the protection against sexual or psychological harassment in relation to work (Article 26) and, more broadly, any other right relating to the protection of human dignity (e.g. Articles 26, 30 and 31).

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[2] Table providing a comparative overview of both instruments and their operation: https://www.coe.int/en/web/turin-european-social-charter/-european-social-charter-and-european-convention-on-human-rights.

[3] It has been supplemented since then by several Additional Protocols enshrining new rights.

[4] See: https://www.coe.int/en/web/turin-european-social-charter/-european-social-charter-and-european-convention-on-human-rights.

13. Protection of health and the environment (particularly under Articles 2, 3 and 8 of the Convention) is a specific protection stipulated under the Charter (Article 11), whereas Article 13 of the Charter sets out the criteria required to guarantee effective medical assistance. The prohibition of slavery and forced labour (Article 4 of the Convention) is enshrined in Article 1 of the Charter. Procedural rights relating to freedom, safety, a fair trial and the legality of sanctions (Articles 5, 6 and 7 of the Convention) are guaranteed under Articles 17 (young offenders) and 19 (expulsion of migrant workers) of the Charter. In addition, the requirements for a fair trial and the right to an effective remedy (Articles 6 and 13 of the Convention) are applicable to any provision of the Charter where the availability and effectiveness of remedies is monitored.

14. Several aspects relating to respect for private and family life (Article 8 of the Convention) are specific positive rights and obligations set out in the Charter, such as the right of workers to respect for their private life (Article 1), the status of children born out of wedlock (Article 17), the placement of children (Article 16), as well as the right of workers with family responsibilities to equal opportunity and equal treatment (Article 27). With regard to the right to education (Article 2 of Protocol No. 1 to the Convention), this is set out in detail in Articles 7, 9, 10, 15 and 19 of the Charter.

15. Certain aspects of freedom of thought, conscience, religion and expression (Articles 9 and 10 of the Convention) are also included in the Charter : for instance, the right to earn a living by work freely undertaken (Article 1), the right of workers to information, including health risks (Articles 21, 22 and 29), or the right of migrant workers to education in their own language (Article 19).

16. The Convention protects the right to marry (Article 12) and equality between spouses (Article 5 of Protocol No. 7 to the Convention), while Article 16 of the Charter provides for their rights and obligations. Certain rights relating to freedom of movement and expulsion from the territory of a state (Articles 2, 3 and 4 of Protocol No. 4 and Article 1 of Protocol No. 7 to the Convention) are covered by Articles 18 and 19 of the Charter.

17. The prohibition of discrimination is provided for in the Convention (Article 14 and Protocol No. 12), while specific provisions in the Charter deal with protection against any form of discrimination based on work (Article 1§2), but also on property status (Article 13), disability (Article 15), nationality (Articles 12, 13 and19), gender (Article 20), age (Article 23) and family status (Article 27). In addition, Article E of the Revised Charter prohibits discrimination relating to the enjoyment of all the rights enshrined therein.

18. Lastly, there are other links between the protection of property (Article 1 of Protocol No. 1 to the Convention) and several articles in the Charter relating, for instance, to remuneration, benefits (Articles 4 and 12) and housing eviction (Article 31).

19. Monitoring of the implementation of the Convention is ensured by the European Court of Human Rights (hereinafter "the ECHR"), as a last resort, in its examination of individual applications. Regarding the Charter, the monitoring of its implementation is carried out by the European Committee of Social Rights (hereinafter "the ECSR"), in the context of its examination of the State reports and of collective complaints (*infra*, part II, B, b) : description of these two procedures), as well as by the Governmental Committee and the Committee of Ministers (*infra* : on the follow-up to the ECSR's conclusions and decisions)..

20. Another point to note is that the collective complaints procedure is a protection system complementing the reporting system and a different system and complementary to the jurisdictional protection, in the field of social rights, afforded by the Court under the Convention. Because of their collective nature, complaints may only raise questions concerning the possible unsatisfactory application of the Charter ~~of a state's law or practice~~ – and may not submit individual situations. Unlike the Convention, therefore, a complaint may be lodged with the ECSR without domestic remedies having been exhausted and consequently, without delay and without the complainant organisations necessarily being a victim of the alleged violation of the Charter.

21. Also worth noting at this stage is that, in their assessment of the cases submitted to them, the Court and the ECSR often take into account the connections between the Convention and Charter and employ very similar criteria, assessing the implementation in practice of the protected rights and checking to see whether the restrictions imposed on them are prescribed by law and necessary in a democratic society. In so doing, the ECSR and the Court ensure that all human rights – whether economic, social, cultural, civil or political – are effectively protected in a complementary and progressive fashion.

22. A further point to note is that implementation of the Convention and Charter gives rise, according to their supervisory bodies and authors of legal doctrine[5], to three types of obligations for the State Parties : respect,[6] protection[7] and implementation[8]. States enjoy a

[5] CHATTON, Gregor T., « *L'harmonisation des pratiques jurisprudentielles de la Cour européenne des droits de l'homme et du Comité européen des droits sociaux : une évolution discrète* », 2007. It may be pointed out that this theory of the three types of State obligations was advanced, notably in 1979 by Henry Shue, Professor of Politics and, in 1989, by Asbjorn Eide, United Nations Special Rapporteur on the right to food. This theory was also taken up in 1991 by the United Nations Committee on Economic, Social and Cultural Rights (see General Comment No. 3).

[6] As an example of the obligation to respect, the following decisions from the ECSR are worth noting: 5 December 2000, Complaint No. 7/2000 (*FIDH v. Greece*) concerning a Greek legislative decree banning career officers who have received several periods of training from resigning their commissions for up to 25 years; 25 April 2001, Complaint No. 8/2000 (*QCEA v. Greece*) concerning the impact of the length of civilian service on the entry of conscientious objectors in Greece into the labour market; 7 December 2005, Complaint No. 27/2004 (*ERRC v. Italy*) concerning evictions of travellers, invasion of Roma dwellings and destruction of their property. In the case of the Court, much of the case law concerns allegations of unjustified interference in its rights by the authorities.

[7] As an example of the obligation to protect, mention can be made of the following decisions from the ECSR: 10 October 2005 (admissibility, paragraph 14), Complaint No. 30/2005 (*MFHR v. Greece*) concerning the semi-privatised mining of lignite, posing health and environmental risks; 7 December 2004, Complaint No. 18/2003 (*OMCT v. Ireland*): ban on the corporal punishment of children (paragraph 64); 9 May 2005, Complaint No. 25/2004 (*C.G.S.P. v. Belgium*) where the ECSR interprets the law on collective bargaining as meaning that states must take positive steps to encourage consultation between trade unions and employers' organisations and, if such consultation does not take place spontaneously, must establish permanent bodies and arrangements in which unions and employers' organisations are equally and jointly represented (paragraph 41). It should be noted that similar ("positive") protection obligations are recognised by the Court, which can make it compulsory for states to enact legislation, inform or advise, conduct effective inquiries, instruct/train its staff and adopt specific prevention measures.

[8] As an example of the obligation to implement, the following decisions from the ECSR are worth mentioning: 4 November 2003, Complaint No. 13/2002 (*Autisme-Europe v. France*) concerning the progressive creation of educational establishments and places suitable for autistic children and adults; 9 September 1999, Complaint No. 1/1998 (*ICJ v. Portugal*) concerning the abolition of child labour (paragraphs 39 et seq.); aforementioned decision of 7 December 2005, Complaint No. 27/2004 (*ERRC v. Italy*) concerning the creation of suitable, decent sites for nomadic Roma and the application of a positive discrimination policy enabling settled Roma to have suitable, affordable housing. Although the Court only considers individual cases, many of its judgments require, in terms of enforcement, general (sometimes structural) measures to be adopted. This is particularly true

large margin of discretion[9] with regard to the implementation means of this last category of obligations – more present in the case of the Charter – which traditionally feature structural measures, including certain aspects that can only be fully implemented over time, in view of their complexity and their important budgetary resources required.

23. Since social rights are protected by other Council of Europe bodies aside from the Court and the ECSR, attention is given to these institutions as well (see below, Part III). There is also a chapter on the relationship between the Charter and European Union law, in view of the need to ensure consistency between the two (see below, Part IV). Lastly, although the report is confined to European systems for protecting social rights, some references have also been made to instruments developed by the United Nations.

3. The principles of indivisibility and interdependence of human rights

24. Both the Charter and the Convention have their roots in the Universal Declaration of Human Rights, adopted by the United Nations on 10 December 1948, which is a catalogue of all the fundamental rights recognised by the international community so as to ensure the dignity of every individual. Article 22 of the Declaration states that: "*Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality*" thereby enshrining the unity and indivisibility of fundamental rights in terms of their human, civil, political, social, economic and cultural aspects.

25. The Universal Declaration of Human Rights, however, has resulted, as a reminder, in the Council of Europe, in the adoption of two major treaties of fundamental rights reflecting their specificities: the Convention (1950) and the Charter (1961). This was also the case at the United Nations level where two separate International Covenants were adopted in 1966 : the ICCPR[10] and the ICESCR[11]. However, it is worth recalling the adoption in 2008 of an Optional Protocol to the ICESCR which now enables, like the First Optional Protocol to the ICCPR, to submit individual communications alleging violation(s) of economic, social and cultural right(s).

26. In 1993 at the World Conference on Human Rights held in Vienna, the international community reiterated its commitment to the principles of the Universal Declaration: "*All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the*

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of its pilot judgments, highlighting structural shortcomings which call for measures that take into account the many people affected (collective aspect).

[9] Part V, Article I of the revised European Social Charter states that its provisions are implemented by : *a) laws or regulations ; b) agreements between employers or employers' organisations and workers' organisations ; c) a combination of those two methods ; d) other appropriate means* ». According to Article 8§4 of the Optional Protocol to the ICESCR (*infra*) : « *4. When examining communications under the present Protocol, the Committee shall consider the reasonableness of the steps taken by the State Party in accordance with part II of the Covenant. In doing so, the Committee shall bear in mind that the State Party may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant* ».

[10] International Covenant on Civil and Political Rights.

[11] International Covenant on Economic, Social and Cultural Rights.

duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms".[12]

27. It should also be recalled that the principle of the indivisibility of human rights is also reaffirmed in the Preamble to the European Social Charter: ***"****Recalling that the Ministerial Conference on Human Rights held in Rome on 5 November 1990 stressed the need, on the one hand, to preserve the indivisible nature of all human rights, be they civil, political, economic, social or cultural and, on the other hand, to give the European Social Charter fresh impetus*" (see the 4th Recital)[13].

28. Poverty illustrates very well the indivisibility of human rights. In this respect, the UN's guiding principles on extreme poverty and human rights of 2012 state that : "*Extreme poverty is a clear illustration of the indivisibility, interrelatedness and interdependence of human rights, given that persons living in poverty face daily violations of their civil, cultural, economic, political and social rights, which interact and mutually reinforce one another with devastating effects*"[14].

29. Within the Council of Europe the principles of indivisibility and interdependence of human rights have likewise been highlighted in regular reminders (see below in particular, the Declaration made by the Committee of Ministers in 2011 to mark the 50th anniversary of the Charter).

4. Socio-economic changes deterioration of numerous social rights

30. In recent years, many institutions have condemned the impact of the economic crisis on the enjoyment of numerous economic, social and cultural rights, especially among the most vulnerable members of society.[15] Developments in this area are discussed in several places in the report, in the sections focusing on the institutions in question:

- The Court's response to the economic crisis and austerity measures (see below, Part II, A);
- The ECSR's response to the economic crisis and austerity measures (see below, Part II, B);
- Numerous texts from the Parliamentary Assembly of the Council of Europe (see below, Part III, B);
- Several documents and reports from the Commissioner for Human Rights (see below, Part III, D);
- Stances adopted on this issue at European Union level (see below, Part IV).

31. Most of these developments feature in the above mentioned CDDH feasibility study on the impact of the economic crisis and austerity measures on human rights in Europe adopted in December 2015.[16] Apart from providing a reminder of the positions taken by numerous Council of Europe institutions on this subject (Part III), this study had the merit of focusing on a number of specific areas (Part IV): access to justice and fair trial, women/gender-related

Commentaire [PM1]: *{**PT**: keep a reference to the background paper of the Brussels Conference … "social rights are human rights. They are an integral part of the european societal model. These rights belong to all human beings in the same way as civil and political rights"}*

*{**GR** support **PT**}*

Mis en forme : Anglais (Royaume-Uni)

[12] Article 5 of the Vienna Declaration of 1993.

[13]

[14] A/HRC/21/39, paragraph 16.

[15] One notable example was the Declaration made on 17 October 2012 by the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities and the INGO Conference: "Acting together to eradicate extreme poverty in Europe," which stated that it is the people belonging to the most disadvantaged social groups who are the hardest hit by the economic crisis and often also by fiscal austerity measures.

[16] CDDH(2015)R84 – Addendum IV.

issues and the economic crisis; youth unemployment and children, the protection of migrant workers and asylum seekers, prison overcrowding and the repercussions of the economic crisis on social cohesion.[17] An erosion of rights has been observed across the board in these areas, against the background of the crisis, often affecting, first and foremost, these vulnerable groups. . However, as mentioned in the study, it was stated at the relevant CDDH meeting ~~The study also confirmed, however,~~ that many of the problems linked to the economic crisis and austerity measures, including poverty, have been exacerbated, rather than caused, by the crisis (paragraph 44).

32. Accordingly, in February 2015, the Brussels Conference on the Future of the Protection of Social Rights in Europe (see below: "Turin Process") identified, *inter alia*, some trends within Council of Europe states in terms of the programmes developed to reform the welfare state since the mid-1990s and, more recently, to address the financial and economic crisis (Session I of the conference).

33. As regards solutions to the crisis, however, the "Brussels Document" (see below in the Appendix) makes notably the following negative observations:

"*The financial and economic crises have had a significant negative impact on social rights enjoyment in Europe. Increases in unemployment, hunger, inequality and poverty among children following 2008 have posed a serious threat to the rights set out in the European Social Charter, as well as to the European social model more broadly. In Europe, cuts in health-related spending have affected the right to enjoy the highest attainable standard of health, as noted by the Council of Europe Commissioner of Human Rights. Housing and job insecurity in particular have contributed to an increase in the proportion of people at risk of poor mental health. The economic crisis has been identified as a key driver of increased homelessness in Greece, Ireland, Italy, Portugal, Spain and the UK from 2007 to 2012. Unemployment has increased in many EU Member States since 2007, and the share of individuals engaged involuntarily in part-time and temporary employment has also grown sizeably. Two thirds of the 30 European countries surveyed by UNICEF saw child material deprivation worsen between 2008 and 2012. The post-2007 fiscal consolidation has disproportionately affected women: in some EU Member States, EEA-EFTA countries and EU candidate countries, there is evidence that considerable retrenchment in employment, social transfers and social services may well be rolling back past progress in equality between women and men.*

These developments represent potential regression in terms of the realisation of a range of rights protected under Council of Europe human rights instruments, including elements of Articles 1, 4, 7, 11 and 12 of the European Social Charter, as well as Articles 2, 3, 6, 8 and Article 1 of Additional Protocol 1 of the European Convention on Human Rights. Enjoyment of Articles 30 and 31 of the Revised European Social Charter, guaranteeing protection from poverty and social exclusion and the right to housing, has also been significantly affected. Some of these social rights' impacts have been attributable to specific crises-related outcomes

[17] See pages 15 and 16 of the study referring to the positions taken by the European Commission against Racism and Intolerance (ECRI), which criticises in particular the rise of nationalist populist parties rooted in profound hostility to ethnic, religious and cultural diversity (Annual Report of ECRI's Activities 2013, p. 8) and the legislative provisions adopted during recessions, such as employers being forced to dismiss foreign workers first when making staff cuts (ECRI report on Austria of 15 December 2009, p. 24) or even the introduction of a scheme whereby employers are given incentives to replace their third-country workers with their own or other EU nationals (ECRI report on Cyprus of 23 March 2011, p. 22).

such as market turmoil and labour opportunities. Others result from national and supranational policy responses to the crises, particularly fiscal austerity measures.

(...) The crises have resulted in an erosion of social citizenship, posing a substantial threat to Europeans' sense of solidarity and loyalty to the European project. This points to the existence of "lasting fractures", which can only be addressed through social rights (...)."[18]

34. It is important to note, furthermore, that in June 2015, the INGO Conference (see below, Part III, E) adopted a Recommendation on "*The violation of economic, social and cultural rights by austerity measures: a serious threat to democracy*".[19] This reminds us that, after almost five years' implementation, these austerity measures are considered by many national, European and international institutions and experts[20] to be counter-productive while their impact on economic, social and cultural rights has proved to be disastrous. The Recommendation criticises in particular the erosion of the following rights:

- The right to work: the employment sector has been hardest hit by the economic crisis and cutbacks. According to Eurostat data, among EU member countries, the unemployment rate is highest in Greece (25.8% and among the young: 50.6% in November 2014), in Spain (23.4% and among the young: 50.9%), in Croatia (44.1% among the young in the fourth quarter of 2014) and in Italy (41.2% among the young). This situation has made it necessary for large numbers of young people to leave their home countries and emigrate to find work abroad, while those who remain are more likely to find themselves in situations of extreme poverty or to be exploited.
- The right to health: in their 2013 report, Médecins du Monde said that the obstacles preventing access to health care included primarily financial problems (25.0%),[21] while 64.5% of patients admitted to their centres had no access at all to health care. In addition, the number of persons at risk of poor mental health increased by more than 3 million persons in the European Union from 2007 to 2011.
- The right to education: public spending on schools decreased in a third of OECD countries[22] between 2009 and 2011. The consequence has been a reduction in salaries and in the number of teachers, with an obviously negative impact on the quality and accessibility of education.
- The right to housing, food and water: between 2009 and 2011, demand for services for the homeless rose by 25-30% in Portugal and Spain and by 25% in Greece.[23]

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[18] "Brussels Document", see Appendix, February 2015, pages 2 to 4 (point 1: "Protecting Social Rights in the Time of Crisis"). See also on this topic: the General Report on the Turin I Conference (below), pp. 17 to 20 and pp. 27 to 35 and in particular the conclusions of the Turin II Forum (below).

[19] Recommendation of 25 June 2015: CONF/PLE(2015)REC1.

[20] See in particular Cephas Lumina, Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights: "*Report – Mission to Greece (22-27 April 2013)*", A/HRC/25/50/Add.1, 27 March 2014 ; Juan Pablo Bohoslavsky, Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to Greece (30 November to 8 December 2015), A/HRC/31/60/Add.2, 29 February 2016.

[21] Administrative problems came second (22.8%) and lack of familiarity with or understanding of the health care system came third (21.7%). Médecins du Monde (2013), L'accès aux soins des plus précaires dans une Europe en crise sociale. Le cas des femmes enceintes et des enfants [Access to health care for the most vulnerable in Europe during the social crisis: focus on pregnant women and children], Paris, p. 27.

[22] OECD (2014), *Education at a Glance 2014: OECD Indicators*, p. 222.

[23] FEANTSA, *On the Way Home?*, Monitoring Report on Homelessness and Homeless Policies in Europe, 2012, p. 21.

35. The Recommendation also criticises the wide-ranging privatisation programmes, due to their lack of transparency and democratic control, posing a constant threat to the right of access to water, electricity and health care and to cultural and natural heritage. It also condemns the impoverishment of a growing number of people and the risk of poverty and social exclusion in the European Union (24.8% in 2012, i.e. 124.2 million people[24]), contributing to the growing loss of legitimacy of democratic institutions and, as a result, to the rise in political extremism in Europe.

36. Finally, according to the European Trade Union Confederation (ETUC above mentioned)[25], the dangers posed to social rights come from various sources: the economic and financial crisis with its austerity measures; European Union case law (see the primacy of economic freedoms over trade-union rights) and technological developments, such as digitalisation, which can result in drastic changes in the working environment which social rights need to respond to. According to the ETUC, furthermore, other developments have a huge impact on social rights, such as the ageing society, all aspects of migration, including asylum seekers and the gender dimension, which is still absent in many respects, along with several other factors which need to be taken into account in the context of "effective enjoyment" of social rights.

5. Greater awareness of the need for improved social rights protection

A. At Council of Europe level

37. Faced with this erosion of the effective implementation of numerous social rights (section 3), many Council of Europe bodies have stressed, in recent years, the need for increased protection. References to developments on this front can be found in this report, in the sections on the institutions in question (see below).

38. As "background" to the tasks assigned in this area to the CDDH, the following in particular are worth mentioning: the Declaration made by the Committee of Ministers in 2011 to mark the 50th anniversary of the Charter; Priority No. 5 on reinforcing the Charter, identified in 2014 by the Secretary General of the Council of Europe in his strategic vision for his second term; the "Turin Process" launched in this context by the Secretary General in October 2014.

a. Committee of Ministers 2011 Declaration on the Charter

39. On 12 October 2011 the Committee of Ministers adopted an important Declaration marking the 50th anniversary of the European Social Charter (see Appendix), in which it :

- reaffirmed that all human rights are universal, indivisible and interdependent and interrelated;
- underlined the particular relevance of social rights and their guarantee in times of economic difficulties, in particular for individuals belonging to vulnerable groups;
- reaffirmed the paramount role of the Charter in guaranteeing and promoting social rights;

[24] Eurostat, http://ec.europa.eu/eurostat/statistics-explained/index.php/People_at_risk_of_poverty_or_social_exclusion (accessed on 30 March 2015).
[25] Contribution received from the CES/ETUC in July 2016 for the purpose of compiling this report.

- called on all states which were not yet parties to the Revised Charter and the collective complaints mechanism whose contribution in furthering the implementation of social rights was recognised, to consider ratifying them;
- expressed its resolve to secure the effectiveness of the Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure;
- affirmed its determination to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the European Committee of Social Rights;
- invited member states and the relevant bodies of the Council of Europe to increase their effort to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners, as well as to inform the public at large of their rights.

b. Priority No. 5 of the Secretary General of the Council of Europe for the 2014-2019 term: a greater role for the Charter

40. The seven priorities mentioned on 16 September 2014 by the Secretary General in his strategic vision for his second term 2014-2019 include an enhanced role for the Charter (Priority No. 5).[26] In that vision, he pointed out that, while the Council of Europe does not play any role in economic policies, it does nevertheless uphold social rights, which is an important aspect of its mandate, as an integral part of the overall logic of a rule of law, democracy and human rights system. In addition, the Secretary General stressed the crucial importance of ensuring coherence between the standards in the Charter and those of the European Union and of increasing synergies between the two protection systems. He further emphasised his intention to enhance the Social Charter Department's targeted co-operation activities, while increasing synergies in the area of social cohesion. Lastly, he pointed out that ratification of the Revised Charter and its Additional Protocol on Collective Complaints by any states which had not yet done so was a priority.

41. On the subject of the crisis, in his "Report on the state of democracy, human rights and the rule of law in Europe" of 17 April 2014, the Secretary General had previously stated that:

"*People's rights are…threatened by the impact of the economic crisis and growing inequalities. European societies have suffered the effects of the recent economic crisis, which has deeply affected social cohesion in many member States, and which may eventually threaten both the rule of law and democracy*."

c. "Turin Process" launched in 2014 by the Secretary General/CoE[27]

42. In 2014 growing political awareness of the need to uphold and promote social rights in a global environment affected by the crisis marked a decisive phase in the Charter's history. Accordingly, the Secretary General of the Council of Europe, following on from Priority No. 5 for his 2014-2019 term, launched the "Turin Process" at the High-level Conference on the European Social Charter which took place in Turin on 17 and 18 October 2014 ("Turin I"). This was followed in February 2015 by the Brussels Conference on the Future of

[26] SG/Inf(2014)34 – The seven priorities identified are: 1) Continuing to strengthen the Convention and the principle of shared responsibility; 2) Continuing to strengthen and expand co-operation with member states; 3) Reinforcing the role of the Council of Europe when it comes to upholding democratic principles; 4) Upholding assistance to neighbouring countries; 5) Making the role of the Social Charter stronger; 6) Strengthening the cohesion of the organisation, and 7) Increasing its operational capacity.

[27] For more information on the Turin Process: https://www.coe.int/en/web/turin-european-social-charter/home.

the Protection of Social Rights in Europe and, in March 2016, by "Turin II" (Forum on Social Rights in Europe and Inter-parliamentary Conference on the European Social Charter).

43. The "Turin Process" is aimed at strengthening the normative system of the Charter within the Council of Europe and its relationship and synergy with the European Union, as well as improving the implementation of social rights at national level.

(i) "Turin I" Conference: October 2014

44. Turin I was organised by the Council of Europe in co-operation with the Italian authorities as part of their Presidency of the European Union. The decision to stage a high-level conference on the Charter was justified by the view that this fundamental treaty of the Council of Europe was bound to encounter a number of major challenges[28] – affecting the effectiveness of its implementation and requiring decisions on the part of the State Parties, political bodies of the Council of Europe and, to a certain extent, the European Union.

45. Turin I was attended by some 350 people; 37 European countries sent delegations and 15 of them were represented by ministers and state secretaries. Also present were the Chair of the Committee of Ministers and numerous bodies of the Council of Europe and the European Union, represented at the highest level.

46. During the conference, participants exchanged views on three main challenges: social rights and economic crises, the synergy between European Union law and the Charter, and the relevance and effectiveness of the collective complaints procedure. Two other important issues were discussed: the need to reinforce the status and position of the ECSR and the need for the Council of Europe to implement a communication policy capable of sending a clear message on the legal nature of the Charter and the scope of the ECSR's decisions.[29]

Commentaire [PM2]: *{**PL**: Those were suggestions voiced by some participants not representing Member states. Those suggestions were not discussed.}*

47. At the end of the Conference, states and European institutions were invited to start a political process (the "Turin Process") which would promote greater acceptance of the normative system of the Charter and better implementation of its provisions. This initiative was deemed necessary so that the normative system of the Charter could be strengthened and finally express its full potential alongside the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union, in the name of the aforementioned overarching principles, namely the indivisibility and interdependence of fundamental rights.[30]

48. The "Turin Process" thus marks a vital step towards a fresh start for the process of uniting Europe, given that it is essential for Europe to be based on the fundamental values around which its task is to bring states and their citizens together, and especially on the values of the European Social Charter, which is "Europe's social constitution".[31]

Commentaire [PM3]: *{**PL**: Such a view of the "process" is somewhat exaggerated taking into account the current state of it, especially limited involvement of the states (it is solely up to them to adopt any decisions). The para should be deleted or mitigated. See also para 51 on position of the States.}*

[28] "*The conclusion was that social rights are therefore doubly undermined, firstly, because of the legal and institutional disequilibrium between the monitoring systems of the respect for fundamental rights in Europe and, secondly, because of the impact of the crisis, which is leading to restrictions of rights or the dismantling of the underlying policies.*" (see Executive Summary, page 3, of the "Nicoletti Report" : https://www.coe.int/en/web/turin-european-social-charter/conference-turin).
[29] Ibid: Executive Summary, pages 2 and 3 of the "Nicoletti Report".
[30] Ibid: Executive Summary, page 2 of the "Nicoletti Report".
[31] Ibid: Executive Summary, page 4 of the "Nicoletti Report".

49. The "Turin Process" also represents a genuine opportunity to turn declarations of principle, at national and European level, into targeted political actions, in order to reinforce the effectiveness of the implementation of social rights.

50. The General Rapporteur of the "Turin I" Conference, M. Nicoletti, Vice-President of the Parliamentary Assembly (PACE), accordingly included an Action Plan (see Appendix) in his General Report above mentioned ("Nicoletti Report" : a driving force for the "Turin Process")[32]. It should be noted, however, that several States have distanced themselves from the findings and conclusions of the "Nicoletti Report" (see below, the current status of the "Turin Process").

51. This Action Plan incorporates the ideas and the proposals put forward or inspired by the Conference in the form of a list of priority measures, organised according to their objectives, the responsible actors (Council of Europe[33] – European Union – national agencies – NGOs/partners) and the timeframes required for their implementation (immediate, medium-term and long-term actions).

52. Among the measures mentioned in his presentation on 5 February 2015 to the Committee of Ministers[34], the General Rapporteur, Mr Nicoletti, identified the following six sectors as being of key importance:

- ratification of the Revised Charter and its Protocol on Collective Complaints by all member states, as is the case for the European Convention on Human Rights with the protocol allowing direct applications;
- enhancement of the collective complaints procedure;
- strengthening of the position, status and composition of the ECSR, including notably through the election of its members by the Parliamentary Assembly;
- strengthening of the position and status of the administrative services which assist the ECSR;
- reinforcement of the dialogue and exchanges which the "Turin Process" has already made possible with competent bodies of the European Union, so that full consideration can be given to the European Social Charter and decisions and conclusions of the ECSR in European Union law;
- implementation by the Secretary General of a communication policy capable of sending a clear message on the legal nature of the Charter and on the scope of the ECSR's decisions. An increased parallelism between the Charter and the Convention in the communication policies of the Council of Europe would also help to enhance the latter's role as the guardian of all fundamental rights at European level.

(ii) Brussels Conference on the Future of the Protection of Social Rights in Europe (February 2015)

53. This event, organised by the Belgian Chairmanship of the Council of Europe, confirmed that there was broad agreement on the need to give better consideration to the requirements of social rights in policies implemented in Europe in response to the economic, financial and

[32] See the entire Nicoletti Report: https://www.coe.int/en/web/turin-european-social-charter/conference-turin).
[33] Action measures aimed in particular at the ECSR, Committee of Ministers, Parliamentary Assembly, the Commissioner for Human Rights and the INGO Conference (see below).
[34] See this presentation : http://www.coe.int/en/web/turin-european-social-charter/-/report-on-turin-process-presented-at-committee-of-ministers. : in Appendix.

sovereign debt crises, and to strengthen, to this effect, the possibilities of legal remedies against violations of these rights. The conference accordingly also focused on the collective complaints procedure, with a consensus emerging on the need to give full effectiveness to the Revised Charter and to improve co-ordination across the different European systems of social rights protection.

54. The "Brussels Document" (see Appendix) – drafted by the academic experts attending the Conference with the help of the General coordinator of the ANESC (Academic Network on the European Social Charter and Social Rights: see below) – summarises the main proposals made during the event: mostly[35] action measures which already feature in the above-mentioned Action Plan in the "Nicoletti Report".

55. The "Brussels Document" provides a useful reminder that: "*The crisis is thus not just a threat to social rights, legality and social justice in Europe – it is also a call to action. The Charter can serve as the basic framework for an economic recovery that is social rights-compliant, and contributing to a recalibration of European rule of law. The model of the "highly competitive social market economy" referred to in article 3 of the Treaty on the European Union should in the future integrate this requirement*."[36]

(iii) "Turin II": Interparliamentary Conference on the European Social Charter and Forum on Social Rights in Europe, March 2016[37]

56. On 17 March 2016 the Council of Europe held a Conference on the European Social Charter in Turin in co-operation with the Italian Chamber of Deputies and the city of Turin. It was attended by more than 100 parliamentarians from 25 countries, including chairs of committees (on social affairs) at national and PACE (Parliamentary Assembly of the Council of Europe) level. In this way, the Conference facilitated the involvement of the national parliaments participating in the "Turin Process", with discussions on ratification procedures, the acceptance of new provisions of the Charter and the collective complaints system, and on implementation of its provisions at national level in the current international climate.

57. The following day, a Forum[38] was held, which was also attended by, on behalf of the Committee of Ministers, the chairs of the Rapporteur Group on Social and Health Questions (GR-SOC) and of the Rapporteur Group on Human Rights (GR-H), and a representative of the European Commission (see below, Part IV: presentation on the project "European Pillar of Social Rights").

58. The forum looked at the implementation of social rights in Europe,[39] having regard to the major challenges linked to the current global situation and the risks posed to democratic

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[35] Among the new ideas put forward, mention can be made of the following: creating a Council of Europe/European Union working group to discuss inter alia EU accession to the Charter (also mentioned in the Turin Action Plan: see below, Part IV); Declaration of the Committee of Ministers reaffirming the roles played by the Charter bodies; a more structured exchange of good practice relating to the Charter, and translation of the ECSR's decisions into the national languages.

[36] See Appendix "Brussels Document", February 2015, page 4 (point 1: protecting social rights in the time of crisis).

[37] https://www.coe.int/en/web/turin-european-social-charter/-/turin-ii-events-publication-of-the-official-speeches-and-interventions.

[38] For a more detailed account of the Forum see CDDH(2016)002.

[39] The following observations in particular were made : 1) despite moves towards a gradual standardisation of employees' status, we are now seeing a fragmentation of employment conditions; 2) we are also seeing a

security in societies where these fundamental rights were not fully upheld. In the course of the event, it was mentioned that given the current economic model, social cohesion was actually a means of promoting productivity, while individual well-being was conducive to growth.[40]

59. During the forum, the President of the ECSR highlighted the following as priority measures in his opinion: launching procedures at parliamentary level for assessing the social impact of governmental policies, with effective compliance with the Charter being used as a parameter for assessment; enabling this Charter to be directly relied on by its real beneficiaries (acceptance of the collective complaints procedure), and taking greater account of the Charter in domestic court decisions. Lastly, argued the President of the ECSR, the fact that the Charter did not oblige states to respect the social rights of people who were nationals of a country that was not a party to the Social Charter posed a problem in the current climate. This was also an anomaly compared with other international instruments for protecting human rights. He was therefore in favour of taking this aspect into consideration in order to improve the Charter system (e.g. the option for states to unilaterally agree to broaden its scope of application).[41]

60. The Forum's conclusions mentioned above called on Europe to ensure that labour markets and social protection systems operated on a fair and equal footing in all states. Another point highlighted in the conclusions was the important role of social policies in building a solidarity-based society, which left no room for dangerous forms of marginalisation.[42]

(iv) Conference in Cyprus on the role of domestic and European courts regarding social rights : February 2017[43]

61. On 24 February 2017, under the Cyprus Presidency of the Council of Europe, the Supreme Court of Cyprus organized a Conference entitled "*Social Rights in today's Europe : the role of domestic and European Courts*".

62. In this context, the relevant case-law of the ECHR and the ECJ (session I), as well as that of a number of national courts (session II[44]), was the subject of discussions between judges, representatives of European advisory and follow-up bodies, with input from academics. A final session focused on tools for social rights training and support for the legal professions (in particular the HELP program: *see below*). Finally, the opening speech aimed at safeguarding social rights in times of austerity.

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growing tendency for the production process to be split into networks, leading to a double lack of responsibility on the part of businesses and a weakening of the trade unions; 3) large numbers of young people are botching their entry into the labour market, with lifelong consequences for their careers; 4) the dismantling of social rights has created uncertainty among the present generations and uncertainty about future generations as well.

[40] See the speech made by Jean-Paul Fitoussi, professor of economics: https://www.coe.int/en/web/turin-european-social-charter/turin-forum-on-social-rights-in-europe.

[41] See the speech made by the President of the ECSR, Giuseppe Palmisano, cited above.

[42] See the conclusions of the Forum presented by Cesare Damiano, Chairman of the Committee on Public and Private Sector Employment of the Italian Chamber of Deputies, cited above.

[43] The interventions made during this Conference are largely already available on the website of the Charter : http://www.coe.int/en/web/turin-european-social-charter/conference-cyprus-2017.

[44] Interventions : "*Social rights litigation : constitutional issues ?*" ; "*Social rights litigation before the Italian Constitutional Court in times of economic crisis*" ; "*Employment litigation and the European Social Charter*" ; "*Rights of persons with disabilities : the appropriation by the French judge of the concept of* reasonable *accommodation*" ; "*Direct-effect-primacy of the more protective standard : social rights litigation before Greek Courts*" and ; "*The right to health : a thin line between social rights and positive obligations of the State*".

63. Concluding remarks were presented by Giuseppe Palmisano, President of the ECSR. According to him, it is clear from the Conference that social rights are not only a fundamental value but that they are of a fully legal nature – forming part of the legislation in force in Europe : European international law on human rights, Community law and national laws. As legal norms, they must be applied, interpreted and judicially guaranteed by national and European courts. To this end, the most relevant "law" is the Social Charter – being the most comprehensive and complete instrument for the protection of social rights at pan-European level. However, it is clear from the Conference that, for various reasons, the ECHR and the ECJ do not fully exploit the full potential of the Charter system and do not always seem to regard it as a source of law to be taken as a reference or to apply regarding social rights issues. As to the courts of the States Parties to the Charter, they should increasingly regard and perceive it as an "*integral part of domestic law*" – taking into account, of course, the specific legal characteristics of each national legal order and the specific nature of the provisions of the Social Charter, which are not all directly applicable, nor all of them able to produce direct effects.

(v) Current status of the follow-up to the "Turin Process"

64. Several initiatives have been introduced and measures adopted since the "Turin Process" was launched in October 2014. The following in particular are worth highlighting:

Commentaire [PM4]: *{**FR** : Ajout de la Pologne qui montre son désaccord sur certains points (augmentation du nombre de membres du CEDS, parallélisme entre le système de la Convention EDH et celui de la Charte). Pourtant, il est communément admis que la procédure de réclamations collectives établie dans le cadre de la Charte représente un système de protection parallèle et complémentaire à la protection juridictionnelle assurée dans le cadre de la Convention européenne des droits de l'homme. En effet, la Charte a été élaborée comme un instrument des droits de l'homme destiné à compléter la Convention EDH. Mais nous sommes d'accord avec cet insert car il ne fait que montrer les divergences entre les Etats membres à ce sujet.}.*

- GR-SOC meeting of 26 May 2015[45] : detailed exchange of views on the "Turin Process", especially on the proposals in the "Nicoletti Report", in light of the "Brussels Document".

  The delegations considered that priority should be given to encouraging further ratifications of the Revised Charter and the system of collective complaints, in particular by examining the obstacles to them. With regard to the appointment and increase of the members of the ECSR, delegations expressed mixed views. A number of delegations were in favour of further simplification of the Charter monitoring procedures and/or for it to address the most pressing issues. Finally, delegations supported the suggestion to invite the Council of Europe Development Bank to finance more projects related to social rights.

  It should also be pointed out that during the discussions several delegations opposed other aspects of the "Nicoletti Report", in particular the following: the parallelism between the Convention and the Charter systems, while their legal binding obligations are different; the opportunity of EU accession to the Charter; the lack of formal status of the Turin Action Plan – its proposals having not been endorsed by the "Turin I" Conference. Finally, some delegations invited the ECSR to reflect on its working methods and its approach to the interpretation of the Charter. One delegation said that it creates a lack of clarity as to the scope of the obligations undertaken by member States.

- Adoption by the Committee of Ministers in November 2015 of the Programme and Budget 2016-2017, specifying that: "*emphasis will be given to strengthening the application of the Charter in today's Europe. The Council of Europe will maintain a dialogue with the European Union on this matter. The key objective is to improve the implementation of social rights at national level, in order to reduce economic and social tensions. Efforts will be made (...) to simplify the monitoring procedures, which could make further ratifications of the Revised Social Charter and its Additional Protocol on*

[45] See GR-SOC(2015)CB3 – Rapporteur Group on Social and Health Questions (GR-SOC) of the Committee of Ministers.

Collective Complaints more attractive, and (...) to enhance targeted co-operation with member States in the field of social rights...".[46]

With this in mind, the Committee of Ministers decided to: 1) create two new lawyer posts in the Social Charter Department in connection with the collective complaints procedure; 2) transfer a third post in connection with the new European Social Cohesion Platform (see below), and 3) increase the financial resources earmarked for boosting co-operation activities focusing on the Charter system.

- Approval on 19 January 2016 by the GR-SOC of the December 2015 proposals from the General Secretariat/CoE concerning numerous objectives of the "Turin Process":[47] high-level meetings in member states in order to promote further ratifications and acceptance of more of the Charter's provisions; simplifying the monitoring procedures, particularly for states which have accepted the collective complaints procedure; improving targeted technical co-operation with member states; strengthening the synergy between European Union law and the Charter (these four "courses of action" are elaborated on below: Part II, B and Part IV).

- Exchange of views, on 30 March 2016, between the President of the ECSR and the Ministers' Deputies – presentation by the President on the progress made and the remaining challenges (see below).[48]

- Exchange of views, on 22 March 2017, between the President of the ECSR and the Ministers' Deputies – state of art by the first of the advances and remaining challenges (see below)[49]

- May 2016: 3rd report of the Secretary General of the Council of Europe on the state of democracy, human rights and the rule of law: Chapter 5 on inclusive societies, one of the five main components of democratic security where there are ample references to social rights, the Charter and the "Turin Process" (also mentioned in the 2014 and 2015 reports).

- Launch on 10 December 2015 of the new European Social Charter website – thus helping to achieve the aforementioned objective of the "Turin Process" regarding communication (see above: one of the six priority sectors identified by the Committee of Ministers).

- Launch at the end of 2015 of the "Council of Europe-FRA-ENNHRI-EQUINET" Collaborative Platform on Economic and Social Rights (see below, Part II, B).

- Production by the Directorate General Human Rights and Rule of Law of a film about the European Social Charter aimed at raising public awareness of the fact that this Charter is

[46] Council of Europe Programme and Budget 2016-2017, CM(2016)1, 21 December 2015.
[47] GR-SOC(2016)CB1, meeting of 19 January 2016, and the Secretariat General/CoE's proposals referred to therein and as set out in CM(2015)173 of 17 December 2015 : in Appendix.
[48] Introductory speech by the President of the ECSR during his exchange of views with the Committee of Ministers, 30 March 2016: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806304fc.
[49] Speech of the President of the ECSR, 22 March 2017 : https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016807010f3

one of the cornerstones of the Council of Europe's identity. A campaign of dissemination of this film will soon be launched.

- Organisation of other forums and meetings in Turin aimed at promoting further ratifications of the Revised Charter and collective complaints protocol (see above, "Turin II").

- Report in the process of being finalised within the PACE by Silvia Eloisa BONET (Andorra) – appointed as Rapporteur for the "Turin Process" (see below, Part III, B).

Initiatives by some member States to promote the "Turin Process", such as the Brussels Conference (2015) and the Cyprus Conference (2017) ~~held under the Chairmanship of the Council of Europe~~, and Turin II (2016) ~~at the invitation of the Mayor of Turin and the Italian Chamber of Deputies~~ (see above).

- Initiative launched by the INGO Conference: a co-ordinating committee was set up in June 2016 devoted to the "Turin Process" (see below, Part III, E).

B. At European Union level

65. In tandem with the action being taken at Council of Europe level, awareness is also growing at European Union level of the need to provide greater protection for social rights. Evidence of this can be seen in the "European Pillar of Social Rights" project, various European Parliament resolutions and also recommendations/reports from the FRA (European Union Agency for Fundamental Rights). For further details, see below, Part IV of the report.

6. Previous work of the CDDH in the area of social rights

66. In the past, the CDDH has carried out various activities in the field of social rights. Notable examples include:

- Drafting Recommendation (2000)3 of the Committee of Ministers to member States on the right to the satisfaction of basic material needs of persons in situations of extreme hardship.
- GT-DH-SOC working group (2003-2005), which examined the possibility of adding social rights to the Convention: the CDDH adopted its activity report at its 60th meeting (14-17 June 2005).[50] Following an exchange of views, it decided to keep the ongoing discussion of developments relating to social rights on its agenda.

To this end, the CDDH had already appointed Chantal Gallant (Belgium) as the CDDH's rapporteur for social rights, who went on to submit two reports on developments in the area of social rights: CDDH(2006)022[51] and CDDH(2008)006.[52] This second report, which was updated on 15 September 2008, and supplemented with material from the first report,[53] was also the subject of a Council of Europe publication intended for limited distribution.

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[50] See http://www.coe.int/t/dghl/standardsetting/cddh/GT_DH_SOC/2005_006_en.pdf
[51] Seehttp://www.coe.int/t/dghl/standardsetting/cddh/GT_DH_SOC/CDDH(2006)022_EN.pdf
[52] See http://www.coe.int/t/dghl/standardsetting/cddh/GT_DH_SOC/CDDH(2008)006_EN.pdf.
[53] https://www.coe.int/t/dghl/standardsetting/cddh/GT_DH_SOC/Recent%20developments%20in%20the%20field%20of%20social%20rights_publication_EN.pdf.

- Drafting of the Manual on human rights and the environment, published in 2006 and updated in 2011, in the light of the latest judgments of the Court and ECSR decisions, and featuring examples of national good practice in the Appendix.

- Drafting of Recommendation CM/Rec(2014)2 of the Committee of Ministers to member States on the promotion of the human rights of older persons: principles illustrated by examples of national good practice. Paragraph 3 of the document urges states to provide additional examples of action taken on this Recommendation, so that they can be published on the CDDH website.

- Drafting of Recommendation (2016) 3 of the Committee of Ministers to member States on human rights and business. Paragraph 3 invites them to "*share examples of good practices related to the implementation of this recommendation with a view to their inclusion in a shared information system, to be established and maintained by the Council of Europe, and which is to be accessible to the public, including through reference to existing information systems*".

II. THE TWO MAIN COUNCIL OF EUROPE CONVENTIONS

67. The Convention and the Charter are regional instruments to be understood in a broader international framework (in particular the ILO - International Labour Organization – norms and the above mentioned ICESCR), from which they derive and draw inspiration. Thus, their supervisory mechanisms may take into account these different sources of law which complement each other[54].

A. The European Convention on Human Rights ("the Convention")

a. Illustrative case law of the Court concerning social rights

68. In the reports referred to above (CDDH(2006)022 and CDDH(2008)006), a detailed examination was carried out on the Court's direct case law (prohibition of slavery, servitude and forced labour – freedom of association – right to education) and indirect case law on social rights. It was noted that the Court had built up this case law in both the substantive and the procedural spheres.[55] It was also noted that previously the Court had seemed to refer to the Charter mainly in order to specify the limits of its powers but that it now seemed to refer to it more to back up its findings of violations. Lastly, it was pointed out that Protocol No. 12 could give rise to increased protection of social rights by the Court.

69. In these reports, it was noted that the Court provided indirect protection, particularly in the following areas:

[54] In this regard, the *Demir and Baykara* judgment of the Grand Chamber of 12 November 2008, in which the ECHR specifies that in defining the meaning of the terms and concepts of the Convention, it can and must take into consideration elements of international law others than the Convention, their interpretation by their competent bodies, and the practice of European States reflecting their common values (§85). Referring to the references made by the ECSR to international instruments, see the section on this issue below (point B (d), (ii)).

[55] Procedural protection has been afforded by Article 6 in many social disputes in areas such as social benefits, applications for work permits, occupational disqualifications and the recovery of unpaid wage supplements. It should be noted that there was a reversal of the Court's case law regarding the applicability of Article 6 to cases involving civil servants (Grand Chamber judgment, *Vilho Eskelinen v. Finland* of 19 April 2007).

- the right to health[56] and the right to a healthy environment[57] (Articles 2 and 8);
- the right to conditions of detention consistent with human dignity[58] and the right of prisoners to access to health care[59] (Article 3);
- various aspects of labour law (Articles 8,[60] 9,[61] 10[62] and 1 of Protocol No. 1[63]);
- the right to housing (Articles 8[64] and 1 of Protocol No. 1[65]);
- social benefits[66] (Article 1 of Protocol No. 1 taken alone[67] or in conjunction with Article 14).[68]

70. On the other hand, in these reports, little progress was noted in other areas such as protection from social insecurity[69] or the right to integration of persons with disabilities.[70]

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[56] See, from the standpoint of Article 2, the *Silih v. Slovenia* judgment of 28 June 2007 (violation confirmed by a Grand Chamber judgment of 9 April 2009: major delays and frequent changes of judge during proceedings concerning a death alleged to have occurred as a result of medical negligence) and from the standpoint of Article 8, the *Tysiac v. Poland* judgment of 20 March 2007 (concerning procedures to exercise the right to a therapeutic abortion).

[57] See, from the standpoint of Article 2, the *Budayeva and Others v. Russia* judgment of 20 March 2008 with regard to a natural disaster (no emergency relief policies or subsequent investigation) and, from the standpoint of Article 8, the *Lemke v. Turkey* judgment of 5 June 2007 (continuing operation of goldmines despite the withdrawal of permits).

[58] See the *Trepashkin v. Russia* judgment of 19 July 2007.

[59] See the *Dybeku v. Albania* judgment of 18 December 2007. In this judgment, the Court found, with regard to Article 46, that measures should be taken as a matter of urgency to secure appropriate conditions of detention and adequate medical treatment. In several other cases, the Court has ordered provisional measures for the medical treatment and/or hospitalisation of applicants (in particular, in the *Paladi v. Moldova* judgment of 10 July 2007 – upheld by a Grand Chamber judgment of 10 March 2009, and the *Yakovneko v. Ukraine* judgment of 25 October 2007).

[60] See the *Sidabras and Dziautas v. Lithuania* judgment of 27 July 2004 concerning employment restrictions on former employees of the KGB. Relying on Article 1§2 of the Charter, the Court found that the restrictions had adversely affected the applicants' possibilities to develop relationships with the outside world, making it extremely difficult for them to earn a living (violation of Article 14 in conjunction with Article 8).

[61] See the *Ivanova v. Bulgaria* judgment of 12 April 2007 (employment terminated on account of religious beliefs) – and, by contrast, the inadmissibility decision of 18 March 2008 in *Blumberg v. Germany*.

