



Strasbourg, 11 May 2021

GC (2021)9

### Position paper

## on the follow-up to the Steering Committee for Human Rights (CDDH) report addressed to the Committee of Ministers of the Council of Europe

Governmental Committee of the European Social Charter  
and  
European Code of Social Security

### ***On the need for an effective implementation of social rights***

The Governmental Committee of the European Social Charter stands firmly behind the recognition of the need for an effective implementation of social rights. In its statement adopted on 16 December 2020,<sup>1</sup> the Governmental Committee reaffirmed the long-standing commitment of the Parties to the European Social Charter (commonly referred to as the Social Constitution of Europe) and to reinforcing social rights. Effective implementation in law and in practice of all social rights guaranteed by the Charter should be a priority for all member States of the Council of Europe. The Governmental Committee has encouraged member States “to be central to a process towards elaborating through multi-stakeholder dialogue a common understanding of the social contract fit for the 21st century.”<sup>2</sup>

The Governmental Committee actively works to contribute to the task defined by the Committee of Ministers of examining and making proposals for improving the implementation of social rights in the member States and of facilitating in particular the relationship between the Council of Europe instruments with other instruments for the protection of social rights.<sup>3</sup> In this respect, it has carefully considered the report of the Steering Committee for Human Rights (CDDH)<sup>4</sup>, the position paper on

---

<sup>1</sup> Statement of 16/12/2020 on the follow-up to the Steering Committee for Human Rights (CDDH) report addressed to the Committee of Ministers of the Council of Europe

<sup>2</sup> Message of the Governmental Committee to the Committee of Ministers of the Council of Europe during the ceremony of the 70<sup>th</sup> anniversary of the Council of Europe, 2019.

<sup>3</sup> At its 141st meeting (5-8 October 2020, (online meeting) Strasbourg), the Governmental Committee mandated a dedicated Working Group to follow up to the CM decisions and CDDH reports. The Working Group met on 27 October, 17 November, 2 December 2020, 23 and 25 February 25<sup>th</sup> March and 19<sup>th</sup> April 2021. The Working Group is composed of the members of the Governmental Committee Bureau and complemented with representatives of France, the Netherlands and United Kingdom and a representative of the ETUC.

<sup>4</sup> Council of Europe CDDH (2018), Improving the protection of social rights in Europe. Volume I. Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe, adopted by the CDDH at its 89th meeting (19–22 June 2018), p.160; Council of Europe CDDH (2019) Improving the protection of social rights in Europe. Volume II. Report identifying good practices and making proposals with a view to improving the implementation of social rights in Europe, adopted by the CDDH at its 91st meeting (18–21 June 2019), p. 131.

the CDDH report issued by the European Committee of Social Rights in October 2020<sup>5</sup> as well as the decisions adopted by Committee of Ministers at its 1363rd meeting on 11 December 2019<sup>6</sup>, where it further invited the the Governmental Committee to:

1. consider further ways of streamlining the reporting procedure, including the advisability of reviewing the current system of thematic reports.
2. consider, in particular, the advisability of reforming its working methods,<sup>7</sup> and the need for adjusting its own procedures to focus on priority issues in the context of the follow-up to Conclusions.
3. enhance dialogue with national authorities and other stakeholders in relation to Conclusions under consideration.
4. reflect, in dialogue with the European Committee of Social Rights (ECSR), on the desirability and potential modalities for the ECSR to have the assistance of an ad hoc expert, who would satisfy the requisite criteria for ECSR membership, in proceedings concerning a specific collective complaint where no national of the respondent State is a member of the ECSR at the time.<sup>8</sup>

The Governmental Committee embraces its role as a human rights body designed to contribute to the implementation of social rights in Europe as set out by the European Social Charter (of 1961 and Revised Charter of 1996) and in the European Code of Social Security (1964 and Revised Code of 1990). As a pivotal contributor to the monitoring process, it sees clearly that the time for action is now, in a situation where the COVID-19 pandemic is having far-reaching social rights consequences beyond the spread of the disease, in particular taking into account the fact that the crisis has exposed or exacerbated pre-existing problems in the implementation of social rights. Effective implementation of the European Social Charter will be crucial for the recovery efforts that must follow.

As confirmed in its statement of 16 December 2020, the basis of the work of the Governmental Committee is, first and foremost, its commitment to monitor and foster the effective implementation of social rights in law and practice. The European Social Charter (revised) should underpin the social contract for the 21<sup>st</sup> century.

To this end, the Governmental Committee reaffirms that it stands ready to adopt adjustments in its working methods and rules of procedure. It will therefore proceed to:

- reviewing its working methods and its rules to ensure that they are better adapted to present-day realities and more effective in dealing with the complex and many-faceted social rights questions that arise, in particular by considering a focus on priority issues and targeting specific questions and analysis when examining the follow-up to the ECSR's Conclusions;
- strengthening the follow-up to all Conclusions of non-conformity, by proposing, based on an enhanced dialogue with member States and European and national social partners, further and reasoned actions, including proposing recommendations in appropriate cases as stipulated in Article 27§3 of the Charter;<sup>9</sup>
- prompting a sustained dialogue with other stakeholders, in particular the ECSR, national authorities, European and national social partners, as well as the GR-SOC and PACE, with a view to sharing and supporting best practices, with due respect for their specific roles and mandates.

