

General Introduction

1. The European Committee of Social Rights, established by Article 25 of the European Social Charter, composed of:

Ms Polonca KONCAR, President

Professor of Labour Law, Law Faculty,

University of Ljubljana (Slovenia)

Mr Andrzej SWIATKOWSKI, Vice-President

Professor of Labour Law, Law Faculty,

Jagiellonian University, Krakow (Poland)

Mr Colm O'CONNOR, Vice-President

Senior Lecturer in Law

Faculty of Laws

University College, London (United Kingdom)

Mr Jean-Michel BELORGEY, General Rapporteur,

President of the Reports and Studies' Section,

Conseil d'Etat, Paris (France)

Ms Csilla KOLLONAY LEHOCZKY

Professor, Legal Studies Department,

Central European University, Budapest (Hungary),

Head of the Labour and Social Law Department,

Law Faculty, Eötvös Lorand University, Budapest (Hungary)

Mr Lauri LEPPIK

Professor of Social Policy

Tallinn University (Estonia)

Ms Monika SCHLACHTER

Professor of Civil Law, Labour Law and Comparative Law

Faculty of Law

University of Regensburg (Germany)

Ms Birgitta NYSTRÖM

Professor of Private Law

Deputy Dean, Faculty of Law,

University of Lund (Sweden)

Ms Lyudmila HARUTYUNYAN

Dean of Faculty of Sociology

Yerevan State University (Armenia)

Mr Rüchan IŞIK

Professor of Labour Law, Faculty of Law

Bilkent University, Ankara (Turkey)

Mr Petros STANGOS

Professor of European Law, School of Law

Department of International studies

Aristotle University, Thessaloniki (Greece)

Mr Alexandru ATHANASIU

Professor, Law School, Private Law Department

University of Bucharest (Romania)

Mr Luis JIMENA QUESADA

Professor of Constitutional Law

University of Valencia (Spain)

Substitute Judge at the High Court of Justice, Administrative Chamber (Spain)

Ms Jarna PETMAN

Senior Lecturer, Professor in International Law, Department of Public Law, Faculty of Law

University of Helsinki (Finland)

assisted by Mr Régis BRILLAT, Executive Secretary of the European Social Charter, with the participation of Mr Alexandre EGOROV, representative of the International Labour Organisation,

between February 2009 and October 2009 examined the reports on the application of the Revised European Social Charter by Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Ireland, Italy, Lithuania, Malta, Moldova, the Netherlands, Norway, Portugal, Romania, Slovenia, Sweden and Ukraine.

2. At the 1041st meeting of the Ministers' Deputies on 19 November 2008 the Committee of Ministers held an election to fill four of the five seats left vacant following the expiry of the terms of office of Mr Alfredo BRUTO DA COSTA (Portuguese), Mr Stein EVJU (Norwegian), Mr Nikitas ALIPRANTIS (Greek), Mr Tekin AKILLIOGLU (Turkish) and Mr Lucien FRANCOIS (Belgian). Mssrs ISIK (Turkish), STANGOS (Greek), ATHANASIU (Romanian) and JIMENA QUESADA (Spanish) were elected for a term of office beginning on 1 January 2009 and ending on 31 December 2014. At the 1047th meeting of the Ministers' Deputies on 4 February 2009 the Committee of Ministers held an election in respect of the remaining vacant seat. Ms PETMAN (Finnish) was elected for a term of office beginning immediately and ending on 31 December 2014.

The Committee wishes to express its appreciation and gratitude to the outgoing members, Mssrs BRUTO DA COSTA, EVJU, ALIPRANTIS, AKILLIOGLU and FRANCOIS, for their outstanding work during a crucial period in the Committee's existence, marked not least by the entry into force of the Revised Charter and the Collective Complaints Procedure.

3. On 6 March 2009, Ms Annalisa CIAMPI (Italian) resigned from the Committee having been a member since January 2008. The Committee wishes to thank Ms CIAMPI for her contribution to its work. At the 1xxxth meeting of the Ministers' Deputies on xx July 2009 the Committee of Ministers held an election to fill the seat left vacant

following the resignation of Ms CIAMPI. [...] was elected and took up office immediately for a term of office ending on 31 December 2010.

4. The function of the European Committee of Social Rights is to decide on the conformity with this treaty of the law and practice of states. Its conclusions appear in the following chapters by State. They are also available on the website of the Council of Europe www.coe.int and in the case law database that is also available on this site. A summary table of the Committee's Conclusions 2009 as well as the state of signature and ratification of the 1961 European Social Charter and the 1996 Revised European Social Charter appears below.

5. The conclusions adopted by the Committee in October 2009 concern the accepted provisions of the following articles of the Revised Charter belonging to the thematic group "Health, social security and social protection":

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

6. In addition to the state reports, the Committee had at its disposal comments on the reports submitted by [...]

Statements of interpretation

10. Statement on Article 12§3

The Committee clarifies its interpretation of Article 12§3:

Firstly, it considers that the existence of a social security system of a higher level than that required under Article 12§1 or Article 12§2 is not presupposed under Article 12§3.

Secondly, a situation of progress may consequently be in conformity with Article 12§3 even though the social security system has not attained the levels required under the two first paragraphs of Article 12.

Thirdly, it repeats that a partly restrictive evolution in the social security system is not automatically in breach of Article 12§3; the Committee has already detailed the criteria to assess such situations.

11. Statement on Article 14§1

Article 14§1 guarantees the right to general social welfare services. The right to benefit from social welfare services must potentially apply to the whole population, which distinguishes the right guaranteed by Article 14 from "the various articles of the Charter which require States to provide social welfare services with a narrowly specialised objective".