[62] See the *Peev v. Bulgaria* judgment of 26 July 2007 (another unlawful dismissal) – and by contrast, the inadmissibility decision of 29 May 2007 in *Kern v. Germany*.

[63] See the *Evaldsson and Others v. Sweden* judgment of 13 February 2007 concerning deductions to wages of non-unionised workers to finance a union's wage monitoring activities.

[64] See the *Wallova and Walla v. the Czech Republic* judgment of 26 October 2006 on the placement of five children in care solely because of their inadequate and unstable housing. The Court found the measure to be disproportionate but did not examine the other complaint relating to the failure to provide social housing.

[65] See the pilot judgment in *Hutten–Czapska v. Poland* of 19 June 2006, in which the Court (Grand Chamber) found that there had been a violation of the right to property while requesting in its final provisions that a mechanism be set up to establish a "fair balance" between the interests of landlords and the general interest of the community, particularly by providing sufficient accommodation for the less well-off.

[66] See, in particular, the Grand Chamber's admissibility decision of 6 July 2005 in *Stec and Others v. the United Kingdom* finding that Article 1 of Protocol No. 1 also applies to "non-contributory" benefits.

[67] See several judgments of 15 February 2007 v. Russia on the quashing of judgments finding that a reduction in the applicants' special monthly disability allowances was unlawful.

[68] See the *Luczak v. Poland* judgment of 27 November 2007, in which the Court found that a person's exclusion from a social security scheme (in this case because of his nationality) must not leave him bereft of any social security cover, thereby posing a threat to his livelihood (reference by the Court to Article 12 of the Charter).

[69] On this subject, it was noted that the Court had always been very exacting with regard to the level of severity required to be in breach of Article 3 and had only ever given inadmissibility decisions in this respect. The Court also required "exceptional circumstances" when considering such matters under Article 2 and in relation to Article 8, it stated that states had "a wider margin of appreciation … in cases involving an allocation of limited State resources" (inadmissibility decision of 4 January 2005 in *Pentiacova and Others v. Moldova*). More generally, it was noted that it was surprising that, when it was examining social insecurity cases, the Court did

71. The aim here is to attempt to examine, through examples of case law, whether since September 2008 (when the final version of the document cited above was published[71]), the Court has made any significant progress as regards the protection of social rights.

(i) Direct protection of certain social rights

72. It should be recalled that the Convention directly protects the following rights: the prohibition of slavery, servitude and forced labour, freedom of association and the right to education. These rights are somewhere in between civil and political rights and economic, social and cultural rights.[72]

- Prohibition of slavery, servitude and forced labour[73] (Article 4)

73. Since the previous reports, several rulings have been taken under this article. A few examples are given here.

74. With regard to the liberal professions, we can point to the inadmissibility decision of 14 September 2010 in *Steindel v. Germany*,[74] in which the Court found that the obligation for a medical practitioner to participate in an emergency-service scheme did not amount to compulsory or forced labour. The Court also found no violation of Article 14 taken in conjunction with Article 4 in the *Graziani-Weiss v. Austria* judgment of 18 October 2011 on the obligation of lawyers and public notaries – but not other categories of persons who had studied law – to act as unpaid guardians to mentally ill persons. In so doing, the Court relied on ILO Convention No. 29 concerning forced or compulsory labour.

75. Note should be taken of the *Chitos v. Greece* judgment of 4 June 2015, in which for the first time, the Court ruled on the requirement for an army officer to pay a fee to be allowed to resign before the end of his period of service. The Court found that there had been a violation of Article 4§2, taking the view that although the aim pursued was legitimate, the state had failed to strike the right balance between the applicant's right and the interests of the

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not simply refer to the concept of human dignity – which lay at the core, for instance, of its assessment of detention conditions.

[70] It should be recalled that Article 8 includes the right to personal development and the right to develop relationships with the outside world. From some inadmissibility decisions it had been noted that this article places states under certain positive obligations towards persons with disabilities without nonetheless specifying which, whereas the Court had not established any positive obligation as to the accessibility of public places for persons with reduced mobility (decisions of inapplicability, finding that the rights relied upon were too "broad" or "indeterminate": no evidence of a special link between the needs of private life and the inaccessibility of the places referred to). However, the inadmissibility decision of 11 April 2006 in *Molka v. Poland* was highlighted as possibly indicating the advent of new case law on the subject, it appearing to be decisive in this case that the incident complained of was an isolated case (reference by the Court to Article 15 of the Charter).

[71] http://www.coe.int/t/dghl/standardsetting/cddh/GT_DH_SOC/Recent%20developments%20in%20the%20field%20of%20social%20rights_publication_EN.pdf

[72] It should be recalled that these rights are also guaranteed by the Charter (mainly by Articles 1§2, 5, 6, 15§1st and 17).

[73] http://www.echr.coe.int/Documents/FS_Forced_labour_ENG.pdf: factsheet on slavery, servitude and forced labour (September 2016). See, in particular, the *Siliadin v. France* judgment of 26 July 2005 (first judgment to provide a substantial interpretation of Article 4 of the Convention, which had been referred to very little prior to this).

[74] See also the inadmissibility decisions in *Mihal v. Slovakia* of 28 June 2011 (concerning a judicial enforcement officer) and *Bucha v. Slovakia* of 20 September 2011 (concerning a lawyer).

community in view of the sum claimed and the fact that it could not be paid in instalments (reference by the Court to Article 1§2 of the Charter).

76. With regard to prison work,[75] mention should be made of the Grand Chamber's *Stummer v. Austria* judgment of 7 July 2011. According to the applicant (who had spent 28 years in prison), European standards had changed to such an extent that prison work without affiliation to the old-age pension system constituted a violation of Article 4. The Court found that there had been no violation of Article 4 as there was no Europe-wide consensus on the subject and no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1.[76] The Court called on the respondent state to keep the issue raised by the case under review but considered that, by not having affiliated working prisoners to the old-age pension system, it had not exceeded its margin of appreciation. In its judgment, the Court referred to the ECSR's interpretation of Article 1§2 of the Charter.[77] The Court also found that there had been no violation of Article 4 in its *Meier v. Switzerland* judgment of 9 February 2016 – lack of a sufficient consensus among member states on requiring prisoners to work after reaching retirement age.

77. With regard to domestic work, mention can be made of the *C.N. and V. v. France* judgment of 11 October 2012, in which the Court found that there had been a violation of Article 4 with regard to the first applicant (aged 16) as the state had failed to provide a legislative and administrative framework capable of effectively combating servitude and forced labour. In addition in the *C.N. v. the United Kingdom* judgment of 13 November 2012, the Court also found that there had been a violation of Article 4 because there was no legislation making domestic servitude a specific offence (distinct from trafficking and exploitation) and therefore the investigation into the applicant's allegations had been ineffective.

78. In the area of human trafficking, the Court ruled on this subject for the first time in its *Rantsev v. Cyprus and Russia* judgment of 7 January 2010. Holding that Article 4 prohibited this type of trafficking, the Court concluded that Cyprus had failed to comply with its positive obligations because it had failed to put in place an appropriate legal and administrative framework to combat trafficking and the police had failed to take operational measures to protect the applicant's daughter (in the light of the suspicions that she was a victim of trafficking). The Court also found that there had been a violation of Article 4 by Russia because it had failed to investigate when and where the women concerned had been recruited or to take measures to determine the identity of the traffickers or their methods. Lastly, the Court found that Cyprus had also infringed Article 2 (failure to conduct an effective investigation into the death of the woman in question).

79. In the *L.E. v. Greece* judgment of 21 January 2016, the Court also found that there had been a violation of Article 4 in view of a number of shortcomings, which had undermined the effectiveness of the preliminary inquiry and the investigation of the case and considerable delays and shortcomings in the administrative and judicial proceedings (concerning the

[75] See also the inadmissibility decision of 12 March 2013 in *Floroiu v. Romania* (as the applicant's remaining sentence had been substantially reduced, his work was considered to have been remunerated).
[76] See also the inadmissibility decision of 21 April 2015 in *S.S. and Others v. the United Kingdom* concerning the refusal to pay social security benefits to prisoners.
[77] According to this, prisoners' working conditions must be properly regulated, particularly if they are working for employers other than the prison service. The regulations must cover pay, hours and other working conditions, as well as social protection (in the sphere of employment injury, unemployment, health care and old age pensions): Conclusions 2012, General Introduction, Statement of Interpretation on Article 1§2 of the Charter.

granting of the status of human-trafficking victim). In the *Chowxdury and others v. Greece* judgment of 30 March 2017, the ECHR found a violation of Article 4§2 in view of the authorities' failures to prevent the trafficking situation (as regards 42 Bangladeshi nationals), to protect the victims, to conduct an effective investigation of the acts committed and to punish the perpetrators. In contrast, in the judgment of 17 January 2017 J.*V.L. and others v. Austria*, the ECHR concluded that there had been no violation of Articles 3 and 4, noting in particular that States are not obliged to establish universal jurisdiction over trafficking in human beings committed abroad and that the authorities had taken, in the circumstances of the case, all the measures which could reasonably have been expected of them in respect of the acts committed in Austria[78]

80. Lastly, it is important to note the inadmissibility decision of 4 May 2010 in *Schuitemaker v. the Netherlands* concerning a law of 2004 requiring the applicant to take up "generally accepted" employment (the exceptions being employment which is not socially accepted or to which the candidate may have conscientious objections) or otherwise have her unemployment benefit reduced. According to the Court, if a state sets up a social security system, it is fully entitled to lay down conditions for persons claiming benefits.[79]

- Freedom of assembly and association[80] (Article 11)

81. Since the previous reports, a very large number of decisions have been given in the sphere of freedom of association. A few examples are given here.

82. With regard to the right to join a trade union, reference can be made to the *Danilenkov and Others v. Russia* judgment of 30 July 2009, in which the Court found that there had been a violation of Article 14 taken in conjunction with Article 11 as the state had failed to afford clear and effective judicial protection against discrimination on the ground of trade-union membership (dismissal of members of the Dockers' Union of Russia after a two-week strike). As to the right not to join an association , reference can be made to the *Vörður Olafsson v. Iceland* judgment of 27 April 2010, in which it was found that there had been a violation of Article 11 because a non-member was required by law to pay a contribution to a private industrial federation (the judgment includes a reference to the Charter).

83. As to the refusal to register trade unions, a note should be made of the Grand Chamber's *Sindicatul 'Pastorul cel Bun' v. Romania* judgment of 9 July 2013. In this judgment the Court found that there had been no violation of Article 11, reversing its judgment of 31 January 2012. It elaborated on its case law on the characteristic features of an employment relationship – applying criteria from the relevant international instruments (with reference to

[78] See, in particular, the inadmissibility decisions for want of evidence or failure to exhaust domestic remedies in: *V.F. v. France* of 29 November 2011, *M. and Others v. Italy and Bulgaria* of 31 July 2012 and *F.A. v. the United Kingdom* of 10 September 2013. There is also a relevant application pending: *T.I. and Others v. Greece* (40311/10).

[79] The ECSR also approves of the requirement to accept the offer of a job or training or otherwise lose entitlement to unemployment benefit – although it does set out more exceptions to this rule than the Dutch legislation: Conclusions 2012, General Introduction, Statement of Interpretation cited above on Article 1§2 of the Charter. In Conclusions 2015 on findings of non-conformity for repeated lack of information, the ECSR concluded that this law, which provides for an initial period of one year during which unemployed persons can refuse an unsuitable job offer without losing their entitlement to unemployment benefit, was reasonable (finding of conformity with Article 12§1 of the Charter).

[80] http://www.echr.coe.int/Documents/FS_Trade_union_ENG.pdf: Factsheet: Trade union rights (May 2016). Regarding the freedom of expression of trade unions, see below : Article 10 of the Convention.

Article 5 of the Charter) – and reiterated the principle that no occupational category should be excluded from the scope of Article 11. However, in the case in question, the Court considered that the court had merely applied the principle of the autonomy of religious communities, as the refusal to register the trade union – following the failure to obtain the Archbishop's permission – derived directly from the right of the religious community in question to make its own organisational arrangements. Reference can also be made to the *Manole and "Romanian Farmers Direct" v. Romania* judgment of 16 June 2015, in which the Court found no violation of Article 11 regarding the refusal to register a group of self-employed farmers as a trade union (possibility for them to join trade unions but not to found them – right reserved to farm employees and members of co-operatives). In its judgment, the Court referred to the Charter and to the comments of the ILO Committee of Experts.

84. It is also important to mention the *Matelly v. France* judgment of 2 October 2014 on the prohibition on members of the armed forces founding or joining associations to defend their professional interests. This was the first time that the Court ruled on the extent of the protection afforded them by Article 11. In this case, the Court found that there had been a violation, considering that while the freedom of association of military personnel could be subject to legitimate restrictions, a blanket ban on forming or joining a trade union was incompatible with the Convention. In its judgment, the Court referred to Article 5 of the Charter while going beyond the ECSR's requirements.[81]

85. As to the right to collective bargaining[82], reference should be made to the above mentioned Grand Chamber's *Demir and Baykara v. Turkey* judgment of 12 November 2008[83] with regard to the setting aside with retroactive effect of a collective agreement negotiated by a trade union with the authorities and the ban on founding a trade union imposed on the applicants, who were municipal workers. In both respects, the Court found that there had been a violation of Article 11. In its judgment (referring in particular to Articles 5 and 6 of the Charter) the Court found as follows: "*having regard to the developments in labour law, both international and national, and to the practice of Contracting States in such matters, the right to bargain collectively with the employer has, in principle, become one of the essential elements of the 'right to form and to join trade unions for the protection of [one's] interests'..., it being understood that States remain free to organise their system so as, if appropriate, to grant special status to representative trade unions. ... civil servants, except in very specific cases, should enjoy such rights, but without prejudice to the effects of any 'lawful restrictions' that may have to be imposed on 'members of the administration of the State' ... – a category to which the applicants ... do not, however, belong"* (§154).[84]

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[81] States are permitted to restrict or suppress entirely the freedom to organise of the armed forces (Complaint No. 2/1999, *EUROFEDOP v. France*, 4 December 2000, §28). However, it must be verified that bodies defined by domestic law as belonging to the armed forces do indeed perform military tasks (Conclusions XVIII-1 (2006), Poland). However, since the *Matelly* judgment, the ECSR considered that the restrictions in the law aiming at rendering the situation into conformity with the Convention did not ensure the conformity with the Charter.

[82] See, in particular, the inadmissibility decision in *Unite the Union v. the United Kingdom* of 3 May 2016 (inability of a trade union to engage in collective bargaining following the abolition of a wages council – however, European and international instruments do not require states to have a mandatory statutory mechanism for collective bargaining in the agricultural sector).

[83] Upholding the previous judgment of 21 November 2006 – referred to in previous reports.

[84] It should be noted that in its defence, the Turkish government invoked the absence of political support on the part of member states, in the context of the work of the Steering Committee for Human Rights, for the creation of an additional protocol to extend the Convention system to certain economic and social rights. The Court observed, however, that this attitude of member states was accompanied by a wish to strengthen the mechanism of the European Social Charter – an argument in support of the existence of a consensus among Contracting

86. Concerning the right to strike, it is important to note the *Enerji Yapi-Yol Sen v. Turkey* judgment of 1 April 2009 where the ECHR found a violation of Article 11 (officials sanctioned for their participation in a national strike day – ECHR reference to the Charter, §24). On the other hand, in the *National Union of Rail, Maritime and Transport Workers v. the United Kingdom* judgment of 8 April 2014, the Court found that there had been no violation of Article 11 given that nothing in the facts submitted by the applicant trade union showed that the ban on taking secondary industrial action (that is against an employer not involved in an industrial dispute) had had a disproportionate effect on its rights. In this case, the Court considered that the United Kingdom's margin of appreciation had to be broad – since a country's industrial relations strategy formed part of its overall economic and social policy and it was generally accepted that these were sensitive issues. It was necessary, therefore, to respect the legislature's wishes unless they clearly had no reasonable basis. It is important to note, however, that the ILO Committee of Experts and the ECSR, to which the Court refers, had already criticised the United Kingdom for failing to grant trade unions the right to organise such actions.[85]

87. In two other judgments – also referring to Article 6§4 of the Charter – the ECHR found, in contrast, that there had been a violation of Article 11 with regard to the right to strike: the *Veniamin Tymoshenko and Others v. Ukraine* judgment of 2 October 2014 (complete ban on strikes for the staff of an airline company) and the *Hrvatski liječnički sindikat v. Croatia* judgment of 27 November 2014 (ban of nearly 4 years on strikes by a healthcare trade union).

88. With regard to trade union rights for civil servants, several findings of violations have been issued against Turkey including, in particular: the *Şişman and Others v. Turkey* judgment of 27 September 2011 (regarding the posting of trade union notices calling for a worker's demonstration on 1 May) and the *Ismail Sezer v. Turkey* judgment of 24 March 2015 (punishment of a teacher performing trade union functions – a reference is made in the judgment to Article 5 of the Charter). Lastly, in the *Junta Rectora Del Ertzainen Nazional Elkartasuna v. Spain* judgment of 21 April 2015, the Court found that there had been no violation of Article 11 with regard to a police trade union's right to strike bearing in mind the specific nature of the activities of the officers concerned, which warranted granting the state a sufficiently wide margin of appreciation (a reference is also made in this judgment to Article 5 of the Charter).[86]

States to promote economic and social rights. The Court also pointed out that nothing prevented it from taking this wish into account when interpreting the provisions of the Convention (§84).

[85] See ECSR Conclusions XX-3 (2014) on the United Kingdom: "*the Court found ... that it would be inconsistent for [it] to take a narrower view of freedom of association of trade unions than that which prevailed in international law. However, because the right to organise had still been partially effective, the United Kingdom's legislation was found by the Court to be within the margin of appreciation within the framework of the European Convention of Human Rights .... The Committee notes that Article 6§4 of the Charter is more specific than Article 11 of the Convention. ... while the rights at stake may overlap, the obligations on the State under the Charter extend further in their protection of the right to strike, which includes the right to participate in secondary action*".

[86] While states may restrict the police's right to organise, police officers must nonetheless be able to benefit from most trade union rights including the right to negotiate their pay and their working conditions and freedom of assembly (Complaint No. 11/2001, *CESP v. Portugal*, 22 May 2002, §§25-26). More recently and extensively, the ECSR interpreted Article 6§4 of the Charter, finding that it had been violated by the prohibition of the right to strike of members of the police (Complaint 83/2012, *EuroCop v. Ireland*), Decision 2 December 2013.

- Right to education (Article 2 of Protocol No. 1)[87]

89. Since the previous reports, several decisions have been given concerning the right to education. A few examples are given here.

90. As to respect for parents' philosophical and religious convictions,[88] the Court noted in its *Mansur Yalçin and Others v. Turkey* judgment of 16 September 2014 that the Turkish education system offered no appropriate options for the children of parents who had a conviction other than that of Sunni Islam and that the very limited procedure for exemption was likely to subject pupils' parents to a heavy burden and the need to disclose their convictions in order to have their children exempted from lessons in religion. As a result, the Court found that there had been a violation of Article 2 of Protocol No. 1. Noting that this violation stemmed from a structural problem (*Hasan and Eylem Zengin v. Turkey* judgment of 9 October 2007), the Court found, under Article 46, that Turkey should take appropriate steps to remedy the situation without delay including, in particular, a procedure for exemption from compulsory religious culture and ethics classes (which did not require parents to disclose their convictions).

91. Contrary to its judgment of 3 November 2009, the Court found in its Grand Chamber judgment of 18 March 2011 in *Lautsi v. Italy*, that there had been no violation of Article 2 of Protocol No. 1 as a result of the presence of a crucifix in the classrooms of Italian state schools – particularly from the perspective of its impact on the applicants (as an essentially passive symbol).

92. With regard to education for Roma children,[89] mention should be made of the Grand Chamber's *Orsus and Others v. Croatia* judgment of 16 March 2010 concerning 15 Croatian nationals of Roma origin placed in Roma-only classes during their schooling. This case should be distinguished from that of *D.H. and Others v. the Czech Republic*,[90] as in this case

[87] See, in particular, http://www.echr.coe.int/Documents/FS_Childrens_ENG.pdf: factsheet on children's rights (February 2017: pages 15 to 18). It is particularly worth noting the Grand Chamber's *Catan and Others. v. the Republic of Moldova and Russia* judgment of 19 October 2012 regarding the forced closure of schools as a result of the separatist authorities' language policies and their acts of harassment after they reopened (no violation by the Republic of Moldova – which had not supported the regime and had made considerable efforts to support the applicants – violation by the Russian Federation – the separatist regime could not have survived without Russia's support and the closure of the schools therefore fell within its jurisdiction). As to exclusion from school, reference can be made to the following judgments: *Ali v. the United Kingdom* of 11 January 2011 (no violation: applicant expelled during an investigation into a fire at the school but alternative schooling proposed and attempt at reintegration made); *Memlika v. Greece* of 6 October 2015 (violation: mistaken medical diagnosis and delays in reintegration); *Dogru and Kervanci v. France* of 4 December 2008 (no violation of Article 9: refusal by the applicants to take off their headscarves during physical education classes) and *Aktas, Bayrak, Gamaleddyn*, *Ghazal*, *Ranjit Singh* and *Jasvir Singh v. France* (inadmissibility decisions of 30 June 2009: application manifestly ill-founded: expulsions for wearing conspicuous symbols of religious affiliation).

[88] See, in particular, the Grand Chamber's *Folgero and Others v. Norway* judgment of 29 June 2007 (violation – the Court found the partial exemption arrangement to be inadequate). It is also worth noting the *Grzelak v. Poland* judgment of 15 June 2010, in which the Court found that there had been a violation of Article 14 taken in conjunction with Article 9 (lack of ethics classes for a pupil who chose not to attend religious-education classes) but that the application was inadmissible under Article 2 of Protocol No. 1.

[89] See, in particular: http://www.echr.coe.int/Documents/FS_Roma_ENG.pdf: factsheet on Roma and Travellers (January 2017: see pages 19 to 21).

[90] It should be recalled that in its Grand Chamber judgment of 13 November 2007, the Court considered that it did not need to examine the applicants' individual cases, it having been established that the application of the impugned law (on the placement of children in special schools) had, at the time of the facts, had harmful and disproportionate effects on the Roma community. The Court consequently found that there had been indirect

the two schools in question did not apply a general policy of segregation of Roma children. In *Orsus and Others* it was alleged that the special classes only included Roma children because of their poor command of the Croatian language. Yet the tests used to determine their placement did not really relate to their language skills, the curriculum did not address language problems and nothing was done to monitor the pupils' progress in this area. In contrast with its Chamber judgment of 17 July 2008, the Court found that there had been a violation of Article 14 taken in conjunction with Article 2 of Protocol No. 1 as there were no clear or transparent criteria for the applicants' transfer to mixed classes. As in *D.H.*, it is surprising that the Court referred to many different sources but failed to mention the ECSR's position on this subject (separate school facilities for Roma children violate Article 17§1 of the Charter).

93. Mention can be made, among others,[91] of the *Sampani and Others v. Greece* judgment of 11 December 2012, in which the Court also found that there had been a violation of Article 14 taken in conjunction with Article 2 of Protocol No. 1. In particular, the Court noted that there had been no significant change since its *Sampanis and Others v. Greece* judgment of 5 June 2008 – because of the failure to take account of the particular needs of Roma children as members of a disadvantaged group. Under Article 46, the Court recommended enrolment in other schools.

94. In its *Velyo Velev v. Bulgaria* judgment of 27 May 2014, the Court pointed out that Article 2 of Protocol No. 1 did not require states to set up educational facilities in prisons. The Court found, however, that the refusal to enrol the applicant in the existing prison school was not sufficiently foreseeable, and did not pursue a legitimate aim to which the refusal would have been proportionate. Accordingly, the Court found that there had been a violation of Article 2 of Protocol No. 1.

95. On the subject of the accessibility of public places to persons with disabilities, it is worth noting the Grand Chamber's inadmissibility decision of 9 July 2015 in *Gherghina v. Romania,* in which the Court found that a student with disabilities complaining that university and court buildings were inaccessible had failed to exhaust domestic remedies. According to the Court, he could have asked the courts to order the universities to install an access ramp and other facilities accommodating his needs, brought an action in tort to make good any damage he had sustained or lodged an administrative appeal against the decisions to exclude him from the various universities concerned. In the Court's view, the absence of a well-established body of domestic case law could be explained by the fact that the protection of the rights of people with disabilities was a relatively recent branch of domestic law which was emerging alongside international law and practice. However, by applying to the relevant court, the applicant would have created an opportunity for the development of domestic case law, which would potentially have been beneficial to anyone else in a similar situation. In addition, the inaccessibility of the court buildings in question could not have prevented the applicant from making applications in writing or through a representative. Lastly, with regard to the applicant's contention that it would be unreasonable to require individuals to bring proceedings against many different bodies to ensure that public buildings were made

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discrimination against the applicants – based primarily on statistics. In this way, the Court aligned itself with the evaluation mechanism of the Charter (relating to a general situation).

[91] See, in particular, the *Horváth and Kiss v. Hungary* judgment of 29 January 2013 (long history of wrongful placement of Roma children in special schools – failure to take account of their special needs as members of a disadvantaged group – as a result, difficulties in integrating into society at large) and the *Lavida and Others v. Greece* judgment of 28 May 2013 (concerning a primary school attended only by Roma pupils).

accessible, the Court pointed out that the national authorities were in the best position to decide on matters of economic and social policy entailing public expenditure.

96. The Court seems to have taken a major step forward in its *Çam v. Turkey* judgment of 23 February 2016, in which it found that there had been a violation of Article 14 taken in conjunction with Article 2 of Protocol No. 1, holding that the refusal by the national music academy to enrol the applicant because she was blind (despite the fact that she had passed the entrance examination) and its failure to make reasonable accommodation constituted an infringement of her right to a musical education. The Court referred to Article 15 of the Charter and its explanatory report and to the United Nations Convention on the Rights of Persons with Disabilities, whose provisions on the right to education should be taken into account (§53). It pointed out that reasonable accommodation could take a variety of forms and it was not the Court's task to define the means of meeting the educational needs of children with disabilities. However, the Court was entitled to exercise some supervision in this area as discrimination based on disability extended to any refusal to provide reasonable accommodation (no effort was made in this respect in the case in question).[92] We can note that the ECHR does not make any reference to the ECSR – even if the latter has often mentioned this point in its conclusions on Article 15§1st of the Charter.

97. Lastly, in the *Ponomaryovi v. Bulgaria* judgment of 21 June 2011, the Court found that there had been a violation of Article 14 taken in conjunction with Article 2 of Protocol No. 1 with regard to the requirement for aliens without a permanent residence permit to pay secondary-school fees. A state could have legitimate reasons to restrict the use of costly public services such as welfare programmes and health care by illegal or short-term immigrants. This could also apply to education, but not unreservedly. Unlike other public services, the right to education was directly protected by the Convention. It was a very particular type of service serving broader societal functions and was indispensable for respect for human rights. The higher the level of education, the greater the state's margin of appreciation in this respect. Moreover, secondary education played an ever increasing role in successful personal development and in the social and vocational integration of the individuals concerned, warranting stricter scrutiny of proportionality (it should be noted that the legislation made no provision for requesting exemption from the payment of school fees). In its judgment, the Court referred to Article 17 of the Charter (which expressly provides for the right to free primary and secondary education).

(ii) Indirect protection of a number of social rights

98. As noted in previous reports, the Court has built up indirect protection of many other social rights through a constructive and dynamic interpretation of the Convention's provisions.

- Right to life (Article 2)[93]

[92] http://www.echr.coe.int/Documents/FS_Disabled_ENG.pdf: factsheet on persons with disabilities and the European Convention on Human Rights (January 2017).

[93] See also the *Jasinskis v. Latvia* judgment of 21 December 2010: death while in police custody of a deaf and mute man: violation of Article 2 (substantive and procedural heads); the Court held in particular that in view of his disability, the police officers should at least have provided the man with a pen and paper to enable him to communicate. See the *Panaitescu v. Romania* judgment of 10 April 2012, in which the Court found that there had been a procedural violation of Article 2 as the authorities had failed in their duty to provide the applicant's father with the anti-cancer medicines he had needed (domestic judgments to this effect).

99. In the publication cited above, the decisions referred to concerning Article 2 related to the following areas: medical liability, access to health care, environmental law and protection of minors. Since then, the Court has delivered several decisions in these areas. A few examples are given here.

100. With regard to health,[94] the Court has given many judgments relating to medical liability – including several in which it found a violation of Article 2 by Turkey. In the *Oyal v. Turkey* judgment of 23 March 2010, the Court found that the most appropriate remedy in the circumstances (applicant infected with HIV by blood transfusions at birth)[95] would have been to order the defendants, in addition to the payment in respect of non-pecuniary damage, to cover the applicant's medical costs (for treatment and essential medication) for his whole lifetime. In the *Altuğ and Others v. Turkey* judgment of 30 June 2015, the Court found that there had been a failure to ensure appropriate implementation of the relevant legislative and statutory framework as the medical experts and the courts had failed to address the possibility that it had been infringed in this case (death as the result of an allergic reaction: yet, there was a legal obligation to question patients or their families on their medical record, to inform them of the possibility of an allergic reaction and to obtain their consent to the administration of the drug in question).

101. In other judgments, the Court found that there had been violations of Article 2 (under its substantive and procedural heads) – noting certain shortcomings in the Turkish hospital services in the following judgments: *Mehmet Şentürk and Bekir Şentürk v. Turkey* of 9 April 2013 (death of a pregnant woman following errors by several hospitals and a failure to provide her with emergency medical treatment); *Asiye Genç v. Turkey* of 27 January 2015 (death of a premature new-born baby owing to lack of treatment); *Aydoğdu v. Turkey* of 30 August 2016 (death of a premature new-born baby in hospital owing to lack of emergency treatment). In the latter judgment, the Court found that (as a result of inadequate expert opinions) the authorities had been unable to provide a coherent and scientifically grounded response to the problems arising and to establish any liability. On the basis of Article 46, the Court called upon Turkey to require independent and impartial administrative and disciplinary investigations to be carried out, affording victims an effective opportunity to take part; to ensure that bodies and/or specialists that might be called upon to produce expert opinions had qualifications and skills corresponding fully to the particular features of each case; and to require experts to give proper reasons in support of their scientific opinions.

102. In the *Eugenia Lazăr v. Romania* judgment of 16 February 2010, the Court found that there had been a violation of Article 2 (under its procedural head) and ruled, in particular, that the investigation into the death of the applicant's son had been undermined by the inadequacy of the rules on forensic medical reports. In the *Lopes de Sousa Fernandes v. Portugal* judgment of 15 December 2015 (referred to the Grand Chamber in May 2016), the Court found that there had been a violation of Article 2 (under its substantive and procedural heads) in respect of a death following nasal polyp surgery and the subsequent procedures in response to allegations of medical negligence. The Court found that the lack of co-ordination between the ear, nose and throat department and the emergencies unit revealed a deficiency in the

[94] http://www.echr.coe.int/Documents/FS_Health_ENG.pdf: factsheet on health (January 2017).

[95] In the *G.N. and Others v. Italy* judgment of 1 December 2009, the Court found that there had been a procedural violation of Article 2 with regard to persons also infected with HIV following blood transfusions. It also found a violation of Article 2 taken in conjunction with Article 14 – the applicants, who were thalassaemia sufferers or their heirs, had been discriminated against compared with haemophilia sufferers, who had been able to take advantage of the out-of-court settlements offered by the state.

public hospital service. The Court also ruled that the patient should have been clearly informed prior to the operation about the risks incurred.

103. In contrast, the Court found that there had been no violation of Article 2 (nor of Articles 6 or 8) in its *Colak and Tsakiridis v. Germany* judgment of 5 March 2009 (refusal to award compensation to an applicant who complained that her doctor had not informed her that her companion had AIDS) – the domestic courts' assessment had not been arbitrary and the principle of equality of arms had been complied with.

104. With regard to the lack of appropriate medical treatment and poor living conditions in placement facilities, it is worth noting the *Nencheva and Others v. Bulgaria* judgment of 18 June 2013 regarding the deaths of 15 children and young adults with physical and mental disabilities in a home on account of the cold and a lack of food, medicines and basic necessities. The director of the home had unsuccessfully alerted all the establishments responsible for providing funding to the problem. The Court found that there had been a substantive and procedural violation of Article 2 as the authorities had failed to take the necessary steps to protect the lives of the children and young adults concerned – who had been entrusted to the care of a specialist public facility – and had failed to carry out an effective official investigation into these exceptional circumstances.

105. Reference should also be made to the Grand Chamber's *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* judgment of 17 July 2014 concerning the latter's death at 18 in a psychiatric hospital. The Court found that there had been a violation of Article 2 (under its substantive and procedural heads) and noted in particular that Mr Câmpeanu had not been given appropriate care and had been transferred from one unit to another without proper diagnosis. Furthermore, by deciding to place him in a psychiatric hospital with known problems – lack of personnel and heating and insufficient food – the authorities had unreasonably put his life in danger. In the absence of a mechanism for redress for people with mental disabilities claiming to be victims under Article 2, the Court found a breach of Article 13. Lastly, under Article 46, finding that these violations reflected a wider problem, the Court recommended that Romania take the necessary measures to ensure that persons with a mental disability were provided with independent representation enabling them to have complaints relating to their health and treatment examined before an independent body.[96]

106. With regard to the environment,[97] reference can be made to the *Kolyadenko and Others v. Russia* judgment of 28 February 2012 concerning a heavy flash flood. The Court found that there had been a violation of Article 2 (under its substantive and procedural heads) and ruled that the state had failed in its obligation to protect the applicants' lives. Nor was it convinced that the judicial response had secured the full accountability of the officials or authorities in charge (also violations of Article 8 and Article 1 of Protocol No. 1 but no violation of Article 13). The *Özel and Others v. Turkey* judgment of 17 November 2015 concerned the deaths of the applicants' family members, who were buried under collapsed buildings following an earthquake in a region classified as a "major risk zone". The Court found that that there had been a violation of Article 2 under its procedural head, holding that the

[96] Similarly, legal standing to lodge an application on behalf of a deceased mentally ill detainee was also granted under Article 34 in the *Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea v. Romania* judgment of 24 March 2015. In this case, however, the Court found that there had been only a procedural violation of Article 2.

[97] http://www.echr.coe.int/Documents/FS_Environment_ENG.pdf: factsheet on the environment (October 2016).

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authorities had not acted promptly to determine the responsibilities and the circumstances in which the buildings had collapsed.

107. In contrast, on 24 March 2015, the Court declared the application in *Smaltini v. Italy* concerning the alleged harmful effects of the activity of a steelworks on the health of the first applicant, who had died from leukaemia, inadmissible. According to the Court, she had had the benefit of adversarial proceedings and had failed to demonstrate any violation of her right to life in the light of the scientific data available at the time of the events.

108. Lastly, the *Kayak v. Turkey* judgment of 10 July 2012 concerned the murder at 15 of the applicants' son and brother, who was stabbed by a pupil in front of the school at which the perpetrator was a boarder. The Court highlighted the key role of the school authorities in protecting the health and welfare of pupils and their duty to protect them from any form of violence to which they might be subjected while under their supervision. The school administration had warned the authorities about the security problems at the school, even asking for help from the police, but to no avail. The Court found that there had been a violation of Article 2, holding that the authorities had failed in their duty to provide supervision (it also found the length of the compensation proceedings to have been excessive).

- Prohibition of torture or inhuman or degrading treatment (Article 3)[98]

109. In the publication cited above, the decisions referred to concerning Article 3 related to the following areas: general conditions of detention, prisoners' access to health care, detention of persons with disabilities, the right to health in the context of asylum and immigration, protection of minors and social insecurity. Since then, the Court has given many decisions in these areas. A few examples are given here.

110. With regard to general conditions of detention,[99] it is particularly worth noting the three pilot judgments (adopted to support execution procedures already under way) finding a violation of Article 3:[100] *Ananyev and Others v. Russia* of 10 January 2012 (violation also of Article 13),[101] *Torreggiani and Others v. Italy* of 8 January 2013,[102] and *Varga and Others v.*

[98] In this connection, it is worth noting three judgments relating to the forced sterilisation of Roma women: *V.C. v. Slovakia* of 8 November 2011, in which the Court found that there had been a substantive violation of Article 3 (uninformed consent by the applicant when signing a form requesting sterilisation while in labour) but no violation of its procedural aspect and a violation of Article 8 (owing to the absence of safeguards giving special consideration to the reproductive health of the applicant as a Roma woman), *N.B. v. Slovakia* of 12 June 2012 and *I.G. and Others v. Slovakia* of 13 November 2012 (including a violation of the procedural aspect of Article 3). In contrast we can point to the *Dvoracek v. the Czech Republic* judgment of 6 November 2014, in which the Court found that there had been no violation of Article 3 (under its substantive or procedural heads) as a result of the surgical castration of the applicant, who had a sexual preference for adolescents as the result of an illness (informed consent deemed to have been given in this case).

[99] http://www.echr.coe.int/Documents/FS_Detention_conditions_ENG.pdf (October 2016). With regard to detention of the elderly, it is worth noting the *Contrada No. 2 v. Italy* judgment of 11 February 2014, in which the Court found that there had been a violation of Article 3 (83-year-old prisoner – medical reports and certificates concluding that his state of health was incompatible with his conditions of detention). In contrast, see the *Haidn v. Germany* judgment of 13 January 2011 (no violation of Article 3).

[100] In contrast, see the *Szafranski v. Poland* judgment of 15 December 2015, finding that there had been no violation of Article 3 but a violation of Article 8 (failure to separate sanitary facilities completely from the remainder of prison cells).

[101] In this judgment the Court noted in particular that certain measures could be implemented in the short term and at little extra cost.

Hungary of 10 March 2015 (violation also of Article 13).[103] Reference can also be made to the *Vasilescu v. Belgium* judgment of 25 November 2014: violation of Article 3 (prison overcrowding and poor hygiene conditions).[104] Lastly, we can highlight two further findings of violations of Article 3 linked with passive smoking, namely the *Florea v. Romania* judgment of 14 September 2010 and the *Elefteriadis v. Romania* judgment of 25 January 2011.

111. As to detention of persons with disabilities,[105] reference can be made to the *Helhal v. France* judgment of 19 February 2015 (paraplegic with urinary and faecal incontinence), in which the Court found that there had been a violation of Article 3 (inadequate rehabilitation treatment and premises not adapted to the applicant's disability). In the *Z.H v. Hungary* judgment of 8 November 2011 (a deaf and mute person with a learning disability, incapable of communicating), the Court found that there had been a violation of Articles 3 (requisite measures not taken within a reasonable time) and 5§2 – failure to provide the applicant with the requisite information to challenge his detention. It criticised the fact that the authorities had not taken reasonable steps – a concept akin to that of reasonable accommodation (Articles 2, 13 and 14 of the United Nations Convention on the Rights of Persons with Disabilities) – in particular by procuring him assistance by a lawyer or another suitable person.

112. The Court has given many decisions on prisoners' access to health care.[106] It is worth noting several findings of violations of Articles 3 and 34 for failure to comply with provisional measures including the *Aleksanyan v. Russia* judgment of 22 December 2008

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[102] In this judgment, the Court called on the authorities to put in place, within one year, a remedy or a combination of remedies providing redress in respect of violations of the Convention resulting from overcrowding in prison.

[103] In this judgment, the Court found in particular that the authorities should promptly put in place an effective remedy or combination of remedies, both preventive and compensatory, to guarantee genuinely effective redress for violations of the Convention.

[104] Under Article 46, the Court found that there was a structural problem and recommended that general measures be adopted to guarantee prisoners conditions of detention compatible with Article 3 and afford them an effective remedy by which to put a stop to an alleged violation or allow them to obtain an improvement in their conditions of detention.

[105] http://www.echr.coe.int/Documents/FS_Disabled_ENG.pdf: factsheet cited above on persons with disabilities (July 2016). See, in particular, the *Zarzycki v. Poland* judgment of 6 March 2013 (prisoner with both forearms amputated), in which the Court found that there had been no violation of Article 3, noting the proactive approach of the prison authorities (provision of basic mechanical prostheses free of charge and entitlement to a refund of a small part of the cost of bio-mechanical prostheses). See also the *Topekhin v. Russia* judgment of 10 May 2016, in which the Court found that there had been a violation of Article 3 because of the conditions of detention and transfer of a paraplegic remand prisoner.

[106] http://www.echr.coe.int/Documents/FS_Prisoners_health_ENG.pdf: factsheet on prisoners' health-related rights (January 2017). See, in particular, the *Poghosyan v. Georgia* judgment of 24 February 2009, in which the Court found that there had been a violation of Article 3 and invited Georgia, under Article 46, to take steps without delay to prevent the transmission of viral hepatitis C in prisons, to introduce screening arrangements for this disease and to ensure its timely and effective treatment. In the *V.D. v. Romania* judgment of 16 February 2010, the Court found that there had been a violation of Article 3 because of the failure to provide the applicant with dentures (despite medical diagnoses stating that they were needed as far back as 2002). In the *Korneykova and Korneykov v. Russia* judgment of 24 March 2016, the Court found that there had been several violations of Article 3 – including, in particular, insufficient medical care for a new-born in a detention facility (three months without a paediatrician). The *Wenner v. Germany* judgment of 1 September 2016 concerned the refusal to provide the applicant, who was a heroin addict, with drug substitution therapy. The Court found that there had been a violation of Article 3 because the authorities had failed to attempt to identify a type of therapy that was appropriate to his case. In contrast, in the inadmissibility decision in *Fedosejevs v. Latvia* of 19 November 2013, the Court found the medical care and supervision provided in this case to be appropriate.

(transfer of an HIV-positive prisoner to a hospital)[107]; the *Salakhov and Islyamova v. Ukraine* judgment of 14 March 2013 (immediate transfer to hospital of a prisoner, who died two weeks after his release); the *Yunusova and Yunusov v. Azerbaijan* judgment of 2 June 2016 (failure to inform the applicants fully about medical treatment); and the *Kondrulin v. Russia* judgment of 20 September 2016 (failure to meet a request for an independent medical examination of the applicant, a prisoner who had then died of cancer).

113. With regard to discrimination, reference can be made to the following judgments: *Gulay Cetin v. Turkey* of 5 March 2013, in which the Court found that there had been a violation of Articles 3 (prisoner with advanced cancer resulting in her death) and 14 and, under Article 46, and called on the authorities to take measures to protect the health of prisoners with incurable diseases, whether they were being held pending trial or following a final conviction, and the *Martzaklis and Others v. Greece* judgment of 9 July 2015, in which the Court found that there had been a violation of Article 3 taken alone and in conjunction with Article 14 because of the isolation or segregation of HIV-positive prisoners.

114. The Court has also given many decisions on care for prisoners with mental disorders.[108] Reference can be made to the *Sławomir Musiał v. Poland* judgment of 20 January 2009, in which the Court found that there had been a violation of Article 3 and recommended under Article 46 that measures be taken rapidly to secure appropriate conditions of detention, particularly for prisoners in need of special care. The Court also held that the applicant should be transferred as quickly as possible to a specialised institution offering constant medical supervision. In the Grand Chamber's *Murray v. the Netherlands* judgment of 26 April 2016, the Court found that there had been a violation of Article 3 because the applicant's life sentence had effectively been without remission and he had never been provided with any treatment for his mental condition. Lastly, it is worth pointing to the *W.D. v. Belgium* pilot judgment of 6 September 2016 (also adopted to support execution procedures already under way), in which the Court found that there had been a violation of Articles 3, 5§1, 5§4 and 13. Noting a structural deficiency in the Belgian detention system, the Court asked Belgium to organise the latter in such a way that the detainees' dignity was respected.

115. Lastly, the Court has come to many findings of violations of Article 3 with regard to the conditions of detention of migrants,[109] including a very large number against Greece. A

[107] Under Article 46, the Court asked Russia to replace detention on remand with other, reasonable and less stringent, measures of restraint, or with a combination of such measures, provided by Russian law.

[108] http://www.echr.coe.int/Documents/FS_Detention_mental_health_ENG.pdf: factsheet on detention and mental health (September 2016). See, in particular, the *Raffray Taddei v. France* judgment of 21 December 2010, in which the Court found that there had been a violation of Article 3 (failure to take sufficient account of the need for specialised care, combined with transfers, of an applicant suffering from conditions including anorexia and Munchausen's syndrome). In contrast, no violation was found in the *Cocaign v. France* judgment of 3 November 2011 (medical supervision deemed appropriate).

[109] http://www.echr.coe.int/Documents/FS_Migrants_detention_ENG.pdf: factsheet on migrants in detention (February 2017, pages 3 to 10). See in particular the *Riad and Idiab v. Belgium* judgment of 24 January 2008, in which the Court found that there had been a violation of Article 3 (detention of the applicants in an airport transit zone with a total lack of regard for their essential needs). On the other hand, it may be pointed out *Khlaifia and Others v. Italy* judgment of the Grand Chamber of 15 December 2016, in which the ECHR held that there had been no violation of Article 3 with regard to the conditions of detention of the applicants in Lampedusa, particularly in view of their short stay and the humanitarian emergency context at the time of the facts (but violation of Articles 5 and 13 in conjunction with Article 3). As to migrants who are especially vulnerable, it is particularly worth noting the findings of violations of Article 3 in the following judgments: *Rahimi v. Greece* of 5 April 2011 (an unaccompanied Afghan minor seeking asylum), *Popov v. France* of 19 January 2012 (family with children aged five months and three years), *Mahmundi and Others v. Greece* of 31 July 2012 (eight-month pregnant woman with four minor children), *Aden Ahmed v. Malta* of 23 July 2013 (fragile health and emotional

particular note can be made of the Grand Chamber's *M.S.S. v. Belgium and Greece* judgment of 21 January 2011, in which the Court found in particular that there had been two violations of Article 3 as a result of the applicant's conditions of detention and his living conditions in Greece. The Court found, in the light of the obligations imposed by the European Reception Directive, that the Greek authorities had not had due regard for the applicant's vulnerability as an asylum-seeker and should be held responsible, because of their failure to act promptly, for the situation in which he had found himself for several months, living on the street, with no resources or access to sanitary facilities, and without any means of providing for his essential needs (§263).

116. With regard also to migrants' living conditions,[110] the Court found in its initial *V.M. and Others v. Belgium* judgment of 7 July 2015, as in the *M.S.S.* judgment (§162), that there had been a violation of Article 3 in respect of a family of asylum-seekers who had been exposed to conditions of extreme poverty for four weeks (reference to the ECSR's finding of non-conformity with Article 17§1 of the Charter in the context of Complaint No. 69/2011, *DCI v. Belgium*). However, the case was struck off the Court's list by a Grand Chamber judgment of 17 November 2016 under Article 37, paragraph 1a) of the Convention (after contact was lost with the applicants).

117. With regard to the living conditions in social care homes for persons with mental disorders, mention can be made of the Grand Chamber's *Stanev v. Bulgaria* judgment of 17 January 2012, in which the Court found that there had been a violation of Article 3, relying in particular on the findings of the CPT after a visit to the home at the time of the facts (insufficient, poor quality food, inadequate heating, one shower a week, toilets in an execrable state – and all for approximately seven years).

118. Lastly, with regard to social benefits, reference should be made to the inadmissibility decision of 18 June 2009 in *Budina v. Russia*, to which the Court referred in its *M.S.S.* judgment. The Court pointed out that state responsibility could arise where an applicant who was totally dependent on state support found himself or herself faced with official indifference when in a situation of serious deprivation or want incompatible with human dignity. However, even though the applicant's income was low in this case, the Court held that she had not proved that her lack of funds had resulted in actual suffering and there was nothing to indicate that the level of her pension and her social benefits were insufficient to protect her from damage to her physical or mental health or from a situation of degradation incompatible with human dignity.[111]

119. With regard to the granting of residence permits for medical reasons, it is worth noting the *Yoh-Ekale Mwanje v. Belgium* judgment of 20 December 2011, in which the Court found that there had been a violation of Article 3 taken alone (inadequate medical supervision in a closed centre) and in conjunction with Article 13 (failure to conduct a careful and thorough examination of the medical situation of the applicant – who was HIV positive – before concluding that she would be at no risk if deported to Cameroon). In the *Senchishak v.*

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state of the applicant), *Asalya v. Turkey* of 15 April 2014 (paraplegic in a wheelchair) and *A.B. and Others v. France* of 12 July 2016 (detention of a four-year-old child for 18 days).

[110] It is worth noting the pending case, *B.G. and Others v. France* (63141/13), concerning the emergency accommodation in tents of asylum-seekers accompanied by minors.

[111] See also the inadmissibility decisions of 23 April 2002 in *Larioshina v. Russia* (same subject) and of 21 March 2002 in *Nitecki v. Poland* (concerning the authorities' refusal to fully reimburse the applicants' medical costs).

Finland judgment of 18 November 2014, the Court found that there would be no violation of Article 3 if the applicant, aged 72, were deported to Russia considering that there were both private and public care institutions in Russia and it was possible to hire external help. The Court was satisfied that her state of health would be taken into account when she was deported. Lastly, in the Grand Chamber's *Paposhvili v. Belgium* judgment of 13 December 2016, the Court found that the removal of the applicant – who had since died – to his country of origin, Georgia, would have constituted a violation of Articles 3 and 8 because of the failure to assess the impact of removal on his state of health and respect for his family life.

