

High-Level Conference on the European Social Charter

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Contribution by

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Response to the following Conference objectives:

- *Addressing contemporary social rights challenges*

- *Discuss **key social issues** such as [...] the rights of older people [...], ensuring that responses are aligned with the Council of Europe's human rights framework and in particular the European Social Charter.*

- *Enhancing institutional cooperation*

- ***Strengthen collaboration** with the Parliamentary Assembly, the Congress of Local and Regional Authorities, the Conference of INGOs and relevant intergovernmental committees and actors to improve coordinated action on social rights.*
- *Reinforce **strategic partnerships**, in particular the relationship with the European Union, the United Nations and other key international actors to elevate social rights on the global agenda and strengthen joint initiatives.*

- *Increasing commitments under the Charter*

- *Organisation of a **treaty event** where Council of Europe member States can undertake or pledge additional commitments, including ratification of the revised Charter and acceptance of its provisions and/or the collective complaints procedure.*

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Introduction

As frequently repeated in the current political discourse, the 21st century is experiencing an unprecedented social transformation, initiated by global demographic change, which is reshaping the age structure of the population. Given the triumphs of medical technology, people are living longer and healthier lives, while, at the same time, fertility rates are declining rapidly and working-age populations are shrinking. According to the latest estimates, the number of people aged 60 and over is expected to double worldwide by 2050, with significant increases anticipated across all regions, particularly in Europe.

The current social transformation presents significant economic and social challenges for governments, policymakers and medical professionals. In particular, it has major implications for social and fiscal policy and is exerting enormous pressure not only on central, regional and local governments but also on individuals. Older persons are often encountering profound physical and social obstacles preventing them from living a life with dignity and rights. As the global population of older people rapidly expands, so will the number of rights violations against older people.

Against this background, robust policy responses and legal frameworks are required that respect, protect and fulfil the rights of older persons at all levels. Towards that goal, this contribution to the High-Level Conference emphasises that it is crucial to strengthen the protection of older persons' rights, both nationally and internationally, placing the European Social Charter (ESC), in coordination with other Council of Europe instruments such as the European Charter of Local Self-Government, at the forefront of the agenda to respond to this contemporary social rights challenge.

A Human Rights-based Approach to Ageing

While raising specific human rights issues, matters related to ageing and older persons have been addressed through normative viewpoints such as medical, welfare, political and economic, but not often from the human rights perspective. Ageing has traditionally been viewed through a welfare-based lens as a negative process, with older people perceived as vulnerable, frail, dependent and a drain on resources. This approach stems from a biomedical model of ageing, which portrays ageing as a process of decline and decay necessitating medical intervention. In this paradigm, older individuals are often excluded or marginalised, with the State seen as primarily responsible for providing compensation for their losses in terms of income, autonomy and social roles. These ageist assumptions frequently reinforce poor intergenerational relations and discriminatory practices in society, while legal and policy responses to the ageing population have often been inadequate, failing to address systemic issues impacting older persons.

Contrary to this welfare approach, a rights-based perspective, influenced by the social model of disability, views inequality and exclusion as products of societal barriers rather than individual deficits. It places duties on States to dismantle these barriers in their jurisdiction and

ensure full participation, equality and dignity for older persons, while going beyond economic arguments as the *raison d'être* of active ageing or similar policies. The ongoing paradigm shift from traditional models of ageing to a human rights-based approach to the complex and multifaceted issues that older persons face, has been essential for ensuring their dignity, autonomy and participation as active rights holders, while providing a better foundation for laws affecting older persons. For the reasons explained below, the ESC, which largely follows a human rights-based approach to ageing, should be placed at the heart of this paradigm shift that is currently on-going in the Council of Europe Member States.

Recent Developments at the United Nations Level

In positive international law at the universal level,¹ there is no treaty that focuses exclusively on the rights of older persons and there are only very few fragmented references to age-related rights. While there have been notable attempts to address this textual gap through the interpretation of general provisions in human rights treaties and through wide-ranging soft law instruments,² the understanding remains that there exist multiple protection gaps and that existing mechanisms are inadequate to protect age-related rights. To address these gaps, and in an attempt to reframe the global discourse around older persons through a human rights-based approach, there is a movement towards the adoption of a universal human rights treaty on the rights of older persons.