The provision of social welfare services concerns everybody who find themselves in a situation of dependency, in particular the vulnerable groups and individuals who have a social problem. The Committee therefore verifies that social services are available to all categories of the population who are likely to need them. It has identified the following groups: children, the elderly, people with disabilities, young people in difficulty and young offenders, minorities (migrants, Roma, refugees, etc.), the homeless, alcoholics and drug addicts, battered women and former detainees.

The list is not exhaustive as the right to social welfare services must be open to all individuals and groups in the community. It does, however, give an idea of the groups

in which the Committee systematically takes an interest because of their more vulnerable situation in society.

Under Article 14§1 the Committee reviews rules governing the eligibility conditions to benefit from the right to social welfare services (effective and equal access) and the quality and supervision of the social services as well as issues of rights of beneficiaries and their participation in the establishment and maintenance of social welfare services (Article 14§2). Persons applying for social welfare services should receive any necessary advice and counselling enabling them to benefit from the available services in accordance with their needs.

The other provisions of the Charter dealing with social services for specific target groups, including those falling within the scope of Article 13§3, concern – as noted above – services “with a narrowly specialised objective”. When these various provisions have not been accepted by a State Party the Committee proceeds to a summary and less exacting examination of the situation with regard to social services for the specific target groups concerned under Article 14 (in so far as this article has been accepted).

What distinguishes Article 14 from the other relevant provisions of the European Social Charter such as Article 13§3 and others which deals with social protection issues are the general scope of coverage and specific methods of social work used by the social welfare services.

General Questions from the Committee

12. The Committee addresses the following general questions to all the States Parties and invites them to provide replies in the next report on the provision concerned:

13. The Committee asks that the next report on Article 11 contain information on the availability of rehabilitation facilities for drug addicts, the range of facilities and treatments as well as whether supply matches demand under Article 11.

14. The Committee observes that self-employment is becoming a more widespread form of economic activity. In this context, the Committee asks for information on the coverage of self-employed persons with regard to all social security schemes under Article 12§1.

Comment on the application of the Charter in the context of the global economic crisis

15. The Committee notes that during the reference period of the current reporting cycle the economic climate in Europe was still generally favourable and many governments were expanding their social safety nets. However, 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 social protection” of the current reporting cycle. Increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increase while tax and social security contribution revenues decline.

16. In this context, the 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.

17. 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 recognised by 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.

18. The Committee also recalls that 2010 is the European Year for Combating Poverty and Social Exclusion, focusing on promoting solidarity, social justice and social inclusion. One of the key priorities of the European Year is to recognise the fundamental right of people in a situation of poverty and social exclusion to live in dignity and to play a full part in society. In this context the Committee wishes to reiterate that the right to protection against poverty and social exclusion is one of the fundamental rights protected under the revised Charter. Concerted efforts of states to accept and secure this right are therefore pertinent.

Comment on fulfilment of the reporting obligations by the States Parties

19. The Committee has in the past taken note of instances of non-submission by certain States Parties of reports on the application of the Charter within the deadline set by the Committee of Ministers. Although the situation has improved somewhat since the entry into force of the new system for submission of reports¹, serious delays nevertheless persist in respect of a limited number of states. Thus, in the present supervision cycle the reports of Hungary, Iceland and Ireland had to be examined after the conclusions for all other states had been adopted and made public. The Committee invites the States Parties to observe scrupulously the reporting deadlines so as not to undermine the impact of the Charter's supervisory mechanism.

20. The Committee recalls that a new Form for Reports was adopted by the Committee of Ministers on 26 March 2008². The Form is available at <http://www.coe.int/socialcharter/>.

and it considers that the general impression of the first reports based on this new Form is encouraging. However, the quality of certain reports is still not adequate and does not allow the Committee to make an assessment of the situation forcing it to defer the conclusion. Information provided is not always pertinent, is not sufficiently clear and/or exhaustive or is lacking entirely. The Committee wishes to point out in this respect that it is not enough to provide lists of national legislation relevant to the Charter provisions concerned. All references to legislation should be accompanied by the appropriate explanations of how they ensure application of the Charter.

21. In deciding about the nature and extent of the information to include in the report, the national authorities should take into account the case law of the European Committee of Social Rights as it is reflected in the Committee's previous conclusions and decisions. They may refer to various publications on the case law, including to the Digest published under the responsibility of the Secretariat³

. The Committee further recalls that each report shall contain replies to any questions raised by the Committee in its conclusions, whether questions of a general nature addressed to all States (such questions appear in the "General introduction") or specific questions contained in the conclusions proper in respect of each State for each provision. As regards statistical information it is understood that, if official statistics are lacking, governments may supply data or estimates based on *ad hoc* studies and surveys, or use valid data from other sources.

22. Having regard to the fact that the current system for submission of reports entails a period of four years between reports on any given accepted provision of the Charter and being committed to avoiding as far as possible the deferral of conclusions, the Committee has decided that it will defer a conclusion for lack of information only once before adopting a conclusion of non-conformity on the ground that it has not been established by the State in question that the situation is in conformity with the Charter. In practical terms, this means that where conclusions contained in the present volume have been deferred, the information requested must be included in the next report on

the provision concerned (i.e. in four years' time), otherwise the conclusion will be one of non-conformity.

Next report

23. The next reports, which are due before 31 October 2009, will concern the accepted provisions of the following Articles belonging to the thematic group "Labour rights": 2, 4, 5, 6, 21, 22, 26, 28 and 29.

¹*Decision adopted at the 963rd meeting of the Ministers' Deputies on 3 May 2006.*

²*Decision adopted at the 1022nd meeting of the Ministers' Deputies on 26 March 2009.*

³*The Digest of the Case Law may be consulted at <http://www.coe.int/socialcharter/>.*