120. Lastly, the Court has given several decisions on the protection of minors.[112] A particular note can be made of the *Dorđević v. Croatia* judgment of 24 July 2012 on the state's positive obligations in a case falling outside the sphere of criminal law, in which the authorities were aware of serious harassment directed at a person with physical and mental disabilities. The Court found that there had been a violation of Article 3 in respect of this person and of Article 8 in respect of his mother. In this judgment the Court referred indirectly to the Charter (through its reference to PACE Resolution 1642(2009) on access to rights for people with disabilities and their full and active participation in society). In addition, the ECHR found 2 violations of Article 3 in *V.K. v. Russia* judgment on 7 March 2017 due to the mistreatments of a 4-year-old boy by his teachers in his public kindergarten (material violation) and the authorities' failure to carry out an effective investigation (procedural violation).

- Right to a fair trial (Article 6)

121. The aforementioned publication included references to several decisions in relation to Article 6 in the following areas: social benefits cases, labour law (private and public sector), the right to have final judgments enforced, and court fees/legal aid. Since then several decisions have been delivered in these fields.[113] A few examples are mentioned below.

122. In the *Dhahbi v. Italy* judgment of 8 April 2014, the Court found, for the first time, that there had been a violation of Article 6, due to a court's failure to give reasons for refusing a request for a preliminary ruling from the Court of Justice of the European Union, concerning the refusal to grant social benefits to foreigners.

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[112] http://www.echr.coe.int/Documents/FS_Minors_ENG.pdf: factsheet on the protection of minors (March 2017). It is particularly worth noting several findings of procedural violations of Article 3 relating to allegations of child rape, especially *P.M. v. Bulgaria* of 24 January 2012, *I.G. v. the Republic of Moldova* of 15 May 2012 and *M.G.C. v. Romania* of 15 March 2016. In contrast, in the Grand Chamber's *O'Keeffe v. Ireland* judgment of 28 January 2014 (sexual abuse in a primary school), the Court found that there had been no procedural violation of Article 3 but there had been a substantive violation of Article 3 (no mechanism of state control against the risks of such abuse) and of Article 13 (any system of detection and reporting of abuse which had allowed over 400 incidents of abuse to occur in the applicant's school for such a long time had to be considered ineffective). Lastly, reference can be made to the *E.S. and Others v. Slovakia* judgment of 15 September 2009, in which, although an individual had been convicted of domestic violence and sexual abuse of a minor, the courts had refused to order him to leave the family home. The Court found that there had been a violation of Articles 3 and 8 as the authorities had failed to provide the applicants with the immediate protection they required.

[113] Concerning legal aid, mention may be made of the *Volkov and Adamskiy v. Russia judgment of* 26 March 2015 (violation due to the absence of a lawyer in appeal proceedings). By contrast, in the *Blaj v. Romania* judgment of 8 April 2014 the Court found there had been no violation (no lawyer during police questioning under *flagrante delicto* procedure).

123. With respect to medical liability, in the *Howald Moor and Others v. Switzerland* judgment of 11 March 2014 the Court found that, in view of the exceptional circumstances (applicants' exposure to asbestos – a disease for which the latency period could be several decades), the application of limitation periods had restricted the applicants' access to a court, breaching Article 6§1.

124. Concerning proceedings brought with a view to obtaining compensation for dismissal,[114] in a number of judgments the Court found there had been a violation of embassy employees' rights under Article 6: the Grand Chamber's *Cudak v. Lithuania* judgment of 23 March 2010; the Grand Chamber's *Sabeh El Leil v. France* judgment of 29 June 2011, and the *Wallishauser v. Austria* judgment of 17 July 2012. In all these cases, the Court found that the governments' application of the rule of state immunity was not justified – given that it impaired the very essence of the applicants' right of access to a court.

125. In the *K.M.C. v. Hungary* judgment of 10 July 2012, also with regard to dismissal, the Court found that there had been a violation of Article 6§1, given that, at the time of the facts of the case, it was possible to dismiss a civil servant without giving any reasons for the dismissal. The Court's finding was corroborated by the Constitutional Court of Hungary which in February 2011 declared the impugned law unconstitutional, basing its decision in part on the relevant case law of the Court, which, moreover, is largely in keeping with the spirit of the European Union Charter of Fundamental Rights and the revised European Social Charter (Article 24), which provide that every worker has the right to protection against unjustified dismissal.[115]

126. The Court also delivered several judgments where it found there had been a violation of Article 6 due to the failure to execute final judgments.[116] One such example in the employment field is the *Garcia Mateos v. Spain* judgment of 19 February 2013 (according to which the failure to provide the applicant with compensation amounted to a violation of article 6.1, when Spanish Constitutional Court had already declared that the response to the applicant's request for a reduction in working time so that she could look after her child amounted to discrimination on grounds of sex). In the environmental field, there is the *Apanasewicz v. Poland* judgment of 3 May 2011 (decision ordering closure of a production plant). Lastly, in the field of housing, it is worth noting the *Tchokontio Happi v. France* judgment of 9 April 2015 relating to the failure to enforce a decision ordering that the applicant be re-housed as a matter of urgency, under a procedure provided by the "DALO" Act.[117] The Court held that the explanation given by the government for the

[114] See in particular http://www.echr.coe.int/Documents/FS_Work_ENG.pdf: factsheet on work-related rights (February 2017).

[115] See the separate opinion on, in particular, the question of whether the Court can apply standards not accepted by the respondent state (ILO Convention and Article 24 of the revised Charter). In the opinion this question is answered in the affirmative, given that Hungary is bound by similar obligations under the EU Charter and the International Covenant on Economic, Social and Cultural Rights. It would therefore not be acceptable for Hungary to claim to be held to a lower standard vis-à-vis the Council of Europe.

[116] Mention may also be made of older cases still relevant with respect to execution, such as the *Piven* and *Zhovner v. Ukraine* judgment of 29 June 2004 (non-execution of judgments ordering the payment of length-of-service bonuses and sick pay: violation of Article 6§1 and Article 1 of Protocol No. 1): see Interim Resolutions CM/ResDH(2010)222, CM/ResDH(2011)184 and CM/ResDH(2012)234 regarding execution of the pilot judgment of 15 October 2009 in the case *Yuriy Nikolayevich Ivanov v. Ukraine* and 389 other cases.

[117] See below the decisions of 5 December 2007 concerning France (Collective Complaints Nos. 33/2006 and 39/2006) where the ECSR found that there had been several violations in the field of housing (in a 2008 Resolution, the Committee of Ministers noted the adoption of the "DALO" Act, but in December 2015, in the context of the simplified reports procedure – see below – the ECSR noted that the situations had not been

authorities' failure to enforce the judgment, namely that there was a shortage of available housing, was not a valid reason – given that it was not open to a state authority to cite lack of funds or other resources as an excuse for not honouring a judgment debt.[118] However, the Court declared the complaint under Article 1 of Protocol No. 1 inadmissible, considering that the right to a "social tenancy" did not constitute a possession within the meaning of this provision.

127. Lastly, it is worth mentioning the inadmissibility decision of 14 September 2010 in *Farcas v. Romania* concerning the impossibility for a person with a physical disability to access certain public buildings, including court buildings. In its decision the Court indicated that under Article 34 states may be expected to take positive measures (if there are no arrangements enabling persons with impaired mobility to use the public postal services). In this particular case, the Court found that neither the right of access to a court nor the right of individual petition had been hindered by insurmountable obstacles (for example, the applicant could have brought proceedings before the courts or the administrative authorities by post, if necessary through an intermediary;[119] the local post office was accessible; possibility of contacting the bar association by fax or letter, or of requesting free legal assistance). Furthermore, the Court stated that Article 8 applied only if the lack of access interfered with an individual's right to personal development and to establish and maintain relationships with the outside world. Given the general nature of the applicant's allegations in this particular case, there remained some doubt about his daily use of the buildings in question and about the direct and immediate link between the measures required of the state and the particular needs of his private life.[120]

- Right to respect for private and family life (Article 8)

128. The aforementioned publication included references to several decisions in relation to Article 8 in the following fields: right to protection of mental and physical health, right to a healthy environment, right to housing, right to integration of people with disabilities, right to protection of and respect for minorities' ways of life, and right to protection of certain aspects of labour law. Since then there have been many judgments by the Court in several of these areas. A few examples are given below.

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brought into conformity with the Charter – given the lack of information or insufficient information provided by the Government). The judgment of the Court reflects the difficulty of implementing the "DALO" Act – an illustration of the complementarity that exists between the Convention and Charter mechanisms. It is surprising therefore that the Court makes no reference in this judgment to the monitoring mechanism of the ECSR.

[118] See also the *Levishchev v. Russia* judgment of 29 January 2009 where the Court found that there had been a violation of Article 6 and Article 1 of Protocol No. 1 (4 years to allocate housing after a final judgment) and the *Gerasimov and Others v. Russia* pilot judgment of 1 July 2014 where the Court found there had been a violation of Articles 6 (non-enforcement or delayed enforcement of judgments ordering the allocation of housing or obligations in kind) and 13 (Compensation Act not applicable to such decisions) and Article 1 of Protocol No. 1.

[119] Likewise the Grand Chamber's inadmissibility decision of 9 July 2015 in *Gherghina v Romania,* mentioned above in relation to Article 2 of Protocol No. 1.

[120] It will be recalled that the previous reports referred to decisions where the rights relied on were also held to be too broad and indeterminate (therefore no evidence of a special link between the particular needs of the applicant's private life and the lack of access to the buildings in question). We can once again notice that the ECHR does not make any reference, in its judgment, to the ECSR despite its several conclusions on this point regarding Article 15 and in particular 15§3 of the Charter.

129. In the health field,[121] the Court has handed down judgments on a large number of cases in relation to Article 8,[122] including, in particular, *Otgon v. Republic of Moldova* of 25 October 2016 on the amount of compensation awarded for harm caused to health (dysentery from infected tap water). The Court held that there had been a violation of Article 8 because the sum paid in compensation was insufficient for the degree of harm caused to the applicant's health. In the *McDonald v. United Kingdom* judgment of 20 May 2014, the Court confirmed the decision to reduce the amount allocated to the elderly applicant with severely impaired mobility for her weekly care. It found that her needs could be met by the use of incontinence pads and absorbent sheets instead of a night-time carer to assist her in using a commode. The Court held that there had been a violation of Article 8 during the period before the possibility of legal action was established in domestic law. In respect of the subsequent period, however, it declared the applicant's complaint inadmissible, given that the state had a wide margin of appreciation in decisions concerning the allocation of scarce resources.

130. With respect to health and safety at work, in the *Vilnes and Others v. Norway* judgment of 5 December 2013 the Court found there had been a violation of Article 8 due to the state's failure to ensure divers employed by North Sea oil companies had access to essential information regarding risks associated with the use of rapid decompression tables. However, it found there had been no violation with regard to the other complaints (failure to prevent the applicants' health and lives being put at risk). This judgment adds to the Court's case law on access to information in connection with Articles 2 and 8, establishing an obligation for the authorities to ensure employees receive essential information enabling them to assess the health and safety risks associated with their work. In the *Brincat and Others v. Malta* judgment of 24 July 2014 concerning shipyard workers exposed to asbestos for a number of decades the Court found there had been a violation of Article 2 in respect of the applicants whose relative had died, and Article 8 in respect of the remainder of the applicants, considering that in view of the seriousness of the threat posed by asbestos, despite the room for manoeuvre left to states to decide how to manage such risks, the Maltese Government had failed to satisfy their positive obligations, given that in the past they had neither legislated nor taken other practical measures to ensure the applicants were adequately protected and informed of the risk to their health and their lives.

131. In its inadmissibility decision of 17 November 2015 in *Dolopoulos v. Greece* the Court found that, despite the fact that the Greek legislature had failed to include psychiatric illnesses in the list of occupational diseases, the applicant had had avenues available to him by which to complain of the deterioration of his mental health at work and, if appropriate, to obtain

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[121] http://www.echr.coe.int/Documents/FS_Health_ENG.pdf: aforementioned thematic factsheet on health (January 2017).

[122] See also, for example, on access to experimental treatment or medicine: the *Hristozov and Others v. Bulgaria* judgment of 13 November 2012 (no violation of Article 8 – anti-cancer drug not authorised in other countries) and the inadmissibility decision of 6 May 2014 in *Durisotto v. Italy* (strict conditions of access to experimental treatment imposed by a legislative decree). Concerning domestic violence, among many others (in the *Opuz v. Turkey* judgment of 9 June 2009, the Court held, for the first time, that there had been a violation of Article 14 taken in conjunction with Articles 2 and 3), it is worth noting the *Eremia v. Republic of Moldova* judgment of 28 May 2013 (violation of Articles 8 and 14 – failure to take measures to protect the applicant and her daughters). With regard to abortion, mention can be made of the *R.R. v. Poland* judgment of 26 May 2011 (Article 8 violation: pregnant woman carrying a malformed fœtus denied access to prenatal genetic tests and, therefore, abortion) and the *P. and S. v. Poland* judgment of 30 October 2012 (Article 8 violation: minor refused unhindered and timely access to lawful abortion).

compensation, and that he had made use of those avenues. In its decision, the Court referred to Article 26 of the Charter on the protection against harassment in the workplace.[123]

132. In the environmental field,[124] there have also been a large number of Court decisions in relation to Article 8.[125] Only three examples are mentioned here. In the *Di Sarno and Others v. Italy* judgment of 10 January 2012, the Court found there had been a violation of Article 8 due to the prolonged inability of the public authorities to ensure the proper functioning of the waste collection, treatment and disposal service. In the *Deés v. Hungary* judgment of 9 November 2010, the Court also found that the nuisance caused to a resident by heavy road traffic in his street situated near a motorway toll was a violation of Article 8 (in particular, the noise exceeded the statutory limit by 12% to 15%), while acknowledging the complexity of the authorities' task in handling infrastructure issues, which could involve measures that were a drain on time and resources. Lastly, on 12 May 2009 the Court declared inadmissible the application in *Greenpeace E. V. and Others v. Germany* concerning particle emissions of diesel vehicles, in particular because it held that the state had taken a number of measures to curb emissions, and the applicants had not shown that in refusing to take the measures they requested, the authorities had exceeded their discretionary power.

133. With respect to housing, on several occasions the Court has found the forced eviction of Roma to be a violation[126] of Article 8. For example, in the *Yordanova and Others v. Bulgaria* judgment of 24 April 2012, the Court held that evicting the applicants from a settlement (makeshift homes built without permission and with no sewage or plumbing) would breach Article 8, particularly in the absence of any alternative housing proposal. The Court held that in exceptional cases, Article 8 can give rise to an obligation to secure shelter to particularly vulnerable individuals – and considered that the applicants' specific nature as a socially disadvantaged group and their particular needs as a result thereof should have been taken into account by the authorities. The removal order had been based on a law and reviewed under a procedure, neither of which required the authorities to balance the different interests at stake. Pursuant to Article 46, the Court held that the authorities would have to change the law and practice to ensure that orders to recover public land or buildings clearly identified the aims pursued with the recovery, the individuals affected and the measures to secure proportionality.[127] In addition, the Court held that pending such measures the impugned order had to be either repealed or suspended. In its judgment, the Court referred to the ECSR's

[123] It is worth underlining that from 2017 onwards, the ECSR deals with psychosociological risks related to work under its Article 3 (see also its Interpretative Observation of 2013 on this provision).

[124] http://www.echr.coe.int/Documents/FS_Environment_ENG.pdf: aforementioned thematic factsheet (October 2016).

[125] Concerning Article 8 violations, mention may be made in particular of the *Tatar v. Romania* judgment of 27 January 2009 (working of a gold mine), the *Dzemyuk v. Ukraine* judgment of 4 September 2014 (pollution, and in particular water pollution, linked to a nearby cemetery) and the *Mileva and Others v. Bulgaria* judgment of 25 November 2010 (noise from a computer club). By contrast, it is worth noting the inadmissibility decision of 9 September 2014 in *Chis v. Romania* (opening of a number of bars in the applicant's building) and the *Flamenbaum and Others v. France* judgment of 13 December 2012 (no violation of Article 8: disturbances linked to the proximity of Deauville Airport).

[126] By contrast, on 17 June 2014 *Farkas and Others v. Romania* was declared inadmissible (forced eviction and rejection of re-housing conditions – non-exhaustion of domestic remedies). Moreover, a number of cases are currently pending in this field (*Cazacliu and Others v. Romania*, 63945/09; *Hirtu and Others v. France*, 24720/13; *Dimitrova and Others v. Bulgaria*, 39084/10).

[127] On a different note, mention may also be made of the *Ivanova and Cherkezov v. Bulgaria* judgment of 21 April 2016 concerning the order given, without a review of its proportionality, for the demolition of the applicants' house built without a permit (enforcement of the order would be a violation of Article 8 but not Article 1 of Protocol No. 1).

decision of 18 October 2006 in relation to Collective Complaint No. 31/2005 v. Bulgaria (violation of Article 16 of the Revised Charter taken in conjunction with Article E).

134. In the *Winterstein and Others v. France* judgment of 17 October 2013 concerning eviction proceedings brought against traveller families, the Court also found a violation of Article 8, since the jurisdictions did not analyse the proportionality of the expulsion measure having not taken into account the length of time the applicants had been present in the place and the tolerance of that presence by the municipality, and the authorities had no sufficient attention to the needs of the families who had requested relocation on family lands.. The Court pointed out that numerous international instruments stressed the need, in cases of forced eviction of Roma or Travellers, to provide alternative housing, except in cases of force majeure. In its judgment of 28 April 2016 on just satisfaction, while welcoming the evolution of the domestic case law since the judgment on the merits, the ECHR deems that since it is not possible under French law to reopen civil proceedings following a judgment of the ECHR, the execution of the judgment on the merits imply that the authorities commit themselves not to take measures in view of the forced execution of the domestic decision of eviction. It also implies that all the applicants that are not yet resettled can, given their vulnerability and their specific needs, be accompanied in view of their access to housing – on a family land or in social housing according to their wishes – and benefit from, in the meantime, of a sustainable housing without the risk of eviction. In the *Bagdonavicius and Others v. Russia* judgment of 11 October 2016 the Court also held that there had been a violation of Article 8, because in the proceedings concerning the demolition of their homes, the applicants, of Roma origin, had not had the benefit of a proportionality assessment, and the authorities had not conducted genuine consultations with them about possible re-housing options, on the basis of their needs and prior to their forcible expulsion.[128]

135. With regard to the placing of children in public care as a result of their parents' poor living conditions, mention may be made of two violations of Article 8.[129] In the *Saviny v. Ukraine* judgment of 18 December 2008, concerning children placed in public care on account of the inability of their parents, both blind, to provide them with adequate care and upbringing, the Court in particular doubted the adequacy of the evidence relied upon by the authorities, noting that the courts had limited their assessment of the case to difficulties that could have been overcome by targeted financial and social assistance and effective counselling. However, the Court pointed out that it was not the Court's role to determine whether the promotion of family unity in the case entitled the applicants' family to a particular standard of living at public expense, a matter for discussion by the authorities and subsequently the courts. The *R.M.S. v. Spain* judgment of 18 June 2013 concerned a child (aged 3 years and 10 months) placed in public care on account of her mother's financial situation without consideration being given to the subsequent change in the latter's circumstances. The Court held that the applicant had simply been faced with a shortage of funds, which the authorities could have helped remedy by means other than the complete break-up of the family (a measure of last resort to be applied only in the most serious cases),

[128] Regarding these cases, reference can be made to complaints 15/2003 and 27/2004 already mentioned elsewhere.

[129] NB: the *Wallova and Walla v. Czech Republic* judgment of 26 October 2006 (violation of Article 8 – the family's lack of a suitable and stable home was the sole ground for placing the children in public care). See also the *A.K. and L. v. Croatia* judgment of 8 January 2013 (violation of Article 8 – authorities' failure to ensure legal representation of the mentally disabled applicant in proceedings divesting her of parental rights and to inform her of adoption proceedings in respect of her son).

the role of the social welfare authorities being precisely to help persons in a situation of financial insecurity to find ways of overcoming their difficulties.

136. With regard to employment[130] (other than the health and safety aspects referred to above), there have also been a number of rulings in relation to Article 8. Examples of violations include the *Schüth v. Germany* judgment of 23 September 2010 (church's dismissal of the parish organist and choirmaster with prior notice on account of his stable extramarital relationship), the *Ozpinar v. Turkey* judgment of 19 October 2010 (dismissal of a judge, in particular on account of her close relationship with a lawyer and her unsuitable clothing and make-up), the *D.M.T. and D.K.I. v. Bulgaria* judgment of 24 July 2012 (suspension of a civil servant for more than 6 years with a ban on gainful employment); ; the *Oleksandr Volkov v. Ukraine* judgement of 9 January 2013 (dismissal of a Supreme Court judge - under Article 46, the ECHR orders his resumption of his duties as soon as possible) ; the *Ay v. Turkey judgment* of 21 January 2014 (non-renewal of a teacher's work contract related to a safety investigation) ;and the *Radu v. Republic of Moldava* judgment of 15 April 2014 (hospital's disclosure of medical information to the applicant's employer in the context of a sick note – interference not foreseen in domestic law).

137. Examples of cases where the Court found there had been no violation under Article 8 include the *Obst v. Germany* judgment of 23 September 2010 (Mormon Church's dismissal without prior notice of a director for adultery, in order to preserve the Church's credibility), the Grand Chamber's *Fernández Martínez v. Spain* judgment of 12 June 2014 (Church's decision not to renew the employment contract of a religious education teacher, a married priest, father of 5 children and member of an organisation opposed to official Church doctrine, judging that the interference with the applicant's individual rights could be justified in terms of respect for the lawful exercise by the Catholic Church of its religious freedom in its collective or community dimension, and that in choosing to accept a publication about his family circumstances and his association with a protest-oriented meeting, the applicant had severed the bond of trust that was necessary for the fulfillment of his professional duties) ; the *Barbulescu v. Romania* judgment of 12 January 2016 (dismissal for personal use of the Internet in the workplace – case referred to the Grand Chamber in June 2016). It is also worth mentioning the inadmissibility decision of 5 October 2010 in *Köpke v. Germany* (dismissal without notice for theft following covert video surveillance).

138. Another noteworthy judgment is the *Vukota-Bojic v. Switzerland* judgment of 18 October 2016 where the Court found there had been a violation of Article 8 as regards the placing of the applicant under secret surveillance by an insurer, whose evidence in court resulted in a reduction in the applicant's invalidity pension. Above all, the Court considered that this measure was not prescribed by law (the provisions did not indicate clearly when and for how long surveillance could be conducted, nor the procedures to be followed for storing and accessing the data). However, the Court found that, in this particular case, the use of such evidence had not resulted in an unfair trial.

139. Lastly, with regard to family reunion, in the *Osman v. Denmark* judgment of 14 June 2011, the Court found that the refusal to renew the residence permit of the applicant (lawfully resident in Denmark for most of her childhood), following the passing of a law that limited the right to family reunion to children under 15 to discourage families from sending older children to receive a more traditional education in their country of origin, was a

[130] See http://www.echr.coe.int/Documents/FS_Work_ENG.pdf: aforementioned thematic factsheet (February 2017).

violation of Article 8.[131] In the *Mugenzi v. France*, *Tanda-Muzinga v. France* and *Senigo Longue and Others v. France* judgments of 10 July 2014, the Court also found there had been a violation of Article 8 since due consideration had not been given to the applicants' specific circumstances, and the procedure had not offered the requisite guarantees of flexibility, promptness, and effectiveness.

140. *By contrast*, in the *Berisha v. Switzerland* judgment of 30 July 2013 the Court found there had been no violation of Article 8 (the children had spent many years in Kosovo where they still had family ties, and there was nothing to prevent the applicants from going there), and in *I.A.A. and Others v. United Kingdom* it declared the application inadmissible on 31 March 2016 (the children were no longer young and had never been to the United Kingdom, and there was nothing to prevent their mother from relocating to Ethiopia to be with them).

- Freedom of thought, conscience and religion (Article 9)

141. The aforementioned publication included references to several rulings in relation to Article 9 in the fields of dismissals and work permits. There have been a number of decisions since then, including the following three examples.

142. In the *Siebenhaar v. Germany* judgment of 3 February 2011, the Court found there had been no violation of Article 9 concerning the Protestant Church's dismissal of the applicant, a childcare assistant and, later, kindergarten manager, for belonging to another religious community. The *Eweida and Others v. United Kingdom* judgment of 15 January 2013 concerned restrictions placed on wearing religious symbols at work in respect of two of the applicants (a British Airways employee and a geriatric nurse) and the dismissal of the other two applicants for refusing to carry out duties which they considered would condone homosexuality. The Court found there had been a violation of Article 9 only in the case of the British Airways employee as the courts had attached too much importance to her employer's wish to project a certain corporate image. In the *Ebrahimian v. France* judgment of 26 November 2015 the Court found that in respect of the decision not to renew the employment contract of a hospital social worker because of her refusal to stop wearing the Muslim headscarf there had been no violation of Article 9, because the authorities had not exceeded their margin of appreciation in deciding to give precedence to the requirement of neutrality and impartiality of the state.

- Freedom of expression (Article 10)

143. In the aforementioned publication, all the decisions mentioned in relation to Article 10 concerned dismissals. Since then, there have been decisions in a number of different fields. A few examples are given below.

144. In relation to trade unions, in the *Csanics v. Hungary* judgment of 20 January 2009 the Court found there had been a violation of Article 10 (wrongful ordering of a trade union leader to rectify comments he had made during a demonstration – although harsh, the comments had a factual basis and reflected the tone commonly used by trade unions). However, in the Grand Chamber's *Palomo Sanchez and Others v. Spain* judgment of

[131] It should be noted that the ECSR has not given on opinion on this law, given that Denmark has not accepted Article 19§6 of the 1961 Charter concerning family reunion.

12 September 2011, the Court found that there had been no violation of Article 10 concerning trade unionists' dismissal for publishing articles deemed offensive to colleagues, considering that, even though freedom of expression is closely related to that of freedom of association in a trade-union context, there are limits to that right, being one of those limits the specific features of labor relations, as they must be based on mutual trust. In the *Vellutini and Michel v. France* judgment of 6 October 2011 the Court found there had been a violation of Article 10 (applicants' conviction for public defamation of a mayor – remarks made in their capacity as trade union officials). In the *Szima v. Hungary* judgment of 9 October 2012, the Court found there had been no violation of Article 10 concerning a decision sentencing a police trade union leader to a fine and demotion for critical statements she had made.

145. Mention may also be made of the *Heinisch v. Germany* judgment of 21 July 2011 where the Court found that the dismissal of a geriatric nurse for having lodged a criminal complaint against her employer alleging shortcomings in the care provided had been a violation of Article 10.[132] Given the particular vulnerability of elderly patients and the need to prevent abuse, the information disclosed was undeniably of public interest whereas the sanction was liable to have a serious chilling effect on all nursing staff. In its decision, the Court referred to Article 24 of the Charter (protection against unjustified dismissal). Reference may also be made to the Grand Chamber's *Baka v. Hungary* judgment of 23 June 2016 where the Court found that the dismissal of the President of the Supreme Court was a violation of Article 10, given that it resulted from the opinions and criticisms he had expressed publicly, rather than from a reform of the judiciary (violation also of Article 6§1).

146. Lastly, mention may be made of three other decisions in relation to Article 10. In the *Lombardi Vallauri v. Italy* judgment of 20 October 2009, the Court found there had been a violation of Articles 10 and 6§1 concerning the refusal to allow the applicant to apply for a teaching post at a denominational university on account of his allegedly heterodox views. In the *Vejdeland and Others v. Sweden* judgment of 9 February 2012, the Court found that there had been no violation of Article 10 in respect of the applicants' convictions for having distributed homophobic leaflets in an upper secondary school. In one of the concurring opinions appended to the judgment reference is made to Complaint No. 45/2007 v. Croatia in which the ECSR found there had been a violation of Article 11§2 of the Charter in light of the non-discrimination clause (teaching material on sexual and reproductive health). Lastly, in the *Tesic v. Serbia* judgment of 11 February 2014 concerning an applicant ordered to pay sums totalling 2/3 of her retirement pension, leaving her with 60 euros per month to live on (she could no longer afford her medication given that it cost her 44 euros per month), the Court found there had been a violation of Article 10 (excessive sanctions totalling more than 60% of the applicant's income).

- Prohibition of discrimination (Article 14)

147. The aforementioned publication included references to several decisions in relation to Article 14 taken in conjunction with Article 8 (child allowances, parental leave, and forbidding persons to exercise their profession) and Article 1 of Protocol No. 1 (affiliation to the social security system, method for calculating pensions, and refusal of insurance).

[132] See also the *Matuz v. Hungary* judgment of 21 October 2014 where the Court found there had been a violation of Article 10 concerning the dismissal of a journalist for having published a book criticising his employer, in breach of a confidentiality clause (in this particular case, to draw public attention to the censorship operating within the state television company).

148. Since then, in addition to the aforementioned decisions (for example, the *Cam v. Turkey* judgment of 23 February 2016: discrimination in access to education because of a disability), numerous others have been delivered under Article 14 – some examples of which are given here.

149. With regard to workers with family responsibilities, in the Grand Chamber's *Konstantin Markin v. Russia* judgment of 22 March 2012, the Court found that there had been a violation of Article 8 taken in conjunction with Article 14[133] with regard to gender-based difference in treatment among military staff concerning the right to parental leave. In its judgment, the Court referred to Article 27 of the Charter (equal opportunities and equality of treatment of workers with family responsibilities of both sexes and between them and other workers). In the *Di Trizio v. Switzerland* judgment of 2 February 2016, the Court also found that there had been a violation of Articles 8 and 14 on the ground of the method used to calculate disability allowances resulting in de facto discrimination against women (the applicant had been refused the right to a disability allowance after indicating that she wished to reduce her working hours to look after her children).

150. It is also worth taking note of the aforementioned judgment (under Article 6) *Dhahbi v. Italy* of 8 April 2014 and the *Fawsie* and *Saidoun v. Greece* judgments of 28 October 2010 in which the Court held that there had been a violation of Article 8 taken in conjunction with Article 14 with regard to the refusal to grant the child allowance to the applicants on the ground that they were foreigners.[134] In the *Dhahbi v. Italy* judgment, the Court based its judgment on the fact that the applicant (worker) did not belong to the category of individuals who, as a rule, failed to contribute to the funding of public services and in relation to whom a state may have legitimate reasons for curtailing the use of resource-hungry public services. In the *Fawsie* and *Saidoun* judgments, the Court pointed out that under the Geneva Convention on the status of refugees, states must accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

151. With regard to dismissal, reference may be made to two judgments finding a violation of Article 8 taken in conjunction with Article 14: *I. B. v. Hungary* of 3 October 2013 (on the ground of the applicant's non-contagious HIV status) and *Emel Boyraz v. Turkey* of 2 December 2014 (on the ground of the sex of the applicant, a female security guard).

152. Two judgments forbidding persons to exercise their profession[135] are also worth noting. In the *Naidin v. Romania* judgment of 21 October 2014, the Court concluded that there had not been any violation of Article 8 taken in conjunction with Article 14 having taken into account the decision handed down by the Constitutional Court, according to which the barring of former collaborators of the political police from public-service employment was justified by the loyalty expected from all civil servants towards the democratic regime. In the *Sidabras*

[133] See also the *Hulea v. Romania judgment of* 2 October 2012: violation of Article 8 taken in conjunction with Article 14 because of the refusal to grant compensation to a male soldier thereby discriminating against him as regards the right to parental leave (recognised by the Romanian Constitutional Court – as a result of which the legislation was amended in 2006).

[134] In its 2011 Conclusions, the ECSR held that the situation in Italy was incompatible with Article 16 of the Charter because of the unequal treatment of foreigners with regard to the granting of child allowances. However, in its subsequent judgment in 2014, the Court did not refer to this finding. To date, there have been no finding by the ECSR in respect of Greece on this subject.

[135] See also, under Article 7, the *Gouarré Patte v. Andorra* judgment of 12 January 2016: violation involving an ancillary penalty (namely a lifetime ban on practising as a doctor), despite a more favourable retroactive law.

and others v. Lithuania judgment of 23 June 2015, the applicants complained about the failure to repeal legislation banning former KGB agents from working in certain spheres of the private sector – whereas the Court had handed down judgments in their favour in 2004 and 2005. The Court held that there had been no violation of Articles 8 and 14 in respect of the first 2 applicants (as they had failed to demonstrate that they had been subject to discrimination) but that there had been a violation of these articles in respect of the 3rd applicant because it was impossible for him to find employment. The Court was not convinced by the argument that the domestic courts' explicit reference to the KGB Act (still in force) was the decisive factor forming the legal basis on which his claim for reinstatement in the company had been rejected.

153. With regard to housing, mention may be made of the *Kozak v. Poland* judgment of 2 March 2010 in which the Court held that there had been a violation of Article 8 taken in conjunction with Article 14 with regard to the refusal to recognise a homosexual's right to take over the tenancy of a flat after his partner's death. The Court pointed out that states had to take into consideration developments in society and that, given that the margin of appreciation afforded to the state was narrow where a difference of treatment was based on sex or sexual orientation,[136] a blanket exclusion of persons living in a homosexual relationship from succession to a tenancy could not be accepted.

154. In the *Bah v. United Kingdom* judgment of 27 September 2011, the Court held that there had been no violation of Article 8 taken in conjunction with Article 14 with regard to the refusal to take account of the presence of a minor, who had been given permission to join the applicant on condition that he did not have recourse to public funds, in determining whether the applicant was in priority need of social housing. The Court found that it was legitimate to put in place criteria for the allocation of social housing when there was an insufficient supply (wide margin of appreciation afforded to the state given the socio-economic nature of the dispute) and, in this context, to take account of foreigners' immigration status (cf. the conditions under which the applicant's son had been granted immigration status).

155. Mention may also be made of the Grand Chamber's *Biao v. Denmark* judgment of 24 May 2016 in which the Court held that there had been a violation of Article 8 taken in conjunction with Article 14 with regard to the fact that the conditions relating to family reunion were more favourable for persons who had held Danish citizenship for at least 28 years. The Court took the view that the reply to the question as to how long it takes for a Danish citizen to have sufficiently strong ties with Denmark to allow family reunion could not depend solely on the length of time the citizen had held Danish nationality. The Court referred in its judgment to several international treaties and held that the indirect difference in treatment by a state between its own nationals depending on their ethnic origin was contrary to Article14. It is worth noting that only one separate concurring opinion referred to Article 19§6 of the Charter.[137]

156. Finally, it is worth noting the *Glor v. Switzerland* judgment of 30 April 2009 in which the Court found a violation of Article 8 taken in conjunction with Article 14 – referring in

[136] See also the *P.B. and S.J. v. Austria* judgment of 22 July 2010 on the refusal to extend insurance cover to the dependent of a civil servant who had a homosexual relationship with the former: violation of Articles 8 and14 up to 30 June 2007 (when the insurance law was amended so that its wording was gender- neutral with regard to the sexual orientation of cohabiting partners).

[137] It should be noted that this provision of the Charter concerning family reunion has not been accepted by Denmark.

particular to the UN Convention on the Rights of Persons with Disabilities – and considered the distinction made by the authorities between persons unfit for military service who were not required to pay the military-service exemption tax and those also declared unfit but obliged to pay it (in the case in question the applicant suffered from diabetes) to be discriminatory.

157. Numerous decisions under Article 14 and Article 1 of Protocol No. 1 concern retirement pensions. The following judgments may be cited as examples of violations: the Grand Chamber's *Andrejeva v. Latvia* judgment of 18 February 2009 (concerning the refusal to take account of the periods during which the applicant had worked in the former Soviet Union when calculating her retirement pension, on the ground that she did not have Latvian citizenship); *Muñoz Díaz v. Spain* judgment of 8 December 2009 (refusal to recognise the validity of the applicant's Roma marriage and to pay her a survivor's pension on the death of her husband, whereas the state had provided social cover and received payment of social contributions from him for over 19 years); *Pichkur v. Ukraine* judgment of 7 November 2013 (termination of payment of retirement pension on the ground that the beneficiary was permanently resident abroad); *Fábián v. Hungary* judgment of 15 December 2015 (referred to the Grand Chamber in May 2016 – differences in treatment between employees in the public and private sectors and between different categories of civil servants in respect of the payment of their retirement pension – in the case in question, the payment of the applicant's pension was suspended because he was simultaneously working in the public sector).

158. In contrast, in the Grand Chamber's *Carson and others v. United Kingdom* judgment of 16 March 2010, the Court held that there had been no violation of Article 14 and Article 1 of Protocol No. 1 with regard to the refusal to index-link the pensions of persons resident in overseas countries which had no reciprocal arrangements with the United Kingdom. It is also worth noting the *Andrle v. Czech Republic* judgment of 17 February 2011 in which the Court held that there had been no violation of Article 14 and Article 1 of Protocol No. 1 regarding the difference in the pensionable age for women and men caring for children. The latter was originally aimed at counterbalancing factual inequalities between women and men. The Court took the view that this difference in treatment continued to be reasonably and objectively justified until social and economic changes removed the need for special treatment for women.[138]

159. With regard to maintenance payments, in the *J. M. v. United Kingdom* judgment of 28 September 2010, the Court found that there had been a violation of Article 14 and Article 1 of Protocol No. 1 concerning the possibility for a non-resident parent who had formed a new relationship to obtain a reduction in the amount of child maintenance – but not if he or she was living with a person of the same sex. In its *Efe v. Austria* judgment of 8 January 2013, the Court found that there had been no violation of Article 14 and Article 1 of Protocol No. 1 concerning the refusal to grant the applicant (who held both Austrian and Turkish nationality) family allowance once a social security agreement between Austria and Turkey had been terminated – and tax credits for maintenance payments on the grounds that his children were not resident in Austria. In its judgment the Court referred to Article 12 of the Charter and the

[138] In its Conclusions XVI-2(2004) in respect of the Czech Republic, the ECSR also observed that: "States may, in the context of legal systems, fix different retirement ages for men and women, and considers that Article 1 of the Protocol permits different treatment which necessarily and objectively reflects the different retirement ages". However the Court did not refer to this in its judgment.

conclusion of the ECSR that the situation in Austria was in conformity with this article (Conclusions XVIII-1(2006)).[139]

160. Finally, under Article 14 and Article 1 of Protocol No. 1, it is worth mentioning two other findings of a violation: the *Vrountou v. Cyprus* judgment of 13 October 2015 (discriminatory refusal to grant housing assistance to the children of displaced women compared with the children of displaced men – termination of this disputed measure after 40 years) and the *Guberina v. Croatia* judgment of 22 March 2016 (failure to take account of the needs of a disabled child when determining his father's eligibility for tax exemption on the purchase of property adapted to his child's needs). The Court observed that although the relevant law was couched in general terms, other relevant provisions of domestic law provided some guidance with regard to the question of basic requirements of accessibility for persons with disabilities and that the state should also take into consideration the relevant principles of the UN Convention in this field. As the authorities had not taken account of these national and international obligations, the manner in which the legislation was applied in practice failed to sufficiently accommodate the requirements of the specific aspects of the applicant's case.

- Protection of property (Article 1 of Protocol No. 1)

161. The aforementioned publication included references to several decisions in relation to Article 1 of Protocol No. 1 alone, in the following fields: entitlement to welfare benefits (invalidity allowances and pensions), denial of wage supplements, salary deductions for non-unionised workers and right to housing. Since then, several decisions have been delivered – particularly with regard to retirement pensions – some examples of which are given here.

162. With regard to retirement pensions, it is worth noting the following judgments finding a violation of Article 1 of Protocol No. 1: the *Moskal v. Poland* judgment of 15 September 2009 (Revocation of an early retirement pension which had been granted by mistake several months previously and constituted the applicant's sole source of income); the *Apostolakis v. Greece* judgment of 22 October 2009 (full and automatic withdrawal of the right to a pension and social cover as a result of a criminal conviction); *Lakicevic and others v. Montenegro and Serbia* judgment of 13 December 2011 (full suspension of the payment of the applicants' pensions because they had re-opened their legal practices on a part-time basis following the entry into force of the 2003 law on pensions and invalidity insurance – inadmissible in respect of Serbia);[140] *Stefanetti and others v. Italy* judgment of 15 April 2014 (loss of two-thirds of the applicants' retirement pensions following a change in the law whereby pensions were no longer calculated on the basis of earnings (established case law of the national courts) but on the basis of contributions – which retroactively determined the outcome of their proceedings against the state – violation also of Article 6). In this judgment, the Court relied to a large extent on the conclusions of the ECSR with regard to adequate benefits (§64: the ECSR considers the sum of €461 per month to be inadequate as a minimum pension; the sums at

[139] It should be stressed that the ECSR nevertheless reversed its conclusion of conformity in its 2013 Conclusions in which it concluded that the situation in Austria was not in conformity with Article 12§4 of the Charter on the ground that equal treatment with regard to access to family allowances was not guaranteed to nationals of all other States Parties, in particular those with which it had no bilateral agreements, if they applied a different entitlement principle.

[140] It would have been different if the applicants had had to accept a reasonable and proportionate reduction in their pension instead of the full suspension of their rights, or if the law had provided for a transition period pending the introduction of the new regime.

issue, which did not exceed €1 000 a month, must be considered as providing for only basic commodities. The reductions had therefore undoubtedly affected the applicants' way of life and hindered its enjoyment substantially).

163. In contrast, mention may be made of two judgments finding that there had been no violation of Article 1 of Protocol No. 1: *Valkov and others v. Bulgaria* judgment of 25 October 2011 (cap on the pensions paid under one of three pensions systems – the Constitutional Court upheld the decision on the ground that it met the requirements of social justice – in the case in question, the applicants had suffered only a reasonable and commensurate reduction) and *Philippou v. Cyprus* judgment of 14 June 2016 (the applicant had lost his civil servant's pension following disciplinary proceedings against him which had led to his dismissal; however he had retained the right to a social security pension while his wife was granted a widow's pension).

164. With regard to retirement pensions, it is also worth noting the following inadmissibility decisions: *Torri and others v. Italy* decision of 24 January 2012 (non-reimbursement of the contributions paid by the applicants – civil servants – which were not taken into account in the calculation of their pension – following a change in the case law); *E. B. (No. 2) v. Hungary* decision of 15 January 2013 (reform of the pensions system in 2010, which did not deprive the applicant of her legitimate expectation to receive a pension in the future as she was entitled to future pension payments through the contributions she had made during the entire period of her employment either to a private pension fund or the state fund); *Cichopek and 1,627 other applications v. Poland* decision of 14 May 2013 (law of 2009 reducing the pensions of ex-employees of the Polish communist secret police with the aim of putting an end to pension privileges and ensuring greater fairness of the pension system); *Markovics and others v. Hungary* decision of 24 June 2014 (restructuring of retired servicemen's pensions – not subject to income tax – replaced in 2011 by an equivalent but taxable allowance); and *Mauriello v. Italy* decision of 13 September 2016 (non-reimbursement of the retirement contributions made by the applicant during the 10 years she was in employment – as it transpired, she did not qualify for a civil service pension – because she had not paid contributions for 15 years, as required by domestic law). The Court observed that states enjoyed a wide margin of appreciation in matters relating to pensions systems and the Convention did not require states to adopt a specific model. It should be noted that, in the present case, when the applicant began working and paying contributions, it was already certain that she would not be entitled to a pension.

165. With regard to invalidity pensions, mention may be made of the *Wieczorek v. Poland* judgment of 8 December 2009 in which the Court found that there had been no violation of Article 1 of Protocol No.1 concerning the withdrawal of the applicant's invalidity pension on the ground that she was no longer unfit to work; her case had been re-examined by the national courts (and she had been granted a temporary pension for two years). In the *Katai v. Hungary* decision of 18 March 2014, the Court declared the application inadmissible as the applicant who was the beneficiary of an invalidity pension had not suffered any significant material prejudice pending the allegedly unlawful reassessment of his health following the reform of the invalidity pensions scheme in 2011. Finally, in the Grand Chamber's *Belane Nagy v. Hungary* judgment of 13 December 2016, the Court held that there had been a violation of Article 1 of Protocol No. 1 concerning the applicant's complete loss of her invalidity pension following the introduction of new criteria (the Court took the view that the applicant had to bear an excessive and disproportionate individual burden).

166. Two further noteworthy decisions with regard to labour issues are the *N.K.M. v. Hungary* judgment of 14 May 2013 in which the Court held that there had been a violation of Article 1 of Protocol No.1 on the ground of the rate of taxation (52% – a much higher rate than the rate applied to all other incomes) applied to the applicant's severance pay, as the result of a new law raising the level of tax on severance pay in the public sector (excessive and disproportionate individual burden without a transitional period to adjust to the new scheme) and the *Paulet v. United Kingdom* judgment of 13 May 2014 in which the Court also found that there had been a violation of Article 1 of Protocol No. 1 on the ground that the applicant's wages had been confiscated following his conviction – the Court held that the domestic courts' scope of review of the case had been too narrow, as they had simply found that the confiscation order had been in the public interest, without balancing that conclusion against the applicant's right to peaceful enjoyment of his possessions.

167. Finally, with regard to housing,[141] mention may be made to the *Berger-Krall and Others v. Slovenia* judgment of 12 June 2014. The applicants, who were tenants[142] and holders of "specially protected tenancy" agreements under the former socialist regime, complained of the housing reform, following the move to the market economy – which had resulted in higher rents and less security of tenure. The Court took the view that it was unnecessary to examine whether the right of an occupant to reside in a real estate unit could constitute a "possession" within the meaning of Article 1 of Protocol No. 1, even assuming that provision to be applicable, there had been no violation of its requirements (nor of Article 8). It was true that as a result of the housing reform, the applicants had been faced with a general degradation of the legal protection they had previously enjoyed but securing the rights of previous owners (whose property had been nationalised) necessarily entailed a corresponding restriction of the rights of the occupiers. The Court also observed that the applicants continued to enjoy special protection going beyond that usually afforded tenants (among other things, subsidised rents significantly lower than free market rents – which showed that the transition to a market economy had been conducted in a reasonable and step-by-step manner). In its judgment (see in particular §176) the Court referred to the ECSR's decision of 8 September 2009 concerning Complaint No. 53/20088 v. Slovenia in which the Committee had found that there had been a violation of Articles 31§§1 and 3, 16 and E of the Charter – while taking account of the measures adopted to comply with the decision.[143]

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[141] See also the *Akhverdiyev v. Azerbaijan* judgment of 29 January 2015: violation of Article 1 of Protocol No. 1 (unlawfulness of the applicant's forced relocation and the demolition of his house), the aforementioned Grand Chamber *Chiragov and others v. Armenia* and *Sargsyan v. Azerbaijan* judgments of 16 June 2015 and the *Vomocil and Article 38 A.S. v. Czech Republic* inadmissibility decision of 5 March 2013 (failure to exhaust domestic remedies – with regard to the condemnation of capped rents).

[142] The aforementioned publication referred essentially to judgments finding that there had been a violation of Article 1 of Protocol No. 1 in respect of the owners: the *Ghigo v. Malta* judgment of 26 September 2006 (a disproportionately low rent and the long period for which the applicant was unable to enjoy his property); the *Radovici and Stanescu v. Romania* judgment of 2 November 2006 (failure to comply with the formalities leading to the extension of leases on a property without payment of rent for several years); the *Urbarska Obec Trencianske Bisupice v. Slovakia* pilot judgment of 27 November 2007 (compulsory transfer of land, preceded by an obligation to lease the land at a disproportionately low price) and the aforementioned *Hutten-Czapska v. Poland* pilot judgment of 19 June 2006 (a restrictive system of rent control – judgment of 28 April 2008: case struck off list following a friendly settlement: redress to the applicant and general measures – including the law of 8 December 2006 on the need to offer the most disadvantaged groups different types of housing).

[143] In May 2016, however, in the context of the monitoring of this complaint, the ECSR concluded that the situation in Slovenia had not been brought into conformity with the Charter, as the Government had failed to provide sufficient information, while noting that some progress had been made.

168. In contrast, mention may be made of two cases introduced by property-owners. In its *Almeida Ferreira and Melo Ferreira v. Portugal* judgment of 21 December 2010, the Court found that there had been no violation of Article 1 of Protocol No. 1 – a statutory bar to terminating a long-term lease based on a commitment to protect a section of society deemed by the state to require special protection. In its *Société Cofinfo v. France* decision of 12 October 2010, the Court declared inadmissible a complaint based on Article 6§1 and Article 1 of Protocol No. 1 concerning the authorities' refusal to execute a court decision ordering the evacuation of a block of flats on the ground that its unlawful occupants were in a situation of insecurity and vulnerability and that they therefore deserved greater protection.

- General prohibition of discrimination (Protocol No. 12)

169. In the aforementioned publication, the potential for increased protection of social rights through Protocol No. 12 was underlined (at the time ratified by 17 State Parties), while at the same time making the point that a very large number of complaints of discrimination could already be examined under Article 14 of the Convention – in view of its independent existence and the broad interpretation given by the Court to several concepts such as "private and family life" and to that of "property" .

