

# MANUAL ON PREPARATION OF NATIONAL REPORTS ON ACCEPTED PROVISIONS UNDER THE REPORTING PROCEDURE OF THE EUROPEAN SOCIAL CHARTER

Part 1



**Danuta Wiśniewska-Cazals**



European  
Social  
Charter

Charte  
sociale  
européenne

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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ON ACCEPTED PROVISIONS UNDER THE  
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## Introduction

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States are faced with increasing demands regarding the implementation of numerous treaty obligations, the submission of reports to international and regional human rights systems and the follow-up to recommendations or decisions arising from them.

This manual on reporting by states to the European Committee of Social Rights under the reporting procedure of the European Social Charter seeks to bring together the key elements for effective and efficient national reporting, without proposing a single solution.

The accuracy and clarity of the information contained in a national report is essential for a fair assessment of the situation in the state by the European Committee of Social Rights and, therefore, for the conclusions of the Committee, whose aim is, in particular, to guide the state in improving the protection of the social rights of persons who are entitled to benefit from these rights.

For States Parties, reporting and engaging in the procedure for monitoring the implementation of the European Social Charter provides a unique opportunity to self-assess the situation on the ground, including through data collection and analysis, and to review current legislation and policies.

This manual is dedicated exclusively to the reporting procedure on accepted provisions of the European Social Charter. Its primary objective is to contribute to improving the quality of the national reports submitted for examination to the European Committee of Social Rights in order to reduce the number of conclusions of non-conformity or deferrals due to lack of information requested by the Committee.

## Brief considerations regarding the European Social Charter

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The European Social Charter is a Council of Europe treaty that guarantees fundamental social and economic rights as a complement to the European Convention on Human Rights, which mainly concerns civil and political rights. Both instruments have their origin in the United Nations Universal Declaration of Human Rights adopted in 1948. They can both be directly applied by the national courts.

The scope of the Charter is wide. It contains 31 articles or 98 numbered paragraphs covering what is generally recognised as human social rights, such as the right to housing, health, employment, education, social protection and welfare. In each of these areas there are also provisions that protect specific target groups such as children, people with disabilities, the older people and migrants. The enjoyment of protected rights must be guaranteed without discrimination.

No other legal instrument at European level offers such extensive and comprehensive protection of fundamental social rights as the European Social Charter, which also serves as a reference in European Union law in this field. The Charter is therefore perceived as the Social Constitution of Europe and is an essential element of the continent's entire human rights system.

Adopted in 1961 and revised in 1996, the Charter has been ratified by 43 of the 47 Member States of the Council of Europe, with 34 countries bound by the revised Charter and 9 still bound by the 1961 Charter.

The Charter establishes a supervisory mechanisms guaranteeing their respect by the States Parties : reporting system and the collective complaints procedure. The latter, which entered into force in 1998, has so far been ratified by 15 countries (Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden).

# Reporting procedure and simplifying reporting procedure – an overview

## Legal framework

The reporting system is set out in Part IV of the 1961 Charter (Articles 21-29 of the 1961 Charter) as amended by the 1991 Amending Protocol (Turin Protocol) (ETS No. 142), which considerably improves the monitoring mechanism of the Charter.

This Protocol confirms the political role of the Committee of Ministers and of the Parliamentary Assembly of the Council of Europe in the procedure of monitoring the implementation of the European Social Charter. It clarifies the respective functions of the two main supervisory bodies, namely the European Committee of Social Rights (a restricted body composed of independent persons, which decides whether or not situations in the countries concerned are in conformity with the Charter in law and in practice) and the Governmental Committee of the European Social Charter and the European Code of Social Security (a body composed of representatives of each of the Parties, which prepares the work of the Committee of Ministers), and strengthens the participation of the social partners and non-governmental organisations.

On 3 May 2006, the Committee of Ministers of the Council of Europe amended Article 21 of the 1961 Charter on reports concerning accepted provisions by adopting the new system of presentation of reports under the European Social Charter (see: CM(2006)53), which since then has been as follows:

1. States shall present a report annually on a part of the provisions of the Charter (whether it be the 1961 Charter or the 1996 revised Charter), the provisions having been divided into four thematic groups. The four groups of provisions are composed as follows:

<p>Group 1 <b>Employment, training and equal opportunities</b></p> <ul style="list-style-type: none"> <li>▶ Article 1</li> <li>▶ Article 9</li> <li>▶ Article 10</li> <li>▶ Article 15</li> <li>▶ Article 18</li> <li>▶ Article 20</li> <li>▶ Article 24</li> <li>▶ Article 25</li> </ul>	<p>Group 2 <b>Health, social security and social protection</b></p> <ul style="list-style-type: none"> <li>▶ Article 3</li> <li>▶ Article 11</li> <li>▶ Article 12</li> <li>▶ Article 13</li> <li>▶ Article 14</li> <li>▶ Article 23</li> <li>▶ Article 30</li> </ul>	<p>Group 3 <b>Labour rights</b></p> <ul style="list-style-type: none"> <li>▶ Article 2</li> <li>▶ Article 4</li> <li>▶ Article 5</li> <li>▶ Article 6</li> <li>▶ Article 21</li> <li>▶ Article 22</li> <li>▶ Article 26</li> <li>▶ Article 28</li> <li>▶ Article 29</li> </ul>	<p>Group 4 <b>Children, families, migrants</b></p> <ul style="list-style-type: none"> <li>▶ Article 7</li> <li>▶ Article 8</li> <li>▶ Article 16</li> <li>▶ Article 17</li> <li>▶ Article 19</li> <li>▶ Article 27</li> <li>▶ Article 31</li> </ul>
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Consequently, each provision concerned of the Charter is reported upon every four years.

■ 2. The reports shall be presented on 31 October of each year.

The European Committee of Social Rights shall adopt its conclusions before the end of the following year.

The system entered into force as from 2007.

### Implementation

**At the first phase**, the European Committee of Social Rights examines the reports submitted by the States Parties during the previous year. Following this examination, it concludes whether national situations are, or are not, in conformity with the Charter.

The conclusions of the Committee, presented by State and for each State, by article or paragraph, indicate:

- ▶ the situation is in conformity with the Charter;
- ▶ the situation is not in conformity with the Charter on the ground(s) that... (followed by reasons). A situation is not in conformity with the Charter if the relevant legislation is incompatible with the requirements of the Charter or if compatible legislation is incorrectly or not fully applied;
- ▶ deferral of the conclusion because information provided is not pertinent, is not sufficiently clear and/or exhaustive or is lacking entirely. The Committee defers the adoption of its conclusion until it considers the next report on the provision in question. It does so only once;
- ▶ the situation is not in conformity on the ground that it has not been established that the situation is in conformity as the questions asked the State concerned in the previous cycle remain unanswered (otherwise, the conclusions could be deferred for a period of eight years or even 12 years, which is clearly too long for the system to be effective).

The Conclusions adopted by the European Committee of Social Rights within the framework of the reporting system are published every year.

The Conclusions can be consulted using the European Social Charter HUDOC Database: <https://hudoc.esc.coe.int/>.

When the European Committee of Social Rights concludes that a situation is not in conformity, the State Party concerned has to take steps to bring the situation into conformity.