A reform of its working methods, as it is proposed by this paper, would for instance allow preparation in advance of the assessment of specific national situations of non-conformity, an exchange with

---

<sup>5</sup> ECSR position paper on follow-up to the report and proposals of the Steering Committee for Human Rights (CDDH), 21 October 2020.

<sup>6</sup> CM/Del/Dec (2019)1363/4.1c

<sup>7</sup> CM/Del/Dec (2019)1363/4.1c

<sup>8</sup> Decisions adopted by Committee of Ministers during 1363<sup>rd</sup> meeting on 11 December 2019

<sup>9</sup> Article 27§3 of the of the 1961 Charter as amended by the Turin Protocol reads as follows: "The Governmental Committee shall prepare the decisions of the Committee of Ministers. In particular, in the light of the reports of the Committee of Independent Experts and of the Contracting Parties, it shall select, giving reasons for its choice, on the basis of social, economic and other policy considerations the situations which should, in its view, be the subject of recommendations to each Contracting Party concerned, in accordance with Article 28 of the Charter. It shall present to the Committee of Ministers a report which shall be made public."

national authorities and social partners to understand the particular aspects and reasons for the existing national situation and a better knowledge of the actions needed, so that specific and adapted recommendations can be proposed.

### ***Simplifying the reporting procedure***

The European Committee of Social Rights (ECSR) set out in its position paper of 21 October 2020<sup>10</sup> certain proposals to further simplify the reporting procedure, including:

- a focus on selected provisions in each of the thematic reports and targeting specific and topical questions;
- the development of explanatory and pedagogical language in the Conclusions to help states to better understand the implications of each of the Charter provisions under analysis.

In its paper, the ECSR also proposed the possibility of rendering the current system of thematic reports more flexible, perhaps even phasing it out. This would allow the ECSR to examine the issues that it considers to be of particular importance in view of the prevailing social, economic and policy considerations. It would involve addressing provisions across the four thematic groups rather than following the current supervision cycle approach.

The Governmental Committee welcomes the steps already taken by the ECSR and shares the view that a targeted approach that would loosen up the thematic group approach could be explored further. This could allow for a more timely review of national situations. An example already undertaken is the initiative of the ECSR to address questions on state responses to Covid-19 outside the reporting reference period in 2020.

The role of the Governmental Committee is to foster follow-up and implementation of the Conclusions adopted and published by the ECSR. The Governmental Committee therefore proposes that future joint consultations with the European Committee on Social Rights take place to discuss the topics and articles to be reported on every year, whilst ensuring the general regular interval at which all articles are considered is maintained<sup>11</sup>. The dialogue should include setting priorities and identifying key issues. This would contribute to reinforcing the dialogue between the two Committees. The Governmental Committee highlights that Article 21 of the European Social Charter provides that “The Contracting Parties shall send to the Secretary General of the Council of Europe a report at two yearly intervals, in a form to be determined by the Committee of Ministers, concerning the application of such provisions of Part II of the Charter as they have accepted.” It is within this broad framework that the discussion about simplifying and rationalising the reporting system will have to take place.

### ***Strengthening the follow up to Conclusions of non-conformity***

While contributing to the simplification of the reporting procedure, the Governmental Committee is determined to ensure its follow-up to the ECSR’s Conclusions is more effective and transparent. To this aim, it will strive to examine all Conclusions of non-conformity with the Charter, in the framework of a combination of written and oral examination. In making this proposal, it draws from the experience of the examination of Conclusions at its October 2020 plenary meeting. The experience gained showed that such a procedure allows for an early identification of the most serious cases that require particular attention by the Governmental Committee (and subsequently the Rapporteur Group on social and health questions, GR-SOC and the Committee of Ministers).

In order to allow for the examination of situations of non-conformity, the Conclusions will be divided into the following categories by the Bureau assisted by the Secretariat:

1. conclusions of non-conformity not concerning core Charter provisions issued for the first time;

---

<sup>10</sup> <https://rm.coe.int/eCSR-position-paper-on-follow-up-to-the-report-and-proposals-of-the-cd/1680a0663a>

<sup>11</sup> Following the changes to the reporting system in 2006 and 2014, States only report in principle every four years on a thematic group of ESC Articles. This 4-year interval is not applicable when States have ratified the Collective Complaints Protocol and then submit only ‘simplified reports’, as well as in situations where the ECSR decided not to select certain cases of non-conformity for oral discussion in the Governmental Committee.

2. repeated Conclusions of non-conformity not concerning core Charter provisions;
3. conclusions of non-conformity due to the (repeated) lack of information (“conformity not established”) not concerning core Charter provisions;
4. cases and situations which concern more serious or urgent situations, having regard to the criteria laid down in Article 16B of the Rules of Procedure, that is:
  - a. conclusions of non-conformity concerning provisions relating to core provisions;
  - b. repeated Conclusions of non-conformity in the past (at least 2 or more supervision cycles, so several years);
  - c. cases where the GC has considered the national situation in the past (at least twice) and there have been no substantive changes to remedy a situation manifestly not in conformity;
  - d. other particular serious national situations manifestly incompatible with the Charter, as well as a result of a combination of a violation of other fundamental human rights standards. The criteria for what is to be considered ‘serious’ will be agreed by the Governmental Committee.