170. Since then, there have been two further ratifications of Protocol No. 12 (Slovenia on 1 January 2010 and Malta on 1 April 2016: which makes a total of 19 states which have ratified the Protocol and 19 states which have signed but not ratified). To date, however, there is still no specific case law on social rights under Protocol No. 12.

b. The Court's response to the economic crisis and austerity measures

171. In January 2012, the former President of the ECHR, Sir Nicolas Bratza, said : "*The economic crisis and the political instability that it might lead seem to develop without limits. All our societies face difficulties (...). In such a situation, vulnerable people are the most exposed and minority interests struggle to express themselves. States and individuals may be tempted to withdraw into themselves (...). Human rights, the rule of law and justice seem to be losing ground on the political agenda of governments seeking quick solutions or simply faced with difficult choices when funds are short. It is in times like these that democratic society is put to the test. In this climate, we must bear in mind that human rights are not a luxury*"[144].

172. Similarly, in January 2013, Mr. Dean Spielmann, also former President of the ECHR, stated the following at the Seminar on Implementing the European Convention on Human Rights in times of economic crisis :"*those most affected by the crisis are the vulnerable, for example prisoners (...), migrants, (...) pensioners, who see their pensions being reduced – that is to say, the kind of people that our Court tends to protect in many of its cases*".[145]

173. As shown in numerous decisions referred to above and in the aforementioned CDDH feasibility study on the impact of the economic crisis and austerity measures on human rights in Europe,[146] the Court has handed down many decisions in which its reasoning takes account of economic and financial factors. It has also had to deal with cases directly concerned with austerity measures introduced by member states to cope with the economic crisis.

[144] See the ECHR annual Report 2012, Strasbourg, 2013
[145] http://www.echr.coe.int/Documents/Dialogue_2013_ENG.pdf: Dialogue between judges 2013.
[146] CDDH (2015)R84 – Addendum IV (pages 5 to 8).

174. Most of the cases alleged violations of Article 1 of Protocol No. 1. In the case of *Mihăieş and Senteş v. Romania* (inadmissibility decision of 6 November 2011), the applicants complained that the application of an austerity programme had led to a 25% reduction in their remuneration as public service employees. The Court ruled that even if they could be deemed to have a "possession", the authorities had not exceeded their margin of appreciation. In the case of *Koufaki and Adedy v. Greece* (decision of 7 May 2013), the Court considered applications relating to a series of austerity measures, including cuts in public officials' salaries, pensions, bonuses and other allowances,[147] to reduce public spending and respond to the crisis facing the country. The Court declared these applications inadmissible, since the adoption of the impugned measures had been justified by the existence of an exceptional crisis without precedent in recent Greek history, necessitating an immediate reduction in public expenditure. The Court reaffirmed the principle that law makers had a wide margin of appreciation when implementing economic and social policies and that in this case the aims of the policies were in the general interest and also coincided with those of the euro zone member states, which were required to ensure budgetary discipline and preserve the stability of the euro zone. For the same reasons, the Court has declared inadmissible applications protesting against reductions in the holiday and Christmas bonuses paid to retired public officials (decision of 8 October 2013 in *Da Conceica Mateus and Santos Januario v. Portugal* – limited and temporary nature of the measures; it was not disproportionate to reduce the state budget deficit by cutting public sector salaries and pensions with no equivalent cuts in the private sector)[148] and a temporary reduction in judges' pensions (decision of 15 October 2013 in *Savickas and Others v. Lithuania*).[149] All of these measures were adopted in response to the economic crisis.

175. From the standpoint of Article 6, in the case of *Frimu and Others v. Romania* the Court has ruled, indirectly, on a reduction in the retirement pensions of former officials of the judicial service, as a means of reducing the state budget. In its inadmissibility decision of 13 November 2012, the Court found that the fact that there had been discrepancies in the assessments of courts ruling on similar situations was not in violation of Article 6§1, since the case concerned the application of clearly expressed legal provisions to varying personal situations. Judicial practice might vary for two years, or even more, before machinery to ensure consistency was established.

176. Two cases may also be cited concerning austerity measures in the banking sector in response to the economic crisis. It its inadmissibility decision of 17 March 2015 in *Adorisio and Others v. the Netherlands*, the Court found that the restrictions on the applicants' procedural rights, in proceedings designed to ensure a rapid decision on the expropriation of their financial assets, was not in breach of Article 6 since, notwithstanding the very short time available, the applicants had had an effective remedy and the Government had been faced with the need to intervene as a matter of urgency in order to prevent serious harm to the

[147] The Court held that the reduction in the first applicant's salary from €2 435.83 to €1 885.79 was not such as to place her at risk of having insufficient means to live on, in breach of Article 1 of Protocol No. 1. In the case of the second applicant, compensation had been provided for the abolition of his 13th and 14th month salary payments by the introduction of a single bonus.

[148] See the inadmissibility decision of 1 September 2015 in *Da Silva Carvalho Rico v. Portugal*, which also concerned cuts in retirement pensions resulting from austerity measures, in which the Court noted in particular the general interest applicable in Portugal following the financial crisis and the limited and temporary nature of the measures introduced.

[149] See also the *Khoniakina v. Georgia* judgment of 19 June 2012 (legislation retroactively modifying the retirement pensions of Supreme Court judges was not in breach of Article 6 and Article 1 of Protocol No. 1) and the inadmissibility decision of 8 January 2013 in *Bakradze and Others v. Georgia* on the same subject.

national economy. In its *Mamatas and Others v. Greece* judgment of 21 July 2016, the Court found that there had been no violation of Article 1 of Protocol No. 1, alone or taken in conjunction with Article 14, in connection with an imposed decrease in the nominal value of bonds without the consent of the private investors concerned, to reduce the level of public debt (following negotiations between the state and international institutional investors on a reduction in their claims). The applicants' bonds had been cancelled and replaced with new securities, entailing a 53.5% capital loss. However, the Court found that since the exchange operation had resulted in a reduction of the Greek debt, the impugned interference had pursued an aim in the public interest. Moreover, the loss, which on the face of it was substantial, had not been sufficient to amount to the cancellation of or an insignificant return on the applicants' investments.

177. To date, there appears to have been only one case in which the Court has found a violation in connection with austerity measures, namely the aforementioned *N.K.M. v. Hungary* of 14 May 2013 (excessive rate of tax on severance pay following legislation to raise these rates in the public sector).

178. At a seminar in October 2015,[150] Linos-Alexandre Sicilianos, current Vice-President of the ECHR, referred to the major impact the economic crisis was having on several Convention rights, which showed that the traditional view that civil and political rights did not have a significant cost was now proving to be ever more erroneous. Several of them entailed positive obligations, and he cited a number of major examples, including the negative impact of the crisis on detention conditions in numerous countries, the substantial costs of safeguarding the right to a fair trial and the general deterioration in the conditions of treatment of migrants and asylum-seekers.

179. The speaker summarised the Court's response to the economic crisis as one of both prudence and firmness. It acted prudently in so far as, particularly in a time of crisis and in accordance with the subsidiarity principle, it left national authorities a wide margin of appreciation by refusing to intervene in large-scale decisions reflecting major political choices in economic matters. However, it continued to act firmly by refusing to take account of economic considerations when it was necessary to protect non-derogable rights (for example, detention conditions must always be compatible with Article 3 – see the *Orchowski v. Poland* judgment of 22 October 2009), and principles relating to the rule of law (reasonable length of proceedings and the execution of final judicial decisions – see the aforementioned *Tchokontio Happi v. France* judgment of 9 April 2015 : lack of social housing) and non-discrimination (see the aforementioned *Ponomaryovi v. Bulgaria* judgment of 21 June 2011 – secondary education fees for foreign nationals without permanent residence permits).

c. Examples of execution of social rights judgments

180. States' undertaking to abide by judgments of the Court in cases to which they are parties (Article 46§1 of the Convention), combined with the *erga omnes* effects of its decisions, have resulted in numerous reforms in the social domain.

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[150] http://www.esil-sedi.eu/sites/default/files/Sicilianos_speech_Translation.pdf: The European Court of Human Rights at a time of crisis in Europe, SEDI/ESIL Lecture, 16 October 2015. His address covered the crisis in its broadest sense: the economic crisis (pages 2 to 4), the refugee and migrant crisis, the fight against terrorism and armed conflicts in Europe.

181. As the Court's case law has developed, particularly with regard to the scope of Article 6 of the Convention, starting with cases such as *Feldbrügge v. the Netherlands*, *Deumeland v. Germany* and *Schuler-Zgraggen v. Switzerland*, the resulting reforms have contributed substantially to strengthening national procedures for safeguarding social rights. For example, they have helped to ensure that related disputes are dealt with in accordance with the Article 6 requirements of fairness, speediness and independence, even if the protected right concerned is not deemed to be a "civil" right, and the requirements of Article 13, such as the right to reside in a country, or of Article 5 on issues relating to liberty, such as detention in psychiatric hospitals.

182. There have also been numerous reforms aimed at strengthening the material protection of rights, such as the rights to a pension, to appropriate detention conditions or, in the case of refugees, to minimum conditions of existence. They include measures to remove discrimination and prevent inappropriate legal interference with acquired rights, particularly through judicial proceedings, to restrict such interference to situations where there are compelling grounds of general interest. Migrants have also been given greater social protection, in connection with both detention conditions and other circumstances.

183. The following is a non-exhaustive illustrative list of legal reforms that have been introduced or are being considered in response to Court judgments:

- Improvements to detention conditions in many countries, including access to appropriate medical care, whether the detention is on criminal or medical grounds or concerns migrants or asylum-seekers;[151]
- The abolition of discrimination between employees in Austria, which restricted certain benefits under the unemployment system to Austrian nationals, even though all employees contributed to the system on an equal footing;[152]
- Ensuring the implementation of final judgments in Greece, particularly judicial decisions in the social field, such as education and retirement benefits;[153]
- The abolition of discrimination between nationals and other persons residing in Italy regarding entitlement to family allowances;[154]
- Numerous reforms to end discrimination against homosexual couples;[155]
- Various measures in Romania to reduce discrimination against Roma persons following acts of violence involving the destruction of Roma homes;[156]

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[151] Criminal law grounds: Committee of Ministers final resolutions (2015)169 in the *Kirkosyan v. Armenia*, (2016)28 in the aforementioned *Torreggiani v. Italy*, (2016)254 in the aforementioned *Orchowski v. Poland* and (2016)278 in the *Kaprykowski v. Poland* judgments. Execution measures have been adopted and others are in preparation in the cases of *Vasilescu* v. *Belgium*, *Kehayov/Neshkov v. Bulgaria*, *Nisiotis v. Greece*, *Istvan Gabor and Kovacs/Varga* v. *Hungary*, *Becciev/Ciorap/Paladi/Shishanov v. Moldova*, *Bragadireanu v. Romania*, *Mandic and Jovic v. Slovenia*, *Nevmerzhitsky/Yakovneko/Melnik/Logvinenko/Isayev v. Ukraine,* and *Kalashnikov/Ananyev* v. *Russia*. Medical grounds: execution measures have been adopted and others are in preparation in the cases of *L.B.* and *W.D.* v. *Belgium* and *Ticu and Gheorghe Predesco v. Romania*. Migrants: final resolutions in the cases of *Suso Musa v. Malta* (2016)277 and *Al-Agha v. Romania* (2016)110.

[152] Committee of Ministers Final Resolution (1998)372 in *Gaygusuz v. Austria*.

[153] Committee of Ministers Final Resolution (2004)81 in *Hornsby and Others v. Greece*.

[154] Committee of Ministers Final Resolution (2015)203 in the aforementioned case of *Dhahbi v. Italy*.

[155] See, for example, Final Resolution (2009)80 in *E.B. v. France* (same-sex couples also entitled to adopt), execution measures in preparation in *Vallianatos and Mylonas v. Greece* (entitlement of same-sex couples to civil unions), Final Resolution (2013)81 in the aforementioned *Kozak v. Poland* (same-sex couples' entitlement to succession of tenancy), Final Resolution (2002)35 in *Smith and Grady v. United Kingdom* (homosexuals' entitlement to serve in the armed forces), Final Resolution (2014)159 in *X. and Others v. Austria* (right of second person in a same-sex couple to adopt the child of the first).

- Various measures introduced or still in preparation in the Czech Republic, Greece and Hungary to eliminate all forms of discrimination against Roma children exercising their right to education;[157]
- Several countries have enacted special legislation to ensure the effective and rapid implementation of decisions under the 1980 Hague Convention on the Civil Aspects of International Child Abduction, or have revised their legislation and procedures accordingly;[158]
- Fathers in Poland are now entitled to establish legal paternity through a procedure directly available to them;[159]
- Adopted children in Italy who were not formally recognised at birth can now obtain information on their origins;[160]
- Several countries have strengthened or are in the process of strengthening protection against domestic violence;[161]
- Several countries have introduced reforms to ensure payment of retirement pensions;[162]
- Finally, reforms have been introduced and more are in preparation in Russia to remedy the problem of failure to execute judicial decisions relating to obligations in kind, such as the provision of housing.[163]

d. Findings

184. It is difficult to draw any clear lessons from the Court's burgeoning case law, particularly as, in accordance with its terms of reference, it decides in the light of the circumstances of each individual case (with the aforementioned exception of *DH and Others v. Czech Republic,* where, after considering statistics pointing to a strong presumption of indirect discrimination in the relevant field, it chose not to focus on the applicants' individual circumstances). Nevertheless, the Court's findings sometimes extend beyond the scope of the individual cases before it, by criticising legislation or practices of a general nature or, in more exceptional circumstances, under Article 46, recommending that states adopt general measures. In doing so, the Court moves closer to the supervisory system of the Charter, in which the ECSR rules on general situations from a collective standpoint, without, however, ever prescribing general measures to be adopted by States.

185. A comparison with the Court's case law on social rights as it appears in the aforementioned publication,[164] suggests that the general trend has been confirmed over the last few years while the volume of such cases seems to be increasing.

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[156] Final Resolution (2015)38 in *Tanase v. Romania* – see also the information on measures in preparation to execute the judgment in *Moldovan and Others v Romania*.
[157] See the information on the execution of the aforementioned cases of *D.H. v. Czech Republic*, *Sampani v. Greece* and *Horvath and Kiss v. Hungary*.
[158] See in particularly final resolutions (2010)84 in *Sylvester v. Austria* and (2015)185 in *Ignaccolo-Zenide v. Romania*. Measures have also been introduced and others are in preparation in the cases of *Bajrami v. Albania*, *Karadzic v. Croatia* and *Hromadka and Hromadka v. Russia*.
[159] Final Resolution (2015)209 in *Rozanski v. Poland*.
[160] Final Resolution (2015)176 in *Godelli v. Italy*.
[161] Measures have been taken or are in the pipeline in connection with *Valiuliene v. Lithuania* and in the aforementioned *Eremia v. Moldova* and *Opuz v. Turkey* cases.
[162] Final Resolution (2012)148 in *Karanovic v. Bosnia and Herzegovina*. Measures have been approved and are currently being implemented in connection with *Grudic v. Serbia*.
[163] Execution measures in preparation in connection with *Gerasimov v. Russia*.
[164] http://www.coe.int/t/dghl/standardsetting/cddh/GT_DH_SOC/Recent%20developments%20in%20the%20field%20of%20social%20rights_publication_EN.pdf.

186. Over the years, the Court's social rights case law has covered three main areas:[165] employment (still relatively few cases under Article 4, many relating to freedom of association and an increasing number concerned with working life under various articles);[166] housing (under numerous articles)[167] and social protection (contributory and non-contributory social benefits),[168] as well as other subjects.[169]

187. There also appears to have been some progress in two areas where little change had been noted in the previous publication: protection against social insecurity and disabled persons' right to social integration.

188. With regard to social insecurity,[170] the Court had already acknowledged that insufficient income might fall within the scope of Article 3, though without ever finding a violation. Once again, in its inadmissibility decision of 18 June 2009 in *Budina v. Russia*, the Court found that the threshold of severity had not been reached, but at the same time it took an important step by arguing, for the first time, that serious deprivation could be incompatible with human dignity. This was followed by the first finding of an Article 3 violation based on social insecurity, in the *M.S.S. v. Belgium and Greece* judgment of 21 January 2011.[171] However, this concerned not insufficient income or social benefits to live in dignity but rather the specific circumstances of an asylum-seeker who had been forced to live on the street for several months with no means of subsistence, thereby making him particularly vulnerable.

189. As the Court's factsheet shows,[172] over the last few years it has been increasingly concerned with protecting persons with disabilities and their right to full integration. In its *Gherghina* decision, the Court noted that this was a relatively recent branch of domestic and international law, though it found that the applicant had not exhausted domestic remedies. The Court has handed down a number of interesting decisions in this field,[173] particularly

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[165] See, in particular, Berger, Vincent, former jurisconsult: "*The international perspective, role of the European Court of Human Rights*", Conference on Protecting economic and social rights in times of economic crisis: what role for the judges?, organised in May 2014 by the Venice Commission in co-operation with the Supreme Court of Brazil: http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-LA(2014)005-f.

[166] Above all dismissal and redundancy cases in recent years, under Articles 6, 8, 9, 10 and 14 and Article 1 of Protocol No. 1, and a few cases relating to such matters as access to employment/recruitment, prohibitions on certain forms of employment, occupational health and safety or conditions in the workplace, such as the wearing of religious symbols or employee monitoring.

[167] Article 6 (failure to execute judicial decisions to allocate social housing), Article 8 (unjustified placement in care of children on grounds of inadequate housing or parents' lack of means; unavailability of accommodation; eviction of Roma and travellers in connection with the obligation to rehouse them; residential disturbance/noise pollution) and Article 1 of Protocol No. 1 (such as bans on terminating tenancies or refusals to execute eviction orders, in both cases to protect vulnerable tenants).

[168] Mainly from the standpoint of Articles 6, 14 and 1 of Protocol No. 1: in recent years most of the cases have concerned matters relating to retirements pensions. A few other areas appear, such as the care of elderly persons, invalidity pensions, entitlement to parental leave and family allowances.

[169] Other fields that ought to be mentioned include the rights to health and to a healthy environment, and the right to education, which is explicitly protected by the Convention.

[170] Aside from living conditions in prison and other forms of residential institution (see, for example, the following judgments finding violations: *Nencheva and Others v. Bulgaria* of 18 June 2013, *Centre for legal resources on behalf of Valentin Câmpeanu v. Romania* of 17 July 2014 and *Stanev v. Bulgaria* of 17 January 2012).

[171] In a similar case, *V.M. and Others v. Belgium,* the Court found a violation on 7 July 2015, but the case was struck from the list in the Grand Chamber on 17 November 2016, because contact with the applicants had been lost.

[172] http://www.echr.coe.int/Documents/FS_Disabled_ENG.pdf: aforementioned factsheet (January 2017).

[173] See also the aforementioned decisions relating to Articles 2 (in particular, failure to take account of a person's disability during police custody) and 3 (harassment of a physically and mentally disabled child).

concerning states' obligation to introduce measures and/or reasonable accommodations on their behalf. Examples include failure to provide a deaf-mute person in custody with the means of communication (no access to a lawyer – violation of Article 5 – *H. v. Hungary* judgment of 8 November 2011); absence of measures to enable a blind person to pursue her musical education (violation of Article 2 of Protocol No. 1 – *Cam v. Turkey* judgment of 23 February 2016); inaccessibility of several public buildings, including the relevant court (decision of 14 September 2010 in *Farcas v. Romania,* inadmissible because there were no insurmountable obstacles in this case, but the Court stated that positive measures might be expected under both Article 8 and Article 34); inaccessibility of universities and courts (aforementioned Grand Chamber inadmissibility decision of 9 July 2015 in *Gherghina v. Romania* – the applicant should have asked the courts to order the authorities to adopt reasonable measures); failure to take account of domestic and international accessibility requirements in connection with an application for tax relief on the purchase of suitably adapted property (violation of Articles 14 and 1 of Protocol No. 1 –*Guberina v. Croatia* judgment of 22 March 2016: this appears to be the first judgment finding a violation regarding physical accessibility).[174]

190. Despite this progress and the Court's expanding case law on a number of social rights, there are still certain limits to the protection it offers. In the Grand Chamber's judgment of 15 March 2012 in *Austin and Others v. United Kingdom*, the Court stated that "*the Convention is a living instrument which must be interpreted in the light of present-day conditions and of the ideas prevailing in democratic states today…. This does not, however, mean that to respond to present-day needs, conditions, views or standards the Court can create a new right apart from those recognised by the Convention … or that it can whittle down an existing right or create a new 'exception' or 'justification' which is not expressly recognised in the Convention …*" (§53).

191. It therefore needs to be stressed that the Convention does not, as such, provide for social legislation, or even a body of fundamental social rights:[175] such rights come into play only if a member state decides to incorporate them in its legislation. In such cases, the Convention is designed to ensure that access to these rights is not subject to discrimination and that there are procedural safeguards to prevent denial and/or breaches of these rights, such as the total removal of a previously granted right or what is deemed to be an excessive reduction in its applicability.

192. In the case of the direct protection offered by the Court for certain social rights (see above: Articles 4, 11 and 2 of Protocol No. 1), the wording of the Convention is much less demanding than that of the Charter, which is more wide-ranging and precise and imposes more rights and obligations on states.[176]

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[174] In all these decisions, the Court makes frequent references to the United Nations Convention on the Rights of Persons with Disabilities, but not to the Conclusions of the ECSR rendered on Article 15 of the Charter (right of persons with disabilities to independence, social integration and participation to the life of the community).

[175] The Optional Protocol adopted on 10 December 2008, which entered into force on 5 May 2013, authorises individual complaints to the United Nations Committee on Economic, Social and Cultural Rights. This has been accepted by 22 States, including 11 from the Council of Europe, namely Bosnia and Herzegovina, Italy, Belgium, Luxembourg, Montenegro, Spain, San Marino, Slovakia, Finland, France and Portugal. Experience so far is insufficient to demonstrate the potential benefits that the addition of social rights to the Convention might eventually offer (see above, the work of the GT-DH-SOC).

[176] For example, Article 2 of Protocol No. 1 applies only to existing education. Moreover, in the case of trade union rights, in its *National Union of Rail, Maritime and Transport Workers v. United Kingdom* judgment of 8 April 2014 the Court draws attention to the much broader wording of Article 6§4 of the Charter, as compared

193. Finally, it should be noted that the Court appears to have been making increasing reference to the decisions and conclusions of the ECSR in recent years, sometimes in support of its findings,[177] and sometimes differing from them.[178] However, these references are often of a general nature, and accompanied by other sources.[179] Finally, it has to be noted that the Court still often fails to make any allusion to the Charter system in cases in which this might nevertheless be quite appropriate.[180]

194. This applies particularly to the aforementioned cases dealing with austerity measures, despite several ECSR decisions concerning Greece and its conclusions on this subject relating to various States (see below). In a general manner, it appears important to encourage a maximum of cross-references between the Convention and Charter systems, as a mean of emphasising their complementary nature[181] and, in certain cases, their synergies.

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with Article 11 of the Convention. However, in the light of other judgments on Article 11 of the Convention, the ETUC considers that, in general, the ECHR attempts to comply with the European consensus on freedom of association - arising in particular from the Charter (and Article 6 (4) thereof).

[177] Particularly in the following aforementioned cases: The *Demir and Baykara v. Turkey* Grand Chamber judgment of 12 November 2008 (violation of the right to conduct collective bargaining – the Court also noted states' wish to strengthen the mechanism of the European Social Charter), *Matelly v. France* of 2 October 2014 (violation concerning the freedom of association of military personnel, in which the Court went beyond the requirements of the ECSR), *Junta Rectora Del Ertzainen Nazional Elkartasuna v. Spain* of 21 April 2015 (non-violation concerning police officers' right to strike), *Çam v. Turkey* of 23 February 2016 (violation for refusal to admit a blind person to music school), *Yordanova and Others v. Bulgaria* of 24 April 2012 (violation following the eviction of Roma without the offer of alternative accommodation – relying partly on collective complaint No. 31/2005 v. Bulgaria), *Efe v. Austria* of 8 January 2013 (non-violation following refusal to grant family allowance for children living abroad – subsequently contradicted in ECSR conclusions) and *Stefanetti and Others v. Italy* of 15 April 2014 (violation following a substantial reduction in pension payments).

[178] Particularly in the following aforementioned cases: the *Stummer v. Austria* Grand Chamber judgment of 7 July 2011 (non-violation following refusal to affiliate working prisoners to the old-age pension system: no European consensus), *National Union of Rail, Maritime and Transport Workers v. United Kingdom* of 8 April 2014 (non-violation following a legal ban on secondary trade union action: states enjoy a wide margin of appreciation and the applicants produced no evidence of a negative impact on the enjoyment of their rights) and *Berger-Krall and Others v. Slovenia* of 12 June 2014 (non-violation following reduced security of tenure for tenants who were "specially protected" under the previous regime: with regard to the applicants' situation, the transition to a market economy could be deemed reasonable and gradual).

[179] Particularly in the following areas: the right to leave employment, the right not to join a trade union, the right to strike, refusal to register a trade union, public officials' freedom to form or join trade unions, the right to secondary education, harassment of persons with disabilities, unfair dismissals, harassment in the workplace and the right to parental leave.

[180] Particularly in the following aforementioned cases: the *DH and Others v. Czech Republic* Grand Chamber judgment of 13 November 2007 and *Orsus and Others v. Croatia* of 16 March 2010 (violations concerning the education of Roma children: numerous ECSR conclusions on this subject), *Tchokontio Happi v. France* of 9 April 2015 (violation following failure to execute a decision ordering urgent rehousing: two collective complaints on this subject against France), *Dhahbi v. Italy* of 8 April 2014 (violation, prior ECSR conclusions) and *Andrle v. Czech Republic* of 17 February 2011 (non-violation, *idem,* prior ECSR conclusions on this subject, cited above) and the case *Cam v. Turkey* of 23 February 2016 (violation for refusing access to musical education to a blind person) and more generally, the judgments of the ECHR concerning the rights of persons with disabilities (while it exists a specific Article 15 of the Charter on this topic).

[181] See the aforementioned *Tchokontio Happi v. France* judgment of 9 April 2015, an individual case that illustrates the practical difficulties associated with the implementation of legislation examined by the ECSR – and, more generally, all the cases where the Court and the ECSR adopt different positions – bearing in mind their different supervisory systems.

e. Possible action

195. Although the aforementioned "Turin Action Plan" (see Appendix) is addressed to many Council of Europe stakeholders, it is important to point out that it includes no reference to any measures for the Court. In view of the above, however, the Court and its Registry can be encouraged to engage in more dialogue and discussion with the ECSR and European Social Charter Department to ensure that its members and all its staff have a better knowledge of the Charter (more references where appropriate).

B. <u>European Social Charter ("The Charter")</u>

a. State of signatures, ratifications and number of provisions accepted

196. The European Social Charter was opened for signature on 18 October 1961 in Turin. It entered into force on 26 February 1965.

197. Bearing in mind the key principles of the indivisibility and interdependence of human rights (*above*, Part I, Point 2), after the Rome Conference held in October 1990 to mark the 40th anniversary of the Convention, the Council of Europe decided to "relaunch" the Charter.

198. This decision led to the Turin Conference marking the 30th anniversary of the Charter in October 1991, the adoption of the Protocol amending the 1991 Charter on, in particular, the reporting procedure (see below), the adoption of the 1995 Additional Protocol providing for a system of collective complaints (see below) and the adoption of the Revised Charter, which was opened for signature by the member states on 3 May 1996 and entered into force on 1 July 1999.

199. The Revised Charter groups together all the rights guaranteed by the 1961 Charter and its 1988 Additional Protocol,[182] while incorporating new rights and amendments: the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 20), the right of elderly persons to social protection (Article 23), the right to protection in cases of termination of employment (Article 24), the right of workers to protection of their claims in the event of the insolvency of their employer (Article 25), the right to dignity at work (Article 26), the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27), the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28), the right to information and consultation in collective redundancy procedures (Article 29), the right to protection against poverty and social exclusion (Article 30) and, lastly, the right to housing (Article 31).

200. The Charter is currently in force in 43 member states of the Council of Europe:[183]

- 9 states are bound by the 1961 Charter: Luxembourg, Germany, Croatia, Czech Republic, Denmark, Iceland, Poland, Spain and the United Kingdom;

[182] It establishes the following rights in addition to those guaranteed under the 1961 Charter: workers' right to non-discrimination on the grounds of sex, their rights to be informed and consulted within the undertaking; their right to take part in the determination and improvement of the working conditions; the right of elderly persons to social protection.

[183] Appendix: Table dated of 1st January 2017 showing full list of signatures and ratifications of the European Social Charter, its Protocols and the Revised Charter.

- 4 states have not yet ratified the Charter: Liechtenstein, Monaco, San Marino and Switzerland;
- the other 34 states are bound by the 1996 Revised Charter.[184]

201. In addition, to date there are 15 states which are bound by the 1995 Protocol providing for a system of collective complaints: Czech Republic, France, Greece, Portugal, Italy, Belgium, Bulgaria, Cyprus, Sweden, Croatia, Finland, Ireland, Netherlands, Norway and Slovenia.

202. Lastly, four states have not yet ratified the 1991 Protocol amending the Charter: Luxembourg, Germany, Denmark and the United Kingdom. As a result, the Protocol has not yet entered into force, because ratification by all the Contracting Parties to the Charter is required for that to happen (see below).

203. Unlike the Convention with the exception of its Optional Protocols, the Charter is based on an "à la carte" system of acceptance of its provisions, which allows states to choose the provisions they are willing to accept as obligations under international law. Accordingly, while explicitly encouraging them to gradually accept all of its provisions, the Charter allows states, at the time of ratification, to adapt their undertakings to fit the level of protection of social rights achieved in their country, in law and/or in practice.

204. Part I of the Charter sets forth the rights, like the Convention, and Part II details States' obligations with respect to their implementation. In spite of its "à la carte" system, when States ratify the revised Charter, they must accept a minimum of rights (16 articles, including at least six of the "so called" nine hard core articles – or 63 numbered paragraphs)[185]. Concerning the European Social Charter of 1961, States must accept at least five of seven articles (Articles 1, 5, 6, 12, 13, 16 and 19) and a number of articles or numbered paragraphs of Part II of the Charter, as it may select, provided that the total number is not less than 10 articles or 45 numbered paragraphs[186].

205. Concerning the "hard core" provisions of the Charter,[187] Article 1 (right to work) has been accepted by 43 states, Article 5 (right to organise) by 42 states, Article 6 (right to bargain collectively) by 41 states, Article 7 (right of children and young persons to protection) by 41 states, Article 12 (right to social security) by 39 states, Article 13 (right to social and medical assistance) by 25 states, Article 16 (right of the family to social, legal and economic protection) by 38 states, Article 19 (right of migrant workers and their families to protection and assistance) by 34 states and Article 20 (right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex) by 38 states[188].

206. Concerning the other provisions of the Charter, those that appear to be least accepted by states are Articles 18§§1 to 3 (right to engage in a gainful occupation in the territory of other Parties), 23 (right of elderly persons to social protection), 30 (right to protection against

[184] Note the most recent ratification of the Revised Charter by Greece, at the Turin Forum on 18 March 2016.
[185] Part III of the Charter, Article A "Undertakings", §1.
[186] Article 20 of the European Social Charter of 1961.
[187] Reference here to the States Parties to the 1961 Charter, 1988 Additional Protocol and 1996 Revised Charter.
[188] This is a global overview which does not take into account the acceptance by States of the various paragraphs of these articles. Thus, for example, paragraph 4 of Article 6 (right to strike) was not accepted by 5 States and paragraph 5 of Article 7 (remuneration of young workers) was not accepted by 7 States.

poverty and social exclusion) and 31 (right to housing). Those that appear to be most accepted are Articles 2§§2 and 5 (right to public holidays with pay and to a weekly rest period), 4§§2 and 3 (right to an increased rate of remuneration for overtime work and to equal pay for men and women), 8§1 (right to take leave before and after childbirth up to a total of at least 14 weeks) and, lastly, 11 (right to protection of health).

207. In 2002, in order to encourage states to accept more of the Charter provisions, and bearing in mind that "à la carte" acceptance is of a temporary nature like reservations in respect of international instruments (Article 57 of the Convention which, furthermore, does not permit reservations of a general nature), the Committee of Ministers decided to implement Article 22 of the 1961 Charter on reports concerning provisions which are not accepted.[189] In practice, once they have ratified the revised Charter, States are obliged to submit a report, every five years, on provisions they have not accepted for examination by the ECSR.

b. Conclusions and decisions of the European Committee of Social Rights (ECSR)

(i) Nature of ECSR conclusions and decisions

208. Insofar as they refer to legally binding provisions and are adopted by a monitoring body established by the Charter and the 1995 Protocol providing for a system of collective complaints, the Conclusions (in the context of the reporting system) and Decisions (in the context of the collective complaints procedure) of the ECSR must be implemented by the States concerned.

209. However, when the ECSR finds that the situation in a given country is not in compliance with the Charter, the authorities of that country cannot be required to adapt their domestic legislation to bring it into conformity with the ECSR's finding as would be the case with a ruling by the national courts or by the Court in Strasbourg (no equivalent in the Charter to Article 46§1 of the Convention). However, the fact that the Decisions and Conclusions of the ECSR are not enforceable does not mean that a State can ignore them. These are thus declaratory, in other words they set out the law and should serve as a basis for positive developments with respect to social rights through the passing of new laws, case law or practices at national level.

210. Furthermore, it can happen that national courts declare invalid or set aside domestic legislation if the ECSR has ruled that it is not in compliance with the Charter (see below, point f). Lastly, as with the judgments of the Court, it is possible for ECSR members to append their dissenting opinions to Conclusions and Decisions adopted by the ECSR.

(ii) State reporting procedure

211. The state reporting system is set out in Part IV of the 1961 Charter as amended by the 1991 Protocol (known as the "Turin Protocol"). Although the Protocol has not yet entered into force,[190] it is applied on the basis of a decision of the Committee of Ministers.[191] It has improved the reporting system, by clarifying the prerogatives and responsibilities of the

[189] Decision of the Committee of Ministers adopted on 11 December 2002 at the 821st meeting of the Ministers' Deputies.
[190] It should be recalled that it requires ratification by all States Parties. To date, four states have yet to ratify it.
[191] On 11 December 1991 the Committee of Ministers adopted a decision calling on the states and monitoring bodies to consider already applying some of its measures if permitted to do so by the text of the Charter.

Commentaire [PM5]: *{PL: Verification procedure ends with a decision of the Committee of Ministers which (NOT the conclusions or decisions of the CIE) are conclusive for Member States. They should consider them in their legislative or policy processes, as appropriate. To write that states parties are mandated to abide by the conclusions and decisions of the CIE, degrades the other two verifying bodies, i.e., the Governmental Committee and the Committee of Ministers and unduly expands the powers of the CIE. This para should accurately describe the competencies of the respective verifications bodies. The following paras should be adjusted accordingly.}*

*{**PT** : Au par. 199, "Insofar...; il faut quand même garder une référence au pouvoir décisionnel qui resulte du jeu des différents organes du système de la CSE. Nous pourrions mettre, si cela convenait à toutes les parties, dans le sens du respect d'une plus grande exactitude dans la description du fonctionnement de ce système: ... the conclusions (in the context of the reporting system) and decisions (in the context of the collective complaints procedure) of the ECSR, which give rise, on consultation with the Governmental experts committee, to a Resolution or a Recommendation of the CM, possess a particular, tendencially binding, authority.}*

*{**GR** supports **PT**}*

Commentaire [PM6]: *{PL: Examples of court decisions listed in para 279 do not confirm " that national courts declare invalid or set aside domestic legislation if the ECSR has ruled that it is not in compliance with the Charter". The Polish courts regard positions taken by international verification bodies as supplementary in their interpretation and application of the law. They clearly distinguish between the rulings of the ECHR which they respect and the positions of those other verification bodies. In any case, in principle, there is no automatic recognition of CIE conclusions or decisions. As a rule, national courts determine the application of those conclusions/decisions on an case by case basis.}*

*{**PT**: Je garderais le texte qu'il est proposé de rayer dans la mesure où il y est dit: "it can happen": l'objection de la Pologne y est déja contenue.}*

*{**GR:** supports **PT**}*

organs in charge of the control of the Charter, and has also enabled the social partners and non-governmental organisations (NGOs) to be more closely involved.

212. Under the reporting system, States Parties are under the obligation to regularly submit a report on how the provisions of the Charter they have accepted are applied in law and in practice. The reports are examined by the ECSR which decides, from a legal point of view, whether or not the national situations they describe comply with the Charter. The decisions of the ECSR – known as "Conclusions" – are published annually.

213. When sending the Secretary General a report pursuant to Articles 21[192] and 22[193], states must also send a copy of the report to such of its national organisations as are members of the international organisations of employers and trade unions invited, under Article 27, paragraph 2, to be represented at meetings of the Governmental Committee.[194] These organisations may send any comments they have on the national reports to the Secretary General, who then sends a copy of their comments to the states concerned, so that they have an opportunity to respond. Moreover, there is also a provision whereby the Secretary General sends a copy of the national reports to the international non-governmental organisations who have consultative status with the Council of Europe and have particular competence in the matters governed by the Charter (Article 1 of the Turin Protocol– see below, Part III, E: Conference of INGOs). Lastly, given that the reports are published on the website dedicated to the European Social Charter, any national or other organisation (such as the European Union, for example, although so far it has never happened) may submit its comments to the Department of the European Social Charter,[195] and it falls to the ECSR, if it sees fit, to take them into account when assessing a national situation. In practice, it is not often that national and international organisations send any comments on the state reports.

214. In 2007, following a decision by the Committee of Ministers, the provisions of the Charter were divided into 4 thematic groups: Group 1: Employment, training and equal opportunities; Group 2: Health, social security and social protection; Group 3: Labour rights; Group 4: Children, families, migrants.[196] Every year, states submit a report on one of these four thematic groups. Consequently, each provision of the Charter is reported upon every four years.

215. In 2014, the Committee of Ministers adopted changes to the Charter reporting and monitoring system, primarily to simplify the system of national reports for those states (currently 15) that have accepted the collective complaints procedure. In practice, this means that every two years they submit a simplified national report in which they explain the follow-up action taken in response to decisions of the ECSR on collective complaints brought against them.[197] Depending on the case, the ECSR may then conclude that the national situation has been brought into conformity with the Charter. The new system has been in

Commentaire [PM7]: *{**PL**: Yes, but even such simplified reports are comprehensive, i.e., they cover all articles by which a state party is bound. They are not just replies to CIE findings in regard to the particular collective complaints. On top of that the control cycle has been extended to 8 years, as opposed to 4 years in the case of those states parties which have not adhered to the collective complaints procedure.}*

[192] Part IV, Article C, Article 21 of the Charter : "Reports on accepted provisions".
[193] Part IV, Article C, Article 22 of the Charter : "Reports on non-accepted provisions".
[194] In practice, this concerns the following three organisations: the European Trade Union Confederation (ETUC), Business Europe and the International Organisation of Employers (IOE).
[195] For example, in 2015, shadow reports were submitted by the Belgian Interfederal Centre for Equal Opportunities (UNIA), the Danish Institute for Human Rights (INDH) and the Scottish Human Rights Commission (INDH), whereas in 2014 and in 2017, shadow reports were also submitted by the Greek National Commission for Human Rights (NCHR).
[196] See Appendix concerning 2015 (submission of reports) and 2016 (publication of conclusions) to 2018/2019.
[197] See Appendix: the 15 states currently concerned by the simplified reporting procedure have been split into two groups according to the number of complaints lodged against them (from the highest to the lowest number).

force since October 2014 for states that have accepted the collective complaints procedure. For the other states, it will come into force one year after their acceptance of the 1995 Protocol providing for the collective complaints procedure.

216. In 2014, it was also decided that all states must submit additional reports on Conclusions of non-conformity for repeated lack of information one year after adoption of such Conclusions by the ECSR.[198] The intention here was to encourage states to seriously and swiftly consider the findings. ~~submit higher quality and more comprehensive national reports, so as to avoid an increase in such cases~~.

217. In the reporting system, the decisions of the Committee of Ministers are prepared by the Governmental Committee of the European Social Charter and the European Social Security Code ("Governmental Committee") comprising representatives of the States Parties and observers from the aforementioned international social partners (Business Europe, IOE and ETUC). In particular, in the light of the reports of the ECSR and the States Parties, it selects, after a thorough discussion of national circumstances and their evolution, given due regard to considerations of social and economic policy, ~~on the basis of considerations of social and economic policy,~~ situations which, in its opinion, should be the subject of recommendations to States. It then presents a report to the Committee of Ministers which is made public[199].

218. It should be noted the fact that the Governmental Committee is now also dealing with the European Code of Social Security has undermined the effectiveness of the Charter system, since it is devoted now only eight meetings days (on ten) of the Governmental Committee. Thus, according to an informal working method, decided in 2015, between the Governmental Committee and the ECSR, the latter selects henceforth a maximum of situations for discussion by the Governmental Committee from among its negative conclusions (currently 80 per cycle). Many negative conclusions are therefore no longer discussed and "handed over" to the ECSR's assessment four years later (in the next cycle on the articles concerned). According to the ETUC, practice demonstrates that this new working method should be improved - in particular by allowing the ECSR to select more cases and by better arguing the reasons for non-selection of cases of non-conformity with the Charter.

219. The role of the Committee of Ministers in the reporting system comes into play in the final phase. Once it has received the ~~Conclusions of the ECSR~~report of the Governmental Committee, it adopts, by a two-thirds majority of votes cast, a resolution which brings each supervision cycle to a close and may contain individual recommendations addressed to the states concerned, given that in the event of a non-conformity conclusion by the ECSR, states are required to remedy the situation to bring it into conformity with the Charter. If a state fails to respond to the ECSR's finding(s) of non-conformity, the Committee of Ministers can issue a formal Recommendation to the respondent state based on social and economic policy considerations, requesting that it change its law or practice. Given the importance of this decision, it also requires a two-thirds majority of the number of votes cast. Only States Parties to the Charter are entitled to vote on resolutions and recommendations[200].

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[198] For example, when the ECSR finds that a situation in not in conformity owing to a lack of information after examination by Thematic Group 1, the state concerned must submit the information required when it comes to report on Thematic Group 3.
[199] Part IV, Article C, Article 27 of the Charter.
[200] Part IV, Article C, Article 28 of the Charter.

220. Lastly, it is important to stress that it falls to the ECSR, which assesses states' compliance with the Charter from a legal standpoint (Part IV, Article C, Article 24§2), to establish whether or not a situation has been brought into conformity with the Charter. It can rule on the subject in the context of both the state reporting system and the collective complaints procedure.

Commentaire [PM8]: *{**PL**: Paragraph. to be deleted - the process has been presented already.}*

(iii) Collective complaints procedure[201]

221. The Additional Protocol providing for a collective complaints system was opened for signature on 9 November 1995 and came into force on 1 July 1998. Its aim was to increase the effectiveness, speed and impact of the activities carried out to monitor implementation of the Charter.

222. The collective complaints procedure has also enhanced the role of the social partners and NGOs by making it possible for them to submit a direct request to the ECSR for a decision on the possible unsatisfactory application of provision(s) of the Charter in States that have accepted the procedure. The organisations entitled to lodge collective complaints are: a) the aforementioned international social partners (Business Europe, ETUC[202] and IOE) ; b) INGOs enjoying participatory status with the Council of Europe whose application to bring collective complaints has been accepted by the Governmental Committee[203] and ; c) national social partners. In addition, the Protocol provides that any State may grant the right to lodge complaints to representative national NGOs with particular competence in the matters governed by the Charter. However, out of 15 States, so far only Finland has done so.

223. As already indicated, the primary objective of the collective complaints procedure is to reinforce the effective implementation of the Charter. As already also stated in the introduction, this procedure complements the jurisdictional protection afforded, in the field of social rights, by the Court under the Convention. In view of their collective nature, complaints can raise questions pertaining only to possible unsatisfactory application of the Charter in a State's law or practice. They cannot submit individual situations. Unlike the procedure under the Convention, there is no need to have exhausted the domestic remedies before lodging a complaint, and the claimant organisation or their members do not necessarily have to have been victim(s) of the alleged violation(s).

224. When a complaint is lodged, the ECSR starts by studying its admissibility under the Protocol and its rules of procedure.[204] Then, following its decision on admissibility, and in a procedure that is usually written and adversarial, the ECSR examines the respondent state's submissions on the merits of the complaint, the response from the claimant organisation and, where appropriate, any further response from the respondent state[205].

225. During the written procedure, several third party interventions are possible, in particular by States having accepted the complaints procedure and the aforementioned international

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[201] http://www.coe.int/en/web/turin-european-social-charter/conference-turin: information note in preparation for the Turin I conference.

[202] To date, the ETUC and its national affiliates have filed two collective complaints: 32/2005 (*ETUC, CITUB et PODKREPA v. Bulgaria*) and 59/2009 (*ETUC, CSC, FGTB et CGSLB c. Belgium*). On the contrary, no complaint has yet been lodged neither by Business Europe, nor by the IOE.

[203] https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680684ffd: the list of INGOs entitled to submit collective complaints (71 in total, as of 1 January 2017).

[204] See Appendix on the admissibility conditions for collective complaints.

[205] Sometimes, the ECSR decides simultaneously on the admissibility and the merits of complaints.

social partners, who are invited to submit observations on all complaints, independently from the States concerned and whether lodged by NGOs (internationals or nationals) or national employers or employees organisations.[206]

226. It should be noted that, in practice, interventions by other States that have accepted the collective complaints procedure are rare, even exceptional. In one such example, Finland submitted observations with a view to rebutting Complaint No. 39/2006 (*FEANTSA v. France*) concerning the right to housing. Interventions by the aforementioned international social partners (ETUC, Business Europe and IOE) are more common, however, especially by the ETUC[207], which, for example, submitted observations on Complaint No. 27/2004 (*CEDR v. Italy*) concerning Roma's right to housing.

227. Furthermore, following a proposal from the Rapporteur, the President of the ECSR may invite any organisation, institution or individual (legal or natural: it never happened) to submit observations.[208] For example, in 2012 the aforementioned Belgian Interfederal Centre for Equal Opportunities (UNIA) was invited to submit its observations regarding Complaint No. 75/2011 (*FIDH v. Belgium*) concerning, in particular, the access of highly dependent adults with disabilities to the appropriate social services. UNIA also submitted observations on Complaint No. 109/2014 (*MDAC v. Belgium*), still pending[209], concerning the right of children with disabilities to be educated in ordinary Flemish primary and secondary schools.

228. In addition to this possibility for National Human Rights Institutions (NHRIs) and independent bodies promoting equality (such as UNIA) to submit observations, in some cases NHRIs provide support to NGOs lodging complaints. For example, the Irish NHRI granted financial assistance for research work that resulted in Complaint No. 110/2014 (*FIDH v. Ireland*), still pending[210], concerning the law, policies, and practices with respect to social housing, and the Greek NHRI gave its support for Complaint No. 111/2014 (*GSEE v. Greece*)[211] on the impact of austerity measures on many workers' rights.[212]

229. In connection with this last complaint, it is worth noting that, for the first time, the European Commission has submitted observations. Similarly, in future, the ECSR might also invite other organisations or stakeholders, such as the Commissioner for Human Rights, to submit observations on complaints. It should also be pointed out that the ILO, having a right to sit on the ECSR, may also submit observations on complaints.

230. Any observations the ECSR receives from third parties are forwarded to the State in question and to the organisation that has lodged the complaint – without it being always possible to replicate. Written submissions, responses and observations and any case

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[206] Rule 32 of the Rules of the ECSR: https://www.coe.int/en/web/turin-european-social-charter/rules (latest version of 6 July 2016).
[207] To date, the ETUC has sent 20 observations regarding 27 collective complaints, while the IOE submitted comments only once and Business Europe has not yet submitted any.
[208] Rule 32A of the Rules of the ECSR: Request for observations.
[209] No decision on admissibility yet.
[210] Decision on admissibility of 17 March 2015.
[211] Decision on admissibility of 19 May 2015 and decision on its merits at the 291st meeting of the ECSR - but not yet made public.
[212] GSEE happens to be a member of the Greek NHRI, but when the complaint was lodged, the NHRI was urgently calling for a mechanism to assess the impact of austerity measures on human rights and, in its reports, was analysing the implementation of the Charter in Greece.

documents transmitted during the examination of the merits phase are also published on the Charter website.

231. In the course of its examination of a complaint, the ECSR can also decide to organise a hearing,[213] either at the request of one of the parties or on its own initiative. If one of the parties requests a hearing, the ECSR decides whether or not the request should be granted. Hearings are public unless the President decides otherwise. In addition to the parties to the complaint, states and organisations which have indicated that they wish to intervene in support of a complaint or for its rejection are invited to submit observations and/or take part in the hearing. To date, in practice ECSR hearings are rare (in total 9 hearings)[214].

232. Moreover, since 2011, the Rules of the ECSR provide that as from the decision on the admissibility of a complaint or at any subsequent time during the proceedings before or after the decision on the merits the ECSR may, at the request of a party, or on its own initiative, indicate to the parties any immediate measure the adoption of which seems necessary with a view to avoiding the risk of a serious irreparable injury and to ensuring the effective respect for the rights recognised in the Charter.[215] So far, there have been only five requests for immediate measures, three of which were rejected[216] and two granted. When granting these two requests on the same day, the ECSR call on the respondent state to: "*adopt all possible measures with a view to avoiding serious, irreparable injury to the integrity of persons at immediate risk of destitution, through the implementation of a co-ordinated approach at national and municipal levels with a view to ensuring that their basic needs (shelter)*[217]*/(shelter, clothes and food)*[218] *are met and ensure that all the relevant public authorities are made aware of this decision*".