**At the second phase**, the state which has been given a conclusion of non-conformity is invited to present to the other States Parties - namely to the Governmental Committee of the European Social Charter and the European Code of Social Security («Governmental Committee») - information on measures it intends to take to bring the situation into conformity.

The first time a finding of non-conformity is made, this information is provided in writing and is - in principle - not discussed in the Governmental Committee. If the European



Committee of Social Rights reiterates the finding of non-conformity, the Governmental Committee shall hold a discussion, after the presentation of the information from the state concerned on the measures taken or envisaged to bring the situation into conformity. This presentation should therefore include all necessary information on the points raised by the European Committee of Social Rights.

The Governmental Committee is assisted in its work by observers representing European employers' organisations and trade unions.

As a general rule, three organisations are invited to participate in the work of the Governmental Committee:

- ▶ two organisations of employers: the International Organisation of Employers and Business Europe;
- ▶ one organisation of workers: the European Trade Union Confederation.

The Governmental Committee elaborates a report to the Committee of Ministers of the Council of Europe in which it indicates the situations that, in its opinion, should be the subject of recommendations to states in the light of selected Conclusions of the European Committee of Social Rights and the States Parties' explanations, and taking into account in particular national circumstances and social and economic policy considerations.

**At the third phase**, the Committee of Ministers, on the basis of the Governmental Committee's report, adopts a resolution which closes each monitoring cycle and may contain individual recommendations addressed to the states concerned, directing them to remedy the situations of non-conformity.

So far, in practice, recommendations addressed to individual states by the Committee of Ministers following a conclusion of non-conformity adopted by the European Committee of Social Rights remain rare.

#### **■ a) Reporting obligations in respect of States Parties which have not accepted the collective complaints procedure**

In accordance with the above-mentioned Decision of the Committee of Ministers of the Council of Europe, the States Parties which have not accepted the collective complaints procedure submit an annual report indicating how they implement the Charter in law and in practice. Each report concerns a selection of the accepted provisions of the Charter, divided into four thematic groups listed above.

#### **■ b) Reporting obligations in respect of States Parties which have accepted the collective complaints procedure**

In April 2014, the Committee of Ministers adopted further changes to the Charter's monitoring system (see: CM(2014)26). The most important objective of these changes was to simplify the reporting system for States Parties that have accepted the collective complaints procedure.

Accordingly, since October 2014, States Parties concerned have to provide a national report every two years only.

The 15 States which have accepted the collective complaints procedure are divided into two groups.

The groups are composed by distributing the states according to the number of complaints registered against them (from the highest to the lowest), as follows:

- ▶ Group A, made up of eight States: France, Greece, Portugal, Italy, Belgium, Bulgaria, Ireland, Finland;
- ▶ Group B, made up of seven States: Netherlands, Sweden, Croatia, Norway, Slovenia, Cyprus, Czech Republic.

The system functions as follows:

In December 2020, States belonging to group « A » should submit a simplified report. Other States are required to submit a « standard » report concerning the provisions of thematic group 2: *Health, social security and social protection*.

In October 2021, States belonging to group « B » should submit a simplified report. Other States should submit a « standard » report concerning the provisions of thematic group 3: *Labour rights*.

States Parties which draw up a simplified report are required to indicate what follow-up action has been taken in response to the decisions of the European Committee of Social Rights on collective complaints and to answer any questions raised in cases of non-conformity due to a lack of information on the relevant provisions concerning the thematic group under review.

If new States Parties accept the collective complaints procedure, they will be assigned alternately to Group B, then to Group A, then back to Group B, and so on. This reporting system will enter into force for these new States Parties one year after the acceptance of the collective complaint procedure.

## Drafting of national report

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Every year, the European Committee of Social Rights sends letters to States Parties inviting them to submit their reports which should answer its questions, with reference to the Form for reports where applicable.

### The Form

On 26 March 2008, the Committee of Ministers adopted the forms for the reports to be submitted in pursuance of the European Social Charter (revised), as well as the 1961 Charter and the 1988 Additional Protocol.

The forms can be consulted on the following addresses:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCT-MContent?documentId=09000016804922f8> (1996 Charter)

and

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCT-MContent?documentId=09000016804922f6> (1968 Charter).

The Form is intended to guide states in the preparation of reports.

In accordance with the Form, the national reports should provide, for each accepted provision of the Charter, any relevant information on the measures adopted to ensure its application, mentioning in particular:

- ▶ the legal framework - any laws or regulations, collective agreements or other provisions which contribute to such application and, where appropriate, relevant national case law - relevant decisions of courts and other judicial bodies;
- ▶ the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework;
- ▶ all relevant figures, statistics or other information enabling the degree of implementation of these provisions to be assessed.

In order to clarify the issues covered by the given provision of the Charter, the indications resulting from the interpretation of the relevant Article by the European Committee of Social Rights, as summarised in the Digest of the case law, should be taken into account, where appropriate.

The latest version of the Digest is available on:

<https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80>.

When referring to the interpretation of the European Committee of Social Rights, the decisions of the Governmental Committee based on social, economic and other general policy considerations should be taken into account, where appropriate.

Responses from governments should, where appropriate, explicitly specify:

- whether they refer only to the situation of nationals or whether they also include nationals of other Parties;
- whether they are valid for the whole of the national territory;
- whether they apply to all categories of persons covered by the provision.

The first national report following the entry into force of the Charter for the state concerned should contain detailed information on all relevant aspects of the provision, while for subsequent reports it will suffice to update the information on the legal and practical framework given in previous reports. The same principle applies to each provision of the Charter accepted subsequently.

### Information required by the European Committee of Social Rights

Before 2019, the European Committee of Social Rights asked two sets of questions:

- the so-called **"general" questions**, which concern all states, and which appear in the General Introduction to the volumes of conclusions published each year. It was therefore important that the drafters of the reports, when dealing with a specific provision, refer to the last volume of conclusions which dealt with that provision.
- **specific questions** which concern a particular state and which are included in the chapter of the volume of Conclusions relating to the state concerned. It is in the very text of the conclusion and - in particular - in its last part that the reasons why the European Committee of Social Rights considers that the situation is not in conformity are explained.

In 2019 and 2020, the European Committee of Social Rights invited States to answer **targeted questions** asked under certain provisions, with reference to the Form for reports, where applicable. It did not ask questions under all provisions. The questions will differ every year.

The objective of this approach was to focus monitoring on the most relevant issues and to reduce the workload of states by limiting the report to responses to selected and targeted questions, without prejudice to answers to questions still outstanding from previous reporting cycles.

This step stems from the work carried out by the Steering Committee for Human Rights (CDDH) to identify good practices with a view to improving the implementation of social rights in Europe, as well as proposals made by the European Committee of Social Rights to make the reporting procedure under the European Social Charter more effective and focused.

It should be noted that the CDDH considers that this procedure should be further simplified

and should become more targeted so as to focus on topics of strategic importance for the implementation and protection of social rights.

The report of the CDDH, adopted on 18-21 June 2019, can be consulted on:

<https://rm.coe.int/improving-the-protection-of-social-rights-in-europe-volume-ii-en/168097adf3>.