On 21 December 2010 and following a report by the UN Secretary-General in response to growing concerns over older persons' rights, the UN General Assembly adopted Resolution 65/182, establishing an "open-ended working group for the purpose of strengthening the protection of the human rights of older persons", known as the Open-Ended Working Group on Ageing (OEWGA). Remarkably, at its 14th session (20 to 24 May 2024), the OEWGA, with the active engagement of civil society, made significant progress by adopting for the first time a substantive decision on the human rights of older persons, on the basis of the proposed intergovernmentally-negotiated recommendations. This decision includes recommendations for addressing protection gaps, through a new legally binding UN convention on the rights of older persons, akin to conventions protecting women, children and persons with disabilities. The decision adopted by the OEWGA was presented to the 78th Session of the UN General Assembly in September 2024.

It is crucial to note that at its 58th Session (24 February to 4 April 2025), the UN Human Rights Council decided to establish an open-ended intergovernmental working group with the mandate of elaborating and submitting a draft international legally binding instrument on the human rights of older persons with the objective of promoting, protecting and ensuring the full

¹ In the Americas, there exists since 2015 a specific treaty on the rights of older persons, the Inter-American Convention on Protecting the Human Rights of Older Persons, which is the first regional treaty that fully recognises the human rights of such people.

² E.g. Council of Europe, Committee of Ministers, Recommendation CM/Rec(2014)2 to Member States on the promotion of human rights of older persons.

enjoyment of human rights by older persons.³ This is undeniably a timely window of opportunity for the Council of Europe to follow these developments which very much confirm the line of travel in the ESC and the centrality of its key provisions, as analysed below.

The Perspective of the ESC

The Council of Europe's ESC (revised) is unique in many respects. It contains a bundle of rights which, both individually and collectively, give tangible support to older persons as active social citizens. These rights are anchored in human autonomy and moral agency, something that does not fade in importance with age. They extend into the economic sphere, assuring the older person of a right to work without discrimination (Article 1) and other employment-related rights, such as vocational guidance and training and protection from dismissal (Articles 9, 10 and 24 respectively). They encompass the full range of social supports, including a right to social security (Article 12), a right to social and medical assistance (Article 13) and a right to benefit from welfare services (Article 14). They include the right of (older) persons with disabilities to independence, social integration and participation in the life of the community (Article 15) and the right to the social protection of the family, which is even more important in the midst of demographic change (Article 16, in combination with Article 27). And, of course, they include the substantive rights to protection of health (Article 11), to protection against poverty and social exclusion (Article 30) and to housing (Article 31), which are a natural precondition for active social citizenship. Cementing this into place is Article E which prohibits discrimination and provides an important tool to challenge the past policies of the past.

In addition to the many generic rights that can and do have tangible benefits for older persons, the ESC is also unique in providing a *sui generis* provision dealing specifically with the rights of older persons, Article 23. This is the first international treaty provision explicitly dedicated to older persons. In many respects, the philosophy of Article 23 – equal social citizenship – is already diffused into the above-mentioned substantive provisions. However, Article 23 provides an overarching and animating philosophy to make the other rights come alive in the context of older persons. The core ideas that underpin it include an insistence on human autonomy regardless of age. That is why the issue of autonomy and independence (and interdependence) is so important in old age. This philosophy lies at the heart of the revolution in thinking about the rights of older persons around the world. Also emblazoned on Article 23 is the concept of active participation and social inclusion, which forces a re-think on how to continue to include.

