

# FOLLOW-UP TO ECSR DECISIONS IN COMPLAINTS

## **Aim:**

Remedy any violations identified bringing the situation at national level into conformity with the Charter: changes to law (legislation, domestic case law) and/or changes to practice (allocating resources, improving administrative procedures, programmes, projects, etc.)

## **Two forms of follow-up:**

- 1) Formal follow-up procedure at Council of Europe level as provided by the Charter and the 1995 Protocol
- 2) “Material” follow-up action by the respondent State and/or action by the complainant organisation or others



European  
Social  
Charter

Charte  
sociale  
européenne



# Legal basis: the 1995 Protocol

## “Article 9

1 *On the basis of the report of the Committee of Independent Experts, the Committee of Ministers shall adopt a resolution by a majority of those voting. If the Committee of Independent Experts finds that the Charter has not been applied in a 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. [...]*”

*“The Committee of Ministers **cannot reverse the legal assessment** made by the Committee of Independent Experts. However, its decision (resolution or recommendation) may be based on social and economic policy considerations.”*

(Explanatory Report, para. 46, emphasis added).

# Link to the reporting procedure

## **“Article 10**

*The Contracting Party concerned shall provide information on the measures it has taken to give effect to the Committee of Ministers' recommendation, in the next report which it submits to the Secretary General under Article 21 of the Charter.”*

# How it works: process and flow

- ↓ Notification of the ECSR decision to the parties and to the Committee of Ministers (*3-5 weeks after adoption by ECSR*)
- ↓ GR-SOC puts the decision on its agenda and the respondent Government provides information to GR-SOC, which proceeds to a first examination and on that basis instructs the Secretariat to prepare a draft recommendation or resolution (*2-3 months after the notification, depending on GR-SOC's meeting calendar*)
- ↓ GR-SOC approves the draft text at its next meeting (*4-6 months after notification*)
- ↓ Committee of Ministers adopts the recommendation/resolution (*5-7 months after notification*)
- ↓ In any event, the ECSR decision becomes public no later than *4 months after notification* (Article 8§2 of the 1995 Protocol)
- ↓ Follow-up in the framework of the reporting procedure (*1-2 years after adoption of the recommendation or resolution*)

# Resolution or Recommendation?

## [Resolution ResChS\(2014\)7](#): FEANTSA v. the Netherlands, Complaint No. 86/2012

*[The Committee of Ministers:]*

- 1. takes note of the report of the ECSR and in particular the concerns communicated by the Dutch Government (see appendix to the resolution);*
- 2. recalls that the powers entrusted to the ECSR are firmly rooted in the Charter itself and recognises that the decision of the ECSR raises complex issues in this regard and in relation to the obligation of States parties to respect the Charter;*
- 3. recalls the limitation of the scope of the European Social Charter (revised), laid down in paragraph 1 of the appendix to the Charter;*
- 4. looks forward to the Netherlands reporting on any possible developments in the issue.*

## [Recommendation CM/RecChS\(2022\)2](#): ICJ/ECRE v. Greece, Complaint No. 173/2018

*[The Committee of Ministers] Recommends that Greece:*

- pursue further the efforts already undertaken to increase the national accommodation capacity for accompanied and unaccompanied migrant children, including accommodation for accompanied children on the islands;*
- proceed to the reform and full implementation of a law on guardianship of unaccompanied minors;*
- strengthen the implementation of the regulatory framework for the education of accompanied and unaccompanied migrant children, in particular on the islands;*
- indicate the decisions and actions taken to comply with this recommendation in the next report on follow-up to decisions to collective complaints.*

# ECSR's own follow-up to decisions in the framework of the reporting procedure

In 2014, the Committee of Ministers decided that States having accepted the collective complaints procedure must submit a simplified report on follow-up to ECSR decisions **every two years**. In order to prevent excessive fluctuations in the workload of the ECSR from year to year, the States which have accepted the complaints procedure were divided into two groups:

- **Group A:** France, Greece, Portugal, Italy, Belgium, Bulgaria, Ireland, Finland;
- **Group B:** Netherlands, Sweden, Croatia, Norway, Slovenia, Cyprus, Czech Republic, [Spain].

ECSR examines the simplified reports and publishes **“findings”** on whether the violations identified have been remedied. The social partners, NGOs and others (including complainant organisations!) may submit comments on the simplified reports in the same way as for the ordinary reports on the Charter provisions

**FEANTSA v. the Netherlands, 86/2012:** examined 3 times since 2015, violations still not remedied (except in respect of migrants in an irregular situation)

**ICJ/ECRE v. Greece, 173/2018:** not yet examined (recommendation adopted only in 2022)

# ”Material” follow-up by the parties and by other actors at national level

## 1) Action by respondent States, by national courts and other authorities at national level:

- Legislative amendments
- Allocation of resources and other “practice” measures
- National courts rule in the light of ECSR decisions
- Regional/local authorities take measures having regard to ECSR decisions
- Etc.

## 2) Action by the complainant parties and others (for example, other social partner and civil society organisations, academe, etc.) at national level:

- Dissemination
- Advocacy, including possibly litigation at national level
- Negotiation/consultation with relevant national authorities
- Analysis
- Etc.