The redesign of the reporting procedure is part of the efforts of the European Committee of Social Rights to ensure full respect of the accepted provisions of the European Social Charter by the States Parties and responds to the Decisions of the Committee of Ministers of the Council of Europe concerning the reporting system relating to the implementation of the Charter:

- ▶ Decision of 2 May 2006, adopted at the 963rd meeting of the Ministers' Deputies (point 4.2),
- ▶ Decision of 26 March 2008, adopted at the 1022nd meeting of the Ministers' Deputies (point 4.2),
- ▶ Decision of 2 April 2014, adopted at the 1196th meeting of the Ministers' Deputies (point 4.7).

These decisions can be consulted on the website of the Committee of Ministers of the Council of Europe: <https://www.coe.int/en/web/cm/adopted-texts>.

### Content of the report

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 mentioned above.

It is essential that this information be presented in a concise and precise manner and that it be strictly relevant to the scope of each provision under consideration.

The report should present:

#### ■ 1) The texts in force which implement the provision concerned of the Charter.

In the first report, a detailed account of the legal framework is required. In subsequent reports, it is sufficient to indicate the changes that have occurred. It is very useful to explain, for example, with reference to parliamentary or governmental work, the reasons that led to the changes in the legal situation and the objectives that the reform is pursuing.

The European Committee of Social Rights pointed 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.

#### ■ 2) The modalities of implementation of these texts in all parts of the territory of the State.

Reference may be made to the difficulties as well as to the strategies implemented, the

results obtained, etc. The report should explain the policies carried out during the reference period, specify why policy changes have taken place, with what objectives and results.

It should be recalled that some provisions of the Charter should be implemented immediately after ratification, for example freedom of association (Article 5 of the Charter). Other provisions, on the contrary, imply the establishment of action plans with an assessment of needs, priorities, deadlines, adjustments, because their implementation is particularly complex and/or costly. All these elements revealing how national authorities are progressively implementing the right in question should be included in each report, for each reference period. The European Committee of Social Rights has, however, stated with precision what methods of progressive implementation may be in conformity with the Charter.

In this respect, the Digest of the case law of the European Committee of Social Rights mentioned above should be consulted when drafting the report.

### ■ **3) Monitoring of the implementation of laws and policies.**

The report should indicate how the authorities ensure that laws and policies are effectively enforced. Reference may be made to the internal reports of the institutions responsible for this monitoring. For example, with regard to the provisions of the Charter concerning labour rights - to the reports of the labour inspectorate.

The European Committee of Social Rights underlines that 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 relevant, is not sufficiently clear and/or exhaustive or is lacking entirely.

It is therefore essential that the report provides accurate and detailed answers to the questions asked by the Committee, both those included in the questionnaire and those appearing in the conclusions of the previous cycle concerning the same group of provisions.

### ■ **4) Statistical information.**

The European Committee of Social Rights has several times indicated to the States Parties that they should measure practical situations by means of indicators.

The reports should therefore contain figures whenever the Committee so requests.

The reports should contain figures to illustrate that the government knows, with sufficient precision, the situation to be able to implement an effective policy. 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. The reports may refer to existing information collected by national or international bodies.

The European Committee of Social Rights systematically examines figures published by Eurostat, the OECD and the EU. However, not all States Parties are concerned and where this is the case, it is important that figures from the national sources are included in the report.

### ■ **5) Answering the statement of the European Committee of Social Rights on information in national reports and information provided to the Governmental Committee.**

The European Committee of Social Rights draws the attention of the States Parties to the obligation to systematically include in national reports responses to the Committee's requests for information. In addition, the Committee invites States Parties to always include in the report any relevant information previously provided to the Governmental Committee, either in writing or orally, or at least to refer to such information, and to indicate any developments or changes that have occurred in the period since the information was provided to the Governmental Committee.

## Report to be submitted in 2020

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**■ a) In respect of States Parties not having accepted the collective complaints procedure yet and the following States having accepted the collective complaints procedure: the Netherlands, Sweden, Croatia, Norway, Slovenia, Cyprus and the Czech Republic.**

The European Committee of Social Rights has sent a questionnaire concerning the implementation of the accepted provisions belonging to the thematic group that will be examined in the next cycle, namely provisions of thematic group 2 - « Health, social security and social protection»:

### **Article 3 - Right to safe and healthy working conditions**

- ▶ §1 Safety and health regulations
- ▶ §2 Enforcement of safety and health regulations
- ▶ §3 Consultation with employers' and workers' organisations on safety and health issues
- ▶ §4 Occupational health services

### **Article 11 - Right to protection of health**

- ▶ §1 Removal of the causes of ill-health
- ▶ §2 Advisory and educational facilities
- ▶ §3 Prevention of diseases and accidents

### **Article 12 - Right to social security**

- ▶ §1 Existence of a social security system
- ▶ §2 Maintenance of a social security system at a satisfactory level at least equal to that required for ratification of the international labour convention no. 102
- ▶ §2 Maintenance of a social security system at a satisfactory level at least equal to that required for ratification of the European Code of Social Security (for Revised Charter)
- ▶ §3 Development of the social security system
- ▶ §4 Social security of persons moving between states

### **Article 13 - Right to social and medical assistance**

- ▶ §1 Adequate assistance for every person in need
- ▶ §2 Non-discrimination in the exercise of social and political rights
- ▶ §3 Prevention, abolition or alleviation of need
- ▶ §4 Specific emergency assistance for non-residents



**Article 14 - Right to benefit from social services**

- ▶ §1 Promotion or provision of social services
- ▶ §2 Public participation in the establishment and maintenance of social services

**Article 23 (or Article 4 of the Additional Protocol) - Right of the elderly to social protection**

**Article 30 - Right to be protected against poverty and social exclusion**

The questions asked by the European Committee of Social Rights to the above mentioned States appear in Appendix I.

It is essential to answer each question by clearly presenting the situation in law and in practice and its progress since the last report. Indeed, conformity with the European Social Charter cannot be achieved by the mere existence of a law or legal framework; it is necessary that this law or legal framework be effectively implemented in practice throughout the territory of the state concerned, and that this implementation be monitored by appropriate institutions. The report should reflect this.

The reference period is 2016 - 2019.

No questions were asked to the States Parties to the European Social Charter (Revised) in relation to Articles 3§4, 12§§1 and 4, 13§§2, 3 and 4, and to the States Parties to the 1961 Charter - in relation to Articles 3§3, 12§§1 and 4, 13§§2 - 4. States are therefore only required to provide information under these Articles in the event of a finding of non-conformity or deferral in the previous cycle.

**■ b) In respect of the following States Parties which are bound by the collective complaints procedure: France, Greece, Portugal, Italy, Belgium, Bulgaria, Ireland and Finland**

The next report is part of the simplified reporting procedure.

The report should contain information on the follow-up given to the decisions of the European Committee of Social Rights under collective complaints procedure, in particular on whether and how these decisions have been implemented and, if not, on the obstacles that have prevented their implementation.

A list of the relevant decisions in complaints that are subject to reporting was prepared for each state and sent to governments separately.

## Practical information

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### Deadline

The report should be submitted to the Council of Europe by 31 October of each year.

In 2020, due to the delays caused by the COVID-19 pandemic, the deadline for submission of reports has exceptionally been extended, in agreement with the European Committee of Social Rights, until 31 December 2020 (instead of the end of October 2020).

### Languages

The report should be submitted in English or French. It is essential that the translation be of high quality so as not to distort the content of the report in the language in which it was written.

