



Webinar

«Social rights protection of internally displaced people and other vulnerable groups: European Social Charter, other European standards and administrative courts case law in Ukraine»

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Ladies and gentlemen, remote participants and viewers,

First of all, I would like to thank you for inviting me to this webinar, giving me the opportunity to offer a contribution to your important work on the implementation of the European Social Charter and the protection of social rights in Ukraine. It is especially valuable to have this virtual meeting with the Ukrainian judges, as the judiciary has the constitutional obligation to protect rights and freedoms of people, including social and economic rights.

Human rights, whether civil, political, economic, social or cultural, are indivisible and interdependent. Social and economic rights are also enabling elements for the enjoyment of civil and political rights. These are core European values enshrined in a number of formal commitments undertaken by the Council of Europe member states, including Ukraine. Respect for and the promotion of social rights is essential in attaining sustainable democracy in Ukraine.

Ukraine ratified the European Social Charter (Revised) on 21 December 2006, accepting 76 of its 98 paragraphs. It has not ratified the Additional Protocol providing for a system of collective complaints.

Since 2008, the economic crisis had an extremely negative impact on the most vulnerable persons. The measures adopted by States to cope with such crisis, in particular the so-called austerity measures, also disproportionately affected those who are most vulnerable – the poor, the elderly, the sick.

Traditional and consolidated high standards in the protection of social rights, and some basic features of the welfare state – which are essential for the enjoyment of such rights, and of which European States should be proud – have been indeed put in danger. Increasing poverty and unemployment rate – in particular youth unemployment – social and economic inequalities; lack or shortcomings in migrant integration; job insecurity for many categories of employees; regressive changes in social security schemes and benefits; cuts in public healthcare systems and increase in the cost of healthcare: these are – and they already were, before Covid-19 - among the most worrying signals about the state of social rights in Europe. And now we have a pandemic crisis to deal with.

In such a situation it becomes even more important to have an effective mechanism for the protection of social human rights. Social rights enshrined in international instruments and incorporated into national legal system via laws and regulations are individual rights. A person may request the implementation of these rights from the state as well as protect his/her rights in the court. Social and economic rights are not as dissimilar from civil and political rights as originally suggested, in that all rights require interpretation to understand how they apply in specific contexts, they may all require both negative and positive measures by States.

Moreover, in the Ukrainian context we can clearly see how the adjudication of social and economic rights can be interconnected with the civil and political rights. I am referring here to the ECtHR judgments on *Burmych and Others v. Ukraine* and *Zhovner/Ivanov group of cases*, (biggest group of cases pending the execution before the Committee of Ministers) which concern non-enforcement or delayed enforcement of domestic judicial decisions in Ukraine. They relate, *inter alia*, to the effective delivery of social services/benefits (particularly social payments).

Dear Colleagues, if we speak about the role of the State in securing social and economic rights across Europe, I would just say that such role already emerges from the provisions of the European Social Charter, as well as from the conclusions, decisions and findings of the European Committee of Social Rights.

The European Committee of Social Rights is the body mandated to interpret the rights provided under the European Social Charter. It develops its interpretation based on the international legal principles: by looking at the object and purpose of the Charter, and its dynamic interpretation as a living instrument, which is able to address current problems. The respect of the Charter is monitored by the European Committee of Social Rights through the reporting procedure and the collective complaints procedure.

Insofar as they refer to binding legal provisions and are adopted by a monitoring body established by the Charter and the relevant protocols, decisions and conclusions of the European Committee of Social Rights must be respected by the States concerned; even if they are not directly enforceable in the domestic legal systems, they set out the law and can provide the basis for positive developments in social rights through legislation and case-law at national level.

The decisions and conclusions of the European Committee of Social Rights are of utmost importance for the domestic courts while deciding on social rights cases, including: employment-related rights; prohibition of discrimination; rights of children, people with disabilities, older persons, migrants; protection of health; social and medical assistance; right to protection against poverty and right to housing (which mostly lay within the competence of the administrative courts in Ukraine).

I encourage the experts – here, today – to have an in-depth discussion on the application of the Charter provisions and the ECSR case law by the Ukrainian national courts and judges, to consult the HUDOC page for the case law with regard to specific issues they are dealing with. The ECSR case law is a practical and valuable tool to be used by the national courts when considering cases on social and economic rights.

The conclusions of the European Committee of Social Rights can be directly used in the court judgments. Moreover, the digest of the ECSR case law can be used for the interpretation of the social rights provided under the Charter.

We see today that, in the nearest future, the issues of access to health care and non-discriminatory approach in the provision of a medical assistance (sorting of patients) might become a new trend in complaints lodged before the national courts across Europe. These issues, among other things, will be addressed by the European Committee of Social Rights in its future conclusions.

Dear Colleagues, allow me to stop here. I hope this event will help to better understand the system of the European Social Charter and the ECSR case law and enhance their application by the Ukrainian administrative courts.

I thank you for the attention and wish you fruitful discussions.