Situations of non-conformity related to the criteria listed under points 1 to 3 (the first group) will be subject to written procedure, pursuant to which a State Party should submit by a specified deadline to the Governmental Committee’s plenary session, information on measures adopted and/or envisaged to address the particular situation of non-conformity. The information will be included in a working document prepared for the session by the Secretariat, including a draft decision, as appropriate, to be submitted to the representatives ahead of the meeting, with a view to their consideration and preparation for adoption at the meeting. Should no information be received ahead of the meeting, an automatic warning will be adopted as it relates to that specific national situation. Situations of non-conformity listed under point 4 (the second group) will be discussed orally at the meeting (as would any case under points 1-3, if requested by a member of the GC).

By adopting this approach [as described in the list above], the Governmental Committee will be able to focus its resources on the discussion and follow-up of the most serious and complex national situations of non-conformity, while covering all cases of non-conformity. This goes hand-in-hand with its mandate and the obligation to adopt reasoned proposals, firmly grounded on “social, economic and other policy considerations”. This is a requirement of Article 27§3 of the 1961 Charter as amended by the Turin Protocol giving regard to recommendations to be submitted to the Committee of Ministers, to ensure that the subsequent CM’s supervisory action is targeted, prompt and effective.<sup>12</sup>

To further strengthen its efficiency, the Governmental Committee will adopt transparent guidelines, setting out criteria for cases that would necessitate a Recommendation to the Committee of Ministers. It will indicate in particular those national situations where despite the seriousness of the issue, as well as its long-standing character, there has been no remedy or specific action taken, therefore necessitating a Recommendation.

In order to reach this goal, the Governmental Committee will strive to submit concrete and solid proposals for action to the GR-SOC and the Committee of Ministers. Such proposals should take stock of measures adopted or envisaged by the national authorities to address the situations of non-conformity identified by the ECSR and contain a reasoned suggestion for further steps, proposing necessary action, including the proposal of recommendations in appropriate cases. The same applies in substantive terms to warnings addressed by the Governmental Committee to the Contracting Parties concerned which are communicated to the Committee of Ministers via the Governmental Committee report.

---

<sup>12</sup> See Article 27.3 of the 1961 Charter as referred to before.

### ***Prompting further dialogue with the European Committee of Social Rights, national authorities, European and national social partners and other stakeholders***

The Governmental Committee is committed to a sustained dialogue with national authorities, European and national social partners, and other stakeholders, as well as with the ECSR, PACE or the GR-SOC, with which it shares responsibility for implementing and making social rights effective, in particular by ensuring proper follow-up to the ECSR's Conclusions.

With this objective, the Governmental Committee proposes several measures to strengthen dialogue:

1. **Ensuring an exchange in advance** on the questions to be submitted by the European Committee on Social Rights to State members, including on questions targeting specific provisions and topics within the reporting cycle;
2. **Intensifying the frequency of meetings with the European Committee on Social Rights** at the Bureau level and introducing regular meetings between the two Committees at plenary level;
3. Organising **meetings with Government representatives** in the Governmental Committee, as well as with national competent authorities, European and national social partners, in order to mutually understand interpretations and approaches, to dispel possible misunderstanding of specific Conclusions, to share good practice experiences, as well as to assist States in finding ways to remedy shortfalls;
4. Organising **training sessions** and give assistance (e.g. via a 'newcomer manual') to new representatives within the Governmental Committee to ensure a better understanding of the role of the Committee and of the mechanism of enforcement of the European Social Charter.

### ***Resourcing the Secretariat of the Governmental Committee***

The Governmental Committee is aware that fulfilling its role requires the support of the secretariat, which it greatly values. In the current crisis environment, it is clear that increased resources requiring an increase in funding from member States seems not to be a viable option for the moment. However, having experienced the results of persistent budgetary restraints and repeated cuts, it is important that the Governmental Committee has the means to carry out its mission efficiently and effectively. To facilitate delivery of its obligations in compliance with its mandate, a full consideration of the sustainable and adequate allocation of resources required is necessary, so that it may conduct its activities within its dedicated and operational budget. The proposed changes described above must deliver focused and tangible results with maximum efficiency, including from a clear budgetary-accountability perspective.

### ***Conclusion***

The Governmental Committee will continue its reflection on the improvement of its working methods in particular, and the ESC monitoring system in general, to achieve more effective implementation of social rights in law and practice and remains available to continue its work with the Committee of Ministers in this respect.

In light of the above, the Governmental Committee asks the Working Group to prepare, on the basis of the discussion to take place at its plenary session in May 2021, a detailed document on the modalities for setting up the method of examining Conclusions, as described above, with a view to its approval during the October 2021 plenary session.