A good practice is to publish the report, in the original language, on a public website of the state concerned. The Council of Europe wishes to establish links between the European Social Charter site, where reports are published in an official language of the Organisation, and the sites where these reports are published in their original language.

### Consultation of social partners

The European Social Charter obliges States Parties to consult national social partners on the report. Depending on the state, the practical arrangements for this consultation vary: some states involve the social partners in the preparation of the report, others consult them once the report has been drawn up and possibly take their suggestions into account by amending the report before it is transmitted to the Council of Europe. In some states, the report is communicated to the social partners after being sent to the Council of Europe. They can then send their comments directly to the Organisation.

Regardless of the modalities chosen, the consultation of employers' and workers' trade unions is a reference with regard to the implementation of the rights guaranteed by the European Social Charter, in particular Articles 5 and 6.

### **Consultation of civil society**

The General Secretariat of the Council of Europe is responsible for the dissemination of state reports to non-governmental organisations enjoying participatory status with the Council of Europe. In practice, this dissemination is ensured by the publication of each report, as soon as it is registered, on the website of the European Social Charter.

### **Collaboration between the national authorities concerned**

As the European Social Charter covers a wide range of areas of social rights, its implementation may involve several ministries or institutions of the state such as: education, health, social affairs, labour or even home affairs and justice. This depends on the administrative structure and the allocation of competences to the different authorities of the state concerned.

The administrative architecture of each state has its own peculiarities and therefore each state shall find its own way of establishing contacts and organising the collection of information with a view to drafting the report under the monitoring system of the Charter. The experience of one state cannot easily be applied in the context of another state.

In any case, for the report to meet the expectations of the European Committee of Social Rights, it is essential that states ensure smooth collaboration and exchange of information between the entities concerned.

Each state decides individually which authority is responsible for coordinating the collaboration between the national entities concerned and for transmitting the report to the Council of Europe.

### **Modalities of submission of reports**

The report should be sent in electronic form to [DGI-ESC-Reporting-System@coe.int](mailto:DGI-ESC-Reporting-System@coe.int).

### **Contact**

The Secretariat of the European Social Charter is at the disposal of States Parties in case of misunderstanding or doubt to further explain the reasoning and expectations of the European Committee of Social Rights ( [social.Charter@coe.int](mailto:social.Charter@coe.int)).

## Shadow (alternative) reports

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Shadow (or alternative) reports are a method for entitled organisations to supplement and /or present alternative information to reports submitted by governments under the monitoring system of the European Social Charter. Once submitted, the alternative report is published on the website of the European Social Charter and is examined by the European Committee of Social Rights at the same time as the government's report. Whether or not the comments provided are taken into account is left to the discretion of the European Committee of Social Rights.

The information below relates exclusively to the reporting procedure.

### Who can submit additional information?

The communication of additional information is governed by Articles 23§1 and 27§2 of the 1961 Charter, as amended by the Turin Protocol adopted in 1991.

States Parties should communicate copies of their reports on accepted provisions and on non-accepted provisions of the European Social Charter to certain national organisations which are entitled to submit comments and information they consider relevant to the European Committee of Social Rights, in parallel with the national reports.

These organisations are encouraged to examine the national report and to submit their comments to the European Committee of Social Rights.

### This concerns:

- for workers - national organisations which are members of the European Trade Union Confederation (ETUC),
- for employers - national organisations which are members of Business Europe and the International Organisation of Employers,
- for civil society - international non-governmental organisations enjoying participatory status with the Council of Europe, national organisations which are members of international non-governmental organisations enjoying participatory status with the Council of Europe, as well as other organisations (in accordance with Rule 21A§1 of the Rules of the European Committee of Social Rights).

### **Reasons for submitting a shadow (alternative) report**

- ▶ Sending the report allows (I)NGOs and other entitled organisations to present to the European Committee of Social Rights an alternative version of the facts and assessments to the one submitted by the government.
- ▶ This is a good opportunity to review and analyse the situation in the country over the past four years.
- ▶ The publication of the report provides an international forum for authors to voice their concerns.
- ▶ This report may have an impact on the conclusions of the European Committee of Social Rights in favour of better protection of social rights in the country.

### **Content of the shadow (alternative) report**

The report may contain additional or alternative information on all issues raised in the national report, or comment on a single issue.

The report may provide information that is missing in the governmental report.

In all cases, the report has to provide information relating to provisions that are under examination by the European Committee of Social Rights in the same year.

### **Languages**

The report should be submitted in English or French. It is essential that the translation be of high quality in order not to alter the content of the report and thus provide reliable information to the European Committee of Social Rights.

### **Deadline**

Comments on national reports should be submitted to the Secretariat of the European Social Charter before 30 April of the year during which the European Committee of Social Rights examines the national report concerned. This deadline has been set to allow states time to respond to the comments, if they so wish.

In 2020, due to delays caused by the COVID-19 pandemic, the European Committee of Social Rights extended the period for submission of comments on national reports by trade unions, employers' organisations and non-governmental organisations until 30 June 2021 (instead of the usual 30 April deadline).

### **Modalities of submission of comments**

The shadow/alternative report should be sent in electronic form to [DGI-ESC-Reporting-System@coe.int](mailto:DGI-ESC-Reporting-System@coe.int).

In accordance with Rule 21A §2 of the Rules of the European Committee of Social Rights, the observations registered and submitted to the Committee shall be forwarded to the government concerned, which shall be given six weeks to submit a response, if it so wishes.

## Appendix I

# Questions addressed to states under thematic group 2 «Health, social security and social protection» of the European Social Charter (revised)

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### Conclusions 2021

At the outset, the European Committee of Social Rights wishes to clarify that these questions and the Conclusions are not intended to form the basis for a full assessment of the efforts made by States to combat the COVID-19 epidemic. However, in the current circumstances it is justified and unavoidable to take COVID-19 into account, not least because the responses to the crisis have been shaped by measures taken and implemented during the reference period. While acknowledging that the responses were made after the reference period, the Committee therefore invites States to provide information on them and on the (provisional) results achieved, in so far as possible and as indicated in the questions set out below.

The Committee is aware of the exceptional circumstances resulting from the pandemic and the COVID-19 crisis. National administrations have been confronted with considerable demands and very difficult choices and decisions, and society as a whole has been placed under enormous strain. COVID-19 has brought about much suffering and for many different reasons.

Human rights, including their social rights dimension, permit the safeguarding of the most fundamental values of our societies over time, including through exceptionally difficult times. As stated in the very first provision of the Statute of the Council of Europe, the aim of the Organisation is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress. The need to pursue this objective is not suspended but, on the contrary, reinforced in times of crisis.

The thematic group of European Social Charter provisions on which States Parties are due to report for Conclusions 2021 - health, social security and social protection - and the reference period (2016 to 2019) were of the greatest importance for the shaping of responses during the COVID-19 crisis. The Committee also wishes to draw attention in this respect to its recent Statement of interpretation on the right to health adopted on 21 April 2020.

The provisions in question should also inspire longer-term decisions once the worst of the pandemic is over. The Committee expects that the COVID-19 pandemic will continue to be a recurring theme in the reporting procedure over the coming years, when it will be examining

other thematic groups of provisions, on labour rights, on children, family (and women) and migrants rights.