233. Following its deliberations, the ECSR adopts a decision on the merits of the complaint finding that there has or has not been a violation of the Charter. This decision is then forwarded to the parties and to the Committee of Ministers. The average length of the procedure is roughly 18 months between registration of a complaint and the decision on the merits. It can be seen, therefore, that the procedure is faster than before the Court and that it can also produce more effects more rapidly in view of its collective nature. In contrast, unlike the Court's judgments, it should be noted that the decisions of the ECSR are not made public until the Committee of Ministers has adopted a resolution, or at the latest four months after the decision has been forwarded to the latter (Article 8§2, the 1995 Protocol).

234. According to Article 9§1 of the Optional Protocol on Collective Complaints, on the basis of the report of the ECSR, the Committee of Ministers shall adopt a resolution by a majority of those voting. If the ECSR finds that the Charter has not been applied in a

[213] Rule 33 of the Rules of the ECSR.
[214] Hearings held: 9 October 2000: aforementioned Complaints Nos. 2/1999 (*Eurofedop v. France*), 4/1999 (*Eurofedop v. Italy*) and 5/1999 (*Eurofedop v. Portugal*), 11 June 2001: Complaint No. 9/2000 (*CFE-CGC v. France*), 31 March 2003: Complaint No. 12/2002 (*Confederation of Swedish Enterprise v. Sweden*), 29 September 2003: aforementioned Complaint No. 13/2002 (*Autism Europe v. France*), 11 October 2004: Complaint No. 15/2003 (*CEDR v. Greece*), 27 June 2007: aforementioned Complaints Nos. 33/2006 (*ATD Fourth World v. France*) and 39/2006 (*FEANTSA v. France*), 21 June 2010: Complaint No. 58/2009 (*COHRE v. Italy*), 7 September 2015: Complaint No. 91/2013 (*CGIL v. Italy*) and 20 October 2016: Complaint No. 111/2014 (*GSEE v. Greece*).
[215] Rule 36 of the Rules of the ECSR.
[216] In the context of Complaints Nos. 93/2013 (*Approach v. Ireland*) and 98/2013 (*Approach v. Belgium*) – see below – and 113/2014 (*Unione Italiana del Lavoro U.I.L. Scuola – Sicilia v. Italy*).
[217] Decision of 25 October 2013, Complaint No. 86/2012 (*FEANTSA v. Netherlands*): see below.
[218] Decision of 25 October 2013, Complaint No. 90/2013 (*CEC v. Netherlands*): see below.

satisfactory manner, the Committee of Ministers shall adopt, by a majority of two-thirds of those voting, a recommendation addressed to the Contracting Party concerned. In both cases, entitlement to voting shall be limited to the Contracting Parties to the Charter. In addition, Article 9§2 of the Protocol provides that, at the request of the Contracting Party concerned, the Committee of Ministers may decide, where the ECSR's report raises new issues, by a two-thirds majority of the Contracting Parties to the Charter, to consult the Governmental Committee.

235. Once again, as with the reports procedure, it is for the ECSR to determine that the national situation has been brought into conformity with the Charter. This may be done by the ECSR on the occasion of new complaints and/or in the reporting system whereby the state provides information, in a simplified report (see above), on the steps it has taken in response to the decisions taken in respect of that state. This mechanism illustrates the complementary nature of the two procedures to monitor application of the Charter – making it possible to follow up more quickly the decisions of the ECSR, as it is no longer necessary to await the next state report on the question(s) at issue in the collective complaints leading to the finding of a violation or violations of the Charter.

c. Standards and practices concerning the functioning of these procedures

Commentaire [PM9]: *{**PL**: This section needs to be revised to include the description of the role of the Governmental Committee and the Committee of Ministers (including GR-SOC). Under the Charter there are THREE bodies involved in the verification procedure (TWO for the collective complaints). This should not to be ignored in this report.}.*

236. Pursuant to the Charter and its Rules, the ECSR comprises fifteen members, independent and impartial, elected by the Committee of Ministers from a list of independent experts of the highest integrity and of recognised competence in international social questions, proposed by the States Parties. Accordingly, in contrast to the Court, the ECSR is a select body – not comprising one member per Council of Europe member state (47), or per State Party to the Charter (43).

237. It is worth pointing out that the latest increase in the number of ECSR members dates from May 2001, when there were just 27 ratifications (9 states: revised Charter – 18 states: 1961 Charter), whereas now, there are 43 ratifications (34 states: revised Charter – 9 states: 1961 Charter). Moreover, the ECSR is currently composed of 14 nationals of States from the European Union (EU) and one Norwegian – which entails a problem of legitimacy for the numerous States parties to the Charter which are not from the EU (15 States).

238. The ECSR members' term of office is six years (renewable once). Lastly, in accordance with the Turin Protocol, they should be elected by the Parliamentary Assembly (PACE) but this provision in the Protocol is the only one which, for the time being, has not yet been implemented, pending the formal entry into force of the Protocol (see above).[219]

239. Unlike the Court, the ECSR is not a permanent body. It meets seven times a year – in principle in Strasbourg – and it is the Council of Europe Secretariat (the Charter Department) which ensures the continuity of its work between sessions. In view of the increasing workload, a result, amongst other things, of the aforementioned increased number of ratifications of the Charter, it does not have sufficient resources to carry out all its tasks (in particular the co-operation activities with states and training and awareness-raising with

[219] To enhance the legitimacy of the processes of monitoring social rights, PACE encourages those states which have not yet done so (of which, it will be recalled, there are four) to ratify the Turin Protocol (AS/Soc/ESC(2014)03rev, 17 October 2014): see below, Part III, B).

regard to the Charter) – despite a recent slight increase in staff and its budget (see above: current status in terms of follow-up to the "Turin Process").

240. In the States reporting system, the ECSR may – like the various UN committees – adopt statements of interpretation through which, in general terms, it sets out the requirements of the Charter in respect of certain of its provisions. Furthermore, to date, the ECSR has adopted general statements of interpretation on the following issues[220] :

- 2015: Statement on the rights of refugees under the Charter, published on an urgent basis in October – in advance of the publication of the annual ECSR report;
- 2013: Statement on the rights of stateless persons under the Charter;
- 2008: Statement on the burden of proof in discrimination cases;
- 2006: Statement on the nature and scope of the Charter;
- 2004: Statement on the personal scope of the Charter;
- 2002: Statement on the application of the revised Charter.

241. Rule 25 of the ECSR Rules provides that "States shall be represented before the Committee by the agents they appoint". Since 2014, three meetings have been held between the ECSR bureau and the government agents during which various procedural and technical issues relating to the system of collective complaints were discussed. In 2016, the idea was discussed and, in principle, accepted by the Charter Department also to have such meetings with representatives of INGOs - at least with those submitting regularly complaints and/or observations.

Commentaire [PM10]: *{**PL**: Rule 25 applies solely to the collective complaints procedure.}*

242. ~~Additionally, t~~There are also working meetings held between the ECSR and the Governmental Committee, generally focusing on a specific issue (for example, the interpretation of specific articles of the Charter and the simplification of the reporting system: see below).

243. Lastly, in order to promote a better understanding of the Charter, several ECSR delegations take part each year in bilateral meetings with states to discuss the following points: the conclusions adopted during the preceding supervision cycles and examination, in the current cycle, of these countries' policies with regard to their commitments under the Charter; the non-accepted articles (see above); and ratification of the revised Charter and the Protocol providing for the system of collective complaints for states not yet Parties to these two instruments.[221]

d. Examples of ECSR decisions and conclusions

(i) Reminder of the major ECSR rules of interpretation and implementation of the Charter

244. The ECSR has clarified the nature and scope of the Charter: *"(...) its purpose is to apply the Universal Declaration of Human Rights, as a complement to the European Convention on Human Rights. While recognising, therefore, the diversity of national traditions (...) it is*

[220] Search by year of Conclusions and tick the "Statements of interpretation" box: http://hudoc.esc.coe.int/eng#.
[221] It should be emphasised that at these meetings, the ECSR may hold talks with numerous stakeholders, in particular the NHRIs. For example, during its visit to Denmark in September 2014, the ECSR discussed with the Danish NHRI the possibilities of increasing NHRI involvement in monitoring the implementation of the Charter – which resulted in the submission in 2015 by that institution of the above-mentioned parallel report.

important to: strengthen commitment to the shared values of solidarity, non-discrimination and participation; identify principles to ensure that the rights embodied in the Charter are applied equally effectively in all the (…) member states.
Primary responsibility for implementing the European Social Charter naturally rests with national authorities. (…) these authorities may in turn delegate certain powers to local authorities or the social partners. However, if they are not accompanied by appropriate safeguards, such implementation arrangements may threaten compliance with undertakings under the Charter".[222]

245. The ECSR further clarified the Charter's interpretation in view of the Vienna Convention on the Law of Treaties and the aforementioned 1993 Vienna Declaration:

"The present complaint raises issues of primary importance in the interpretation of the Charter. In this respect, the Committee (…) has to interpret the Charter, it does so on the basis of the 1969 Vienna Convention (…). According to Article 31§1 (…) :"A treaty shall 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". The Charter was envisaged as a human rights instrument to complement the European Convention on Human Rights. It is a living instrument dedicated to certain values (…) : dignity, autonomy, equality and solidarity (…) according to the Vienna Declaration of 1993, all human rights are "universal, indivisible,interdependent and interrelated" (para. 5). The Committee is therefore mindful of the complex interaction between both sets of rights. (…) the Charter must be interpreted so as to give life and meaning to fundamental social rights. It follows (…) that restrictions on rights are to be read restrictively, (…) understood in such a manner as to preserve intact the essence of the right and to achieve the overall purpose of the Charter"[223].

246. As already stated in the introduction, following the Court's example, the ECSR has adopted the concept of "positive obligations" in its interpretation of the Charter. Furthermore, when considering several collective complaints, the ECSR has reiterated that the aim of the Charter is to protect rights not merely theoretically but also in fact. Accordingly, the ECSR considers that the satisfactory application of the Charter cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised.[224] Consequently, states have an obligation to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter.[225]

247. Lastly, as also indicated in the introduction, certain rights enshrined in the Charter must be implemented immediately upon entry into force of the Charter in the State concerned (this relates in particular to negative obligations and obligations to comply), whereas other rights can be implemented gradually by States. These, for reminder, are rights whose implementation is particularly complex – often necessitating structural measures – and which may entail substantial financial costs – as certain civil and political rights.

248. The ECSR has clarified the way in which a gradual implementation is in conformity with the Charter: "*When the achievement of one of the rights (…) is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent*

Commentaire [PM11]: *{**PL**: Except that only that needs to be interpreted that is not clear. There exist commonly recognized principles of interpretation: clara non sunt interpretanda and interpretatio cessat in claris. Problems begin when the CIE gets into the "living treaty" doctrine and the teleological interpretation to read into the Charter its philosophical and political preferences in disregard of the Charter's letter and the original intentions of states.}*

*{**PT** : Le commentaire qui est fait à coté est un commentaire. Toujours est-il que le texte se lit bien et qu'il correspond à une conception aujourd'hui acceptée en ce qui concerne l'universalité, l'indivisibilité, l'interdépendance et la réciprocité entre les droits, des deux ensembles de droits, civils et politiques et économiques, sociaux et culturels, qu'effectivement la Déclaration et le Programme d'Action de Vienne de 1993 ont contribué à renforcer. Je n'y toucherais pas.}*

*{**GR** supports **PT**}*

[222] Conclusions 2006, Statement of interpretation, cited above: http://hudoc.esc.coe.int/eng#.
[223] Collective complaint 14/2003 (*FIDH v. France*), decision of the ECSR of 8 November 2004, §§ 26 to 29.
[224] Aforementioned decision of 9 September 1999, Complaint No. 1/1998 (*ICJ v. Portugal*), §32.
[225] Aforementioned decision of 4 November 2003, Complaint No. 13/2002 (*Autism-Europe v. France*), §53.

consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for others persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings".[226] *"In the absence of any commitment to or means of measuring the practical impact of measures taken, the rights (...) are likely to remain ineffective. In connection with timetabling – with which other regulatory bodies of international instruments are also very concerned – it is essential for reasonable deadlines to be set that take account not only of administrative constraints but also of the needs of groups that fall into the urgent category. At all events, achievement of the goals that the authorities have set themselves cannot be deferred indefinitely*".[227]

(ii) References to the case law of the Court and other international instruments

249. In its interpretative work, the ECSR has, on numerous occasions, referred to the Convention and the case law of the Court for the definition of principles and concepts. The following are just some examples, relating to:

- Article E in conjunction with another provision of the Charter: the ECSR considers that its role is similar to that set out in Article 14 of the Convention. Referring to the Court judgment of 1968 in the case *"relating to certain aspects of the use of languages in education in Belgium"*, the ECSR held that Article E had no independent existence and had to be combined with a substantive provision of the Charter;[228]
- the definition of discrimination: the ECSR referred to the *Thlimmenos v. Greece* judgment of 2000, according to which discrimination arises where states fail to treat differently persons whose situations are significantly different;[229] [230]
- the protection of the Roma and Sinti population: the ECSR held, as had the Court in its *Chapman v. United Kingdom* (2001), *Muñoz Díaz v. Spain* (2009) and the aforementioned *Orsus v. Croatia* (2010) judgments, that the obligation to protect the identity and lifestyle of minorities covered not only protection of their interests, but also preservation of cultural diversity of value to the whole community;[231]
- the definition of "collective expulsion": the ECSR aligned its definition with that given in Article 4 of Protocol No. 4 to the Convention: "any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group";[232]
- the right to housing: the ECSR's interpretations of Article 31 must be in keeping with the Court's interpretation of the relevant provisions of the Convention;[233] [234] [235]
- the concept of "corporal punishment": the ECSR referred to the Court's interpretation of the concepts of the judicial birching of children (*Tyrer v. United Kingdom*, 1978), corporal

[226] *Ibid*.
[227] Aforementioned decision of 5 December 2007, Complaint No. 33/2006 (*ATD Fourth World v. France*), §§65-66.
[228] Decision of 15 June 2005, Complaint No. 26/2004 (*SAGES v. France*), §34.
[229] Aforementioned decision of 4 November 2003, Complaint No. 13/2002 (*Autism-Europe v. France*), §52.
[230] Decision of 3 June 2008, Complaint No. 41/2007 (*MDAC v. Bulgaria*), §§50-51.
[231] Decision of 25 June 2010, Complaint No. 58/2009 (*COHRE v. Italy*) – §§37 to 40, 106, 117, 120 to 121, 129, 131, 138 and 155 to 156.
[232] Ibid, §§155 and 156.
[233] Aforementioned decision of 5 December 2007, Complaint No. 33/2006 (*ATD Fourth World v. France*), §§68-69.
[234] Aforementioned decision of 5 December 2007, Complaint No. 39/2006 (*FEANTSA v. France*), §§64-65.
[235] Decision of 8 September 2009, Complaint No. 53/2008 (*FEANTSA v. Slovenia*), §§32-35.

punishment inflicted at school (*Campbell and Cosans v. United Kingdom*, 1982) and parental corporal punishment (*A. v. United Kingdom*, 1998) in its interpretation of Article 17§1,b) of the Charter on the protection of children and adolescents against violence, negligence and exploitation;[236] [237] [238] [239] [240]

- the right to organise: referring to the Court's 1998 judgment in the *Gustafsson v. Sweden* case, the ECSR held that treating employers differently depending on whether or not they are members of an organisation is not in conformity with Article 5 of the Charter – if that affected the very substance of their freedom of association.[241]

250. The Charter is also interpreted in the light of other international treaties relating to the field of the rights guaranteed by the Charter and the interpretation given to those treaties by their respective monitoring bodies, in particular the International Covenant on Economic, Social and Cultural Rights,[242] the instruments of the International Labour Organisation (ILO),[243] the United Nations Convention on the Rights of the Child,[244] the United Nations Convention on the rights of persons with disabilities and the International Convention on the Elimination of All Forms of Racial Discrimination.[245]

251. Lastly, it should be pointed out that the ECSR takes account of European Union law when it interprets the Charter (see below, Part IV). Moreover, the revised Charter of 1996 – compared with its original 1961 text – contains amendments which take account of the development of Community law, and which influence the way in which states implement the Charter.

(iii) Overview of the collective complaints submitted so far

252. To 21 April 2017, since the entry into force in 1998 of the 1995 Protocol providing for a system of collective complaints, the ECSR has registered a total of 149 complaints, 40 of which are currently being examined. The majority (roughly 60%) of complaints have been lodged by INGOs having participatory status with the Council of Europe, whereas approximately 30% have been lodged by national trade unions, and the rest (10%) by the international social partners (to date, for reminder, only by the ETUC), national employers' organisations and nationals NGOs[246]. In his above mentioned exchange of views with the

[236] Decision of 7 December 2004, Complaint No. 17/2003 (*OMCT v. Greece*), §31.
[237] Aforementioned decision of 7 December 2004, Complaint No. 18/2003 (*OMCT v. Ireland*), §55.
[238] Decision of 7 December 2004, Complaint No. 19/2003 (*OMCT v. Italy*), §41.
[239] Decision of 7 December 2004, Complaint No. 20/2003 (*OMCT v. Portugal*), §34.
[240] Decision of 7 December 2004, Complaint No. 21/2003 (*OMCT v. Belgium*), §38.
[241] Decision of 16 October 2007, Complaint No. 35/2006 (*Federation of Finnish Enterprises v. Finland*), §§28-29.
[242] For example, the ECSR referred to Article 11 of the Covenant and General Comments Nos. 4 and 7 of the UN Committee on Economic, Social and Cultural Rights with regard to the right to housing in general – aforementioned decision of 5 December 2007, Complaint No. 33/2006 (*ATD Fourth World v France*), §§68-71 – and to forced expulsions – aforementioned decision of 25 June 2010, Complaint No. 58/2009 (*COHRE v. Italy*), §§20-21. With regard to education, the ECSR referred to its General Comment No. 13 – aforementioned decision of 3 June 2008, Complaint No. 41/2007 (*MDAC v. Bulgaria*), §37.
[243] For example, decisions of 7 December 2012, Complaint No. 77/2012 (*POPS v. Greece*) on the reform of pensions, §30 and of 17 May 2016, Complaint No. 103/2013 (*Bedriftsforbundet v. Norway*) on trade union monopolies, §27.
[244] For example, in the ECSR decisions of 20 October 2009, Complaint No. 47/2008 (*DEI v. Netherlands*), §29 – and of 7 December 2004, aforementioned Complaint No. 18/2003 (*OMCT v. Ireland*), §§34 and 55.
[245] For example, in the ECSR decision of 30 June 2011, Complaint No. 61/2010 (*ERRC v. Portugal*), §12.
[246] For reminder, to date, only Finland has acknowledged the right of nationals NGOs to lodge complaints – 7 complaints have been lodged by 3 nationals NGOs : Complaints Nos. 70/2011 and 71/2011 by *The Central*

Ministers' Deputies on 22 March 2017, the President of the ECSR underlined a recent increase in the number of complaints lodged: 21 in 2016, 6 in 2015 and 10 complaints in 2014[247].

253. To 21 April 2017, the ECSR has delivered 101 decisions on the merits[248] of complaints relating to a wide range of issues – including the rights of Roma, assistance and the right to shelter for irregular migrants, the rights of persons with disabilities, the right to organise and the right to strike. In the vast majority of cases, at the level of the merits,, the ECSR has found one or more violation(s) of the Charter (in about 96% of the cases)[249].

Commentaire [PM12]: *{**PL**: Footnote should be deleted. What does it matter that the CIE and the Court have a similarly high rate of negative findings? The only purpose of the „comparison" would be to show a „similarity" between CIE and the Court. But, the fundamental fact is that the CIE is not a court.}*

254. With regard to the states concerned, the distribution has been relatively uneven: roughly one third of complaints relate to France, 14% to Greece, 10% to Portugal and Italy – whereas other states have had only two or three complaints lodged against them over a period of more than 15 years. Lastly, it should be pointed out that recently, an INGO (University Women of Europe) lodged complaints relating, for the first time, to equal pay between women and men against the 15 States Parties to the 1995 Protocol.[250]

(iv) Examples of significant decisions and conclusions[251]

255. The following are some decisions – on particular issues – in which violations have been found:

256. With regard to interactions between the Charter and European Union law, in a decision of 3 July 2013, the ECSR found that a complaint by Swedish trade unions was well-founded. The complainants alleged that the legislative amendments introduced in 2010 bringing Sweden into line with the *Laval* judgment of the Court of Justice of the European Union (CJEU) violated the Charter. The ECSR held that the amendments in question did not

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Association of Carers in Finland ; Complaints Nos. 88/2012, 106/2014, 107/2014 and 108/2014 by the *Finnish Society of Social Rights* and Complaint No. 139/2016 by *Central Union for Child Welfare* (CUCW).

[247] Speech by the Chairman of the ECSR, 22 March 2017: http://rml.coe.int/doc/0900001680701 0f3 (see above).

[248] So far there have been just 6 inadmissibility decisions: decision of 5 December 2006, Complaint No. 36/2006 (*Frente Comum de Sindicatos da Administração Pública v. Portugal*) – insufficient evidence that the representative of the complainant organisation had the authority to act; decision of 14 June 2005, Complaint No. 29/2005 (*SAIGI-Syndicat des Hauts Fonctionnaires v. France*) – the complaint did not pertain to the applicable rules but rather to the manner in which they were being applied in a particular case in a set of proceedings over a period of eight years before administrative and criminal courts and disciplinary bodies; decision of 13 June 2005, Complaint No. 28/2004 (*Syndicat national des Dermato-Vénérologues v France* – the facts adduced were not of a nature to enable the ECSR to conclude that there had been a violation of the right guaranteed by the combination of Article E with Articles 1§2 and 4§1; and decision of 13 October 1999, Complaint No. 3/1999 (*European Federation of Employees in Public Services v. Greece*) – as Greece had not accepted the provisions relied upon; decision of 18 October 2016, Complaint 120/2016 (*FFFS v. Norway*) – due to the validity of the reservation to Article 12§4 of the 1961 Charter to which Norway was bound before 1994, it was not obliged to grant before this date social security rights to foreign seamen not domiciled in Norway and ; . Decision of 24 March 2017, Complaint No. 122/2016 (*Movimento per la libertà della psicanalisi-associazione culturale italiana v. Italy*) - the activities carried out by the complainant organization are not within the essential prerogatives of a trade union and the movement cannot be considered as a trade union organization.. In general, it should be emphasised that the fact that the vast majority of complaints have been declared admissible by the ECSR – a contrary situation to the applications lodged with the Court – can largely be explained by the fact that there is no requirement to exhaust domestic remedies in the collective complaints procedure.

[249] According to the ECHR statistics (1959 to 2016), there are 91.70% of judgments finding at least one violation of the Convention (16399 judgments against 1491 judgments concluding to no violation).

[250] See collective complaints Nos. 124/2016 to 138/2016 – all registered on 24 August 2016.

[251] For all the ECSR's decisions and conclusions and their follow-up, consult the aforementioned site: http://hudoc.esc.coe.int/eng#.

promote collective bargaining for posted workers – a violation of Article 6§2 – that they introduced restrictions on the collective action in which workers must be able to engage – a violation also of Article 6§4 - and that they did not respect the principle of no less favourable treatment of migrant workers - violation of Article 19§4 (see below, Part IV).[252]

257. Concerning the right of persons with disabilities, the ECSR delivered two decisions against France, ten years apart, finding a violation of Article 15§1 on the ground that mainstream education was not a priority for children and adolescents suffering from autism.[253]

258. With regard to the right to social and medical assistance and the right to shelter, in a series of decisions, the ECSR held that from the point of view of human dignity, migrants in an irregular situation should be able to benefit from those rights[254] – thereby going beyond the Appendix to the Charter which limits its scope *rationae personae*.[255] First, in the *FIDH v. France* decision of 2004, the ECSR accepted the applicability of the right of minors in an irregular situation to social, legal and economic protection. In its *DCI v. Netherlands* decision of 2009, the ECSR reached a similar conclusion with regard to such minors' right to shelter. Lastly, in its *CEC v. Netherlands* and *FEANTSA v. Netherlands* decisions of 2014, the ECSR concluded that both minors and adults in an irregular situation had the right to shelter and to urgent medical and social assistance.

Commentaire [PM13]: *{**PL**: It is essential to supplement paras 258 & 259 with info on state reactions to the imposition on them obligations in contravention to the provisions of the Charter. See also reactions by Poland, Spain, UK in their 2016 reports to CIE assertions in the General Introduction to Conclusions XX-3 (2013), January 2014}*

259. In these decisions, the ECSR referred to treaties such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the UN Convention on the Rights of the Child, none of which, like the Convention, provides for any restriction similar to the one in the above-mentioned Appendix. In its *FEANTSA v. Netherlands* decision of 2014, the ECSR highlighted the principles of its interpretation of the rights which must be guaranteed: "*the restriction of the personal scope of the Charter included in its Appendix should not be read in such a way as to deprive migrants in an irregular situation 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 to human dignity. On the other hand, its application to migrants in an irregular situation is justified solely where excluding them from the protection afforded by the Charter would have seriously detrimental consequences for their fundamental rights, and would consequently place the*

[252] Decision on admissibility and the merits of 3 July 2013, Complaint No. 85/2012 (*LO and TCO v. Sweden*), §§116 and 120. In the assessment of the follow-up to this decision, the ECSR held, in 2016, that the situation had still not been brought into conformity wih the Charter.

[253] Aforementioned decision of 4 November 2003, Complaint No. 13/2002 (*Autism-Europe v. France*); decision of 11 September 2013, Complaint No. 81/2012 (*AEH v. France*). In the assessment of the follow-up to these two decisions, the ECSR held, in 2015, that the situations had still not been brought into conformity with the Charter.

[254] Decision of 8 September 2004, Complaint No. 14/2003 (*FIDH v. France*) aforementioned – in its 2011 Conclusions, the ECSR concluded that the situation had been brought into conformity with the Charter; Decision of 20 October 2009, aforementioned Complaint No. 47/2008 (*DCI v. Netherlands*) – the ECSR also concluded that the situation had been brought into line with the Charter; Decision of 2 July 2014, aforementioned Complaint No. 86/2012 (*FEANTSA v. Netherlands*) and Decision of 1 July 2014, aforementioned Complaint No. 90/2013 (*CEC v. Netherlands*) – In the assessment of the follow-up to these two decisions, the ECSR held, in 2016, that the situations had still not been brought into conformity with the Charter.

[255] It will be recalled that, in principle, the Charter does not apply to nationals of states that are not party to the Charter, nor to migrants in an irregular situation. However, the Appendix to the Charter allows states to extend its scope. Furthermore, the President of the ECSR expressed his support for such an approach at the above mentioned Turin Forum in March 2016. Lastly, it should be noted that the aforementioned ECSR's interpretative statements on the personal scope of the Charter (2004), stateless persons (2013) and refugees (2015) invite, all three, States to go beyond the limited personal scope of the Charter.

foreigners in question in an unacceptable situation regarding the enjoyment of these rights, as compared with the situation of nationals or foreigners in a regular situation." [256]

260. Concerning the right of children and adolescents to legal protection, the ECSR has confirmed, in a series of decisions, that states must, in their domestic legislation, explicitly and effectively, prohibit all corporal punishment inflicted on children in the family, at school and in other settings.[257]

261. Lastly, with regard to the protection of health (Article 11 of the Charter), the ECSR has, on two occasions, held that the Charter, like the Convention, guarantees the right to a healthy environment.[258]

262. The ECSR has also delivered decisions finding that there has been no violation of the Charter. By way of example, in Complaint No. 83/2012 (*EuroCOP v. Ireland*),[259] the ECSR held that there had been no violation of Article 5 regarding the ban on members of the police from forming trade unions and, in Complaint No. 100/2013 (*ERRC v. Ireland*),[260] the ECSR held that there had been no violation of Article 16 in respect of the legal framework governing accommodation for Travellers.

263. In the reporting procedure, in 2014 the ECSR examined Thematic Group 3 "Labour rights". On that occasion, it adopted 725 conclusions relating to 41 states: 252 conclusions of non-conformity with the Charter (35%), 337 conclusions of conformity (46%) and 136 "deferrals" (18%), in which, in the absence of sufficient information, the ECSR was unable to assess the situation. Positive developments were observed, particularly in relation to the right to information and consultation in collective redundancy proceedings, the right to paid public holidays and the elimination of risks in inherently dangerous or unhealthy occupations. In contrast, the ECSR noted several recurring problems regarding the right to remuneration enabling workers and their families to have a decent standard of living, periods of notice which were often insufficient, and the unassignable and/or unattachable portion of wages which is often too low.

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[256] Aforementioned Complaint No. 86/2012 (*FEANTSA v. Netherlands*), §58.

[257] Decision of 12 September 2014, Complaint 92/2013 (*Approach v. France*) – an assessment of the follow-up will be made in 2018; Decision of 2 December 2014, aforementioned Complaint No. 93/2013 (*Approach v. Ireland*) – assessment also due in 2018 but reference can be made to the passing of the *Children First Act 2015*, which entered into force on 11 December 2015, which abolishes the common law defence of "reasonable punishment"; Decision of 5 December 2014, Complaint No. 94/2013 (*Approach v.. Italy*) – assessment also due in 2018; Decision of the same date, Complaint No. 95/2013 (*Approach v. Slovenia*) – in 2016, in the assessment of the follow-up to this decision, the ECSR held that the situation had still not been brought into conformity with the Charter; Decision of 20 January 2015, Complaint No. 96/2013 (*Approach v. Czech Republic*) – in the assessment of the follow-up to this decision in 2016, the ECSR held that the situation had still not been brought into conformity with the Charter; Decision of the same date, aforementioned Complaint No. 98/2013 (*Approach v. Belgium*) – assessment is due in 2018.

[258] Decision of 6 December 2006, Complaint No. 30/2005 (*FMDH v. Greece*), §195 – in 2015, the ECSR held that the situation had not been brought into conformity with the Charter; Decision of 23 January 2013, Complaint No. 72/2011 (*FIDH v. Greece*) – in 2015, the ECSR held that the situation had not be brought into conformity in respect of Articles 11§§1 and 3 but that it had been brought into conformity in respect of Article 11§2.

[259] Decision on the admissibility and the merits of 2 December 2013. On the other hand, the ECSR concluded that there were other violations (Article 5 on the prohibition of associations representing members of the police to join national professional organizations ; Article 6§2 on account of their restricted access to negotiations regarding salaries and ; Article 6§4 because of the aforementioned prohibition of the right to strike of members of the police force).

[260] Decision on the merits of 1 December 2015.

264. In 2015, the ECSR examined Thematic Group 4 "Children, families, migrants". On that occasion, it adopted 762 conclusions relating to 31 states:: 239 conclusions of non-conformity with the Charter (31%), 432 conclusions of conformity (57%) and 91 "deferrals" (12%). It may be pointed out that the proportion of cases in conformity with the provisions of the Charter (57%) was the highest since 2005.[261] Positive developments were observed, in particular for the rights of workers with family responsibilities, the legal and social protection of families and corporal punishment. However, the ECSR noted several problems affecting numerous states, including two recurring problems: the pay and treatment of young workers and apprentices, and the rights and treatment of migrant workers (restrictive measures, in particular discrimination as regards family allowances and inadequate respect of the right to family reunion).[262]

265. In 2016, the ECSR examined the Thematic Group 1 "Employment, training and equal opportunities. On that occasion, it adopted 513 conclusions relating to 34 States: 166 conclusions of non-conformity with the Charter (32%), 262 conclusions of conformity (51%) and 85 "deferrals" (17%). Positive developments were observed, in particular for the right to protection in cases of termination of employment, the right of workers to the protection of their claims in the event of the insolvency of the employer as well as for the access to general and vocational secondary education, university and non-university higher education. However, the ECSR noted several problems affecting numerous cases: discrimination in employment, insufficient integration of persons with disabilities into the ordinary labour market, failure to provide for reasonable accommodation for persons with disabilities and the right to equality of opportunity for women and men.[263]

e. The ECSR faced with economic crisis and austerity measures[264]

266. In the general introduction to its Conclusions 2009, the ECSR stated that social rights had acquired greater importance – with respect to application of the Charter in a context of global economic crisis:

"*The severe financial and economic crisis that broke in 2008 and 2009 has already had significant implications on social rights, in particular those relating to the thematic group of provisions 'Health, social security and protection' […]. Increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increase while […] revenues decline. [T]he Committee recalls that under the Charter the Parties have accepted to pursue by all appropriate means, the attainment of conditions in which inter alia the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realised. From this point of view, the Committee considers that the economic crisis should not have as a consequence the reduction of the protection of the rights recognized by*

[261] Aforementioned report by the Secretary General of the Council of Europe in 2016 on the State of democracy, human rights and the rule of law - A security imperative for Europe, Chapter 5 – Inclusive societies.
[262] Aforementioned introductory speech by the President of the ECSR at his exchange of views with the Committee of Ministers: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806304fc.
[263] On Conclusions 2016 : http://www.coe.int/en/web/turin-european-social-charter/-/discrimination-remains-widespread-in-the-states-parties-to-the-european-social-charter
[264] On this topic, see in particular §§45, 46 and 47 of the "Nicoletti Report" mentioned above on the Turin I Conference.

the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most."[265]

267. As already mentioned, the ECSR has had to deal with a number of collective complaints regarding the effects of austerity measures on implementation of the Charter. It is worth noting that they all concerned a single state, Greece, although at least two other States Parties to the collective complaints procedure – Portugal and Ireland – have also experienced stringent austerity measures.

268. The first two complaints regarding austerity measures in Greece concerned changes to the Labour Code providing for the option of dismissing workers up to one year from their hiring without having to give grounds[266] and the introduction of pay for young workers up to the age of 25 that was significantly less than that of older workers.[267]

269. In 2012, the ECSR found on both these points that there had been a violation of the Charter (Articles 4§4 and 4§1 in the light of the non-discrimination clause of the Preamble to the 1961 Charter) – despite the government's objective of consolidating public finances.[268] According to the ECSR, "*while it may be reasonable for the crisis to prompt changes […] to restrict certain items of public spending or relieve constraints on businesses, these changes should not excessively destabilise the situation of those who enjoy the rights enshrined in the Charter*". Accordingly "*a greater employment flexibility in order to combat unemployment and encourage employers to take on staff, should not result in depriving broad categories of employees, particularly those who have not had a stable job for long, of their fundamental rights in the field of labour law, protecting them from arbitrary decisions by their employers or from economic fluctuations. The establishment and maintenance of such rights […] is indeed one of the aims the Charter. [D]oing away with such guarantees would not only force employees to shoulder an excessively large share of the consequences of the crisis but also accept pro-cyclical effects liable to make the crisis worse and to increase the burden on welfare systems […], unless it was decided at the same time to stop fulfilling the obligations of the Charter in the area of social protection*."[269]

270. Also in 2012, concerning five other collective complaints relating to pensions reform in Greece, the ECSR found that there had been a violation of the Charter (Article 12§3),[270] considering that "*the cumulative effect of the restrictions […] is bound to bring about a significant degradation of the standard of living and the living conditions of many of the pensioners concerned" and that "any decisions made in respect of pension entitlements must respect the need to reconcile the general interest with individual rights, including any legitimate expectations that individuals may have in respect of the stability of the rules applicable to social security benefits*".[271] The ECSR further stated that "*the fact that the contested provisions of domestic law seek to fulfil the requirements of other legal obligations does not remove them from the ambit of the Charter*" (in this case, Greece's obligations in

[265] Conclusions 2009: General introduction, op. cit.: http://hudoc.esc.coe.int/eng#.
[266] Complaint No. 65/2011 (*GENOP-DEI and ADEDY v. Greece*).
[267] Complaint No. 66/2011 (*GENOP-DEI and ADEDY v. Greece*).
[268] Decisions dated 23 May 2012 on both the above complaints (65/2011 and 66/2011).
[269] Ibid, Complaint No. 65/2011, §§17-18.
[270] All decisions delivered on 7 December 2012: Complaints Nos. 76/2012 (*IKA-ETAM v. Greece*), 77/2012 (*POPS v. Greece*), 78/2012 (*I.S.A.P. v. Greece*), 79/2012 (*POS-DEI v. Greece*) and 80/2012 (*ATE v. Greece*).
[271] Complaint No. 76/2012, §§78 and 82.

connection with loans from EU institutions and the International Monetary Fund, below).[272]

271. In its evaluation of Greece's follow-up to its seven decisions on austerity measures (simplified reporting procedure, see above), the ECSR considered in 2015 that the situations amounting to violations – noted in 2012 – had not yet been brought into conformity with the Charter.

272. Lastly, it's important to remind the aforementioned complaint No. 111/2014 (*GSEE v. Greece*) which also concerns the impact of austerity measures on a number of workers' rights. A hearing was held on it on 20 October 2016, with the participation, in particular, of the Greek Minister of Labour, Social Security and Social Solidarity as well ~~which also included~~ representatives of the EU, the ETUC and the IOE. The ECSR recently (March 2017) issued a decision on this complaint but it is not yet public.

273. As for the state reporting procedure, in 2013 the ECSR completed its examination of rights relating to health, social security and social protection (Thematic Group 2). Its conclusions are testimony to the effects of the crisis and austerity policies, as the proportion of violations found was higher than in 2009 (when this thematic group was last examined), particularly in the following states: Albania, Georgia, Greece, Poland, Republic of Moldova, Romania and Ukraine.[273] By and large, this rise is increasingly linked to inadequate levels of social security benefits, disproportionately affecting the poor, the unemployed, the elderly and the sick, and to unequal treatment of migrants under the guise of combating "benefit tourism".[274] At the same time, according to the ECSR, austerity measures put health care systems under growing pressure.[275]

274. Referring to these conclusions, the Secretary General of the Council of Europe noted that "*the economic crisis and austerity policies have clearly had a negative impact on social and economic rights across Europe. Benefits are being restricted and people moving between countries to live or find work are often being unfairly treated." He emphasised that "the need to protect everyday rights for workers and non-working people is a core European value which becomes all the more important when times are tough", that "all Council of Europe member states should ratify the latest version of the European Social Charter and also sign up to the complaints mechanism which helps to make sure it is put into practice" and that "international organisations – including the European Union – must take individual countries' obligations under the Charter into account when discussing austerity measures*".[276]

f. Examples of national implementation of the Charter

275. It is important to underline the non-exhaustive and purely illustrative nature of the examples which follow and, above all, to recall that they will be completed in particular by the replies of States to a questionnaire (decision of the CDDH in December 2016) concerning their good practices in the implementation of social rights - in particular of the European Social Charter (below, Part V, point B : identifying good practices : request of the Committee of Ministers).

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[272] Ibid, §50.
[273] *Activity Report 2013*, p. 18. See https://www.coe.int/en/web/turin-european-social-charter/activity-reports.
[274] Ibid.
[275] Ibid.
[276] See his press release (DC011(2014) of 28 January 2014).

(i) Examples of significant reforms further to ECSR decisions and/or conclusions[277]

276. Some States have undertaken significant reforms following ECSR decisions – a few examples of which are given below.

277. In its decision of 19 October 2009, the ECSR found that there had been a violation of Article E taken in conjunction with Article 31 of the Charter, since Travellers were discriminated against when it came to implementing their right to housing.[278] In its assessment of follow-up to this decision, in 2015 the ECSR held that France had brought its situation into conformity through specific measures taken in their interests in the field of housing such as an assisted rental loan for integration purposes, a reduction in the costs of setting up stopping places, a new interministerial strategy on the situation of Travellers and a long-range plan to combat poverty and promote social inclusion containing provisions relating specifically to their accommodation.[279]

278. In its decision of 18 February 2009, the ECSR found that there had been a violation of Article 13§1 of the Charter, since the amendments to the Bulgarian Social Assistance Act suspended minimum income for persons in need after 18, 12 or 6 months.[280] In its assessment of follow-up to this decision, the ECSR held, in 2015, that Bulgaria had brought its situation into conformity following an amendment of this law that now ensured social assistance to these persons without a time limit.[281]

279. In its decision of 23 October 2012, the ECSR found that there had been a violation of Articles 17§1 and 7§10, as the Belgian Government had not taken the necessary and appropriate measures to guarantee illegally resident accompanied foreign minors and unaccompanied foreign minors who were not requesting asylum the care and assistance they needed and special protection against physical and moral hazards.[282] In 2015, the ECSR, in its assessment of follow-up to this decision, held that Belgium had brought its situation into conformity after taking measures to provide these two categories of foreign minors with shelter in a reception centre.[283]

280. The ECSR has also noted some progress in application of the Charter in its conclusions adopted with regard to state reports – whether in the form of new legislation, changes in practice or, in some cases, clarification through fresh information on items raised in previous assessments – making it possible to reduce the number of conclusions "deferred" for lack of information. A few examples are given below.

281. Concerning the right to health, in its Conclusions 2013/XX-2, the ECSR specifically noted a number of measures taken by Turkey to reduce infant and maternal mortality, which had substantially improved the situation, and several regulations on waiting lists introduced in Slovenia in order to reduce waiting times.

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[277] As in the case of the ECHR, see the ECSR country-by-country factsheets (for commitments and implementation):
http://www.coe.int/en/web/turin-european-social-charter/implementing-the-european-social-charter#Factsheets
[278] Complaint No. 51/2008 (*ERRC v. France*).
[279] See http://hudoc.esc.coe.int/eng#.
[280] Complaint No. 48/2008 (*ERRC v. Bulgaria*), op. cit.
[281] See http://hudoc.esc.coe.int/eng#.
[282] Complaint No. 69/2011 (*DCI v. Belgium*), op. cit.
[283] See http://hudoc.esc.coe.int/eng#.

282. Concerning the rights of elderly persons, in its Conclusions 2013/XX-2, the ECSR took particular note of the adoption of legislation in the Czech Republic prohibiting age discrimination outside employment and of specific measures taken in France, Malta, the Netherlands and Slovenia to combat elder abuse.

283. Concerning the right to organise, in its Conclusions 2014/XX-3, the ECSR noted a positive development in Belgium – after enactment of a law in 2009 enabling victims of discrimination based on trade union membership to claim compensation proportional to damage actually suffered and prohibiting this type of discrimination at all stages of the employment relationship – and in Romania further to the passing of the Social Dialogue Act in 2011, which abolished the nationality requirement for membership of the Economic and Social Council.

284. Concerning the rights of persons with disabilities, in its Conclusions 2012/XX-1 the ECSR specifically noted the passing by Estonia of an Equal Treatment Act (entry into force on 1 January 2009) prohibiting all forms of discrimination on the ground of disability in access to vocational guidance, training and employment, and the passing by Poland of the 2010 Equal Treatment Act, introducing into the law on vocational and social rehabilitation and employment of persons with disabilities an expressly worded duty of "reasonable accommodation" for persons with disabilities who were employed, engaged in a recruitment process, undergoing training, on a placement, etc., unless such measures would impose a disproportionate burden on an employer. Moreover, in its Conclusions 2016/XXI-1, the ECSR took note, in particular, that Armenia has adopted a law on employment (came into force on 01/01/2014) which sets out the measures to be taken to help persons with disabilities integrate into the labour market – Republic of Moldova has adopted a law on the Guarantee of equal rights (came into force on 01/01/2013) which prohibits all forms of discrimination, including discrimination based on disability, and applies to all individuals and legal persons in the public and private domains – and Italy has adopted a Legislative Decree No. 76/2013, which obliges public and private employers to make reasonable accommodation to ensure compliance with the principle of equal treatment of persons with disabilities at work.

285. Lastly, concerning the right to work, in its Conclusions 2012/XX-1 the ECSR particularly noted in the context of the economic crisis, structural measures adopted by Sweden with a view to (i) encouraging unemployed persons to actively seek employment, (ii) promoting labour market re-integration of persons excluded and (iii) achieving better labour market matching by a restructuring of the Public Employment Service, and the adoption by Austria of labour market measures including measures relating to education and training for both employees and jobseekers (23.5% increase in the budget for active labour market policy in 2009 by comparison with 2008).

(ii) Examples of positive national responses to the crisis

286. In the previously mentioned 2015 CDDH study on the impact of the economic crisis and austerity measures on human rights in Europe, it was observed that the Commissioner for Human Rights, in his Human Rights Comment "*National human rights structures can help mitigate the effects of austerity measures*",[284] had noted positive measures taken by member states such as Portugal, Spain and the United Kingdom. These measures included organising telephone hotlines for vulnerable groups, publishing a study on the situation of people who could not pay their mortgages, which contained recommendations that had helped the

[284] Human Rights Comment dated 31 May 2012.

authorities adopt measures to increase the protection of these people from the risk of exclusion and poverty, and publishing an analysis of the government's spending review as it affected the right to equality on the basis of race, gender and disability. In its study, the CDDH considered that sharing such practices amongst States would provide added value (see Part V below)[285].

(iii) Debate in national assemblies

287. To give an example, on 10 April 2015 the Committee on Labour, Social Policy and Veterans' Affairs of the State Duma of the Russian Federation held a hearing on the provisions of the European Social Charter not yet accepted by the Russian Federation.

288. It should be noted in passing that on 17 March 2016 the previously mentioned Inter-parliamentary Conference on the European Social Charter was attended by over a hundred parliamentarians from 25 countries, engaging them in the Turin Process, since discussions covered ratification procedures, acceptance of the Charter's new provisions and the collective complaints procedure, and implementation of its provisions at national level.

(iv) Examples of the Charter's applicability by national courts[286]

289. Application of the Charter and ECSR decisions and conclusions by national courts can have a considerable impact on citizens' everyday lives. Consequently, the ECSR believes that it is up to "*national courts to decide the matter in the light of the principles it has laid down [...] or, as the case may be, to the legislator to give them the possibility to draw the consequences as regards the conformity with the Charter and the legality of the provisions at issue*".[287]

290. Some examples of domestic rulings drawing on the Charter are given below. However, it should be pointed out that the jurisdictions of the Member States are aware of various practices concerning the applicability of the Charter in their national law and also depending of the provisions of the Charter concerned.

291. Belgium's Council of State partially set aside a compulsory retirement decision relating to a civil servant, which followed automatically from two negative assessments and took effect 10 days later. It set aside the effective date, enforcing Article 4§4 of the Charter directly, since it held that this period, although admissible in domestic law, did not match the reasonable period of notice guaranteed by the Charter.[288] Other Belgian courts – including the Constitutional Court – are also applying the Charter.[289]

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[285] CDDH(2015)R84 Addendum IV, §41.

[286] In particular, see the relevant parts on this subject of the Annual Activity Reports of the ECSR.

[287] Decision of 22 May 2003, Complaint No. 12/2002 (*Confederation of Swedish Enterprise v. Sweden*), §43: on the obligation to repeal or not enforce pre-entry closed shop clauses, even if a state traditionally leaves regulation of the labour sector to the social partners alone (§28).

[288] Belgian Council of State, judgment of 28 April 2008, No. 182.454 and judgement of 6 November 2012, No. 221.273 (Charter Article 6§4).

[289] See the Belgian Constitutional Court, for example: judgment of 4 May 2005, No. 87/2005 (at B.48 and B.49) regarding Article 2§1 of the Charter; judgment of 6 April 2000, No. 42/2000 (at B.7.4.) regarding Article 6§4 of the Charter; judgments of 14 November 2012, No. 142/2012, and of 15 July 1993, No. 62/1993, on other articles of the Charter. See also Judgment No. 101/2008, which raises Article 31 of the Charter without reservations (although it is not binding on Belgium and a reservation has been expressed in this field concerning the EU Charter of Fundamental Rights) prior to finding a violation of the Constitution with regard to housing (at B.20 *et*

292. Elsewhere, a Spanish labour court overruled national legislation allowing workers to be dismissed during their probationary period without notice or compensation. In doing so, it based its reasoning on the previously mentioned ECSR decision on Complaint No. 65/2011, holding that the measures imposed on Greece by the Troika were similar to those taken in Spain.[290] Several other Spanish labour courts have followed this judgment. In the same vein, three judgments by high regional courts in Spain have recently applied the Charter, giving it a binding effect (Article 4§4 on the right of all workers to a reasonable period of notice), and have recognised that the ECSR's interpretations can help the Spanish judiciary to interpret its dispositions[291]

293. The Labour Division of the French Court of Cassation has also accepted the direct applicability of certain Charter articles such as Article 5 (right to organise) and Article 6 (right to bargain collectively).[292] It has also accepted application of some of the Charter's general provisions in conjunction with Article 5: Article A specifying the extent of states' commitments, Article E enshrining the general principle of non-discrimination and Article G laying down the restrictions permitted by the Charter.[293] France's Conseil d'Etat, for its part, recognised the direct applicability of a Charter article (Article 24: Protection against dismissal) for the first time in its *Fischer* judgment of 10 February 2014.[294]

294. At the previously mentioned international conference organised in 2014 by the Venice Commission in co-operation with the Supreme Court of Brazil on the role of judges in protecting economic and social rights in times of economic crisis, it was concluded that during such times, when rights might be increasingly threatened, judges had a greater responsibility in ensuring that public policies did not erode the protection of fundamental rights, since they were key stakeholders who could contribute to striking a balance between the need to overcome the economic crisis and respect for economic and social rights.[295]

295. At this conference, one presentation addressed constitutional models of protection of social rights in Europe, illustrating a plurality of approaches. The liberal model prevailing in the United Kingdom was marked by an absence of constitutional social rights. The continental model took two forms: a "moderate" model, including states making reference, in a very limited way, to social rights in their constitutions (France, Germany, Scandinavian countries, etc.) and the model of Southern European states (Italy, Spain, etc.), which made ambitious reference to these rights. Most states in Central and Eastern Europe had adopted the latter

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seq.). For other courts, for Article 6§4 of the Charter for example, see judgment of 5 November 2009 of the Brussels Labour Court.