The ESC's monitoring body, the European Committee of Social Rights (ECSR), has had the time and tools to develop a comprehensive approach to the obligations of the 22 out of the 46 Council of Europe Member-States that have accepted Article 23, as well as other ESC provisions relevant to issues of age and protection of older persons. And in this process, the ECSR has benefited from the monitoring system of the ESC, which allows NGOs advocating

³ <https://docs.un.org/en/A/HRC/58/L.24/Rev.1>.

for older persons' rights to participate in the monitoring procedures, either by commenting on state reports or by submitting collective complaints directly to the ECSR against the 16 States-Parties that have accepted the Collective Complaints Procedure, thereby addressing social issues that affect specific groups of people, as members of the society, rather than merely individual grievances. And, in fact, there have been several collective complaints cases brought by NGOs⁴ and trade unions⁵ dealing with the rights of older persons, many of which directly involve local governments, rather than merely the central government.⁶

The Role of Local Governments in Realising the Social Rights of Older Persons Under the ESC

Human rights issues related to age and ageing are dealt with on a daily basis not only by central authorities but also by local authorities within a State, even though their work is not always perceived as human rights implementation.⁷ In particular, the provision and delivery of several public services relating to economic, social and cultural rights is the primary responsibility of municipalities (e.g. housing, health, social assistance, work, education and culture). Trends of decentralisation and urbanisation, particularly across Europe, have shifted the responsibility for delivering many such services to the local level. Notably, in recent years there has been growing attention to the roles that local governments play in law-making processes, as well as in the application and enforcement of universal and regional human rights treaties or soft law instruments, either as state actors or, possibly, as non-state actors, by forming networks.

Given that the effective realisation of the economic and social rights guaranteed by the ESC is a matter for the territorial levels closest to the people, local governments are key players in implementing the ESC, in line with the principles of subsidiarity and local autonomy. Through an interpretation of Art. I of the ESC, it is possible to single out local authorities as recipients of the obligations of the Treaty. Furthermore, under the ESC's reporting system, each national government must put in place collaborative formulas to show that domestic law and practice at all levels of government are in conformity with the ESC provisions. If local powers are not properly exercised or if the government has not provided information relating to such exercise, the State will be found to be violating the ESC. In that context, the ECSR has reaffirmed that,

⁴ *International Federation of Associations of the Elderly (FIAPA) v. France*, Complaint No. 210/2022; *Defence for Children International (DCI) et al v. Spain*, Complaint No. 206/2022; *FIAPA v. France*, Complaint No. 205/2022; *Validity Foundation – Mental Disability Advocacy Centre v. Czech Republic*, Complaint No. 188/2020; *FIAPA v. France*, Complaint No. 145/2017; *ATTAC ry, Globaali sosiaalityö ry and Maan ystävät ry v. Finland*, Complaint No. 163/2018; *FIAPA v. France*, Complaint No. 162/2018; *FIAPA v. France*, Complaint No. 145/2017; *The Central Association of Carers in Finland v. Finland*, Complaints Nos. 70/2011 and 71/2011; *Federation of Human Rights (FIDH) v. Ireland*, Complaint No. 42/2007.

⁵ *Sindacato autonomo Pensionati Or.S.A. v. Italy*, Complaint No. 187/2019; *Panhellenic Association of Pensioners of the OTE Group Telecommunications (PAP-OTE) v. Greece*, Complaint No. 165/2018; *PAP-OTE v. Greece*, Complaint No. 156/2017; *Fellesforbundet for Sjøfolk (FFFS) v. Norway*, Complaint No. 74/2011.

⁶ E.g. *The Central Association of Carers in Finland v. Finland*, Complaints Nos. 70/2011 and 71/2011.

⁷ Council of Europe, Commissioner for Human Rights, *Bringing human rights home: human rights action at the local level*, Statement by Thomas Hammarberg before the Congress of Local and Regional Authorities, 22 March 2011.

for the purposes of the international responsibility of States Parties, the conduct of all organs of the State, including local authorities, is considered to be an act of the State.⁸

According to the ECSR, delegation of certain powers by higher authorities to local authorities does not relieve them from the obligations entered into under international agreements,⁹ and their implementation strategies must be accompanied by appropriate safeguards so as not to jeopardise the effective implementation of ESC commitments.¹⁰ This necessitates that, regardless of the form of the State, the effective implementation of the ESC may in some cases require that the State Party exercises, via the central government, a degree of influence on decentralised levels of government in order to ensure full compliance with its obligations.