The Committee understands that, while administrations and staff may be stretched, the answers to questions related to the COVID-19 may be more readily available in the coming months. It has attempted to formulate questions in a focussed manner, preceded by some explanatory elements, but will welcome broader responses that allow for a comprehensive understanding of the human and social rights-based response given by states to the COVID-19 crisis in light of the arrangements that were in place during the reference period (2016 to 2019).

Continuing the targeted and strategic approach initiated in 2019 (for Conclusions 2020), Conclusions 2021 will focus on the questions set out below. In this respect, the Committee recalls the decision adopted by the Committee of Ministers on 11 December 2019 whereby it “took note with interest of the steps taken by the ECSR to simplify the reporting procedure under the European Social Charter, focusing on issue-based questions on selected provisions, and invited the ECSR and the Governmental Committee to consider further ways of streamlining the procedure, including the advisability of reviewing the current system of thematic reports”. The strategic and targeted approach also implies that the Committee does not request any additional information in respect of certain Charter provisions (for example Article 12§1 and 12§4), unless the previous conclusion was one of non-conformity or when it was deferred due to lack of information.

On account of the difficulties resulting from the current crisis, the Committee exceptionally proposes to extend the deadline for state reports to 31 December 2020 (and not 31 October which is the usual deadline).

### **PART I - 3. RESC ALL WORKERS HAVE THE RIGHT TO SAFE AND HEALTHY WORKING CONDITIONS**

The right of every worker to a safe and healthy working environment is a widely recognised principle, stemming directly from the right to personal integrity. It is closely linked to various rights protected by the Charter and also by the European Convention on Human Rights. As work environments evolve, so do the risks to health and safety that workers are exposed to. There are emerging or relatively new and there are also neglected factors that can affect health, both in the short and the medium or long terms. Of course, the right to safe and healthy working conditions applies to all workers, whether public or private sector employee, and also to the self-employed.

Certain occupations involve assumed or accepted exposure to risk (e.g. cycle delivery services, including those linked to the platform economy; performers in the contact sports entertainment industry; certain jobs involving particular forms of interaction with clients and expected to use potentially harmful substances such as alcohol or other psychoactive substances; etc.). Other work settings also involve risks, for example when they demand ongoing intense attention (e.g. operators of certain types of machinery, vehicles or even computers) or there is an expectation of high performance or increasing output or productivity sometimes associated or conducive to off-label use of medications or stimulants procured in illegal markets (e.g. new forms of high yield trading; performers in the sports entertainment industry, etc.).

There may also be persistent or recurring stress or even traumatic situations at work (for example in the military, law enforcement or health care) which can sometimes be associated to growing industry demands or poor employer response to problematic situations (for example related to harassment or poor management). Ubiquitous supervision or monitoring using digital technology can also affect the health of workers as can the expectation of responsiveness or almost permanent availability.

A human rights and positive obligations approach requires ongoing attention as well as fostering and preserving a culture of prevention in the areas of health and safety as opposed to purely curative or compensatory approaches. The policies and strategies adopted must be regularly assessed and reviewed, particularly in the light of changing risks.

Exposure of frontline staff to SARS-CoV-2 and the risk of developing COVID-19 placed the right to safe and healthy working conditions under the spotlight. Issues may arise both from the angle of risk of infection because of the objective working conditions (high risk settings, close contact with highly contagious patients, emergency or intensive care units), the material and other arrangements surrounding that kind of work, and the means of protection provided to frontline workers, in terms of instructions, training as well as the quantity and adequacy of protective material. In a crisis, such as the one resulting from the COVID-19 pandemic, the large degree of unpredictability does not exclude preparedness and anticipation which is due not only to the population at large (under Article 11 of the Charter) but also to workers under Article 3 of the Charter. Beyond general preparedness, good governance arrangements must be in place enabling quick reaction and appropriate decision making as the crisis evolves in light of the best information and science available.

### **Article 3 – The right to safe and healthy working conditions**

**With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations:**

**1. to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;**

- a) Please provide information about policy formulation processes and practical arrangements made to identify new or emerging situations, that represent a challenge to the right to safe and healthy working conditions; also provide information on the results of such processes and of intended future developments.
- b) With particular reference to COVID-19, provide specific information on the protection of frontline workers (health-care staff including ambulance crews and auxiliary staff; police and other first responders; police and military personnel involved in assistance and enforcement; staff in social-care facilities, for example for older people or children; prison and other custodial staff; mortuary services; and others involved in essential services, including transport and retail; etc.). Such information should include details of instructions and training, and also the quantity and adequacy of personal protective equipment provided to workers in different contexts. Please provide analytical information about the effectiveness of those measures of protection and statistical data on health outcomes.



- ▶ c) If the previous conclusion was one of non-conformity, please explain whether and how the problem has been remedied. If the previous conclusion was deferred, please reply to the questions raised.

## ■ 2. to issue safety and health regulations;

- ▶ a) Please provide detailed information on the regulatory responses adopted to improve occupational safety and health in connection with known and also evolving or new situations (including as regards stress and harassment at work; work-related substance use and employer responsibility; strictly limiting and regulating electronic monitoring of workers; mandatory digital disconnection from the work environment during rest periods – also referred to as “digital detox”; health and safety in the digital and platform economy; etc.) and about regulatory responses to newly recognised forms of professional injury or illness (such as work-related self-harm or suicide; burn-out; alcohol or other substance use disorders; post-traumatic stress disorders (PTSD); injury and disability in the sports entertainment industry, including in cases when such injury and disability can take years or even decades to become apparent, for example in cases of difficult to detect damage to the brain; etc.).
- ▶ b) If the previous conclusion was one of non-conformity, please explain whether and how the problem has been remedied. If the previous conclusion was deferred, please reply to the questions raised.

## ■ 3. to provide for the enforcement of such regulations by measures of supervision;

- ▶ a) Please provide statistical data on prevalence of work-related death, injury and disability including as regards suicide or other forms of self-harm, PTSD, burn-out and alcohol or other substance use disorders, as well as on epidemiological studies conducted to assess the long(er)-term health impact of new high-risk jobs (e.g. cycle delivery services, including those employed or whose work is managed through digital platform; performers in the sports entertainment industry, including in particular contact sports; jobs involving particular forms of interaction with clients and expected to use potentially harmful substances such as alcohol or other psychoactive products; new forms of high-yield high- stress trading; military and law enforcement; etc.) and also as regards the victims of harassment at work and poor management.
- ▶ b) Please provide updated information on the organisation of the labour inspectorate, and on the trends in resources allocated to labour inspection services, including human resources. Information should also be provided on the number of health and safety inspection visits by the labour inspectorate and the proportion of workers and companies covered by the inspections as well as on the number of breaches to health and safety regulations and the nature and type of sanctions.
- ▶ c) Please indicate whether Inspectors are entitled to inspect all workplaces, including residential premises, in all economic sectors. If certain workplaces are excluded, please indicate what arrangements are in place to ensure the supervision of health and safety regulations in such premises.
- ▶ d) If the previous conclusion was one of non-conformity, please explain whether and how the problem has been remedied. If the previous conclusion was deferred, please reply to the questions raised.

**4. to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.**

No information requested, except where there was a conclusion of non-conformity or a deferral in the previous conclusion for your country. For conclusions of non-conformity, please explain whether and how the problem has been remedied and for deferrals, please reply to the questions raised.