[290] Juzgado de lo Social No. 2 of Barcelona, Judgment No. 412 of 19 November 2013.

[291] High Court of Justice of the Canaries (Las Palmas, Gran Canaria), Chamber for Social and Labour Matters, Judgment 30/2016 of 28 January 2016, App. 581/2015; Judgment 252/2016 of 30 March 2016, App. 989/2015; Judgment 342/2016 of 18 April. 2016, App. 110/2016.

[292] French Court of Cassation, Lab. Div., 14 April 2010, Nos. 09-60426 and 09-60429; 10 November 2010, No. 09-72856; 1 December 2010, No. 10-60117; 16 February 2011, Nos. 10-60189 and 10-60191; 23 March 2011, No. 10-60185; 28 September 2011, No. 10-19113. See Nivard, Carole, "L'effet direct de la Charte sociale européenne devant les juridictions suprêmes françaises", *Revue des droits et libertés fondamentaux* (*RDLF*), 2012, Chron. 28.

[293] French Court of Cassation, Lab. Div., 29 February 2012, No. 11-60203; 10 May 2012, No. 11-60235. See in particular *RDLF* 2012, Chron. 28 (*op. cit.*).

[294] French Conseil d'Etat: judgment of 10 February 2014. See Nivard, Carole, "L'effet direct de la Charte sociale européenne devant le juge administratif – Retour sur la question évolutive de l'effet direct des sources internationales", *RDLF* 2016, Chron. 22.

[295] http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-LA(2014)002syn-e.

model[296]. However, it was emphasised that beyond this multiplicity of approaches, social rights were protected more by sub-constitutional instruments, case law and international and European standards – such as the European Social Charter.[297]

296. It is also important to recall that at the aforementioned Conference in Cyprus in February 2017, it was concluded that the courts of the States Parties to the European Social Charter should increasingly regard it and perceive it as an "integral part of domestic law" – taking into account the specific legal characteristics of each national legal order and the special nature of the provisions of the Charter – which are not all directly applicable, nor all of them able to produce direct effects.

297. Finally, as in the case of the ECHR, exchanges take place between national courts and the ECSR. By way of example, on 28 February 2017, an exchange of views was held with the Ukrainian Constitutional Court on the effective protection, in the light of the Charter and the conclusions and decisions of the ECSR, of pension and social security rights[298].

(v) National training and awareness-raising on the Charter

298. Every year, a number of seminars and training events on the Charter and ECSR decisions and conclusions are held in various countries[299] with the participation of former or current members of the ECSR, and some of them are organised by the Conference of INGOs in association with the Charter Department (see Part III E. below). The ECSR is also represented at many international conferences and events on human rights.[300]

299. In addition, a course on labour rights has been developed for the programme of human rights education for legal professionals in the 28 EU member states ("HELP in the 28"),[301] with the objective of assisting them in national implementation of the Convention, the European Social Charter and the EU Charter of Fundamental Rights. Under this HELP programme a European Seminar on Labour Rights was held on 26 and 27 September 2016, organised by the Council of Europe Human Rights National Implementation Division in association with the Judicial Training Centre of Slovenia.

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[296] However, for example, while the 1997 Polish Constitution contains a catalogue of social rights, it clearly distinguishes them from civil and political rights which are unconditionally and directly granted, while social rights are enjoyed as "specified by the statute."

[297] http://www.venice.coe.int/webforms/documents/?pdf=CDL-LA(2014)010-e#.

[298] Speech by the President of the ECSR, 22 March 2017: http://rml.coe.int/doc/09000016807010f3

[299] Examples from 2016: Training event for NGOs on the collective complaints procedure (Brussels, 22 January 2016), conference on Charter implementation in Andorra (Andorra la Vella, 28 April 2016) and seminar on the collective complaints procedure for representatives of various Serbian institutions working on social rights (Belgrade, 25 October 2016). All the training and awareness-building events on the Charter that took place in 2016 will appear in the *Activity Report 2016*, which will be published in 2017 on the European Social Charter website.

[300] A list of these events is also to be found in the annual activity reports: http://www.coe.int/en/web/turin-european-social-charter/activity-reports.

[301] http://www.coe.int/en/web/help/help-courses: This course comprises the following modules: right to work; employment relationship and working time; pay and insolvency; termination of employment; discrimination and equal opportunities; collective labour rights; and health and safety (physical and mental) at work. Events organised under this programme included a course on capacity-building for labour rights on 9 November 2016 in Greece, a seminar on how labour rights need more protection in times of crisis and austerity on 29 September 2016 in Slovenia, a course on labour rights for judges and lawyers on 12 September 2016 in Lithuania and a trainer training session on labour rights on 3 and 4 March 2016 in Strasbourg.

300. It should be noted that this course could usefully be widened to all Council of Europe member states under the "HELP in the 47" programme, and other training courses could also be developed for all states on topics concerning the Charter and the ECHR, thereby illustrating their complementarity and the principles of the indivisibility and interdependence of human rights.

301. Finally, a number of recent books and articles on the Charter have been published[302].

(vi) Some key problems encountered by States when implementing the Charter

302. When implementing the Charter, States seem to encounter, among others, the five following key problems.

303. The first problem concerns the limited financial resources of States (involving in particular taxpayers) in the elaboration of social policies – a factor aggravated by the financial and economic crises. While some social rights – such as the right to organise – do not entail a high financial cost for society, others, such as some civil and political rights (contribution of the ECHR judge, Linos-Alexandre Sicilianos, to a seminar in October 2015, see above), are more expensive and therefore more directly threatened in times of crisis (see point (e) above). By way of example, States may have difficulties in implementing rights relating to social security[303], fair remuneration[304], education for children with disabilities[305] or housing[306].

304. The second problem concerns the lack of clarification on the relationships between the European Social Charter and other international obligations, in particular, under international law (in particular see below, Part IV: relationships between the Charter and European Union law). Their differences were highlighted by the collective complaints procedure over the 2010-2013 period[307].

Commentaire [PM14]: *{**PL**:Paras 306 and 307 should be struck out. They deal not so much with problems of social rights implementation, as with the reporting procedure.}*

*{**PT** :Malgré la position de la Pologne, je garderais quand même aussi les quatrième problème relatif au système des rapports, d'autant plus que si l'on a pu beaucoup insister sur le fait que les droits couverts par les CSE ne seraient pas exécutoires, alors le système des rapports devient une question très importante pour l'application de ces droits.}*

*{**GR** support **PT**}*

Commentaire [PM15]: *- {**PL**: The problem referred to in parat 305 is more serious than this. Consider moving it up.}*

*{**GR** doesn't support changes in the order of the parag.}*

[302] A list of these publications can also be found in the annual activity reports: http://www.coe.int/en/web/turin-european-social-charter/activity-reports.

[303] Complaints Nos. 76/2012, 77/2012, 78/2012, 79/2012 and 80/2012 against Greece, op. cit. Moreover, in its Conclusions 2013/XX-2 the ECSR found non-conformity with Article 12§3 of the Charter (right to social security) in the following states: Georgia, Greece, Italy, Moldova and Poland.

[304] Complaints Nos. 65/2011 and 66/2011 against Greece, op. cit. Furthermore, in its Conclusions 2014/XX-3 the ECSR found non-conformity with Article 4§4 of the Charter (right to a fair remuneration: right to a reasonable period of notice) in the following states: Andorra, Armenia, Azerbaijan, Bulgaria, Czech Republic, Estonia, France, Georgia, Greece, Iceland, Ireland, Italy, Lithuania, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russia, Serbia, Slovak Republic, Slovenia, Spain, Turkey, Ukraine and the United Kingdom. And it found non-conformity with Article 4§1 of the Charter (right to a fair remuneration: right to a remuneration such as to provide a decent standard of living) in the following states: Andorra, Austria, Azerbaijan, Belgium, Germany, Greece, Ireland, Lithuania, Luxembourg, Netherlands, Portugal, Romania, Slovak Republic, Spain and the United Kingdom.

[305] Complaints Nos. 13/2002 (§53) and 81/2012 (§79) against France, op cit. Moreover, in its Conclusions 2016/XXI-1 the ECSR found non-conformity with Article 15§1 (right of persons with disabilities to guidance, education and vocational training in the context of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private) in the following states: Austria, Belgium, Denmark, France, Hungary, Iceland, Luxembourg, Romania, Serbia, "the Former Yugoslav Republic of Macedonia", Turkey, Montenegro and Ukraine.

[306] Complaints Nos. 33/2006 (§62) and 39/2006 (§56) against France, op. cit. Moreover, in its Conclusions 2015 the ECSR found non-conformity with Article 31§1 of the Charter (access to housing of an adequate standard) in the following states: Lithuania, Netherlands, Slovenia, Turkey and Ukraine. It found non-conformity with Article 31§2 (prevent and reduce homelessness) in the following states: Andorra, Lithuania, Netherlands, Slovenia, Sweden, Turkey and Ukraine. And it found non-conformity with Article 31§3 (make the price of housing accessible to those without adequate resources) in the following states: Slovenia and Turkey.

[307] Decisions of 23 June 2010 on Complaints Nos. 55/2009 (*CGT v. France*) and 56/2009 (*CFE-CGC v. France*);

305. The third problem refers to the methods of work of the ECSR and its approach to the interpretation of the Charter, which has been expressed by several States at the above mentioned GR-SOC meeting of 26 May 2015. One delegation, in particular, stressed that the ECSR's approach entails a lack of clarity as to the scope of Member States' obligations. It should be noted that this problem was raised on several occasions during the abovementioned meetings between the ECSR's and the Governmental Committee Bureaus.

306. The fourth problem pertains to the workload for national authorities when preparing reports on the Charter. It should be recalled that the reporting procedure has been already simplified in 2014 for States having accepted the collective complaints procedure. Nevertheless, States are emphasising the need to simplify the reporting procedure still further (see below) so that the ECSR can focus its follow-up on the most pressing issues.

307. Lastly, the fifth problem bears on data collection. Given some States' reluctance to provide some statistics owing to the cost and the difficulties[308] to which they may give rise, the ECSR has nevertheless pointed out that when "*a particular group is or could be discriminated against, the state authorities have a responsibility for collecting data on the extent of the problem. The gathering and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of rational policy*."[309] In the absence of data establishing that a situation is in conformity with the Charter or that a previous finding of non-conformity has been remedied, the ECSR will consequently find that there has been a violation of the provisions concerned.

Commentaire [PM16]: *{**PT** : le Rapport du CDDH-Soc n'est pas un rapport national, mais il resulte d'une réunion d'experts qui sont tenus de prendre en compte les demandes des organes internationaux. Or, tant sur le plan des N.U. que sur le plan des autres organisations internationales, on insiste beaucoup sur les données et leur collecte. Éliminer le problème alors qu'il a été mentionné par les organes de la Charte n'est pas le résoudre. Il faut donc à mon très modeste avis, maintenir ce cinquième item des problèmes (et cela même si en tant qu'Administrations nationales, nous avons tous des dispositions constitutionnelles qui rendent difficile, voire interdisent, la collecte des données).}*

*{**GR** supports **PT**}*

g. Exchange of good practice between the states concerning the Charter

308. Mention can be made here of various recent activities and initiatives designed to ensure effective implementation of the Charter at national level.

309. To begin with, the ECSR has stepped up co-operation with the aforementioned network ANESC, which operates in the field of training, publications and advocacy. In particular, ANESC played an active part in the Brussels Conference (February 2015), sending representatives to speak at the event and drafting the "Brussels Document" (see Appendix), which highlights the key role played by national institutions, in particular judicial institutions, in ensuring that the Charter is implemented as widely as possible. In its proposals[310] for "Turin I" in October 2014, the Network had already emphasised the need to facilitate the dissemination of good practice at the level of national courts and legislative authorities. Later, in 2015, it provided support for a training course on the collective complaints procedure organised by the Conference of INGOs and the Social Platform (European NGOs and federations operating in the social sector), together with the Social Charter Department.

310. The Council of Europe has also taken the lead in running the CoE-FRA-ENNHRI-

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Complaint No. 85/2012 against Sweden, op. cit. and Complaints Nos. 76/2012, 77/2012, 78/2012, 79/2012 and 80/2012 against Greece, op cit.

[308] In particular, in several States, it is prohibited (sometimes by the Constitution) to collect certain types of data, such as, for example, those of an ethnic nature.

[309] Decision of 8 December 2004, Complaint No. 15/2003 (*ERRC v. Greece*), §27, op. cit.; decision of 7 December 2005, Complaint No. 27/2004 (*ERRC v. Italy*), §23, op. cit.

[310] https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168045884e.

EQUINET Collaborative Platform on economic and social rights[311] (launched in Strasbourg in October 2015), the purpose of which is to foster co-operation and the sharing of information and good practice among its partners in order to improve social rights protection in Europe. At the end of its first meeting, the following objectives were identified: a) create a website for sharing information (legal texts, domestic case law, good practice, etc.); 2) training on the Charter and methodological issues (monitoring indicators, human rights impact assessments and equality issues, etc.); 3) awareness raising through national workshops and seminars to support advocacy on the Charter and encourage state action for ratification and effective implementation of Charter instruments.

311. These objectives were clarified at the second meeting of the Platform in January 2016, which was followed by another gathering in Belgrade on 10 October 2016. Among the items on the agenda of this third meeting were the relationship between the Charter and the European Pillar of Social Rights, as recently proposed by the European Commission (see below, Part IV), proposals for suitable indicators for monitoring economic and social rights under the Charter monitoring procedures and a discussion on the capacity-building needs of the Platform partners for 2017.

312. Lastly, in late 2015, the Committee of Ministers decided to set up for the period 2016-2017 a European Social Cohesion Platform in the form of an ad hoc committee.[312] The aim of this committee is to reinforce the intergovernmental component of the Secretary General's strategy to develop the Council of Europe's activities in the field of social cohesion, in particular through the promotion of the European Social Charter and its collective complaints procedure in order to ensure equal and effective access to social rights.

313. Under its terms of reference, this Platform (one meeting per year, with most of the business being conducted by email) aims to ensure that social cohesion is incorporated in all Council of Europe activities. Its terms of reference call for particular attention to be given to ensuring that everyone can enjoy their social rights in practice and without any discrimination, with a special emphasis on vulnerable groups and young people, taking into account the findings of the relevant monitoring mechanisms.[313] To this end, it is provided that the Platform will support co-operation activities, at the request of member states. In addition, the Platform aims to foster the exchange of good practices and innovative approaches in the field of social cohesion among member states, and with other relevant international organisations and stakeholders.

314. The Platform is also tasked with examining new trends and challenges to social cohesion in specific areas such as the protection and integration of migrants and refugees, the impact of the economic crisis on social and health protection, in particular combating poverty and exclusion, which can provide a breeding ground for violent radicalisation, and the access of vulnerable groups and young people to social rights. Special attention is also to be given to respect for human dignity, combating discrimination and integrating the gender perspective in

[311] The Platform originated from the statement made at the conference held on 7 and 8 October 2013 by the Council of Europe, the European Network of Equality Bodies (EQUINET), the aforementioned ENNHRI and the Fundamental Rights Agency of the European Union (FRA).
[312] See CM(2015)161 final, 26 November 2015.
[313] Ibid. "Of particular relevance is the work to promote equal and effective access to social rights, which is decisive for the construction of cohesive societies. The European Social Charter represents a real added value of the Council Europe in this regard and is all the more relevant in times of crisis to help manage the impact of austerity measures on social rights and to avoid marginalisation resulting in poverty and exclusion. Practical action is today required to give full effect to the rights recognised in the Charter."

the Platform's work.

315. Three working groups were set up when the Platform met for the first time at the end of June 2016: 1) mainstreaming social cohesion in the Council of Europe (impact of activities, promoting specific activities, enjoyment of social rights, conclusions of relevant monitoring bodies); 2) exchange of good practices between states (with plans to compile a questionnaire); 3) new trends and challenges in specific areas (preparation of a Declaration to the Committee of Ministers).[314] As well as being represented at meetings of the Platform, the CDDH is expected to participate in the first working group as an observer, as is the case with other Council of Europe bodies and committees.

h. Findings

316. Following the evolutions described above, the Charter now forms an integrated and dynamic system of binding legal instruments which secures fundamental rights in particular in the fields of employment, health, education, social, legal and economic protection of the family as well as protection against poverty and social exclusion. In addition, the Charter places specific emphasis on the protection of vulnerable persons such as elderly people, migrants, children and people with disabilities. It also seeks to ensure that these rights are enjoyed without discrimination.

317. Accordingly, effective enjoyment of the rights enshrined in the Charter is an essential condition for respect for human dignity and equality.

318. However, as it has been noted in the introduction and in this part of the report, the crisis in particular has led, this last years, to a deterioration in numerous social rights, putting the most vulnerable members of society at particular risk.

319. However, the implementation of the Charter: "*has the potential to reduce economic and social tensions, promote political consensus, and (…) facilitate the adoption of the necessary reforms" and "respect for fundamental social rights constitutes the best way forward to increase citizens' participation in democratic processes, reinforce their trust in European construction and combat fundamentalism and radicalisation by promoting inclusion and social cohesion*".[315]

320. Moreover, in addition to the crisis, the following main points have been identified as undermining the effectiveness, credibility and legitimacy of the Charter system:

- Non-ratification of the Charter by all Council of Europe member States – 4 States are not parties – moreover, 9 States are still not bound by the Revised Charter of 1996 ;
- Significant differences in States' obligations due to its "à la carte" system ;
- In practice, some States no longer submit their reports and attend meetings of the Governmental Committee, while other States submit incomplete and/or out of time reports ;
- 15 States Parties to the collective complaints procedure even though 43 States have signed up to the Charter (34 States : Revised Charter and 9 States : 1961 Charter) ;
- Among these 15 States, fairly significant variations in the number of complaints lodged,

Commentaire [PM17]: *{**PL:** The problem is practical effectiveness. The system is perfectly legitimate as states parties established it by a proper international instrument.}*

Commentaire [PM18]: *{**PL**: It seems such dereliction of duties is quite exceptional, while incomplete and/or late reporting are real problems.}*

[314] https://www.coe.int/en/web/turin-european-social-charter/1st-meeting-of-the-european-social-cohesion-platform: see the first meeting report (PECS(2016)7, 23 September 2016).
[315] Ibid., p. 2.

probably due to a continuing lack of awareness of this procedure at national level ;
- Still not many third parties observations in connection with complaints, again probably due to a continuing lack of awareness of this procedure ;
- ECSR decisions and conclusions unenforceable and without real monitoring by the Committee of Ministers (see below) – with the result that many of them remain unimplemented in practice[316] – even though the texts relating to the Charter are binding legal instruments ;
- ECSR members not elected by the PACE despite the Turin Protocol of 1991 which contains a provision to this effect (the said Protocol is still not in force, precisely because of this issue) ;
- ECSR : restricted organ of 15 members not reflecting all the legal traditions and social realities in Council of Europe member States ;
- ECSR : not a permanent body (7 sessions per year), despite its growing workload ;
- Insufficient resources of the ECSR, the Governmental Committee and the Charter Department despite their growing workload, generated mostly by the aforementioned increase in the number of ratifications of the Charter and by their complementary competence regarding the European Code of Social Security – around 22 staff members working for the two systems ;
- Inadequate communication inside the Council of Europe regarding the Charter ;
- Few activities specifically dedicated to the Charter within national Assemblies ;
- Charter provisions of limited and varied applicability in domestic courts;
- Not enough training, awareness raising, co-operation and sharing of good practices on the Charter – because mostly of a lack of human and material resources.

Commentaire [PM19]: *{**PL**: These are real reasons why CIE's conclusions are sometimes set aside. The problem is not that they are not legally binding. This finding reflects what was identifies above in para 289bis.} REQUEST TO DELETE*

Commentaire [PM20]: *{**PL**: It is explained that the CIE is not elected by the PACE because states parties do not wish it to be thus elected. Apparently, they do not want the CIE to be a semi-court. So, what is the point of listing this as a problem?}*

Commentaire [PM21]: *{**PL**: This is not a problem of social rights implementation. The Charter is simply (for the most part) not directly applicable. The enjoyment of social rights depends on the availability of resources and government policy priorities as resources are always limited. Court decisions can only be applicable to certain issues, like discrimination, noncompliance with procedures set by the law in implementing social protection legislation, etc.} REQUEST TO DELETE*

321. More specifically, on a more procedural note, it is worth noting that the President of the ECSR has commented on the functioning of the two new types of reports introduced in October 2014 (see above)[317]. Concerning the simplified reports, in 2015, the ECSR examined 8 States with respect to 125 violations arising from 39 decisions – relating to numerous provisions of the Charter. In the view of the President of the ECSR, however, the goal of simplification has not been fully attained, especially for States such as France and Greece, which are the subject of numerous decisions, and with respect to which there has been no real reduction in the workload. In contrast, its evaluation was more positive of the additional reports concerning findings of non-conformity for repeated lack of information: indeed, in 2015, these reports served to overturn a significant number of negative conclusions reached in 2013[318].

322. As regards to the simplified reports, the ETUC states that they also raise questions as to the legal status of their findings (since these reports are made under the reporting procedure but concern the follow-up of decisions adopted in the framework of the collective complaints procedure) and, therefore, as well as to the bodies in charge of their monitoring.

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[316] More precisely, under the aforementioned new simplified reporting procedure, in 2015, there were 13 "corrected" violations (out of 114 violations of 40 decisions: just over 10% of compliance) and, in 2016, 4 "corrected" violations (out of 21 violations of 9 decisions: less than 20% of compliance).

[317] Above-mentioned introductory speech by the ECSR during his exchange of views with the Committee of Ministers:https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063 04fc.

[318] 20 situations brought into compliance with the Charter in the following areas: health, social security and social protection. In its exchange of views with the Ministers' Deputies on 22 March 2017, the President of the ECSR reaffirmed the usefulness of this procedure, which in 2016 enabled it to "reverse" many conclusions of non-compliance with the Charter of 2014 on the thematic group "Children, families and migrants".

323. Lastly, with regard to the collective complaints procedure, it is important to note that participants at the "Turin I" Conference expressed the view that this mechanism represents a more open and democratic monitoring system than the one based on national reports. It was also pointed out, several times, that if the collective complaints procedure was accepted by more States, this could reduce the number of cases that come before the European Court of Human Rights and the domestic courts, particularly as the complaints procedure is faster (no need to exhaust domestic remedies and shorter processing times than in the Court) and has the potential to make a greater impact, more swiftly, on account of its collective nature. A positive parallel has been drawn here between the collective complaints procedure and the Court's system of "pilot judgments". It will also be recalled that broader acceptance of the complaints procedure would, in theory, help to ease the workload of the national agencies responsible for drafting the reports, enabling them to focus on specific issues.[319]

i. Possible action

324. In the light of these findings, various courses of action can be suggested, several of which flow from the above-mentioned "Turin Action Plan" (see Appendix).

325. This section, however, deals only with suggestions which are of relevance primarily to the ECSR[320], the Governmental Committee and/or the Charter Department. The other proposals aimed at improving the functioning of the Charter system appear in the sections which deal with the stakeholders to whom the proposals are addressed.

Commentaire [PM22]: *{**PL**: No proposal in this section of the report pertains to the Governmental Committee. Proposals on the possible enhanced role of the Governmental Committee (resulting in a better cooperation with the CIE), more staff, more meetings, etc. need to be developed.}*

326. The first possible course of action involves securing more ratifications of the Charter's standard-setting system.[321] Mention of this is made in various parts of the report, as the "Turin Action Plan" calls on everyone involved in implementing the Charter to take steps along these lines.

327. In order to improve the effectiveness of the Charter in all Council of Europe member states, it has been emphasised, in the context of the "Turin Process", that the priority is to promote ratification of the Revised Charter by all states together with gradual acceptance of all its provisions, starting with the "core" ones. The "Turin Process" has also highlighted the need for those states which have not yet done so to ratify the 1995 Protocol establishing a system of collective complaints.

328. To this end, as has already been briefly stated (see above, Part I, current status of the follow-up to the "Turin Process"), the GR-SOC of the Committee of Ministers, for whom this course of action is also a priority, has suggested initiating a discussion on possible barriers to

[319] On the benefits of the collective complaints procedure, see the "Nicoletti Report" on the Turin Conference held on 17 and 18 October 2014, Executive Summary, p. 3. See also the Report presented by Mr. Nicoletti during the training on the collective complaints procedure in Brussels on 22 September 2015.

[320] The Turin Action Plan calls on the ECSR to take the following measures: its decisions and conclusions must take account of the new scenarios and situations; inform the social partners and NGOs about the complaints procedure (see below: enhance the role played by national stakeholders through more training/awareness activities focusing on the Charter); encourage the use of the third party mechanism by EU bodies and NGOs and; various measures as regards the synergies to be developed between EU law and the Charter (see below, Part IV).

[321] It will be recalled that this course of action featured, as such, in the Declaration made by the Committee of Ministers in 2011 and in Priority No. 5 of the strategic vision presented by the Secretary General of the Council of Europe for his second term.

further ratifications.[322] It is accordingly planned to hold high-level meetings in member states to discuss acceptance of the Charter system. These meetings would bring together the competent political representatives from national governments and parliaments and, where appropriate, relevant national and international organisations and senior officials from the Council of Europe, including representatives of the Parliamentary Assembly. When planning these meetings, due account should be taken of the timing of the ECSR meetings on non-accepted provisions (see above), while the decision as to which states should host these initial meetings would depend on various factors.

329. A second possible course of action, also mentioned by the GR-SOC, and which is closely linked to acceptance of additional provisions of the Charter and the complaints procedure, involves simplifying the monitoring procedures, in particular for states which have accepted the complaints procedure. The Ministers' Deputies have therefore called for further simplification of procedures,[323] following on from the ways of streamlining and improving the reporting system (see above).[324] A meeting was held in early 2016 on this subject between the Bureau of the ECSR and the Bureau of the Governmental Committee to prepare the ground for such an objective.[325] Further simplification would have two advantages. First, it would create a fairer balance between states accepting and states not accepting collective complaints, thereby making for greater equality in Europe in terms of how social rights are monitored, and, second, it would encourage the latter states – by this supplementary simplification –to ratify the 1995 Protocol. During its aforementioned exchange of views with the Ministers' Deputies on 22 March 2017, the Chairman of the ECSR stressed the need to further simplify the reporting procedure in order to better identify the real and serious problems of implementation of the Charter[326].

330. One idea here might be to exempt states which have accepted the complaints procedure from having to report on provisions in respect of which the ECSR has already concluded that the situation is in conformity (on the understanding, however, that monitoring may still be carried out in connection with complaints so as to be able to address any changes in the situation- to be noted that States rejected this idea in 2015). In addition, other ideas for making the complaints procedure more attractive for States could be developed, such as, for example, more screening of complaints regarding admissibility[327], or in the long term, the inclusion in the ECSR of an independent expert member from all the States which have accepted the collective complaints procedure, without prejudice of the presence of independent members of other States.

331. A third possible course of action involves providing the ECSR with a more robust institutional framework. In order to give it more independence and authority, the "Turin

[322] GR-SOC(2016)CB1, meeting of 19 January 2016 and the proposals referred to therein by the General Secretariat/CoE as set out in (CM(2015)173) of 17 December 2015: in Appendix.
[323] This course of action also stems from the Declaration made by the Committee of Ministers in 2011: "secure the effectiveness of the Charter through an appropriate and efficient reporting system".
[324] GR-SOC(2016)CB1, meeting of 19 January 2016 and the proposals referred to therein by the General Secretariat/CoE as set out in (CM(2015)173) of 17 December 2015: in Appendix.
[325] Above-mentioned introductory speech by the President of the ECSR during his exchange of views with the Committee of Ministers: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806304fc.
[326] Statement by the President of the ECSR, 22 March 2017: http://rml.coe.int/doc/09000016807010e3 (see above).
[327] In particular, by allowing States to always submit observations on the admissibility, which is not currently the case.

Commentaire [PM23]: *{**PL**: Actually, the opinions and proposals on the future of the reporting procedure presented by the chairperson of the Committee of Independent Experts, were met with objections. Those objections were presented at the meeting of the bureaus (expressed by the Chairperson of the Governmental Committee) and at the Governmental Committee meeting in May of 2016. Subsequently a letter of May 13, 2016 was sent to the Chairperson of the Committee of Independent Experts with the position of the Governmental Committee on the matter. No changes in the state reporting system are currently under consideration, in particular any simplification of reports. The Governmental Committee discussed that issue at its May and September 2016 sessions. Representatives from states parties to the collective complaints procedure were of the view that it would be premature to simplify the state reporting procedure for the collective complaints countries at this stage. It is important to gather more experience first.}*

Commentaire [PM24]: *{**PL**: Decisions on whether to ratify an international instrument so consequential to the ratifying party as the collective complaints protocol, are never made over the reporting procedure. Such views were expressed in the Governmental Committee when it was discussing the simplified reporting procedure.}*

Commentaire [PM25]: *{**PL**: This would significantly reduce the monitoring of legislative changes by states parties. It could be possible to monitor those changes in the collective complaints procedure. Yet, it would not work in regard to those states against which no or few complaints are lodged. It was considered in 2015 when the states were deciding on the simplified country reporting and rejected.}*

Commentaire [PM26]: *{**PL**: Whom would that member represent and how. Who would give him/her instructions? What would be his/her role in the CIE proceedings?}*

Action Plan" calls for the entry into force of the 1991 Protocol (see above) which provides for ECSR members to be elected by the Parliamentary Assembly. The "Turin Action Plan" further recommends increasing of the staff of the Charter Department and -of the members of the ECSR, to enable them to manage their growing workload and better reflect the wide range of legal systems and social models that exist in Europe[328]. This crucial point, among others, was also recalled by the President of the ECSR in his above-mentioned exchange of views of 22 March 2017 with the Ministers' Deputies[329]. It should also be noted that the resources of the Governmental Committee should also be strengthened.

Commentaire [PM27]: *{PL: The CIM Chair's proposals were not supported by Member States at the March 22, 2017 session.}*

332. A fourth course of action involves improving targeted co-operation with member States in the field of social rights[330], an objective that has likewise been approved by GR-SOC[331]. For example, co-operation activities could be improved by holding regular meetings between the governments' agents and the ECSR Bureau (not limited to the States Parties to the Protocol of 1995) and between the ECSR Bureau and the Governmental Committee, by holding more country-specific meetings focusing on implementation of the Charter and by providing technical support to States as part of the follow-up to ECSR decisions and/or conclusions where necessary. It should be noted that direct exchanges between the ECSR and representatives of international social partners and INGOs should also be encouraged.

333. A fifth possible course of action, which is also mentioned in the "Turin Action Plan" and the "Brussels Document" (see Appendix), involves doing more to promote the key role played by national stakeholders, in particular the courts, in implementing the Charter.

334. It will be noted that this fifth course of action also applies to players other than the ECSR and the Social Charter Department, such as PACE, the INGO Conference and ENNHRI.

335. As with the principle of subsidiarity regarding the implementation of the Convention and in keeping with the spirit of the "Brussels Declaration" adopted on this subject in March 2015, better information and training should be provided for legislative, administrative and judicial authorities (through, for example, regular contact between the ECSR and the highest national courts) concerning the Charter system in order to give them greater responsibility for its implementation (ratifications, acceptance of more provisions, monitoring/compliance with ECSR decisions and conclusions). This could be done, to a large extent, at country-specific meetings of the kind mentioned above, organised by the ECSR and the Social Charter Department, or during visits to Strasbourg by the national authorities concerned.

336. This suggestion about more training and information on the Charter system applies to other national stakeholders as well, such as national human rights institutions, representatives of civil society and professionals with an interest in the Charter (in particular lawyers and the social partners).[332]

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[328] Both of these ideas can be traced back to the Declaration made by the Committee of Ministers in 2011, in which the latter expressed its determination "to ensure the expertise and independence of the European Committee of Social Rights".

[329] Speech of the President of the ECSR, 22 March 2017: http://rml.coe.int/doc/09000016807010e3 (see above).

[330] Again, this course of action was mentioned, as such, in the Declaration made by the Committee of Ministers in 2011 and in Priority No. 5 of the strategic vision presented by the Secretary General of the Council of Europe for his second term.

[331] GR-SOC(2016)CB1, meeting of 19 January 2016 and the proposals referred to therein by the General Secretariat/CoE as set out in (CM(2015)173) of 17 December 2015: in Appendix.

[332] The Declaration made by the Committee of Ministers in 2011 also called for efforts to raise awareness of the Charter at national level among professionals and to inform the public at large of their rights.

337. Accordingly, the ECSR and/or the Social Charter Department could be encouraged to, for example: organise and/or participate in more training/awareness activities on the Charter at national level, with an emphasis on the collective complaints procedure; play an active part in the abovementioned Council of Europe-FRA-Equinet-ENNHRI Platform, which aims to pool skills and information in the interests of better social rights protection in Europe.

338. The role of national human rights institutions and equality bodies in implementing the Charter is worth emphasising here[333], and indeed has been set out in detail by ENNHRI in a contribution to this report. Broadly speaking, ENNHRI states that in recent years it has condemned the economic and social rights impact of government decisions about allocating resources in times of economic crisis. ENNHRI has also set up a working group on these rights, which seeks in particular to enhance the capacities and activities of its members with a view to assessing the impact of economic policy on human rights.

339. As a practical example of its members' involvement in implementing the Charter, mention has already been made above of the shadow reports submitted to the ECSR by various national human rights institutions and observations received from them concerning complaints. It is also worth noting that some national human rights institutions draw on the Charter and the decisions and conclusions of the ECSR in their reports at international level (in particular to the United Nations Committee on Economic, Social and Cultural Rights)[334] and national level (including in recommendations to governments and in assessments)[335] as well as in domestic legal proceedings.[336]

III. OTHER COUNCIL OF EUROPE ACTIVITIES RELATING TO THE PROTECTION OF SOCIAL RIGHTS

A. Committee of Ministers

a. Main activities relating to social rights/the Charter

340. It will be recalled that on 12 October 2011, the Committee of Ministers adopted an important Declaration to mark the 50th anniversary of the European Social Charter (appended hereto, see above: introduction), in which it:

- reiterated the role of the Charter in guaranteeing and promoting social rights;
- called on all the states to consider ratifying the Revised European Charter and the collective complaints procedure;

[333] The UN Committee on Economic, Social and Cultural Rights has asked for these rights to be sufficiently reflected in the activities of the NHRIs (E/C.12/1998/25).
[334] For example, the shadow report produced in 2015 by the Irish national human rights institution and the recent submission by the Equality and Human Rights Commission of a report on the United Kingdom.
[335] For example, various reports by the Danish national human rights institution (recommending, amongst other things, ratification of the Revised Charter and the Complaints Protocol), opinions from the Northern Ireland Human Rights Commission and numerous reports by the Greek national human rights institution (consistently referring to ECSR decisions: e.g. its report of 5 May 2016 on the right to social security and its statement of 15 July 2015 on the impact of the continuing austerity measures).
[336] For example, the Belgian equality body UNIA refers extensively, in relation to the treatment of people with disabilities, to the ECSR decision of 29 July 2013 (above-mentioned complaint No. 75/2011, *FIDH v. Belgium*).

- expressed its resolve to secure the effectiveness of the Charter (through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure);
- affirmed its determination to support states in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the ECSR;
- invited states and relevant bodies of the Council of Europe to increase their efforts to raise awareness on the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.

341. In recent years, furthermore, the Committee of Ministers has adopted a number of Recommendations and other instruments concerning social rights. Examples include:

- Recommendation CM/Rec(2015)3 on the access of young people from disadvantaged neighbourhoods to social rights;[337]
- Recommendation CM/Rec(2014)2 on the promotion of human rights of older persons (see above: outcome of the aforementioned work of the CDDH);
- Above-mentioned joint declaration by the Committee of Ministers, the PACE, the Congress of Local and Regional Authorities and the INGO Conference on International Day for the Eradication of Poverty "Acting together to eradicate extreme poverty in Europe" (17 October 2012);
- Recommendation CM/Rec(2011)12 on children's rights and social services friendly to children;
- CM/AS(2011) Rec1963 – Reply to the PACE Recommendation on "Combating poverty";
- CM/AS(2011) Rec1958 – Reply to the Parliamentary Assembly Recommendation on monitoring of commitments concerning social rights;[338]
- CM/AS(2011) Rec1976 – Reply to PACE Recommendation on the role of parliaments in the consolidation and development of social rights in Europe;[339]
- Recommendation CM/Rec(2010)2 on deinstitutionalisation and community living of children with disabilities;
- CM/AS(2010)Rec1912 – Reply to PACE Recommendation on "Investing in family cohesion as a development factor in times of crisis";
- Guidelines on Improving the situation of low-income workers and on the empowerment of people experiencing extreme poverty, 5 May 2010;
- Council of Europe Action Plan for Social Cohesion, 7 July 2010.

342. With regard to the "Turin Process", mention has already been made of the steps taken to date by the Committee of Ministers to provide some follow-up to this process (see above: introduction), specifically:

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[337] This follows on from the ENTER project launched in 2009 to develop social-rights-based policy responses to the exclusion/discrimination/violence experienced by young people in vulnerable situations. It is planned to revise the Recommendation every 3 or 4 years. As part of the follow-up to the Recommendation, various activities are being conducted, including notably local co-operation projects, developing guidelines, new long-term training courses and a database listing the different practices.

[338] In its reply, the Committee of Ministers refers mainly to the aforementioned Declaration, adopted on the 50th anniversary of the Charter. As regards the PACE's request to adopt a decision, pending the entry into force of the 1991 Protocol, to enable it to elect members of the ECSR, the Committee of Ministers does not consider it appropriate, at this stage, to adopt this decision. The same applies to the PACE's request to revise the Collective Complaints Protocol to enable it and other actors to intervene as a third party.

[339] In its reply, the Committee of Ministers fully endorses the PACE's view that national parliaments can play an important role in consolidating and developing social rights. It stresses the importance for parliaments to take steps to ensure full implementation of the standards provided for in international agreements, including in the field of social rights, when designing policy measures.

- exchanges of views on the "Turin Process" on 4 February and 26 May 2015 as well as on 30 March 2016 and 22 March 2017 ;
- adoption of the Programme and Budget for 2016-2017 in November 2015,[340] leading to the creation of two new posts in the Social Charter Department in connection with the complaints procedure, a 3rd post for the aforementioned Social Cohesion Platform and an increase in funding for the purpose of stepping up co-operation activities relating to the Charter system;
- approval by the GR-SOC, in January 2016, of the following objectives:[341] 1) hold high-level meetings in states in order to secure more ratifications and the acceptance of additional provisions of the Charter; 2) simplify the Charter monitoring procedures, in particular for states which have accepted the collective complaints procedure; 3) enhance targeted technical co-operation with states in the field of social rights (for details of these three objectives: see above, Part II, B, i) and; 4) strengthen the synergy between European Union law and the Charter (for more on this fourth objective, see below, Part IV).

b. Findings

343. As regards the Committee of Ministers' role in implementing the Charter, it has been observed that it hardly ever adopts recommendations in the context of reporting and collective complaints procedures. So far, for example, it has carried out no real follow-up comparable to its role in supervising states' execution of judgments handed down by the European Court of Human Rights, as in adopting "resolutions" connected with the Charter, the Committee of Ministers merely takes note of the commitments announced by states, without exercising any supervision whatsoever.

344. Yet despite the fact that the Committee of Ministers does not have the authority to challenge the ECSR's legal assessments (see above), just as it cannot question the content of judgments handed down by the Court, it does nevertheless have a very important role to play, in that it could do more to make the ECSR's decisions and conclusions operational, and so help to give concrete effect to the rights guaranteed under the Charter[342]. This essential point was also recalled by the Chairman of the ECSR during his exchange of views on 22 March 2017 with the Ministers' Deputies, inviting them to reassess their involvement in the follow-up of ECSR decisions (recall in the persistent cases of non-compliance with the Charter of the utility of "peer pressure")[343].

345. As regards the "Turin Process", it should be stressed that, despite the aforementioned objectives approved by the GR-SOC, numerous measures addressed to the Committee of Ministers in the "Turin Action Plan" (appended hereto: see below, possible action) remain unimplemented.

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[340] It will be recalled that the Programme and Budget for 2016-2017 contain the following priorities: strengthening the application of the Charter; dialogue with the EU on this matter; improve the implementation of social rights at national level; simplify the monitoring procedures to make further ratifications of the Revised Social Charter and the Additional Protocol on Collective Complaints more attractive, and; enhance targeted co-operation with member states in the field of social rights.

[341] GR-SOC(2016)CB1, meeting of 19 January 2016 and the proposals referred to therein by the Genera1 Secretariat/CoE as set out in (CM(2015)173) of 17 December 2015: in Appendix.

[342] https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168047e16b: see brochure on collective complaints.

[343] Speech of the President of the ECSR, 22 March 2017: http://rml.coe.int/doc/09000016807010e3.

346. Also, despite having been launched by the Secretary General in October 2014, it is worth noting that the Committee of Ministers has not yet ~~to~~ adopted an official text openly supporting the "Turin Process" (see below: Part V: conclusions and suggestions).

Commentaire [PM28]: *{**PL**: It would be important to explain the reasons. Otherwise, we will be running in circles. We should liberate ourselves from the ideological position that legal symmetry between the EHRC system and the Social Charter system is needed to improve the realization of social rights. It is not needed. There is no agreement among Member States on this. Once that reality is accepted, practical solutions could be discussed and found on how to improve the enjoyment of social rights.}*

c. Possible action

347. Notable examples of the measures addressed to the Committee of Ministers in the above mentioned "Turin Action Plan" (see Appendix) include the following:

- Open a political debate on the Turin Process (action already under way – to be continued) ;

Promote the ratification of the Revised Charter and/or of its provisions as well as the 1995 Protocol on Collective Complaints (for reminder this is the top priority of the Committee of Ministers – to this end, the GR-SOC has set the objective of holding high-level policy meetings in States, see above : no action taken as yet) ;

- Reinforce the position / visibility of the Charter within the Council of Europe (the terms of reference of the European Social Cohesion Platform are a move in this direction – the work of the CDDH could also usefully contribute to this key objective – see below: part V) ;
- Allow the election of members of the ECSR by the PACE[344] – to this end, promote the ratification of the 1991 Protocol (no action taken as yet: institutional strengthening of the ECSR – see above: it will be recalled that only four states have not yet ratified this Protocol) ;
- Increase the number of members of the ECSR[345] (no action taken as yet: institutional strengthening – see above) ;
- Reinforce the position and structure of the Social Charter Department within the Council of Europe Secretariat and increase the number of lawyers working in the department (action already under way via the Budget for 2016-2017 – to be continued, as the Social Charter Department still does not have sufficient human and financial resources, particularly in the light of the planned increase in its co-operation activities and the suggestion about organising more training/awareness activities relating to the Charter) ;
- Reinforce its monitoring of ECSR decisions (to be initiated) ;
- Where necessary, use its ability to make Recommendations to States (to be initiated) ;
- Respect the adversarial principle in the complaints procedure and prevent States from questioning the ECSR's decisions and conclusions (in the sense of the aforementioned clarification of the role of each of the organs of the Charter) ;
- Encourage States to authorise national NGOs to bring complaints (to be initiated – see above: it will be recalled that to date, only Finland has availed itself of this option) ;
- Allow the immediate publication of ECSR decisions (to be initiated: see above: it will be recalled that, at present, such decisions are not published until after the Committee of Ministers has commented on them or, failing that, four months after they have been forwarded to the ~~Committee of Ministers~~latter at the latest) ;
- Promote systematic notification by states of the steps taken to implement decisions of the ECSR (to be initiated) ;

Commentaire [PM29]: *{**PT**: "respect of the adversarial principle in the complaints procedure and prevent states from questioning a Resolution of the CM at the end of a given social rights procedure".*

This point is not the result of an ideology or of legalism. It results of a need to give authority to the solution the CoE organs gave, under the due Charter process, to an identified social rights difficulty}

*{**GR** support **PT**}*

Commentaire [PM30]: *{**FR** : Ajout bienheureux du principe du contradictoire souhaité dans le cadre de la procédure de réclamation collective.}*

Commentaire [PM31]: *{**PL**: This still represents this legalistic ideology. States obviously resist movement in this direction. Insistence on this ideological position will not help in the implementation of social rights in practice.}*

[344] Pending the entry into force of the Protocol, a compromise solution might be for members to be nominated by the PACE and appointed by the Committee of Ministers (as is the case with ECRI and the CPT).
[345] Note that provision has been made in the Programme and Budget 2016-2017 for an additional six members. Alternatively, the number of ECSR members could be increased by 2 at zero cost by reducing the number of sessions from 7 to 6.

- Encourage the emergence of an integrated, common normative system of protection of fundamental rights[346] (to be initiated: see below: Part IV: relationship between the Charter and EU law);
- Promote the accession of the EU to the Charter[347] (to be initiated: see below: Part IV).

348. Below are some additional suggestions for action that could be taken by the Committee of Ministers, as set out in the "Brussels Document" (see Appendix):

- Firmly reaffirm the roles of the various Charter bodies (e.g. by means of a Declaration – to be initiated) ;
- Support the pooling of good practices between states as regards national implementation of the Charter (action already under way – to be continued: the terms of reference of the aforementioned European Social Cohesion Platform include this objective, which is also mentioned in connection with the results to be achieved through the work of the CDDH – see below: Part V).

349. One final course of action is also worth recalling: further simplification of the Charter monitoring procedures, in particular for States which have accepted the collective complaints procedure (see above: Part II, B, i) – 2nd course of action). It will be recalled that the GR-SOC has already approved this objective, although it has yet to be translated into practical measures. It is worth re-emphasising the importance of this measure, because it is about making the Charter system "more attractive" for States and so paving the way for the gradual acceptance of additional provisions of the Charter and the collective complaints procedure by a greater number of States. In this regard, the ETUC stresses that the further simplification of procedures should, above all, aim at improving the effectiveness of the Charter system.

Commentaire [PM32]: *{**PL**: No changes in the state reporting system are currently under consideration, in particular any simplification of reports. The Governmental Committee discussed that issue at its May and September 2016 sessions. Representatives from states parties to the collective complaints procedure were of the view that it would be premature to simplify the state reporting procedure for the collective complaints countries at this stage. It is important to gather more experience first.}*

Commentaire [PM33]: *{**PL**: request to delete the paragraph}*

B. Parliamentary Assembly

a. Main activities relating to social rights/the Charter

350. The Parliamentary Assembly has always considered itself a safeguard of social rights, and has been promoting ratification and implementation of the European Social Charter in close partnership with the ECSR for several years. Since 2013, the ECSR formally addresses its yearly conclusions to the Assembly (by letter of the ECSR President to the Assembly President). These are then shared with Committees in charge of the follow-up of the European Social Charter, in particular the Committee on Social Affairs, Health and Sustainable Development (since 2012, Committee on Social Affairs here-after).

351. Also since 2013, this Committee, and its Sub-Committee on the European Social Charter, have organised specific capacity-building seminars, referring to selected articles for which situations of non-conformity were noted by the ECSR in its yearly conclusions, to address specific social rights challenges with parliamentarians from different member States. After two first seminars in Paris (in 2013 and 2014 respectively) a third, regional seminar for the promotion of social rights was organised in May 2015 in Chisinau (Moldova) under the

[346] Measure mentioned in the "Turin Action Plan", to be implemented by the following: Committee of Ministers, PACE, ECSR, European Council, European Commission, European Parliament, EESC, FRA and CJEU.
[347] Measure mentioned in the "Turin Action Plan", to be implemented by the Committee of Ministers and the PACE. "Work towards the proposed accession of the EU to the Charter": European Council, European Commission, European Parliament, EESC and FRA.

Council of Europe-EU Eastern Partnership Programme[348]. The fourth parliamentary seminar was organised on 28 October 2016, again in Paris, to focus on two main themes: (1) children at work and the working or employment conditions of minors and (2) protecting children from all forms of corporal punishment. To be checked

352. Social rights issues have been addressed by the Parliamentary Assembly in a number of reports in recent years, to underline legislative and political action required by member states to comply with the highest social rights standards as enshrined in the European Social Charter treaty system, to advise states on the promotion of decent work and youth employment and to address certain problems such as the increase in child poverty and the impact of austerity measures.