**PART I - 11. RESC EVERYONE HAS THE RIGHT TO BENEFIT FROM ANY MEASURES ENABLING HIM TO ENJOY THE HIGHEST POSSIBLE STANDARD OF HEALTH ATTAINABLE**

The right to protection of health under Article 11 of the Charter complements Articles 2 and 3 of the European Convention on Human Rights; those provisions of international human rights law are closely linked. Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

Life expectancy (as well as causes of death and infant and maternal mortality) in a community and life expectancy inequality as might be the case for a sub-group within a community – is a broad indicator for the enjoyment of the right to protection of health and for the delivery by the competent authorities of the measures that enable people to enjoy the highest possible standard of health attainable. There is ample evidence of factors that contribute to or that undermine the health of people.

It is well known that members of certain groups enjoy poorer health and have shorter life expectancy, especially the poor, homeless, jobless or other underprivileged communities and also underprivileged ethnicities. Life expectancy varies from country to country and, in some cases, it varies considerably from one part of the country to another or from one part of the same city to another; reports suggest that the difference in life expectancy can amount to years or even to one decade or more. Life expectancy goes hand in hand with a range of health issues. Children's rights and education are also determinants of future health and life expectancy, as is the family environment (housing, poverty or exclusion, exposure to domestic violence, child abuse or neglect).

Insalubrious work or living environments also affect health adversely as does air, water or other forms of environmental pollution, including proximity to active or decommissioned (but not properly isolated or decontaminated) industrial sites with contaminant or toxic emissions, leakages or outflows, including slow releases or transfers to the neighbouring environment. It is for example a broadly accepted truism that prison is bad for people's health (staff and inmates alike).

As regards health care, it should be available, accessible, acceptable and of sufficient quality (the WHO "3AQ" framework), and informed consent is not only a formal requirement, but it goes to the heart of patient autonomy, self-determination, bodily integrity and well-being. A human rights approach to health requires reliance on science, excluding ideology or dogmatism. In particular, pseudoscience is a source of risk and, almost invariably, amounts to denial of informed consent; homeopathy in particular can be a drain on public resources or misguide individuals to pointless personal expenditure.

Mental health is an integral part of the right to health. The transition from former large-scale institutions to community-based mental health care was - and, in certain cases, remains fully

justified and desirable. However, reportedly, it was often poorly implemented or insufficient resources were allocated to it. As a result, some persons in need of mental health care were neglected, drifting towards unemployment and poverty, homelessness or petty crime, and ultimately towards prison. Prison administration complain about such cohorts that, in their view, do not belong in the prison system and prison health care services advance that sometimes these inmates represent a high proportion of the prison population.

Under this provision, States Parties must demonstrate their ability to cope with infectious diseases, such as arrangements for reporting and notifying diseases and by taking all the necessary emergency measures in case of epidemics. The latter would include adequate implementation of the measures applied in the COVID-19 crisis: measures to limit the spread of virus in the population (testing and tracing, physical distancing and self-isolation, provision of surgical masks, disinfectant, etc.) and measures to treat the ill (sufficient number of hospital beds, including intensive care units and equipment and rapid deployment of sufficient numbers of medical personnel while ensuring that their working conditions are healthy and safe - the latter issue was addressed under Article 3 above). It goes without saying that measures taken in respect of epidemics or pandemics must respect the exigencies of human rights law.

The pandemic did not only place a huge demand on health care services but also revealed in many cases chronic public health underfunding and insufficient capacity to respond to ordinary, let alone extraordinary, needs.

States must operate widely accessible immunisation programmes. They must maintain high coverage rates not only to reduce the incidence of these diseases, but also to neutralise the reservoir of virus and thus achieve the goals set by WHO to eradicate a range of infectious diseases. Vaccine research should be promoted, adequately funded and efficiently coordinated across public and private actors.

Access to health care must be ensured to everyone without discrimination. Groups at particularly high risk such as older persons, the homeless or those poorly housed, the poor and destitute, those living in institutions must be adequately protected by the measures put in place. This implies that health equity as defined by the WHO should be the goal: absence of avoidable, unfair or remediable differences among groups of people, whether those groups are defined socially, economically, demographically or geographically or by other means of stratification. Ideally, everyone should have a fair opportunity to attain their full health potential and no one should be disadvantaged from achieving this potential. In the medical fields, there is ample evidence of how women have been victims of prejudice and biased science, to the detriment of their health and wellbeing.

### **Article 11 - The right to protection of health**

**With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:**

#### **1. to remove as far as possible the causes of ill-health;**

- ▶ a) Please provide overall and disaggregated statistical data on life expectancy across the country and different population groups (urban; rural; distinct ethnic groups and minorities;

longer term homeless or unemployed; etc.) identifying anomalous situation (e.g. particular areas in the community; specific professions or jobs; proximity to active or decommissioned industrial or highly contaminated sites or mines; etc.) and on prevalence of particular diseases among relevant groups (e.g. cancer) or blood borne infectious diseases (e.g. new cases HIV or Hepatitis C among people suffering from substance use disorders or who are held in prison; etc.).

- b) Please also provide information about sexual and reproductive health-care services for women and girls (including access to abortion services) and include statistical information about early (underage or minor) motherhood, as well as child and maternal mortality. Provide also information on policies designed to remove as far as possible the causes for the anomalies observed (premature death; preventable infection by blood borne diseases; etc.).
- c) If the previous conclusion was one of non-conformity, please explain whether and how the problem has been remedied. If the previous conclusion was deferred, please reply to the questions raised.

## ■ **2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;**

- a) Please provide information about health education (including sexual and reproductive health education) and related prevention strategies (including through empowerment that can serve as a factor in addressing self-harm conducts, eating disorders, alcohol and drug use) in the community (life-long or ongoing) and in schools. Please also provide information about awareness and education in respect of sexual orientation and gender identity (SOGI) and gender violence.
- b) Provide information on measures to ensure informed consent to health-related interventions or treatment and on specific measures to combat pseudoscience in respect of health issues.
- c) If the previous conclusion was one of non-conformity, please explain whether and how the problem has been remedied. If the previous conclusion was deferred, please reply to the questions raised.

## ■ **3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.**

- a) Please describe the measure taken to ensure that vaccine research is promoted, adequately funded and efficiently coordinated across public and private actors.
- b) Please provide a general overview health care services in places of detention, in particular prisons (under whose responsibility they operate/which ministry they report to, staffing levels and other resources, practical arrangements, medical screening on arrival, access to specialist care, prevention of communicable diseases, mental health-care provision, conditions of care in community-based establishments when necessary, etc.).
- c) Please provide information on the availability and extent of community-based mental health services and on the transition to community-based mental health from former large-scale institutions. Please provide statistical information on outreach measures in connection with the mental health assessment of vulnerable populations, including those in a situation of poverty or exclusion, the unemployed (especially long-term unemployed). Provide also information on proactive measures adopted to ensure that persons in need of mental health care are not neglected. Please also provide information from prison health-care services on the proportion of inmates who are deemed as having mental health

- problems and who, according to health-care professionals, do not belong in the prison system or would have possibly been spared of such a situation should suitable mental health services been available to them in the community or in specialised establishments.
- ▶ d) Please also provide information about drug-related deaths and transmission of infectious diseases among people who use or inject psychoactive substances both in the community and in custodial settings. Provide an overview of the national policy designed to respond to substance use and related disorders (dissuasion, education, and public health-based harm reduction approaches, including use or availability of WHO listed essential medicines for opioid agonist treatment) while ensuring that the “available, accessible, acceptable and sufficient quality” criteria (WHO’s 3AQ) are respected, subject always to the exigency of informed consent, which rules out, on the one hand, consent by constraint (such as in the case of acceptance of detox and other mandatory treatment in lieu of deprivation of liberty as punishment) and, on the other hand, consent based on insufficient, inaccurate or misleading information (i.e. not based on state of the art scientific evidence).
  - ▶ e) Please provide information on measures taken to prevent exposure to air, water or other forms of environmental pollution, including proximity to active or decommissioned (but not properly isolated or decontaminated) industrial sites with contaminant or toxic emissions, leakages or outflows, including slow releases or transfers to the neighbouring environment, nuclear sites, mines, as well as measures taken to address health problems of the populations affected. Please provide also information about measures taken to inform the public, including pupils and students, about general and local environmental problems.
  - ▶ f) In the context of the COVID-19 crisis, please evaluate the adequacy of measures taken to limit the spread of virus in the population (testing and tracing, physical distancing and self-isolation, provision of surgical masks, disinfectant, etc.) as well as the measures taken to treat the ill (sufficient number of hospital beds, including intensive care units and equipment, and rapid deployment of sufficient numbers of medical personnel while ensuring that their working conditions are healthy and safe – an issue addressed under Article 3 above). Please indicate the measures taken or foreseen as a result of this evaluation.
  - ▶ g) If the previous conclusion was one of non-conformity, please explain whether and how the problem has been remedied. If the previous conclusion was deferred, please reply to the questions raised.

## **PART I - 12. RESC ALL WORKERS AND THEIR DEPENDANTS HAVE THE RIGHT TO SOCIAL SECURITY**

In order to satisfy the needs of a community, social security must be enabled to cover a range of minimum benefits and the system must be sufficiently funded in order to do so. The European Code of Social Security provides that the cost shall be borne collectively by way of insurance contributions or taxation or both, in a manner which avoids hardship to persons of small means and takes account of needs and of the economic situation of the country concerned. It also indicates that the part of the burden borne by employees should not exceed 50 per cent of the total of the financial resources allocated to them and their relatives protection.

Article 12 of the Charter requires that the social security system be at least of the level necessary under the European Code of Social Security.

While issues of sustainability and the situation of the economy are relevant, so are questions of progressive realisation of human dignity, which is at the heart of human rights (including

social rights). Financial consolidation is therefore not in itself a decisive factor, given that resource availability and allocation are subject to political determination. According to various sources, public social spending amounts to just over 20% of GDP on average across Europe (c. 28% for the European Union), with around 60% of the expenditure on average being cash benefits and 40% health and social services.

## **Article 12 - The right to social security**

**With a view to ensuring the effective exercise of the right to social security, the Parties undertake:**

### **1. to establish or maintain a system of social security;**

No information requested, except where there was a conclusion of non-conformity or a deferral in the previous conclusion for your country. For conclusions of non-conformity, please explain whether and how the problem has been remedied and for deferrals, please reply to the questions raised.

### **2. to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;**

### **3. to endeavour to raise progressively the system of social security to a higher level;**

- ▶ a) Please provide information on social security coverage and its modalities provided to persons employed or whose work is managed through digital platforms (e.g. cycle delivery services).
- ▶ b) If the previous conclusion was one of non-conformity, please explain whether and how the problem has been remedied. If the previous conclusion was deferred, please reply to the questions raised.
- ▶ c) Please provide information on any impact of the COVID-19 crisis on social security coverage and on any specific measures taken to compensate or alleviate possible negative impact.

### **4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:**

- a. equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;**
- b. the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.**

No information requested, except where there was a conclusion of non-conformity or a deferral in the previous conclusion for your country. For conclusions of non-conformity, please explain whether and how the problem has been remedied and for deferrals, please reply to the questions raised.

## **PART I – 13. RESC ANYONE WITHOUT ADEQUATE RESOURCES HAS THE RIGHT TO SOCIAL AND MEDICAL ASSISTANCE**

A state will only meet its commitments under Article 13 of the Charter if - or when - it secures the effective exercise of the right to social and medical assistance to everyone who is without adequate resources and who is unable to secure such resources either by their own efforts or from other sources, in particular by benefits under a social security.

Because this right concerns persons in a situation of great need and enhanced vulnerability, it is incumbent upon States Parties to ensure that there are no unreasonable obstacles or insurmountable hurdles to the exercise of the right. As the Committee indicated in *European Roma Rights Centre (ERRC) v. Bulgaria*, Complaint No. 151/2017, decision on the merits of 5 December 2018, §84, while there may be avenues available to people to assert their rights, this ability “cannot be assumed for people whose degree of exclusion, past experience and social status places them in a situation where they may not have the means” of exercising their rights. “In such cases, the authorities have a responsibility to support the persons concerned in order to overcome the barriers so that they can effectively assert their rights. Failing such a proactive approach on the part of the Government, the rights and remedies are rendered illusory for the disadvantaged communities in question. This is all the more relevant and important when fundamental rights are concerned, especially the right to health and the conditions under which the enjoyment of that right is enabled.”

### **Article 13 – The right to social and medical assistance**

**With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:**

**1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;**

- ▶ a) Please describe any reforms to the general legal framework. Please provide pertinent figures, statistics or any other relevant information, in particular: evidence that the level of social assistance is adequate, i.e. the assistance should enable any person to meet his/her basic needs and the level of the benefits should not fall below the poverty threshold. Information must therefore be provided on basic benefits, additional benefits and on the poverty threshold in the country, defined as 50% of the median equivalised income and calculated on the basis of the poverty risk threshold value published by Eurostat.
- ▶ b) Please indicate any specific measures taken to ensure social and medical assistance for persons without resources in the context of a pandemic such as the COVID-19 crisis. Please also provide information on the extent and modalities in which social and medical assistance was provided to people without a residence or other status allowing them to reside lawfully in your country's territory.
- ▶ c) If the previous conclusion was one of non-conformity, please explain whether and how the problem has been remedied. If the previous conclusion was deferred, please reply to the questions raised.

**2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;**

No information requested, except where there was a conclusion of non-conformity or a deferral in the previous conclusion for your country. For conclusions of non-conformity, please explain whether and how the problem has been remedied and for deferrals, please reply to the questions raised.

**3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;**

No information requested, except where there was a conclusion of non-conformity or a deferral in the previous conclusion for your country. For conclusions of non-conformity, please explain whether and how the problem has been remedied and for deferrals, please reply to the questions raised.

**4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.**

No information requested, except where there was a conclusion of non-conformity or a deferral in the previous conclusion for your country. For conclusions of non-conformity, please explain whether and how the problem has been remedied and for deferrals, please reply to the questions raised.

#### **PART I - 14. RESC EVERYONE HAS THE RIGHT TO BENEFIT FROM SOCIAL WELFARE SERVICES**

Many of the introductory comments made for Articles 12 and 13 are also relevant to the right to benefit from social welfare services. It is nonetheless worth stressing the requirement of universality; 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 Parties 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. Social services must therefore be available to all categories of the population who are likely to need them. The Committee has identified the following groups: children, the elderly, people with disabilities, young people in difficulty or in conflict with the law, minorities (migrants, Roma, refugees, etc.), the homeless, persons suffering from substance use disorders, women victims of violence and persons in conflict with the law, including those deprived of their liberty and former detainees. This is not, however an exhaustive enumeration of persons entitled to access and benefit from social welfare services.