353. The following are some of the most important texts in this respect (non-exhaustive list according by descending chronological order):

- Resolution 2152 (2017) on "“New generation” trade agreements and their implications for social rights, public health and sustainable development" ;
- Resolution 2146 (2017) on "Reinforcing social dialogue as an instrument for stability and decreasing social and economic inequalities" ;
- Resolution 2139 (2016) on “Ensuring access to health care for all children in Europe” ;
- Resolution 2130 (2016) on "Lessons from the "Panama Papers" to ensure fiscal and social justice" ;
- Resolution 2068 (2015) on “Towards a new European Social Model” ;
- Resolution 2049 (2015) and Recommendation 2068 (2015) on “Social services in Europe: legislation and practice of the removal of children from their families in member states” ;
- Resolution 2041 (2015) and Recommendation 2065 (2015) on “European institutions and human rights in Europe”[349] ;
- Resolution 2039 (2015) and Recommendation 2064 (2015) on “Equality and inclusion for people with disabilities” ;
- Resolution 2033 (2015) on the “Protection of the right to bargain collectively, including the right to strike” ;
- Resolution 2032 (2015) on “Equality and the crisis” ;
- Resolution 2024 (2014) and Recommendation 2058 (2014) on “Social exclusion: a danger for Europe’s democracies” ;
- Resolution 2007 (2014) on “Challenges for the Council of Europe Development Bank” ;
- Resolution 1995 (2014) and Recommendation 2044 (2014) on “Ending child poverty in Europe” ;
- Resolution 1993 (2014) on “Decent work for all” ;
- Resolution 1905 (2012) on “Restoring social justice through a tax on financial transactions” ;
- Resolution 1885 (2012) and Recommendation 2002 (2012) on “The young generation sacrificed: social, economic and political implications of the financial crisis” ;

[348] The respective issues addressed by these seminars were in 2013: Improving employment conditions of young workers (under the age of 18); in 2014: Ensuring safe and healthy working conditions; and in 2015: Fostering social rights in the Eastern Partnership area: focus on the European Social Charter.

[349] It should be noted that reference is made to this Recommendation in the aforementioned CDDH feasibility study on the impact of the economic crisis and austerity measures on human rights in Europe: in this Recommendation, the Assembly calls on the Committee of Ministers “to undertake, in co-operation with the Council of Europe’s Commissioner for Human Rights, an expert study to prepare a catalogue of “criteria for the imposition of austerity measures”, in compliance with requirements of the European Social Charter (revised)”, as determined by the CEDS: CDDH(2015)R84, Addendum IV, §43.

- Resolution 1884 (2012) on "Austerity measures – a danger for democracy and social rights" ;
- Resolution 1882 (2012) and Recommendation 2000 (2012) on "Decent pensions for all" ;
- Resolution 1881 (2012) on "Promoting an appropriate policy on tax havens" ;
- Resolution 1824 (2011) and Recommendation 1976 (2011) cited above on "The role of parliaments in the consolidation and development of social rights in Europe" ;
- Resolution 1793 (2011) on "Promoting active ageing – capitalising on older people's working potential" ;
- Resolution 1792 (2011) and Recommendation 1958 (2011) cited above on "Monitoring of commitments concerning social rights".

354. Reports currently produced within the Committee on Social Affairs, Health and Sustainable Development include among others:

- The need for fiscal and social justice, and public trust in our democratic, financial and tax system
- Guarantee the rights of elderly persons and their comprehensive care : a European social commitment ;
- The need for a citizenship income ;
- Drafting social indicators and an annual report on social rights/The "Turin process" for the European Social Charter ;
- The employment rights of female workers from Eastern Europe
- The employment rights of domestic workers in Europe, especially of women ;
- Fighting income inequality as a means of fostering social cohesion and economic development (adopted at Committee level on 24/03/17).

355. From the very start of the "Turin process" in 2014, the Parliamentary Assembly had declared its willingness to support this initiative.[350] It puts into practice this co-operation by regularly participating in related events (such as the Brussels conference organised by the Belgian Chairmanship in February 2015 and the March 2016 Turin Conference). In addition, a specific Assembly report is currently being drafted – by Silvia Bonet (Andorra), appointed Rapporteur on the "Turin Process" which should lead to a plenary debate in 2017. This report will certainly encourage enhanced co-operation between the European Union and the Council of Europe in the field of social rights, leading to improved implementation of those rights.

b. Findings

356. In 2012, the Parliamentary Assembly was one of the first European bodies pointing to the fact that some of the austerity programmes applied as a response to the crisis significantly undermined and threatened social rights standards across Europe. This was later recognised by various other institutions, including the European Commission. With regard to this issue and others, the Assembly therefore regularly considers itself as a "guardian" of public policies, assessing their impact on social rights standards. Matters of particular concern currently addressed through activities by the Committee on Social Affairs include rising income inequalities, the social inclusion of various categories of population and the sustainability, transparency and justice of fiscal systems in European democratic states.

[350] In this connection, see in the Appendix, the Declaration of the Sub-Committee on the European Social Charter, on behalf of the PACE at the Turin I Conference : AS/Soc/ESC(2014)03rev, 17 October 2014.

Commentaire [PM34]: *{**PT**: "Reports currently produced within the Committee on Social Affairs, Health and Sustainable development include Among others:*
-The need for fiscal and social justice, and public trust in our democratic, financial and tax system.

Je maintiendrais cette affirmation. Elle forme une bonne entrée en matière dans cette liste. D'autre part, dans l'Europe du CoE nous nous réclamons tous de la Démocratie, des DH et de la préeminence du Droit. Mais s'il en est ainsi, il n'est pas de trop de le rappeller. Dans ce cas spécifique, "quod abundat non nocet". Enfin, il revient à chaque Etat de les mettre en oeuvre. Sa marge d'appréciation n'étant pas compromise par cette affirmation en tête de liste.}

*{**GR** support **PT**}*

Commentaire [PM35]: *{**PT** : Et dans cette même liste, je garderais:*
-"The employment rights of female workers". En supprimant "from Eastern Europe", car l'égalité des genres au travail n'est acquise nulle part.}

*{**GR** support **PT**}*

357. In its different Resolutions and Recommendations relating to the European Social Charter, the Assembly has always called for further ratification and implementation of the European Social Charter and its Protocols, including the Additional Protocol of 1995 providing for a system of collective complaints, to ensure that the Charter is a living instrument, effectively monitored and implemented in all member states. Of particular importance for the Parliamentary Assembly is the full ratification of the Amending Protocol of 1991, the so-called "Turin Protocol" through which the election of ECSR members would be assigned to the Parliamentary Assembly. The outstanding ratification by Denmark, Germany, Luxembourg and the United Kingdom of this Additional Protocol (or the revised Charter) stands in the way of this election procedure which is already practiced long since for Judges of the European Court of Human Rights and which would certainly increase the democratic legitimacy of the ECSR, and possibly the acceptance of the Charter monitoring systems by member states. It further needs to be underlined that all other provisions contained in the "Turin Protocol" have entered into force by decision of the Committee of Ministers. Rather than waiting for the last four ratifications, the Committee of Ministers could also decide on this last provision as already recommended by the Assembly in Recommendation 1976 (2011) on "The role of parliaments in the consolidation and development of social rights in Europe".

c. Possible action[351]

358. According to proposals made by the plenary Committee and the Sub-Committee on the European Social Charter, the following further action should be taken by the Assembly in 2016 and 2017:

- Further promoting the ratification of the revised Charter and all of its provisions and Protocols, in particular the Turin Protocol, introducing the election of the members of the ECSR by the Assembly and the Additional Protocol providing for a system of collective complaints;
- Reinforcing the Assembly's own monitoring procedures with regard to the Charter;
- Continuing to organise inter-parliamentary seminars and debates on the Charter, also in the framework of its project "parliaments and social rights" (CEAD 3525, for which voluntary contributions from member states and parliaments have already been received in 2016 and are sought in 2017);
- Communicating issues related to the Charter and its monitoring mechanisms to its partners (European Commission and Parliament, international organisations, INGOs).[352]

359. Further action could also be stimulated within national parliaments, such as:

- Organising political debates on the European Social Charter;
- Stepping up measures required to ratify the revised Charter and its Protocols;
- Reinforcing the position of the Charter in respective national legal frameworks;

[351] Furthermore, the Turin Action Plan sets out the following additional measures to be carried out, including by the PACE: open a political debate on the "Turin Process" (already initiated: aforementioned report currently being drafted by Ms Bonet), encourage the emergence of an integrated, common normative system of protection of fundamental rights (included in the aforementioned report concerning relations between the Charter and the EU) and promoting its accession to the Charter (already the case).

[352] In this connection, the Turin Action Plan addresses the following additional measure, in particular to the PACE: inform social partners and NGOs about the collective complaints process.

- Promoting action implementing the Charter in response to ECSR conclusions;
- Better informing national stakeholders regarding the collective complaint procedure.

C. Congress of Local and Regional Authorities

a. Main activities relating to social rights/the Charter

360. The Congress of Local and Regional Authorities is a pan-European political assembly of 648 members representing over 200.000 authorities of the 47 States members. Its role is to promote territorial democracy, improve local and regional governance and strengthen authorities' autonomy. The promotion of human rights and the rule of law are in this respect indispensable for achieving regional and local democracy – given the strong interconnection of those three pillars.

361. Throughout the activities of the Congress, local and regional authorities have repeatedly brought forward human rights issues on their political agenda. As authorities closest to the citizens and important service providers, they have indeed a prominent role in protecting, fulfilling and promoting human rights – implementing in practice many of the standards of international treaties, such as the Convention or the European Social Charter. In that regard, social rights play a predominant role in the day-to-day decision-making of local and regional authorities. Important examples include the rights to housing, of protection of health, of social and medical assistance and of social welfare services. Additionally, the rights of people with disabilities, the right of the family, children and teenagers to social, legal and economic protection, the rights of elderly persons as well as citizens' right to protection against poverty and social exclusion are of particular concern for local and regional authorities. .

362. The Congress has been bolstering, in particular, the important role of local and regional authorities in the protection of children[353] and in the promotion of the rights of people with disabilities[354]. On this issue, its clear message to strengthen the co-ordination between different levels of governments and to advance the implementation of national action Plans and Strategies for the inclusion of persons with disabilities was welcomed by the ECSR[355]. In addition to that, the Congress has taken action in regard to the rights to protection of health as well as of social and medical assistance[356]. With regard to the right to benefit from social welfare services in the context of the economic crisis, the ECSR again commended the Congress's clear conviction set forth in its Recommendation 340(2013)[357] which encourages member States "*to exclude priority social services such as health, education and social protection for vulnerable groups (...) from local and regional budget expenditure limits, and (...) ensure that vulnerable groups are well protected and that their opportunities in life are not diminished by budgetary measures*". In addition, the Congress has been working on the

[353] See especially its Recommendations 272(2009) on "*Preventing Violence against children*", 332(2012) on "*Legislation and regional action to combat sexual exploitation and abuse of children*" as well as their contribution to the ONE on FIVE Campaign, in the form of a Strategic Action Plan.
[354] See especially its Resolution 153(2003) "*Employment and vulnerable groups*" and its Recommendations 208(2007) on "*Access to public spaces and amenities for people with disabilities*" and 361(2014) on "*Promoting equal opportunities for people with disabilities and their participation at local and regional levels"*.
[355] ECSR, Activity Report 2015.
[356] See especially its Recommendations 223(2007) on "*Balanced distribution of health care in rural regions*" and 212(2007) on "*E-health and democracy in the regions*".
[357] ECSR, Activity Report 2013.

issue of migration, which is of increasing relevance to local authorities – having these last years adopted 20 Resolutions and Recommendations on the issue[358].

363. Since 2008 the Congress has furthermore mainstreamed its specific action on human rights at local and regional level, with the aim of raising awareness, developing indicators and promoting the exchange of best practices among authorities. Accordingly, the Congress adopted one Recommendation in 2010[359], two Resolutions in 2011[360] and 2014[361] and organised a Human Rights Forum in Graz (Austria) in May 2015. On the basis of those activities, the Congress developed a human rights Strategy, including several elements to be implemented in the framework of its Human Rights Action Plan 2016-2017.

b. Findings

364. The work of the Congress shows how local and regional authorities have a fundamental role to play in translating the international obligations subscribed by States into practice – notably in the field of social rights[362].

365. Drawing on its pan-European dimension, the Congress serves as a forum for an exchange of ideas and proposals, for sharing experiences and good practices, recommendable after to other authorities. Accordingly, the Congress raises awareness on human rights among local and regional authorities. At the same time, the Congress's work focuses on challenges and deals therefore regularly with topics related to their competences and their role in protecting the social rights of citizens – including most notably the protection of children, rights of people with disabilities, social welfare services, the right to health and the rights of migrants. While many of those issues will continue to be at the heart of the Congress's activities, the Congress responded to the need for concrete guidance on how to implement human rights at the local level, by launching the aforementioned Human Rights Action Plan 2016-2017.

c. Possible action[363]

366. This Action Plan finds its origins in the Graz Declaration of May 2015, which underlines the four strategic stages of action that the Congress considers indispensable for effectively promoting human rights at local and regional level: 1) identifying human rights related issues ; 2) exchanging good/best practices ; 3) strengthening co-operation between all levels of governments and : 4) regularly assessing the outcomes of implemented actions.

367. In that light, it is foreseen that the activities of the Congress will cover activities in line with each one of these four pillars. Concerning the above mentioned Human Rights Action

[358] See especially, the Resolution 218(2006) on "*Effective access to social rights for immigrants: the role of local and regional authorities*" and the recent/March 2017 report of the Congress entitled "*From reception to integration: the role of local and regional authorities facing migration".*

[359] Congress Recommendation 280 (2010) Revised, The role of local and regional authorities in the implementation of human rights, 17 March 2010, 18th Session CG (18)6

[360] Resolution 334(2011) on "Developing indicators to raise awareness of human rights at local and regional level", 20 October 2011, 21st session CG (21)10.

[361] Resolution 365(2014) on "Best practices of implementation of human rights at local and regional level in member states of the Council of Europe and other countries", 26th session CG (26)5.

[362] This is what the UN General Assembly refers to as the "principle of shared responsibility", Report of the Advisory Committee on the Role of Local Authorities in Promoting and Protecting Human Rights (A/HRC/27/59).

[363] The "Turin Action Plan" presents the following measures of action in particular to the Congress of Local and Regional Authorities: promoting the ratification of the Revised Charter and/or of all its provisions; promoting the ratification of the Protocol on collective complaints.

Plan 2016-2017, it includes the following activities: a Congress Expert Group on human rights at the local level ; a Congress human rights Manual for local authorities and ; an international Colloquy on the challenges in the implementation of human rights at local level.

368. The Congress Expert Group is currently working on the human rights Manual, which is a straight-forward handbook for local and regional authorities. It aims at raising awareness on human rights aspects in their daily work, including the responsibilities and opportunities that a human rights tailored approach to policy making entails, by putting the spotlight on the best practices conducted by other authorities and giving incentives to come up with locally adapted responses. The Manual will therefore set the basis for exchanging initiatives among local authorities and guide them in the implementation of a human rights approach to local policy making, by giving precise recommendations on the planning, co-ordination, participation of civil society and communication as well as monitoring of the action taken. The first edition will concern the "non-discrimination" and focus on the human rights of vulnerable groups (refugees and asylum seekers; Roma; LGTBIQ; religious communities) in local communities and, in particular, their access to social services and rights. It is foreseen that the human rights Manual will be published by June 2017 and serve as the basis for the aforementioned international Colloquy, to be organised in September 2017 in Middelburg (Netherlands).

D. The Commissioner for Human Rights

a. Main activities relating to social rights/the Charter

369. For reminder, the activities of the Commissioner for Human Rights ("the Commissioner") focus on three major, closely related areas: 1) country visits and dialogue with national authorities and civil society ; 2) thematic studies and advice work and ; 3) awareness-raising activities. In the context of his country work, the Commissioner regularly carries out field visits and meets with individuals experiencing difficulties in accessing their social rights, for instance in Roma settlements, institutions for persons with disabilities or refugee camps.

370. Since Commissioner Muižnieks took up his functions in 2012, he has constantly referred to social rights as crucial elements of human rights protection for all citizens, promoting their indivisibility and interdependence. Therefore, he often stresses that full respect of social rights is a prerequisite to ensure the human dignity. He therefore regularly calls upon States to honour their international commitments in this sphere.

371. His approach has generally been to cover access to social rights of specific groups among others: children, women, elderly people, LGBTI persons, persons with disabilities, migrants, asylum seekers and refugees, Roma and other ethnic or religious minority groups, stateless persons, victims of trafficking in human beings and Internally Displaced Persons (IDPs).

372. The Commissioner frequently refers to the Revised Charter as one of the main human rights standards to follow and implement ; furthermore, he uses the conclusions and decisions of the ECSR in his country and thematic work. The Commissioner also regularly refers to other international and European binding instruments as interpreted by their bodies, such as for example the aforementioned ICESCR. At last, he also promotes soft law tools dealing

with social rights – including a wide range of Recommendations of the Committee of Ministers.

373. The Commissioner expressed his full support for the "Turin Process" in its Comment entitled "*Preserving Europe's social model*" (2014). He pointed out how topical the Charter is for our daily lives and that by laying down the foundations of our social model, it is Europe's crowning achievement and the aspirations of millions of Europeans even though the situation on the ground is still far from satisfactory. In this context, the Commissioner asked for three steps to be taken : 1) all States should ratify all of the provisions of the Charter in order to create a homogeneous European space where citizens enjoy comparable social protection : 2) the collective complaint procedure, a powerful bottom-up tool to have socio-economic rights enforced at national level, should be ratified by more States ; 3) national jurisdictions and national human rights structures should increase their use of the conclusions and decisions of the ECSR. Indeed, since decisions of domestic courts inspired by the ECSR's conclusions and decisions can have a huge impact for people's everyday lives, the Commissioner encourages their transnational applicability, which can be enforced by domestic courts – without having to wait for a decision or conclusions concerning their own country.

374. An essential keyword when it comes to protection of social rights is the cross-cutting principle of non-discrimination. Therefore, t the Commissioner constantly recommends that all member States ratify the Protocol No. 12. Social rights constitute also a field where the obligations of non-state players are particularly crucial. Therefore, in his Comment entitled "*Business enterprises begin to recognise their human rights responsibilities*" (2016), the Commissioner stressed that they have an independent responsibility from the State and that workers being directly affected by their activities, States must require from them to respect the rights of their employees.

375. The Commissioner considers that full protection of social rights is a prerequisite of social cohesion and necessary to avoid the social exclusion, segregation and marginalisation of vulnerable groups. Therefore, evidence suggests that economic development is more sustainable and societies are more resilient when social rights are protected. When on the contrary they are not guaranteed, this can lead disillusioned people to increasingly support populist movements and parties, a factor that poses a serious threat to the stability of our societies as shown in recent years (see above, same findings in the context of the "Turin Process).

376. As other institutions, the Commissioner addressed the negative impact of the economic crisis and the austerity measures on human rights. In an Issue Paper on this topic (2013), the Commissioner stressed that the whole spectrum of human rights had been affected, including the rights to decent work, an adequate standard of living and social security, the right to participation, and access to justice, and that vulnerable groups had been hit disproportionately hard – compounding pre-existing patterns of discrimination. In this Issue Paper, the Commissioner recommended ensuring a minimum level of social protection for all, including by maintaining social security guarantees for basic income and health care to ensure universal access to essential goods and services during the crisis. According to him, States should resist any pressure to undermine such basic guarantees by ring-fencing public budgets to protect at least the minimum core levels of economic and social rights at all times. In two Comments

(2014), the Commissioner addressed the need to protect in particular women and youth – in times of crisis and austerity measures[364].

377. The following paragraphs contain a non-exhaustive review of concerns and recommendations made by the Commissioner in the field of social rights[365].

378. The Commissioner considers access to basic social rights as a prerequisite for the human dignity of all persons, regardless of their legal status. As recognised in many international legal instruments, everyone has indeed the right to an adequate standard of living, including adequate food, clothing and shelter, to urgent medical assistance and also education for children. Therefore, the Commissioner considers that all member States should stand by their obligations to protect the basic social rights of everyone. They should refrain from placing barriers in their access and take all necessary measures to facilitate it.

379. Noting that in Europe, even in the EU, poverty is widespread, the Commissioner has asked member States to take resolute measures to combat this phenomenon with a special focus on children and on elderly people. He has also asked States to refrain from banning begging and sleeping rough in the street and from taking any other measure – such as undue or discriminatory placement of children – that would constitute a discrimination on the grounds of socio-economic status and which would negatively affect the rights of most of the vulnerable groups in our societies.

380. In his Comment (2015) entitled "*Without papers but not without rights: the basic social rights of irregular migrants*", the Commissioner called upon States to refrain from criminalising migration and to consider regularisation programmes and increasing possibilities for legal channels to immigrate for work so as to avoid situations whereby migrants are in an irregular situation. Moreover, noting that States may be tempted to link access to some basic social rights to the residence status of the migrant in the hope that it would deter would-be migrants from coming, the Commissioner called for the removal of restrictions on access to social rights resting on such immigration policies.

381. Lastly, access to basic social rights has also been considered by the Commissioner to require urgent measures in many countries for several groups living in squalid conditions often at the outskirts of agglomerations such as some Roma and IDPs populations.

382. Regarding housing, in several of his country reports, the Commissioner has examined its access for several groups and in particular Roma and Travellers. In February 2016, the Commissioner published letters he had sent to the several Governments concerning forced evictions of Roma, stressing that these without due process and provision of adequate alternative housing continue unabated across Europe, in violation of member States' obligations. The Commissioner considers that this situation increases the vulnerability of Roma families, prevents their social inclusion and impedes any prospect of regular schooling for their children. States must thus cease such measures and investing more in finding lasting housing solutions for Roma families. As concerns Travellers, the Commissioner noted that in all the countries, there was a dire lack of sites for temporary and long-term stay. Therefore resolute steps should be taken to increase the number and quality of sites available, including

[364] Reminder, the Comment above mentioned by the Commissioner "*National human rights structures can help mitigate the effects of austerity measures*" (May 2012).
[365] All the country visit reports, thematic work, Human Rights comments and letters mentioned in this report are available on the Commissioner's web site : https://www.coe.int/en/web/commissioner/home

by strongly encouraging, and if necessary, compelling local authorities to allow their temporary stay.

383. The Commissioner constantly stresses that there is a universal right to education for all children irrespective of their legal status. In several country reports he has asked authorities to take measures to eliminate barriers preventing access to school. He has frequently addressed the problem of Roma segregation in school in all its forms. Children with disabilities are also segregated in many countries, either because they attend special schools or classes or no school at all. The Commissioner also regularly recalls in this respect the need to go beyond desegregation and promote inclusive education. Therefore, the Commissioner issued a Comment (May 2015) on the need to promote inclusive education as a means of strengthening social cohesion in diverse society – stressing that it benefits all learners, the school institutions and the community at large.

384. Other issues related to the right to education addressed by the Commissioner include the problem of high drop-out rates among children belonging to minorities; discriminatory school enrolment refusals, particularly in the case of children belonging to Traveller communities; and bullying and violence, in particular against LGBTI children. In some schools, in particular for ethnic minority children or juvenile delinquents, the Commissioner noted also that the quality of education was problematic and hinged on these children's right to equal access to education. Lastly, there is an urgent need in some states for education free from stereotypes and prejudice against minorities and one that does not impose religious teaching.

385. In his Comment entitled "*Maintain universal access to health care*" (2014), the Commissioner stated that everyone's access to health care without discrimination is a core element of this right. More recently, the Commissioner expressed his concern in a Comment about regressive trends in Europe impinging on women's sexual and reproductive health and rights. There have been many other problematic situations where the Commissioner has asked States to honour their obligation to protect the right to health, including mental health, especially for inmates.. Furthermore, the Commissioner has made recommendations on how to improve access to the right to health of intersex people (Issue Paper of 2015).

386. Concerning access to social protection, including social security, the Commissioner has encouraged the creation and enhancement by states of social safety nets for the most socially vulnerable groups of the population, such as children particularly in times of economic crisis. Social safety nets should be part of national social protection systems and readily and systematically available in the form of cash transfers, transfers in kind, income support or fee waivers for essential services such as health, education or heating.

387. Moreover, in times of migration crisis, the Commissioner pays increased attention to reception conditions of migrants and refugees. In addition, migrant integration is an essential tool for protection of their social rights as shown in the Issue Paper "*Time for Europe to get migrant integration right*" (2016). This provides guidance to Governments and Parliaments to implement successful integration policies. In particular, it sets forth a number of concrete recommendations to ease migrants' integration, with a focus on family reunification, permit to stay, language and integration courses, access to the labour market and quality education, effective protection from discrimination and political participation. At last, stateless persons are particularly in need of urgent measures to guarantee their access to social protection. This is why the Commissioner focuses in several of his country reports on the need to provide birth certificates and IDs to all persons.

388. There is also a need to recognise legal capacity for persons with intellectual and psycho-social disabilities. Improving their access to social rights requires replacing guardianship regimes by supported decision-making and providing social services in the community. Finally, States should fight against the isolation of persons with disabilities, elderly people and children without parental care ("desinstutionalisation"). In this context, the Commissioner recommends a better use of public funds: instead of opening new institutions or refurbishing old ones, authorities should create community services meeting the needs of the aforementioned persons and their families.

389. The Commissioner has examined the right to work in several contexts in recent years – including in his above-mentioned Issue Paper on "*Safeguarding human rights in times of economic crisis*" (2013). In his Comment published in November 2015, the Commissioner stressed that everyone should be protected against forced labour and trafficking in human beings. The Commissioner has recommended the swift ratification of the Protocol of 2014 to the 1930 ILO Forced Labour Convention (providing their victims with similar rights as the ones of human trafficking) and also, when speaking in defence of irregular migrants, of the 2011 ILO Convention 189 on Decent Work for Domestic Workers. Finally, in a Comment published in 2013, the Commissioner stressed that child labour constituted a persisting challenge which might be growing in the context of the economic crisis. Moreover, he noted that many of the working children have extremely hazardous occupations in agriculture, construction, small factories or on the street and end up dropping out of school. The Commissioner has therefore recommended to States to pay specific attention to the problem of child labour.

b. Findings

390. Thanks to his remit, the Commissioner for Human Rights is probably the Council of Europe institution that best embodies the indivisibility and interdependence of human rights, principles to which the Commissioner regularly draws attention in his work, moreover.

391. It is clear from the foregoing that the Commissioner takes particular care, in all his activities, to ensure respect for social rights (numerous observations on this subject in his country reports, various Comments and Issue Papers focusing *inter alia* on the right to education, health care and employment), paying a particular attention to access to those rights for specific groups which are considered vulnerable.

392. In recent years, the Commissioner has also taken a close interest in the economic crisis and austerity measures (cross-cutting and priority theme: aforementioned Issue Paper in 2013 and two Comments in 2014) as well as in the situation of migrants (in particular his aforementioned Comment in August 2015 and his aforementioned Issue Paper in 2016).

393. Accordingly, in his activities, the Commissioner often calls on States to honour their obligations with regard to social rights, referring to the Revised Charter and drawing on the conclusions and decisions of the ECSR. The Commissioner has also given his unconditional support to the "Turin Process", in particular by calling on States to accept all the provisions of the Charter and the collective complaints procedure and by encouraging national courts and human rights institutions to make greater use of the decisions and conclusions of the ECSR (aforementioned Comment in 2014).

c. Possible action

394. It is worth noting that action is already being taken in respect of all the measures addressed to the Commissioner in the "Turin Action Plan" (see Appendix):

- promote ratification of the Revised Charter and/or all provisions as well as the Protocol on Collective Complaints (action to this effect is already being taken through the Commissioner's country reports and a number of his assessments and issue papers);
- inform social partners and NGOs about the collective complaints procedure (action already under way through the Commissioner's awareness-raising activities and country visits).

395. The Commissioner can further be encouraged to:

- press ahead with his numerous activities in the field of social rights;
- continue actively supporting the "Turin Process";
- submit, where appropriate, written observations in connection with collective complaints (see above: Rule 32A of the ECSR's Rules).

E. The Conference of INGOs

a. Main activities relating to social rights/the Charter

396. The Council of Europe's work benefits, to a large extent, from contact and co-operation with NGOs, as one of the driving forces in society. In this connection, it maintains relations with INGOs enjoying participatory status which make up the "Conference of INGOs", one of the pillars of the Council of Europe. The INGO Conference meets twice a year in Strasbourg and currently comprises 329 INGOs. They are playing an active part in the decision-making process within the Council of Europe and in the implementation of its programmes.

397. The European Social Charter is crucial for the work of these INGOs as they are concerned, in various ways, by its articles on schooling, child labour, women's employment, equal pay, migrant workers, people with disabilities, elderly persons, poverty and housing.

398. In the early 1990s, the debate on the Charter got under way (see above: the "relaunch" of the Charter) and the INGOs followed with interest the stages leading up to the adoption of the Protocol giving them access to the collective complaints procedure (see above: for reminder, 71 INGOs as at 1 January 2017). Over the same period, the INGOs took an active part in the discussions on the revision of the Charter and its extension to include all economic, social and cultural rights. They thus helped to draft the new Articles 30 and 31 (protection against poverty and social exclusion and the right to housing) and to update Article 15 (rights of persons with disabilities – to include a 3rd paragraph : (social integration and participation in the life of the community, excluding education and employment).

399. In all its work, the INGO Conference constantly underscores the importance of the indivisibility of human rights. It accordingly conducts activities which show the interrelated nature of economic, social, cultural, civil and political rights. Since 2011, for example, the INGO Conference participates every year in the International Day for the Eradication of Poverty – by organising a one-day work meeting between INGOs operating on the ground and

the individuals concerned. The aim is to raise awareness of their mutual effective initiatives in order to address the needs of the socially excluded, the jobless, the homeless, children growing up in poverty and young people with no occupational training.

400. Since the early 2000s, various INGOs have been busy monitoring the Charter, enlisting the support of their national associations in order to collect information from those working on the ground so that it can be passed on to the ECSR. It quickly became clear, however, that these efforts were being hampered by the language barrier, as the country reports were in English or French and were not available in the language(s) of the country concerned. It was therefore decided to contribute to the reporting system through more targeted input, focusing on one of the articles under review during the year in question. In 2013-2014, the focus was on Article 30, while in 2016, attention shifted to Article 15[366]. Finally, once a year, when examining the ECSR's conclusions, the Governmental Committee invites the INGO Conference to a hearing, thus providing an opportunity to discuss on one or other of the Charter articles under review.

401. Also, every year, a number of INGOs devote a considerable amount of time to preparing collective complaints[367]. The task then for the INGO – bringing the complaint – is to mobilise the local associations concerned, so as to be able to show that a particular group of people is being denied access to one or more of the right(s) enshrined in the Charter. This is a very rigorous exercise, as the evidence gathered must be sufficient to support the allegations that there has been one or more violations of the Charter.

402. The complaint mechanism is, in the opinion of the INGO Conference, an example worth promoting, as it allows to alert the ECSR to specific instances where a State fails to enforce one or more Charter right(s) to the detriment of a group of the population. Therefore, this mechanism enables an adversarial debate between the INGO and the State concerned, the ultimate aim being to ensure that the State fulfils its obligations more effectively. Complaints can thus help highlight the difficulties encountered by certain population groups and/or conflicting interpretations of certain rights, while the ECSR's decisions allow it to clarify what is meant by a particular right or rights protected under the Charter[368].

403. Over the years, the enjoyment of social rights has been improved through various complaints lodged by members of the INGO Conference. Examples include the following: the adoption of the aforementioned "DALO" Act on the enforceable right to housing in France (complaint 33/2006 – it will be recalled, however, that the ECSR found, in December 2015, that the situation was not yet in conformity) ; the adoption of the 3rd autism plan in France (complaint 13/2002 – although again, implementation remains very patchy) as well as the positive examples cited above, namely complaints 51/2008 (improvements in France to Travellers' right to housing), 48/2008 (guaranteed minimum income in Bulgaria for persons in need) and 69/2011 (reception arrangements in Belgium for illegal foreign minors).

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[366] For example, in 2016, the INGO produced a publication entitled "*Article 15 of the European Social Charter in the light of the UN Convention on the Rights of Persons with Disabilities*". It was submitted to the Social Charter Department for the attention of the ECSR. It was then passed on to the Governmental Committee which in 2017 will examine the ECSR's conclusions on the implementation of Article 15.

[367] It will be recalled that approximately 60% of all complaints lodged to date were lodged by INGOs enjoying participatory status with the Council of Europe and included in the Governmental Committee's list of INGOs entitled to submit collective complaints.

[368] For example, in the context of complaint 33/2006 (*ATD Quart Monde v. France*), the ECSR was able to point out, under Article 31 of the Charter, that to be considered adequate, housing must include access to water and electricity.

404. In this regard, the INGO Conference wishes to highlight that the Committee of Ministers' conclusions following those of the ECSR – once published – are a useful reference for local associations in their dealings with the authorities, at national, regional or local levels.

405. As regards the "Turin Process", the INGO Conference has been closely involved in this ever since it was launched in 2014. Alongside the "Turin I" Conference, which was addressed by its President, the INGO Conference held a meeting on 17 October 2014, International Day for the Eradication of Poverty. A message to Governments adopted at the end of the meeting was relayed at a plenary session of the "Turin I" Conference[369]. Later, in December 2014, the INGO Conference played an active part in the follow-up seminar held by the Social Charter Department. In February 2015, the Conference was represented by its President at the Brussels Conference and a number of representatives from INGOs attended. The President and the INGO Conference's representative on the CDDH also contributed to the drafting of the "Brussels Document". Lastly, in March 2016, the President of the INGO Conference attended to the two "Turin II" events (see above).

406. As part of the follow-up to the "Turin Process", as already mentioned, the INGO Conference, with the Social Platform and the support of the Social Charter Department, ran training sessions in Brussels on the collective complaints procedure[370] in September 2015 and February 2016. They met with considerable interest from members of NGOs represented in Strasbourg and Brussels. It was about raising awareness of Council of Europe INGOs and INGOs working with the European Union to the contribution that the collective complaints mechanism can potentially make to improve the enforcement of social rights in Europe. These trainings highlighted the ongoing demand for information of this kind.

407. In January 2016, furthermore, the INGO Conference issued a Call to Action to support the "Turin Process" (see Appendix). It proposes that INGOs and their national members engage in a series of activities, among others, to encourage wider ratification of the Revised Charter, to raise NGOs' awareness of the complaints mechanism and to make the case for ratification of the 1995 Protocol, to increase the number of INGOs on the list of organisations authorised to lodge complaints, to encourage NGOs to participate in the reporting system, to further develop co-operation between NGOs and work with Governments in the interests of better social rights protection in Europe.

408. Following this Call, as already stated (see above: Part I: current status of the follow-up to the Turin Process) in June 2016 the INGO Conference set up a co-ordinating Committee to encourage INGO initiatives under the Turin Process, by developing synergies and co-operation between the various players. This Committee aims at encouraging not only INGOS in the Conference but also national NGOs to provide practical expertise in reviewing social issues relating to the Charter provisions which require improvements or ratification in member States. The Committee also wishes to help assess the barriers to ratifying certain provisions of the Charter. The co-ordinating Committee is in the process of approving its working method and its strategic choices for its work in the short term and which will be updated at regular intervals.

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[369] See http://www.coe.int/en/web/ingo/publications (2014).

[370] https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680592fde: Summary entitled: "How to make the best use of the collective complaints procedure under the European Social Charter".

409. Among the various texts adopted by the INGO Conference in the field of social rights, the following deserve a special mention:[371]

- Declaration adopted in January 2017 titled "*The European Social Charter is central to the dialogue between the Council of Europe and the European Union*";
- Recommendation CONF/PLE(2016)REC2 on health care and socio-medical conditions and respect of human rights of older persons in Europe;
- Recommendation CONF/PLE(2015)REC1 "The violation of economic, social and cultural rights by austerity measures: a serious threat to democracy" (see above – Part I, section 3);[372]
- Recommendation to the Committee of Ministers CONF/PLE(2015)REC2 "New disability strategy";
- Resolution CONF/PLE(2013)RES1 "Acting together to eradicate extreme poverty in Europe".

410. Lastly, as regards the publications produced by the INGO Conference on the subject of social rights, mention may be made of the following:[373]

- Rights of persons with disabilities: Article 15 of the European Social Charter in the light of the UN Convention on the Rights of Persons with Disabilities – 2015;
- Booklet on Article 30 (right to protection against poverty and social exclusion) – published in co-operation with the Social Charter Department – 2014;
- Human Rights in times of crisis: contribution of the European Social Charter (Proceedings of the Round Table organised jointly by the Conference of INGOs of the Council of Europe and the Social Charter Department at the Ecole Nationale d'Administration, Strasbourg, 17 October 2011);
- The Charter of Fundamental Rights of the European Union: a reading guide in the light of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter (revised) – 2008;
- The contribution of NGOs to the fight against poverty and social exclusion in Europe – 2007;
- Compendium of texts regarding the eradication of poverty (adopted by the Committee of Ministers, PACE and the Congress of Local and Regional Authorities) : Commitments entered into by member States – 2014;[374]
- Annual publications of the proceedings of the aforementioned gatherings, held by the INGO Conference to mark International Day for the Eradication of Poverty of 17 October (focus in 2015 on child poverty).

b. Findings

[371] See http://www.coe.int/en/web/ingo/texts-adopted.

[372] Note that in this Recommendation, the INGO Conference invites the PACE to update its Resolution 1884(2012) "Austerity measures – a danger for democracy and social rights" so as to encourage Council of Europe member states, in these times of crisis, to: 1. give particular attention to the rights of people who belong to the most vulnerable groups; 2. review their austerity policies; 3. adopt a human rights-based approach in responding to the economic crisis, in keeping with their international commitments.

[373] http://www.coe.int/en/web/ingo/publications.

[374] https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806f54fa.

411. The INGO Conference's interest and continued involvement in social rights (through the reporting procedure and complaints relating to the Charter, its publications and other advocacy work) received a further boost with the "Turin Process" (trainings concerning the collective complaints procedure, co-ordination of its Call to Action to support it).

412. Likewise, in the context of the CDDH, the Conference of INGOS has supported the setting-up of a working group on social rights and strongly emphasised the need to address, within the group, the issue of "the impact of the economic crisis and austerity measures on human rights in Europe" (see above).

c. Possible action

413. It should be noted that action is already being taken on all the measures addressed to the INGO Conference in the "Turin Action Plan":

- promote the ratification of the Revised Charter and/or all provisions as well as the Protocol on Collective Complaints (action already under way, reiterated in the above-mentioned Call to Action to support the "Turin Process");
- inform social partners and NGOs about the collective complaints procedure (action already under way: advocacy and training activities proposed in the said Call to Action).

414. Lastly, in its 4th and final column, the "Turin Action Plan" calls on NGOs/partners to take the following measures (see Appendix):

- open a political debate on the "Turin Process" (this was done through the Call to Action issued by the INGO Conference to national members);
- promote the ratification of the Revised Charter and/or all provisions;
- encourage states to ratify the Collective Complaints Protocol;
- inform NGOs about the collective complaints procedure and encourage them to accede thereto if they have participatory status;
- use the third party mechanism (for the European social partners) or, where appropriate, submit written observations on collective complaints (Rule 32A of the ECSR's Rules – see above);
- promote the accession of the EU to the Charter;
- adapt communication to improve the visibility of the Charter and place it on a level with the ECHR;
- promote expert awareness and inform NGOs about the Charter and the collective complaints procedure (such measures are also provided for in the INGO Conference's Call to Action – in particular through training and advocacy);
- promote knowledge of the Charter and collective complaints procedure among NGOs and citizens.

415. It is worth noting that all these action measures could be recommended to the NHRI's, whose major role in implementing the Social Charter was highlighted earlier (see above: Part II, section B, i)) – even though they are not specifically mentioned in either the "Turin Action Plan" or the "Brussels Document".

F. International Organisations of Employers and Workers

416. International social partners are important stakeholders in the system of protection of human rights in general and fundamental social rights in particular as enshrined in the Charter. This is demonstrated especially by their privileged role in both the reporting and collective complaints systems to the Charter (see above, amongst others, paragraphs 219, 222 and 225-226).

a. The European Trade Union Confederation (ETUC)

- *Main activities relating to social rights/the Charter*

417. As for the ETUC, one might refer to the following actions concerning the Convention, in respect of which the ETUC has obtained a permanent observer status in the CDDH (and in its subgroups). Being actively involved on a more regular basis since 2012[375], the ETUC has contributed to many issues dealt with by the CDDH, in particular :

- the Convention system in general and the reform of the Court ;
- the EU's accession to the Convention ;
- the (draft) recommendations on Human Rights of Older Persons (CDDH-AGE) and on Human rights and Business (CDDH-CORP).

418. Moreover, during the last 5 years, the ETUC has submitted third party interventions in 11 cases before the Court, dealing with amongst others Articles 4 (prohibtion of slavery and forced labour), Article 8 (right to respect for private and family life), Article 11 (freedom of assembly and association) and Article 1 of P1 (protection of property)[376].

419. As regards the Charter, the ETUC was involved as observer from the beginning in its supervision and actively participated in the "Charte-Rel" Committee on the "relaunch of the 1961 Charter" (see above).

420. More generally, the ETUC is involved in political activities of the CoE, in particular in the work of the PACE and especially its Sub-Committee on the European Social Charter, i.a. by providing input for resolutions concerning the "Turin Process" or austerity measures, etc.

421. As a human rights defender organisation, the ETUC used and uses both instruments – the Charter and the Convention – in its daily work and in particular in the work of some of its Standing Committees (e.g. Fundamental Rights and Litigation Advisory Group[377]) and some topical campaigns[378] or activities against austerity measures. This is also highlighted by respective references in different Resolutions, Declarations and press releases[379] as well as

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[375] To be noted that the ETUC participated also in the aforementioned work of the GT-DH-SOC (2003 to 2005).

[376] Some exemples are : *POA e.a. v. UK*, *RMT V. UK*, *V. Tymoshenko v. Ukraine*, *Mentes v. Turkey*, *López Ribalda e.a. v. Spain*, *EĞİTİM-SEN v. Turkey*, *Pop v. Romania*, *Béláné Nagy v. Hungary*, *H. Fábián v. Hungary*, *Barbulescu v. Romania* and *Straume v. Latvia*.

[377] https://www.etuc.org/documents/etuc-resolution-reforming-litigation-group-fundamental-rights-and-litigation-advisory#.WQIFkfl97IU.

[378] For example, see ETUC Campaign in 2016 "Trade union rights are human rights" (https://www.etuc.org/campaign/turights#.WQIIO_l97IW) and ETUC Campaign in 2017 "Social Rights First" (http://socialrightsfirst.eu/en).

[379] Some examples to cite are : ETUC Declaration on the 50th Anniversary of the European Social Charter (19-20/10/2011) and ETUC Position on the European Pillar of Social Rights - Working for a Better Deal for All Workers (06/09/2016). For more information, see the ETUC website www.etuc.org.

further awareness raising, i.a. via internal trainings and publications of the ETUC and/or its research institute, the ETUI[380].

- *Findings*

422. The ETUC uses its privileged role in the reporting and complaints procedures of the Charter. Depending on their involvement, European social partners can achieve relevant results.

- *Possible action*

423. In order to raise the awareness/knowledge and better use of the Convention and Charter by these European social partners (and their affiliates), the following actions could be envisaged:

- Organize meetings between ECSR and representatives of the European social partners in the framework of the collective complaints procedure to discuss technical and procedural issues (see above) ;
- Ensure the social partners (European and national) are associated to the high-level meetings mentioned above to increase ratifications of the different Charter instruments/provisions ;
- Encourage the PACE to continue to organize hearings on specific social rights in the Charter and associate European/national social partners to these meetings ;
- Strengthening of the consultation by the Committee of Ministers of European social partners at all levels (e.g. in the framework of the GR-SOC) ;
- Increase training opportunities/organization of seminars on the Convention and on the Charter by the Charter Department and the member States, involving/for European and national social partners.

b. The International Organisation of Employers (IOE) and Business Europe

Commentaire [PM36]: *{Rapporteur: Please note that this contribution has been slightly shorted and re-ordered. No modification on the substance}*

424. The IOE is the largest network of the private sector in the world, with more than 150 business and employers' organisation members. The IOE is the recognized voice of business in social and labour policy debate taking place in the International Labour Organization, across the UN and multilateral system, and in the G20 and other emerging processes. BusinessEurope is the leading advocate for growth and competitiveness at European level, standing up for companies across the continent and campaigning on the issues that most influence their performance. A recognised social partner, it speaks for all-sized enterprises in 34 European countries whose national business federations are its direct members.

425. Like ETUC, international employers' organizations (IOE and Business Europe) enjoy special consultative status within the framework of the Charter. They shall be invited as observers in a consultative capacity at the Governmental Committee meetings where they have the opportunity to influence the Committee decisions and share opinions that will be further distributed to the Committee of Ministers and the ECSR. Moreover, as a reminder,

[380] See for example : Bruun, N., Lörcher, K. and Schömann, I., *The European Convention on Human Rights and the Employment Relation*, Hart Publishing, Oxford, (2013) ; Bruun, N., Lörcher, K. Schömann, I. and Clauwaert, S.,*The European Social Charter and the Employment Relation*, Hart Publishing, Oxford, (2017).

they receive copies of State reports and collective complaints on which they may comment. Finally, like the trade-unions, they are entitled to lodge collective complaints on one or more unsatisfactory application (s) of the Charter.

426. The IOE and Business Europe play an important role in the application, monitoring, and implementation of the Charter, as they provide their members with a deeper understanding of the application of the Charter, while at the same time they ensure the inclusion of the business perspective both in reporting system and in the collective complaints procedures. Through the IOE and BusinessEurope, their respective members have therefore an opportunity, even if indirectly, to exchange with the European Committee of Social Rights on the implementation of the Charter. The IOE and BusinessEurope have recently increased their engagement and involvement in the work of the Council of Europe and the supervision of the Charter. They work closely with their members, where necessary, in preparing appropriate observations for the ECSR in the event of a collective complaint.

427. So far, the IOE and/or BusinessEurope have been actively involved in representing and providing the viewpoint of their members in six collective complaint procedures: 59/2008 on the right to strike involving picketing in Belgium; 85/2012 on the possibility to start industrial action in Sweden; 106-107-108/2014 on social security coverage in Finland; and 111/2014 on working conditions and wages in Greece (this last case was followed by a hearing of the parties of the collective complaint before the ECSR, where IOE participated).

428. Together with this stronger engagement, Employers are also concerned at the complexity of the Charter supervision procedures. Streamlined rules and procedure ensuring transparency and certainty is necessary to guarantee the implementation of the Charter in a way that supports the goals of economic growth and job creation. In this respect, there is a rising concern within national employers' organisations at the limited receptiveness by the ECSR to business views within the framework of the regular reporting and the collective complaint procedure. Therefore and while actively participating in the supervision of the Charter, albeit not as signatory Parties, nor as constituents of a tripartite organisation like the ILO, employers' organisations at national level have expressed their interest in better understanding the concrete functioning of the supervisory system of the Charter and at being able to have an improved dialogue with the ECSR.

429. Finally, employers' organisations, due to the way in which the collective complaints procedure is drafted, consider themselves exposed to an increased number of NGOs submitting collective complaints with no major formal requirements, drafted in a very general manner, often in a disparaging tone and even without supporting evidence, in order to discredit companies at national level (for example : complaints 106,107,108/2014 against Finland)

IV. RELATIONSHIP BETWEEN EUROPEAN UNION (EU) LAW AND THE CHARTER

A. From the perspective of the Charter

a. Variable commitments on the part of EU member states vis-à-vis the Charter

430. To date, all 28 EU member states have signed up to the Charter but eight of them have not ratified the Revised Charter.[381] Also, only 14 EU states have ratified the Additional Protocol of 1995 providing for a system of collective complaints.[382]

431. It will be recalled that the Charter is based on an "à la carte" system, under which states are able, under certain circumstances, to choose the provisions they are willing to accept as binding (see above). To date, only France and Portugal have accepted all the provisions of the Charter, in contrast to the other EU member states where there are significant disparities in terms of commitments.[383]

432. Indeed, in an ECSR working document designed to clarify the relationship between the Charter and EU law ahead of the aforementioned "Turin I" Conference,[384] the ECSR called for greater consistency among EU member states when it came to accepting provisions of the Charter, especially in the case of provisions already covered by EU law.

b. Recognition of EU law by the Charter and the ECSR

433. As has already been mentioned, one of the sources of inspiration for the Revised Charter has been EU law, with the Explanatory Report containing several references to the fact that the wording was based on EU Directives.[385] The Revised Social Charter of 1996 accordingly

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[381] Among the states still bound by the 1961 Charter are: Croatia, Czech Republic, Denmark, Germany, Luxembourg, Poland, Spain and United Kingdom. Of these, the following have ratified the Additional Protocol of 1988 (see above: inclusion of certain additional rights): Croatia, the Czech Republic, Denmark and Spain.

[382] Namely: Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Portugal, Slovenia and Sweden.

[383] See http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations/esc: table providing an overview of EU member states' acceptance of Charter provisions. Only the right to protection of health (Article 11) has been accepted by all EU states. As regards the other provisions of the Charter, many of these have been accepted only partially or not at all by several EU states.

[384] See http://www.coe.int/en/web/turin-european-social-charter/conference-turin: document of 15 July 2014 on the "Relationship between European Union law and the European Social Charter".