The state has an obligation to take every appropriate measure to ensure that no one is left behind. Therefore it is required to implement apposite outreach arrangements. Meeting this obligation will often require proactive service-oriented action, with the competent authorities taking the initiative rather than merely responding to applications and requests. It should be recalled that fundamental rights are mirrored by fundamental obligations for the duty bearers.



## Article 14 – The right to benefit from social welfare services

**With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:**

**1. to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;**

- ▶ a) Please explain how and to what extent the operation of social services has been maintained during the COVID-19 crisis and whether specific measures have been taken in view of possible future such crises.
- ▶ b) If the previous conclusion was one of non-conformity, please explain whether and how the problem has been remedied. If the previous conclusion was deferred, please reply to the questions raised.

**2. to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.**

- ▶ a) Please provide information on user involvement in social services (“co-production”), in particular on how such involvement is ensured and promoted in legislation, in budget allocations and decision-making at all levels and in the design and practical realisation of services. Co-production is here understood as social services working together with persons who use the services on the basis of key principles, such as equality, diversity, access and reciprocity.
- ▶ b) If the previous conclusion was one of non-conformity, please explain whether and how the problem has been remedied. If the previous conclusion was deferred, please reply to the questions raised.

### **PART I - 23. RECS EVERY ELDERLY PERSON HAS THE RIGHT TO SOCIAL PROTECTION.**

This Article seeks to ensure that older people are recognised and treated as full members of society, both in law and in fact. It allows to examine other provisions of the Charter (e.g. Article 11 on the right to protection of health; Article 12 on the right to social security; Article 13 on the right to social and medical assistance; Article 30 on the right to protection against poverty and social exclusion; and Article 31 on the right to housing). As time passes, older people increasingly become dependent and, as their ability to defend themselves and to assert their rights weakens, they become growingly vulnerable. There have been many examples following the 2008 economic downturn of the resources available being progressively shifted away from older people towards other perceived priorities, with scarce pushback from society and, less surprisingly, from those most affected by the budget cuts and subjected to increased dependency and vulnerability.

A range of issues are covered under Article 23, from discrimination and decision making to accessibility, participation (political life, culture, education) and adequate pensions (whether contributory or non-contributory, and other complementary cash benefits available). It would be contrary to the Charter to allow the situation of older people to deteriorate progressively leading them into —rather than drawing them out of— poverty. Ensuring access to rights requires the provision of information about rights, services and facilities. But, as under other Articles of the Charter, effectiveness may well require outreach and a

proactive approach from the authorities.

Supervision and inspection services may be key to ensuring delivery against the requirements of this Article.

### **Article 23 - The right of elderly persons to social protection**

**With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:**

**1. to enable elderly persons to remain full members of society for as long as possible, by means of:**

- a. adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;**
- b. provision of information about services and facilities available for elderly persons and their opportunities to make use of them;**

**2. to enable elderly persons to choose their lifestyle freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:**

- a. provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;**
- b. the health care and the services necessitated by their state;**

**3. to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.**

- a) Please provide detailed information on measures (legal, practical and proactive, including as regards supervision and inspection) taken to ensure that no older person is left behind in terms of access to and enjoyment of their social and economic rights.
- b) Please provide information on specific measures taken to protect the health and well-being of the elderly, both in their home and in institutional settings, in the context of a pandemic crisis such as the COVID-19 crisis.
- c) If the previous conclusion was one of non-conformity, please explain whether and how the problem has been remedied. If the previous conclusion was deferred, please reply to the questions raised.

### **PART I - 30. RECS EVERYONE HAS THE RIGHT TO PROTECTION AGAINST POVERTY AND SOCIAL EXCLUSION**

Living in a situation of poverty and social exclusion violates the dignity of human beings. Living at risk of falling into poverty and exclusion is damaging for the person, not only as regards dignity, but it also entails suffering, loss in cognitive function and social abilities. Risk of poverty and actual poverty and exclusion also compromise the exercise of a range of other rights, both social and economic (employment, health, education, housing, etc.) and civil and political rights (private and family life, association and opinion) and ultimately involves total disenfranchisement. Leaving no one behind and protection against poverty and social exclusion are not just a question of statistics but are a primary human rights requirement, universal in scope, and it is therefore a matter of priority and of resources.

The main indicator used to measure poverty is the relative poverty rate. The at-risk-of-poverty rate before and after social transfers (cf. Eurostat) is used as an indicative value to assess national situations, without prejudice to the use of other suitable parameters that are taken into account by national anti-poverty strategies or plans (e.g. indicators relating to the fight against the 'feminization' of poverty, the multidimensional phenomena of poverty and social exclusion, the extent of 'inherited' poverty, etc.).

The Committee wishes to emphasise the very close link between the effectiveness of the right recognised by Article 30 of the Charter and the enjoyment of the rights recognised by other provisions, such as the right to work (Article 1), access to health care (Article 11), social security allowances (Article 12), social and medical assistance (Article 13), the benefit from social welfare services (Article 14), the rights of persons with disabilities (Article 15), the social, legal and economic protection of the family (Article 16) as well as of children and young persons (Article 17), right to equal opportunities and equal treatment in employment and occupation without sex discrimination (Article 20), the rights of the elderly (Article 23) or the right to housing (Article 31), while recalling the important impact of the non-discrimination clause (Article E), which includes non-discrimination on grounds of poverty.

Extreme poverty - i.e. people living in severe deprivation, without enough food or even suffering from malnutrition, poorly housed, homeless or with no access to shelter, and without access to clean water and sanitation, etc. - has not yet been eradicated throughout Europe. Extreme poverty does not only affect individuals but also vulnerable communities. Because of their state and status, they are sometimes left out from official statistics. They are among the furthest behind in respect of whom the United Nations Sustainable Development Goals and the Agenda 2030 (that has been adhered to by all Council of Europe member States) calls for priority action.

### Article 30 – The right to protection against poverty and social exclusion

**With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:**

**a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;**

**b. to review these measures with a view to their adaptation if necessary.**

- ▶ a) Please provide detailed information on measures (legal, practical and proactive, including as regards supervision and inspection) taken to ensure that no person drops under the poverty threshold, and provide also information on the impact of the measures taken. Please indicate how many people in your country are at risk of poverty, how many in a situation of poverty, and how many in extreme poverty, including specific data for children.
- ▶ b) Please provide information on measures taken to assist persons affected by poverty, social exclusion and homelessness during the COVID-19 crisis, or after the crisis to mitigate its effects.
- ▶ c) If the previous conclusion was one of non-conformity, please explain whether and how the problem has been remedied. If the previous conclusion was deferred, please reply to the questions raised.

The European Social Charter, adopted in 1961 and revised in 1996, is the counterpart of the European Convention on Human Rights in the field of economic and social rights. It guarantees a broad range of human rights related to employment, housing, health, education, social protection and welfare.

No other legal instrument at pan-European level provides such an extensive and complete protection of social rights as that provided by the Charter.

The Charter is therefore seen as the Social Constitution of Europe and represents an essential component of the continent's human rights architecture.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