[385] Accordingly, in the explanatory report to the Revised Charter, it is stated that:

- Article 2§6 on the right to just conditions of work was inspired by Council Directive 91/533 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship;
- Article 7§2 of the Charter prohibiting the employment of those under the age of 18 was inspired by Council Directive 94/33 on the protection of young people at work;
- Article 8§4 of the Charter on the right of employed women to protection of maternity borrows the idea from Council Directive 92/85 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers;
- Article 25 on workers' right to the protection of their claims in the event of the insolvency of their employer was inspired by Community Directive 80/987 on the approximation of the laws of the member states relating to the protection of employees in the event of the insolvency of their employer;
- Article 29 of the Charter on the right to information and consultation in collective redundancy procedures was drafted with reference to Community Directive 92/56 on the approximation of the laws of the member states relating to collective redundancies.

incorporates the EU social "acquis", that is to say, a large body of EU rules, constituting a minimum core of social rights linked, to a large extent, to the creation of the single market and the free movement of people.

434. Likewise, the ECSR takes account, in its decisions and conclusions, of EU law when interpreting the Charter.[386] There is, however, no presumption of conformity of EU law with the Charter[387]: in other words, the ECSR does not assume that social rights enjoy equivalent protection within the EU. The ECSR, however, has said that it is willing to "review its assessment" once the European Social Charter is taken into account in EU law in a more systematic and faithful manner[388] (see below: the EU's accession to the Charter would allow a move in that direction).

B. From the perspective of EU law

435. When it comes to social rights, the EU has procedures and instruments specific to its own legal order which sometimes refer to the Charter, mentioning it explicitly or implicitly taking it into account as supplementary law.

436. Various types of references to the Charter can be identified here: not only those found in primary and secondary EU law but also references made via the case law of the CJEU and other EU acts or initiatives.[389] The aim here is not to compile a list of every single reference made in EU law to the Charter, but rather to highlight the most topical ones so as to take a more forward-looking view.[390]

a. Through primary law

437. The Treaty on European Union (1992) refers to the European Social Charter in §5 of its Preamble: "*Confirming their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers*".[391]

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[386] For example, the ECSR has taken account of a number of judgments of the European Court of Justice in its interpretation of the right to a healthy environment (in particular in complaint 72/2011, *FIDH v. Greece*, decision of 23 January 2013, which refers to the CJEU judgment of 2 December 2010 in *European Commission v. Hellenic Republic*, C-534/09). Furthermore, in its 2012 conclusions, the ECSR referred to the CJEU judgment of 2 August 1993 in *Marshall v. Southampton*, C-271/91, regarding the upper limits on compensation in discrimination cases.

[387] See the decisions of 23 June 2010 in the aforementioned complaints 56/2009 (*CFE-CGC v. France),* §§32 to 36 – and 55/2009 (*CGT v. France)*, §§34 to 38: while the European Court of Human Rights accepts that in certain circumstances there may be a presumption of conformity between EU law and the Convention, the same cannot be said for EU provisions with regard to the Charter. In these cases, the ECSR found that there had been a violation of the Charter (the right to reasonable working hours and the right to rest periods) as regards the transposition of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 (it was not the Directive *per se* that was considered contrary to the Charter but rather the possible combination of the numerous exceptions and exemptions provided for therein).

[388] Ibid.

[389] On this subject, see the aforementioned ECSR working document, Part III of which looks at the links between the provisions of the Charter, secondary law and the case law of the CJEU.

[390] Ibid.: more comprehensive list in Appendix II: "*provisions of the Charter and corresponding sources of primary law and secondary law of the EU (...) and the link between these provisions, secondary law and European Union Court of Justice's case-law (...)*".

[391] This 1989 Charter established core principles for minimum social rights common to all EU member states. Its provisions were replicated by the Lisbon Treaty (Article 15) and the EU Charter of Fundamental Rights.

438. The Treaty on the Functioning of the European Union (2007) refers, in Article 151§1, to the European Social Charter: "*The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion*".

439. The EU Charter of Fundamental Rights (2000) is a formal body of rights protected under EU law which, it will be recalled, became a binding instrument on 1 December 2009 on the entry into force of the Lisbon Treaty. This Charter was the EU's first binding legal instrument in the field of fundamental rights and covers civil, political, economic, social and cultural rights. According to Article 6§1 of the Treaty on the Functioning of the European Union: "*... The rights, freedoms and principles enshrined in the Charter shall be interpreted in accordance with the general provisions of Title VII of the Charter governing its interpretation application and with due regard ~~and implementation~~ and giving due consideration to the explanations in the Charter, that set out ~~which indicate~~ the sources of these provisions*".

440. Although the EU Charter of Fundamental Rights does not specifically refer to the provisions of the European Social Charter, the latter is nevertheless cited as a source of inspiration in the explanations of many of its articles. It is important to note, however, that certain rights included in the European Social Charter do not appear in the EU Charter: the right to work, the right to a fair remuneration, the right to protection against poverty and social exclusion and the right to housing. Also worth noting is that whereas the provisions of the European Social Charter are binding on those EU member states which have accepted them, these states are required to comply with the EU Charter of Fundamental Rights only when they are implementing EU law, with the result that the rights in question apply only in certain areas.

b. Through secondary law

441. Secondary EU law mainly consists of legal acts – which are adopted by the European institutions – covering regulations, directives and decisions (all of which are binding) but also "atypical" acts such as communications and recommendations (which are non-binding). The wide range of instruments and the varied nature of their legal scope have led to a growing number of calls for co-operation between the EU and the Council of Europe in order to take account of the relevant obligations when interpreting Council of Europe rights, and in particular rights enshrined in the Charter.

442. For example, the European Parliament Resolution of 8 September 2015 on the situation of fundamental rights in the EU "*calls on the Member States to ensure that all EU legislation, including the economic and financial adjustment programmes, is implemented in accordance with the Charter of Fundamental Rights and the European Social Charter" (§2). To this end, it "calls on the Commission to consider proposing accession to the European Social Charter, in order effectively to safeguard the social rights of European citizens*" (§114).

443. Likewise, Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the

purpose of employment as seasonal workers "should apply without prejudice to the rights and principles contained in the European Social Charter" (§44).

444. As for the Memorandum of Understanding between the Council of Europe and the EU of 23 May 2007,[392] the Council of Europe is recognised therein "*as the Europe-wide reference source of human rights*". The EU is thus called upon to, for example, cite Council of Europe norms as a reference in its documents, take into account the decisions and conclusions of the Council of Europe monitoring structures and to ensure coherence of its law with the relevant Council of Europe conventions. The Memorandum also requires both the EU and the Council of Europe, when preparing new initiatives in the field of human rights, to draw on their respective expertise as appropriate through consultations.

445. The conclusions/communications or guidelines issued by the EU can also provide opportunities for reiterating commitments. Accordingly, "*(…)Member States' administrations are the first level where compliance with obligations deriving from the Charter, as well as the constitutional traditions and international obligations common to all Member States, should be guaranteed (…)*",[393] something that is the case for the European Social Charter or, at the very least, those of its provisions which have been accepted by all EU member states.

c. Case law

446. For a long time, the Luxembourg Court refused to accept the Charter as a reference instrument for developing fundamental rights in EU law.[394]

447. Even today, the CJEU refers to the European Social Charter only where the rights protected under the EU Charter of Fundamental Rights are inspired by the former,[395] as is the case, in particular, with Chapter IV of the EU Charter, entitled "Solidarity".

448. Accordingly, the European Social Charter is a "direct" source of inspiration for "discovering" EU fundamental rights,[396] identifying the general principles of EU law[397] and "particularly important mechanism[s] of protection under employment law",[398] and lastly, for

[392] http://ec.europa.eu/justice/international-relations/files/mou_2007_en.pdf.
[393] Council conclusions on the role of the Council of the European Union in ensuring the effective implementation of the Charter of Fundamental Rights of the European Union, 3071st Justice and Home Affairs Council meeting, Brussels, 24 and 25 February 2011, §9.
[394] See in particular Opinion of the Advocate-General F. Jacobs, CJEU, *Albany International BV*, C-67/96, 21 September 1999: "*the rights set out [in the European Social Charter] represent policy goals rather than enforceable rights, and the States parties to it are required only to select which of the rights specified they undertake to protect*".
[395] See for example, CJEU, *Commission v. Strack*, C-579/12 RX-II, 19 September 2013: "*According to the explanations relating to Article 31 of the [EU] Charter [of Fundamental Rights], which, (…) must be taken into account in the interpretation of the Charter, (…) Article 2 of the European Social Charter*" (§27).
[396] CJEU (Grand Chamber), *International Transport Workers' Federation and The Finnish Seamen's Union v. Viking Line APB*, C-438/05, 11 December 2007, paragraph 43; CJEU (Grand Chamber), *Laval un Partneri Ltd v. Svenska Byggnadsarbetareförbundet*, C-341/05, 18 December 2007, paragraph 90: the CJEU agrees to mention the European Social Charter among the sources of inspiration which led it to identify the fundamental rights recognised in the EU legal order.
[397] *Laval* judgment, paragraph 91, and *Viking* judgment, paragraph 44, in which the CJEU stated that "*the right to take collective action must be recognised as a fundamental right which forms an integral part of the general principles of Community law the observance of which the Court [of Justice] ensures"*.
[398] CJEU, *Sari Kiiski v. Tampereen Kaupunki*, C-116/06, 20 September 2007, paragraphs 48 and 49.

interpreting "the principle[s] of Community social law" in the light of the European Social Charter.[399]

449. The European Social Charter, however, can also be an "indirect" source when the CJEU refers to the case law of the European Court of Human Rights, which has itself drawn on the Charter in order to determine what is meant by a particular fundamental right.[400]

450. It should be emphasised that the number of cases in which the CJEU has referred to the European Social Charter remains rather limited,[401] however, in comparison with its references to the Strasbourg Court and the Convention, prompting participants at the "Turin II" meetings[402] to reiterate their desire for closer ties between the CJEU and the ECSR as a way of achieving greater convergence of case law.

451. Lastly, as underlined in the ETUC's above-mentioned contribution to this report, economic freedoms usually take precedence over social rights in CJEU case law, despite their recognition through the various principles laid down. For example, the right to collective action is subject to observance of the rules on the single market.[403]

d. Other acts and initiatives

452. Other EU activities and acts likewise form part of the relationship between the Charter and EU law. Although they have no legal status as such, they do nevertheless provide a policy framework that can help to preserve social rights.

453. The EU can make observations and/or attend hearings as a third party in the collective complaints procedure, on a proposal from the Rapporteur or the President of the ECSR (see above) in order to support a complaint or have it dismissed. As has already been mentioned, for the first time, the European Commission submitted observations in order to support Greece in the aforementioned complaint 111/204 relating to the impact of austerity measures on numerous workers' rights[404].

454. It will further be recalled that the EU may also, if it so wishes, submit observations under the state reporting procedure, although it has yet to avail itself of this option.

455. Also worth mentioning is a European Parliament study published in February 2016 on the European Social Charter in the context of implementation of the EU Charter of Fundamental Rights. As well as identifying the main obstacles to defining a common approach to social rights in the EU, in particular the Charter's "à la carte" system, the study

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[399] CJEU (Grand Chamber), *Impact* v. *Minister for Agriculture and Food and Others*, C-268/06, 15 April 2008, paragraphs 113 and 114.

[400] CJEU, *Werhof,* C-499/04: in a judgment of 9 March 2006, the CJEU drew on the European Court of Human Rights judgment of 30 June 1993 in *Sigurjonsson v. Iceland*, in which the European Court of Human Rights had adopted the ECSR's interpretation with regard to Article 5 of the Charter.

[401] A list of CJEU judgments referring explicitly to the European Social Charter can be compiled using the "*InfoCuria* - Case-law of the Court of Justice" search engine.

[402] Interparliamentary Conference, mentioned above, and Turin Forum on 17-18 March 2016, mentioned above.

[403] Such is the case, for example, with the two judgments cited above: *Laval* (18 December 2007) and *Viking Line* (11 December 2007).

[404] https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805a25cb: observations submitted by the European Commission on 26 January 2016. Decision adopted by the ECSR in March 2017 but not yet public.

encourages EU member states to harmonise their commitments under the Charter and elaborates on the benefits to be gained from the EU's accession to the European Social Charter.[405]

456. The FRA which, it will be recalled, is a member of the CoE-FRA-ENNHRI-EQUINET Collaborative Platform on economic and social rights, publishes data and objective assessments via its reports and makes recommendations to EU member states, in particular where social rights are concerned.[406]

457. In the Focus section of its 2012 Annual Report "The European Union as a Community of values: safeguarding fundamental rights in times of crisis", the FRA notes that the "austerity measures" adopted as part of the effort to manage the crisis and by mutual agreement at European level have tested states' commitment to social rights. It further observes that the CJEU's case law related to the EU Charter of Fundamental Rights "*does not offer judicial tools across the board to guarantee that austerity measures and other public interventions are 'social rights compliant'*."

458. More recently, an FRA report revealed that people living in the EU are not equally entitled to fair working conditions, contrary to Article 2 of the European Social Charter and Article 31 of the EU Charter of Fundamental Rights. The FRA therefore recommended that EU institutions and EU member states review the relevant directives and provisions with a view to granting equivalent and effective protection to all workers, including notably against severe forms of labour exploitation.[407]

459. In another recent report, the FRA made the point that the significant reduction in social spending in EU member states does not relieve them of their duty to provide adequate health care, including to migrants in an irregular situation.[408]

460. Lastly, in June 2016, the FRA held its first Fundamental Rights Forum during which a working group on inclusion provided an opportunity to explore various issues, including the relationship between the EU and the Charter (and the EU's possible accession to the latter) and Council of Europe provisions which fall within the competence of the EU. Among the suggestions to emerge from the Forum (three main strands: protection of refugees, inclusion, digital era), it was recommended that EU institutions and EU member states work together with the Council of Europe to strengthen the role of the Charter in European and national social policy in accordance with member states' obligations (suggestion No. 49).[409]

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[405] http://www.europarl.europa.eu/regData/etudes/STUD/2016/536488/IPOL_STU(2016)536488_EN.pdf: European Parliament, Committee on Constitutional Affairs, Olivier De Schutter.

[406] At the aforementioned meeting of the Social Cohesion Platform, the representative of the FRA provided information on the FRA's latest reports and handbooks, such as the ones on the rights of people with disabilities, the right to a reasonable standard of living and multiple discrimination in health care as well as social inclusion and the participation of migrants in society. The presentations given at this meeting should be available shortly on the Platform website: https://www.coe.int/en/web/turin-european-social-charter/1st-meeting-of-the-european-social-cohesion-platform.

[407] FRA report, "Severe labour exploitation: workers moving within or into the European Union", March 2016.

[408] FRA report, "Cost of exclusion from healthcare – The case of migrants in an irregular situation", September 2015.

[409] See Fundamental Rights Forum, Vienna, 20-23 June 2016: http://fundamentalrightsforum.eu/.

Code de champ modifié

C. Findings

461. Emulating rules that protect social rights has in some cases led to significant progress. As has already been pointed out, the two systems (i.e. the EU and the Council of Europe's European Social Charter) have inspired one another through their respective texts (incorporation in the Revised Charter of developments in EU law, incorporation of the Revised Charter in the EU Charter of Fundamental Rights) and case law, where possible, so as to create synergies which make for more effective social rights protection.

462. Over the past ten years, however, the differences in the way social rights are implemented in EU member states have grown more pronounced,[410] even though the governments in question are still responsible, within the scope of EU law, for implementing the rights enshrined in the European Social Charter.[411] With Article 31 of the Charter strictly defining the restrictions and limitations that may be placed on Charter rights, the ECSR prohibits states from using the obligations imposed on them by the EU as an excuse to absolve themselves of their responsibilities under the Charter.[412]

463. On several occasions, furthermore, CJEU case law has contradicted the European Social Charter. In its above-mentioned decision of 3 July 2013,[413] for example, the ECSR found Sweden to be in violation of Article 6§4 of the Charter because of amendments made to its legislation in order to comply with the CJEU's *Laval* judgment of 18 December 2007, concerning the application of Directive 96/71/EC.

464. Likewise, as has already been noted, differences emerged between EU law and the Charter over the 2010 Memorandum concluded between the Troika and Greece. In several complaints, the ECSR found there had been violations of the Charter on account of austerity measures imposed by the Troika on Greece in response to the economic crisis.[414]

465. Lastly, a number of EU instruments are incompatible with the Charter, one example being Directive 2003/86/EC on the right to family reunification, which runs counter to Article 19§6 of the European Social Charter (which requires states to facilitate as far as

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[410] https://ec.europa.eu/priorities/sites/beta-political/files/allan-larsson-speech.pdf: Allan Larsson, Special Adviser for the European Pillar of Social Rights – speech at the Annual Convention for inclusive growth, 21/03/2016.

[411] Aforementioned decision of 7 December 2012, complaint 76/2012 *(IKA-ETAM v. Greece)*: "*when states parties agree on binding measures, which relate to matters within the remit of the Charter, they should – both when preparing the text in question and when implementing it into national law – take full account of the commitments they have taken upon ratifying the European Social Charter. It is ultimately for the Committee to assess compliance of a national situation with the Charter, including when the implementation of the parallel international obligations into domestic law may interfere with the proper implementation of those emanating from the Charter.*" (§51).

[412] Ibid., complaint 76/2012, §50 and the aforementioned complaints 66/2011 (*ADEDY v. Greece*), decision of 23 May 2012: the economic and financial crisis cannot serve as a pretext for reducing workers' protection – 55/2009 (*CGT v. France*) and 56/2009 *(CFE-CGC v. France*), decisions of 23 June 2010: "*the Committee reiterates that the fact that the provisions at stake are based on a European Union directive does not remove them from the ambit of the Charter*" (§30) – and, prior to that, the decision of 12 October 2004, complaint 16/2003 (*CFE-CGC v. France*), §30.

[413] In the context of complaint 85/2010, mentioned above (*LO and TCO v. Sweden*).

[414] In the context of complaints 65/2011, 66/2011 and 72/2012 to 80/2012, mentioned above. The ECSR notes that "economic or financial aims" were not listed in Article 31 §1 of the Charter as grounds for legitimately limiting the rights guaranteed therein.

possible the reunion of the family of a foreign worker permitted to establish himself in the territory).[415]

466. This lack of consistency, as described in the aforementioned "Nicoletti Report",[416] carries the risk that EU law might afford social rights a lesser degree of protection than that prescribed by the European Social Charter/Council of Europe. These differences in the extent to which social rights are taken into account highlight the need for more co-ordination, therefore, while revealing a lack of harmonisation and recognition of Council of Europe standards on the part of the EU.[417]

467. Accordingly, at the aforementioned Turin Forum (March 2016), the President of the ECSR pointed out[418] that EU states ought to better and more fully standardise their commitments vis-à-vis the Charter and seek convergence in the implementation of social rights, as both of these organisations play a part in promoting common values.

468. Meanwhile, the Secretary General of the Council of Europe, drawing, too, on the "Turin Process", has reiterated[419] (May 2016) the need for co-ordination between the various European systems and for enhanced dialogue with a view to "*the full consideration of the Charter and the decisions of the European Committee of Social Rights within European Union law"*.[420]

D. Possible action

469. As has already been pointed out, the "Turin Process" encourages more co-ordination and synergies between the European Social Charter and EU law. It is important to note, moreover, that one of the four objectives approved by the GR-SOC in January 2016 is greater co-operation between the Council of Europe and the European Union in the field of social rights.[421]

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[415] See ECSR Conclusions, 2011, Interpretative Statement on this article. Another example of divergence can be seen in the ECSR's decision on complaint 55/2009 as compared with Directive 2003/88/EC on working time. A further example lies in the ESCR decision of 8 November 2005 on complaint 24/2004 as compared with Directive 2000/43/EC which focuses exclusively on discrimination on grounds of national origin or membership of an ethnic group or race.

[416] https://www.coe.int/en/web/turin-european-social-charter/conference-turin, §§ 55 to 64, pages 21 to 23 on the relationship between EU law and the European Social Charter.

[417] See in particular DE SCHUTTER, Olivier, "*L'adhésion de l'UE à la Charte sociale européenne révisée*", Brussels, 8 July 2014.

[418] See the above-mentioned "Nicoletti report", October 2014, Executive Summary, pages 2 and 3: "*there is an urgent need to enhance existing synergies and find effective solutions to emerging conflicts. It must be ensured that the fundamental rights enshrined in the Charter are fully respected by decisions or legislation of the States Parties resulting directly or indirectly from changes in EU law. To that effect, the idea was raised of reinforcing co-operation between competent Council of Europe and EU bodies, in view of promoting the harmonisation of the two normative systems to improve states' abilities to comply with their international obligations (...)*".

[419] It will be recalled that in 2014, in his aforementioned strategic vision which led to the "Turin Process", the Secretary General emphasised the crucial importance of ensuring consistency between the standards of the Charter and the EU and of increasing synergies between the two protection systems.

[420] See his 3rd Report on the Situation of Democracy, Human Rights and the Rule of Law, mentioned above, May 2016, pp. 90-91. Likewise, in his first report published in April 2014, the Secretary General underlined the urgent need to find pragmatic solutions to settle conflicts between the two sets of standards.

[421] GR-SOC(2016)CB1, meeting of 19 January 2016 and the proposals referred to therein by the General Secretariat/CoE as set out in (CM(2015)173) of 17 December 2015: in Appendix. For a reminder the other three objectives are: to hold high-level policy meetings in states to increase the number of ratifications of the Charter and acceptance of its provisions; to simplify the Charter monitoring procedures and; to improve targeted co-operation with states in the field of social rights.

470. At the aforementioned Brussels Conference (February 2015), participants called for more consistency in the way fundamental rights and principles are implemented. Proposals included giving wider consideration to the Charter among the general principles of EU law, taking it into account when framing EU law and supplementing the European Commission's impact studies by including references to the Charter.[422]

471. The above-mentioned Brussels Document (see Appendix) accordingly suggests various measures that could be taken to settle conflicts between the European Social Charter and EU rules. Among other things, it is proposed that the Council of Europe and the EU set up a joint working group to, *inter alia*, identify the legal and technical issues raised by the EU's accession to the Revised European Social Charter (see below),[423] and that more account be taken of Charter rights in the Commission's impact studies.

472. Among the various new initiatives, in September 2015 the President of the European Commission, Jean-Claude Juncker, announced the setting-up of a "European pillar of social rights".[424] The ILO and the Council of Europe were directly involved in the public consultation launched in this connection in March 2016 by the Commission, and which concluded on 31 December 2016. The aim of the consultation was to assess the EU's social *acquis*,[425] to consider how Europe will need to adapt to new labour market and societal trends and to canvas opinions and comments on the principles set out in a preliminary outline of the future "European Pillar of Social Rights"[426]. It is referred to the European Social Charter, as a "reference document" in the Commission's Communication, in keeping with the spirit of the "Turin Process".

473. On 20 January 2017, the Secretary General of the Council of Europe published his Opinion on the European Union initiative to establish a "European Pillar of Social Rights".[427] Welcoming the initiative, he stated: "*Building a Europe more readily supported by its citizens, better attuned to their everyday needs and able to promote shared, sustainable growth*[428] *is one of the major challenges of our time. To meet this challenge effectively, it is necessary to consolidate the synergy between standard-setting systems protecting fundamental social rights across the continent. The establishment of a European Pillar of Social Rights by the European Union is a step in this direction*".

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[422] De Schutter, Olivier, "*Les synergies entre le Conseil de l'Europe et l'UE en matière de droits sociaux*", for the Brussels Conference on the future of the protection of social rights in Europe, 12-13 February 2015.

[423] It is important to note that the "Turin Action Plan" (see Appendix) had already called on the following to "work towards/promote the accession of the EU to the Charter": Committee of Ministers and PACE, European Council, European Commission, European Parliament, EESC and FRA, national authorities and NGOs/Partners.

[424] Pillar announced in Mr Juncker's State of the Union address on 9 September 2015.

[425] Round table held on 1 June 2016 in Brussels: "*Stocktaking of the EU social "acquis": is it still relevant and up to date?*"

[426] Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Launching a consultation on a European Pillar of Social Rights": COM(2016)127final, 8 March 2016. This Pillar is intended for EU states in the euro area, although other EU states are allowed to participate as well.

[427] http://www.coe.int/en/web/turin-european-social-charter/-/secretary-general-s-opinion-on-the-european-pillar-of-social-rights: Secretary General's opinion of 2 December 2016, published on 20 January 2017: see Appendix.

[428] See §§ 29 to 34 of the Secretary General's Opinion: "*Growth that benefited only a minority would undermine states' social cohesion and democratic security*".

474. In the Secretary General's view, however, "it is necessary – with due regard for the competences and applicable law of the European Union – that:

1. *the provisions of the European Social Charter (Revised) should be formally incorporated into the European Pillar of Social Rights as a common benchmark for states in guaranteeing these rights; (...)*

   Incorporating the provisions of the Revised European Social Charter in the Pillar will be a political means of promoting:
   i. *An EU social strand firmly linked to an extensive and comprehensive European treaty entirely devoted to social rights, in force in all of its member states; this linkage will foster social cohesion, socially sustainable growth and, on this basis, stronger public support within the European Union for the process of European integration;*
   ii. *Ratification of the Revised Charter, or acceptance of more of its provisions, by the European Union member states concerned, at least for the rights that they already have to guarantee under the European Union's primary and secondary legislation;*
   iii. *Possible incorporation in the European Union's standard-setting system and its acquis of new rights that European Union member states have already undertaken to uphold under the European Social Charter treaty system.*

2. *The collective complaints procedure (...) should be acknowledged by the European Pillar of Social Rights for the contribution that it makes to the effective realisation of the rights established in the Charter and to the strengthening of inclusive and participatory social democracies. (...)*".

475. Moreover, on 19 January 2017, the European Parliament has adopted a Resolution on "The European Pillar of Social Rights".[429] Its makes explicit reference to "*the European Social Charter, its Additional Protocol and its revised version, which entered into force on 1 July 1999, in particular its Part I, its Part II and Articles 2, 4, 16 and 27 of the latter, on the right of workers with family responsibilities to equal opportunities and equal treatment*" and it "*calls on the Member States to sign and ratify the revised European Social Charter and the European Convention on Social Security (ETS No 078); encourages the Commission to examine the steps required for accession of the European Union to the revised Charter and to propose a time-line for this objective*". More generally, the Resolution calls on the Commission, the European External Action Service and the Member States to pursue external action coherent with the "European Pillar of Social Rights", by promoting, *inter alia*, the implementation of the relevant Council of Europe conventions.

476. On 23 January 2017[430], the European Commission held a Conference in Brussels "*The European pillar of social rights: going forward together*" which marked the close of the above-mentioned consultation, and helped to determine the future direction of the Pillar..

477. Finally, on 26 April 2017, the European Commission adopted the "European Pillar of Social Rights" under the form of a Recommendation and a proposal for a joint proclamation

[429] Resolution 2016/2095(INI) : http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0010+0+DOC+XML+V0//EN.

[430] In the framework of the enhanced dialogue between the EU and the Council of Europe on social rights, a workshop "The European Social Charter and the European Pillar of Social Rights" was held in Strasbourg in December 2016.

of the Parliament, the Council and the Commission (its final text will be the subject of negotiations between the three).

478. Announced as containing "20 principles and rights", it is expected that the Pillar will contribute to the smooth functioning and fairness of labour markets and social protection systems. Thus, the Pillar should constitute a frame of reference to be implemented through the various future initiatives, and will make it possible to examine the social performances and the results of the States in terms of employment. It will be taken into account in the context of the European Semester. The Pillar also aims to structure the European funds, such as the European Social Fund. Several legislative and non-legislative initiatives were presented by the Commission, illustrating the implementation of the Pillar[431].

479. The Recommendation[432] states that the 20 principles of the Pillar are based on the "*acquis*" of European Union law and on existing international law. The 1961 European Social Charter, the Revised European Social Charter and the European Code of Social Security are thus not only expressly mentioned but also taken into account for this purpose. The 20 principles are organised around three categories: 1) equal opportunities and access to the labour market, 2) fair working conditions and 3) social protection and inclusion.

Explanatory documents, such as thematic sheets, complement the Recommendation[433].

480. It is important to note that, in the context of both the "Turin Process" and the "European Pillar of Social Rights", staff members have been appointed as "focal points" by the Secretary General of the CoE and the First Vice-President of the European Commission, in the Social Charter Department and DG Employment, Social Affairs & Inclusion respectively, to allow closer co-operation between the two so that greater consideration can be given to the European Social Charter in EU law. The plan is that these focal points will meet on a regular basis and a number of meetings have in fact already taken place. In the long term, they could also help to promote further ratifications of the Revised Charter and the collective complaints system by EU member states.

481. It is worth noting that, since the launch of the "Turin Process", there has also been more dialogue between the ECSR and the CJEU (last exchange in October 2016 at the session of the ECSR), with a view to achieving greater convergence of case law (the CJEU has been called on to take greater account of the Charter,[434] while the ECSR is invited in the "Turin Action Plan" (see Appendix) to continue identifying and using EU legislation and case law in its conclusions and decisions).

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[431] http://ec.europa.eu/social/main.jsp?catId=1310&langId=en.

[432] Recommendation of the European Commission of 26 April 2017 on the European Social Pillar, C(2017) 2600 final : https://ec.europa.eu/commission/publications/commission-recommendation-establishing-european-pillar-social-rights_en.

[433] https://ec.europa.eu/commission/publications/staff-working-document-explanatory-fiches-each-principle_en.

[434] The "Turin Action Plan" (see Appendix) calls on the CJEU to take the following measures: integrate the fundamental rights established in the Charter into the general principles of EU law; encourage the emergence of an integrated, common normative system of protection of fundamental rights (this measure is also addressed to the ECSR); take the Charter and the ECSR decisions and conclusions into consideration when interpreting and implementing EU law; reinforce the relationship and dialogue with the ECSR (this measure is also addressed to the latter) - create a system of reciprocal recognition similar to that of the European Court of Human Rights and work towards a greater convergence of case law (measure addressed to the CJEU).

482. A further example of the enhanced dialogue between the Council of Europe and the EU, under the "Turin Process", can be seen in the above-mentioned CoE-FRA-ENNHRI-EQUINET Platform on economic and social rights (see above: launched in October 2015).[435]

483. In the light of the above, therefore, it is important to support any moves towards greater dialogue between the Council of Europe and the EU in the field of social rights.

484. Lastly, the EU's accession to the European Social Charter would help to ensure compliance with the principles of interdependence and indivisibility of human rights because of the complementary nature of the Charter and the Convention. Above all, however, it would reduce the scope for conflict between the requirements of the European Social Charter and the obligations arising from EU law.[436]

485. The possibility of the EU's accession to the Charter was first mooted in the 1980s[437] and it is clear from the above that it is more relevant than ever. The European Parliament and the Parliamentary Assembly (PACE) are in favour of such accession, moreover (see the European Parliament Resolution of 27 February 2014 on the situation of fundamental rights in the EU and the PACE Resolution of 8 December 2014 on the implementation of the above-mentioned Memorandum of Understanding between the Council of Europe and the EU).

V. CONCLUSIONS AND SUGGESTIONS

A. Background to the work of the CDDH-SOC

486. The CDDH-SOC decided to examine in greater details this part of the report on its future work at its second meeting (November 2017). Nevertheless, the questionnaire referred to in point B) has been sent to the member States since end of April, in accordance with the wish expressed by the CDDH at its meeting in December 2016.

487. Given that social rights are fundamental rights enshrined in international treaties such as the Convention, the Charter and the EU Charter of Fundamental Rights, and that multiple violations of these rights are still occurring in Council of Europe member states, as is evident from the judgments handed down by the European Court of Human Rights, the decisions and conclusions of the ECSR and numerous reports produced by other European monitoring bodies (in particular the Commissioner for Human Rights, the PACE and the FRA), such violations demand an appropriate response, especially in times of economic crisis and austerity, in order to ensure social justice and so preserve social cohesion across Europe.

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[435] The "Turin Action Plan" (see Appendix) calls on the ECSR and the FRA to take the following measure: reinforce the links between the ECSR and FRA, share knowledge and data, exploit the advantages of both monitoring systems.

[436] See above, De Schutter, Olivier: "*L'adhésion de l'Union européenne à la Charte sociale européenne*" – 8 July 2014. In this, the author expresses the view that the CJEU Opinion 2/13 of 18 December 2014 on the EU's accession to the Convention would not apply to the European Social Charter, to which the EU could accede more easily.

[437] The EU's accession to the Charter had been advocated in the Spinelli draft Treaty on the European Union of 14 February 1984 (Article 4§2). As regards the PACE, it has already been called upon to consider this matter in its Resolution 931(1989) "*The Social Charter of the Council of Europe and possible accession thereto by the European Community*".

488. As regards the Convention, despite an extensive body of case law in the field of social rights, as illustrated in this report, attention has also been drawn to the limitations of the protection afforded these rights by the Court (mainly indirect protection, which does not in itself cover social rights; the rather narrow wording of those few articles in the Convention which do provide for social rights, as compared with the broader and more precise wording of the corresponding articles in the Charter).

489. It is impossible, furthermore, to predict how the Court's case law will develop with regard to social rights as long as there is no political will to include new social rights in the Convention (see above: work of the GT-DH-SOC from 2003 to 2005).

490. It is fairly clear, therefore, that the Committee of Ministers' political objective of improving the effective implementation of social rights across Europe falls primarily within the sphere not of the Convention, but of the Charter which, it will be recalled, is the "natural" Council of Europe treaty for protecting such rights.

491. The complementarity and interdependence of the Charter and the Convention (through the rights protected and their different monitoring procedures) could be given greater emphasis, by encouraging more mutual references between the two systems through increased contact between the Court and its Registry and the ECSR and the Social Charter Department.

492. The activities of the CDDH-SOC should therefore form part of the strategic priority set by the Secretary General of the Council of Europe for his second term 2014-2019, namely to "make the role of the Social Charter stronger", and which led to the launch of the "Turin Process" in October 2014.

493. It will be recalled that the aim of the "Turin Process" is to strengthen the treaty system of the European Social Charter within the Council of Europe, its relationship and synergies with the European Union and to improve the implementation of social rights at national level.

494. The terms of reference assigned by the Committee of Ministers to the CDDH-SOC, namely "*to identify good practices and, as appropriate, make proposals to improve the implementation of social rights and facilitate the relationship between the various European instruments for the protection of social rights*" could therefore give rise to:

- the identification of national good practices regarding the implementation of the Charter: a compilation or guide to good practice (point B);
- proposals for improving the implementation of social rights at national level, at the level of the Council of Europe and in its relationship with the European Union; the drafting of one or more non-binding instruments (point C).

B. Identifying national good practices relating to the implementation of social rights, in particular of the European Social Charter

495. The Committee of Ministers' desire to "*identify good practices*" could certainly help to improve the implementation of social rights at national level through a guide or compilation of good practices, enabling them to be usefully shared between member states.

496. The "Brussels Document" (see Appendix) endorses this idea, moreover: "*Ensuring the widest implementation possible of the European Social Charter also implies promoting the*

key role of national institutions, particularly the judicial authorities, through improved training and information targeting lawmakers, administrative authorities and judges,[438] *as well as through the pooling of good practices and the systematic translation of the decisions of the European Committee of Social Rights (…). This would be consistent with the principle of subsidiarity (…), and would be to be conceived of per analogy to what the Committee of Ministers of the Council of Europe recommends as regards the implementation of the European Convention on Human Rights*".

497. In its proposals for the "Turin I" Conference (see Appendix), ANESC, which drafted the "Brussels Document", had already stressed the need to promote the dissemination of good practice at the level of domestic courts and legislative authorities.[439]

498. Since this report contains no specific chapter on national implementation of the Charter and provides only a few illustrative examples in this regard (see above: Part II, B, f))[440], the CDDH decided in December 2016 to send out to member States a questionnaire about their good practices and difficulties encountered in implementing social rights, in particular the Charter – and asking them for any suggestions they may have for improving social rights protection (whether at national level or at the level of the Council of Europe or in its relationships with the EU: see below).

499. This questionnaire (see Appendix) was drawn up at the first meeting of the CDDH-SOC (19 to 21 April 2017). It is mainly inspired by the suggestions made to States in the "Turin Action Plan" (see Appendix: 3rd column: national level). The CDDH-SOC decided to send this questionnaire to the member States through the Governmental Committee on the European Social Charter at the end of April, while copying the lists of members of the CDDH-SOC and of the CDDH for the right information and coordination of its recipients.

500. Given the active role played by ANESC in the "Turin Process", it was invited to participate in the work of CDDH-SOC (drafting the said questionnaire and then preparing a compilation or guide to good practice and, where appropriate, one or more non-binding instruments – see below: section C).

501. When preparing an eventual compilation/guide to good practices, in order to avoid any duplication, close attention will need to be paid to the work of the European Social Cohesion Platform, which "*is in the process of identifying good practices and innovative approaches in the field of social cohesion, with focus in particular on the follow-up to the monitoring work of the European Committee of Social Rights and other relevant Council of Europe bodies (…). This should result in a compilation of good practices and innovative approaches (…). The information collected will allow concrete steps in order to foster the exchange of selected*

[438] See above, Part II, section B, i).

[439] Encouraging the application of the Social Charter by national courts "*could take the form of regular exchanges organised between the European Committee of Social Rights and the judges of the highest courts (…), of training of these judges where necessary, and of dissemination of good practices". The Academic Network further "considers that the Council of Europe could encourage states to adopt measures to see to it that more account of the Charter is taken in national policies and to promote and contribute to the dissemination of good practices.*"

[440] Reminder: (i) Examples of significant reforms further to ECSR decisions and/or conclusions; (ii) Examples of positive national responses to the crisis; (iii) Debate in national assemblies; (iv) Examples of the Charter's applicability by national courts; (v) National training and awareness-raising on the Charter; (vi) Key problems encountered by states when implementing the Charter.

good practices and innovative approaches as well as to take into account the member states' needs of co-operation in this field."[441]

502. The activities of the Platform and the CDDH-SOC should differ in scope, however, as the aim of the CDDH-SOC is to gather examples of good practice and suggestions, mainly from an institutional perspective, so as to improve the implementation of social rights, whereas the Platform's work seems to be more focused on issues.

503. On the basis of this report and member States' replies (for the end of August 2017) to the aforementioned questionnaire, the CDDH-SOC could at its second meeting (November 2017) prepare a guide or compilation of national good practices which would likewise highlight the main difficulties encountered by States in implementing the Charter.

504. This guide or compilation could also be usefully supplemented by other material such as: the information/reports presented at the aforementioned Cyprus conference on the role of domestic courts in the enforcement of social rights (February 2017) and any information that might be available (see above: Part II, B, g): exchange of good practice between states concerning the Charter) from ANESC[442] or the aforementioned "Council of Europe-FRA-ENNHRI-EQUINET" Platform on economic and social rights, one of whose aims is to promote exchanges of good practice (creation of a website featuring the relevant legal texts, examples of national case law and good practices, etc.). Where appropriate, examples of good practice could also be collected from the Congress of Local and Regional Authorities (see above: one of the 4 strategic action phases mentioned in the Graz Declaration, May 2015).

505. This guide/compilation could be appended to the non-binding instrument(s) which would also be prepared by the CDDH-SOC at the same time (section C: see below). It could then be posted on the CDDH website and regularly updated by member states, as is the case with follow-up to the implementation of Recommendation (2014)2 of the Committee of Ministers to member states on the protection of human rights of older persons.

506. Lastly, to promote this guide/compilation, some activities (such as a round table or seminar) could conceivably be planned beyond 2017 to encourage states to share good practice regarding their implementation of the Charter.

C. Proposals for improving the implementation of social rights at national level and at the level of the Council of Europe and in its relations with the European Union

507. The CDDH-SOC could usefully prepare one or more non-binding instruments containing "*proposals with a view to improving the implementation of social rights and to facilitate in particular the relationship between the various European instruments for the protection of social rights*" (see above: terms of reference assigned by the Committee of Ministers).

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[441] See the aforementioned interim report SG/Inf(2017)3 of 24 January 2017, page 4.

[442] ANESC proposals for "Turin I" (see Appendix): ANESC also "*resolved to undertake a systematic comparative study of the manner in which national courts of State Parties take into account the Charter, in order to facilitate the dissemination of good practices and to help identify both the advantages and the obstacles encountered at domestic level*."

508. As in the "Brussels Declaration" of 27 March 2015 on the "Implementation of the European Convention on Human Rights, our shared responsibility",[443] these proposals would be directed at those involved in the implementation of the Charter, at three levels: member states, the Council of Europe and, to a lesser extent, the European Union.

509. The content of the proposals could, subject to sufficient consensus among States, be based in particular on the following elements:

- the "courses of action" mentioned in this report;
- the suggestions made by States in their replies to the aforementioned questionnaire (end August 2017) ;
- the "Turin Action Plan" in its entirety (see Appendix – October 2014) ;
- ANESC's proposals for the "Turin I" Conference (see Appendix – October 2014) ;
- the "Brussels Document" in its entirety (see Appendix - February 2015) ;
- conclusions produced in connection with "Turin II" (March 2016) ;
- conclusions produced at the end of the Cyprus conference (February 2017) ;
- elements of the CDDH's feasibility study on the impact of the economic crisis and austerity measures on human rights in Europe (December 2015; it will be recalled that in February 2016, the Committee of Ministers invited the CDDH to take account of this, where appropriate, in its work on social rights) ;
- any elements that might be transposed from the instruments on implementation of the Convention, in particular part B of the Action Plan appended to the above-mentioned "Brussels Declaration" (March 2015) which suggests numerous action measures for States[444] ;
- Possible elements of the ETUC Declaration on the 50th anniversary of the Charter (2011) – which contains numerous measures addressed in particular to States and the Committee of Ministers.

510. The present report does not prescribe any courses of action for member states as there is no section devoted specifically to them. Under the subsidiarity principle, however, they clearly have a crucial role to play in implementing the Charter, one that has been outlined above (see Part II, B, i): need to provide better training/information on the Charter system for legislative, administrative and judicial authorities as well as national human rights institutions, representatives of civil society and the relevant professional circles).

[443] It will be recalled that the Action Plan appended to this Declaration contains three parts addressed to: A) the European Court of Human Rights; B) member states and; C) Council of Europe institutions (Committee of Ministers, Secretary General of the Council of Europe and, through him, the Department for the Execution of Judgments, all the relevant Council of Europe stakeholders, intergovernmental committees, Secretary General of the Council of Europe, Commissioner for Human Rights and Parliamentary Assembly/PACE).

[444] Drawing on this Declaration, the following measures in particular (in addition to those mentioned in the "Turin Action Plan" and the "Brussels Document", see below) could be addressed to states: prevent violations and create effective national remedies for dealing with violations of the Charter; publication, dissemination and translation of the relevant documents (with priority being given to the conclusions and decisions of the ECSR – with the possible help of a Fund set up for this purpose by the Council of Europe) ; establish "Charter focal points" within the relevant executive, judicial and legislative authorities, and create networks between them; consider holding regular discussions on the implementation of the Charter involving these national authorities and, where appropriate, representatives of national human rights institutions and civil society.

511. Below are some examples, by way of illustration and not exhaustive[445], of the kind of measures prescribed to States under the "Turin Action Plan" (see Appendix, 3rd column – National) :

- open a political debate on the Turin Process;
- ratify the Revised Charter and/or all provisions and the Collective Complaints Protocol;
- reinforce the position/visibility of the Charter within the framework of sources of international law;
- allow the election of members of the ECSR by the PACE;[446]
- organise and facilitate inter-parliamentary debates on the Charter;
- reinforce the framework for ensuring the implementation of the Charter, as well as the decisions and conclusions of the ECSR;
- integrate social rights in economic recovery plans, adapt social impact indicators and new reference values to measure social wellbeing;
- central and local governments need to work together more closely to ensure the implementation of ECSR decisions/conclusions;
- inform social partners and NGOs about the collective complaints procedure;
- authorise national NGOs to bring complaints;
- systematically notify the steps taken to implement decisions of the ECSR;
- take the Charter into consideration when interpreting and implementing EU law;
- implement "early warning" procedures with respect to the compliance of national legislation with the Charter;
- adapt communication to improve the visibility of the Charter and place it at the level of the ECHR;
- promote training on the Charter for judges and experts;
- promote knowledge of the Charter and collective complaints procedure among NGOs and citizens.

512. In addition, it will be recalled that in the "Brussels Document" (section 3: Enhancing the effectiveness of the European Social Charter, see Appendix), it is stated that "*Ensuring the widest implementation possible of the European Social Charter also implies promoting the key role of national institutions, (...), through improved training and information targeting lawmakers, administrative authorities and judges, as well as through the pooling of good practices and the systematic translation of the decisions of the European Committee of Social Rights (...)*".

513. As regards Council of Europe actors, the proposals aimed at them – in a non-binding instrument – could be based, to a large extent, on the courses of action featured in this report, under the relevant actors. For now, these proposals should be aimed primarily at the Committee of Ministers and the ECSR, as the main bodies responsible for monitoring implementation of the Charter. As far as the rest are concerned, including the Secretary General of the Council of Europe who is not dealt with in a specific section of the present report, most of the courses of action prescribed have already been initiated by the parties concerned.[447]

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[445] Among other avenues of action that can be usefully addressed to States, the following proposed by the ETUC can be added : to respect their obligation to submit on time full reports and to attend the meetings of the Governmental Committee – which follow up the conclusions of the ECSR arising therefrom.

[446] See above: action measure likewise prescribed to the Committee of Ministers and the PACE.

[447] Chiefly: slight increased resources for the Social Charter Department; new website for the Charter and a promotional film on the Charter ; PACE report on the Turin Process (in progress); position papers by the

514. The European Union is the target of numerous action measures, as set out in the "Turin Action Plan" (see Appendix, 2nd column) and the "Brussels Document" (see Appendix). The present report, however, includes only those which directly concern the EU's relationship with the Council of Europe (see above: Part IV: "Possible action"), as it was not considered appropriate, in a non-binding Council of Europe instrument, to call on the EU to take measures that fall within its sole competence.

515. Lastly, it is for the CDDH-SOC working group to decide which instrument is the most appropriate for making "*proposals with a view to improving the implementation of social rights and to facilitate in particular the relationship between the various European instruments for the protection of social rights*" (e.g. Recommendation or Declaration). It will also be for the CDDH-SOC to decide whether to prepare one or more instruments, given the various parties involved.

516. One idea might be to prepare a single instrument completing the above-mentioned Declaration of the Committee of Ministers of 12 October 2011 (adopted on the 50th anniversary of the European Social Charter, see Appendix), in the light of the "Turin Process". This Declaration, it will be recalled, was directed at the Committee of Ministers itself,[448] the member states[449] and the relevant Council of Europe bodies,[450] while being drafted in fairly general terms. It could be expanded on, therefore, by including new elements designed to improve the protection of social rights, and on which there is a sufficient consensus among member states.

517. In this way, the Committee of Ministers, which has not adopted an official text on this subject since the "Turin Process" was launched by the Secretary General in October 2014, could give its formal backing to the process. This idea would also tie in neatly with the following action measure addressed to the Committee of Ministers in the "Turin Action Plan" (see Appendix): "*Reinforce the position/ visibility of the Charter within the Organisation*".

Commissioner for Human Rights, including his Human Rights Comment "Preserving Europe's social model" and INGO Conference co-ordinating committee on the Turin Process.

[448] It will be recalled that in this Declaration, the Committee of Ministers expressed its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure, to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the ECSR.

[449] Call for member states to ratify the Revised Charter and the Protocol on collective complaints and to step up their efforts to raise awareness of the Charter at national level.

[450] The relevant bodies of the Council of Europe were likewise urged to increase their efforts to raise awareness of the Charter.

VI. APPENDICES

1. Declaration of the Committee of Ministers, adopted on the 50th anniversary of the European Social Charter in 2011
2. General Report on the High-level Conference on the European Social Charter (Turin, 17-18 October 2014) containing a "Turin Action Plan", as set out at the end of the Report
3. Presentation of the above mentioned General Report before the Committee of Ministers by Mr. Nicoletti, as Vice-President of the PACE, on 4 February 2015
4. "Brussels' Document", prepared after the Brussels Conference on the future of the protection of social rights in Europe, February 2015
5. GR-SOC(2016)CB1, meeting of 19 January 2016, and the Secretariat General/CoE's proposals referred to therein and as set out in CM(2015)173 of 17 December 2015
6. Chart of signatures and ratifications of the various instruments of the Charter
7. Timetable for the reporting procedure for 2015 (submission of reports) and 2016 (publication of conclusions) up to 2018/2019
8. Breakdown of the 15 states bound by the Collective Complaints Protocol of 1995 and subject to the "simplified reporting" procedure
9. Admissibility conditions for collective complaints
10. Positions and proposals of the Academic Network on the European Social Charter and Social Rights for the "Turin I" Conference, October 2014
11. Declaration by the Sub-Committee on the European Social Charter (Committee on Social Affairs) on behalf of the Parliamentary Assembly of the Council of Europe at the "Turin I" Conference, October 2014
12. Call to Action by the Conference of INGOs to support the "Turin Process" for the European Social Charter, January 2016
13. Declaration adopted in January 2017 titled "*The European Social Charter is central to the dialogue between the Council of Europe and the European Union*"
14. Opinion of the Secretary General of the Council of Europe on the European Union initiative to establish a "European Pillar of Social Rights", of 2 December 2016 and published on 20 January 2017
15. Questionnaire on good practices relating to the implementation of social rights at national level - prepared by the CDDH-SOC at its first meeting (April 2017).