Ultimate responsibility for the implementation of official policy, including at least supervision and regulation of local action, therefore rests with the government, which must be able to demonstrate that both local authorities and itself have taken practical steps to ensure that local action is effective.¹¹ If a State does not take sufficient measures to constrain or sanction local authorities in their actions towards their population, this could result in a violation of the ESC.¹² Consequently, States Parties have a duty to monitor their local authorities with regard to the implementation of the ESC.

In the context of older persons' rights, the ECSR constantly monitors how local authorities execute their duty and provides significant guidance on implementing policies that support older persons within the framework of the ESC.¹³ Furthermore, the ECSR takes into account the differences that exist between States with respect to the services provided to older persons and the means at their disposal and emphasises that, even if the services are not under State control, there must be supervision of the services provided. The ECSR's work on collective complaints also highlights that local authorities must comply with Article 23 ESC and the other ESC provisions relevant to older persons, even when delegated significant discretion. Cases have shown violations where local discretion is overly broad or where services fail to meet older persons' needs adequately.¹⁴ However, the ECSR also faces the issue of lack of information provided by the governments – of the already limited number of States having accepted Article 23 – and its input may therefore be limited in some cases.

Human Rights Obligations of Local Governments Under a Combined Reading of the ESC and the European Charter for Local Self-Government

Remarkably, the Council of Europe has adopted a treaty instrument devoted to local authorities which has been ratified by all Member States, the European Charter for Local Self-

⁸ ECSR, *International Federation of Human Rights (FIDH) v. Belgium*, Complaint No. 62/2010, decision on the merits of 21 March 2012, para. 54.

⁹ ECSR, Conclusions 2006, General Introduction, para. 10.

¹⁰ Ibid.

¹¹ ECSR, *ERRC v. Italy*, Complaint No. 27/2004, decision on the merits of 7 December 2005, para. 26.

¹² ECSR, *ERRC v. Greece*, Complaint No. 15/2003, decision on the merits of 8 December 2004.

¹³ ECSR, Conclusions 2013, Serbia.

¹⁴ See e.g. the decisions on the merits of the ECSR on Complaints No. 70/2011 and 71/2011, *The Central Association of Carers in Finland v. Finland*.

Government (ECLSG). Therefore, it is possible to identify the social rights obligations of local governments towards older persons as State agents of Council of Europe Member States under a combined reading of the ESC and the ECLSG, in the work of their bodies, the ECSR and the Congress of Local and Regional Authorities respectively.¹⁵ Furthermore, at least within the Council of Europe, and in light of a combined reading of the two charters, the internal organisation of a State Party matters under regional international law and can no longer be regarded as a purely domestic affair. In this respect, therefore, a State Party to the two charters is, *inter alia*, under an obligation to ensure that adequate decentralisation of tasks and resources occurs and that local authorities have the right to manage “a substantial share of public affairs under their own responsibility” (Art. 3 ECLSG). In addition, this share of affairs should preferably be endowed with entities “closest to the citizen” (Art. 4(3) ECLSG), which have discretion in “adapting their exercise to local conditions” (Article 4(5) ECLSG) and deserve to be granted “adequate financial resources of their own” (Art. 9(1) ECLG), as long as these tasks are conferred on the basis of what the Constitution mandates (Art. 2 ECLSG).

According to the Congress of Local and Regional Authorities, which monitors States Parties’ implementation of the ECLSG, although laws and policies are adopted at the national level, local governments have an obligation under the ECLSG to adopt policies and take decisions that contribute to the implementation of human rights at the local level,¹⁶ including vis-à-vis older people.¹⁷ They are therefore obliged to fulfil the human rights obligations arising from the international commitments of the States Parties, within the limits of their local powers and responsibilities¹⁸ as defined by national law.¹⁹ National governments, for their part, have the obligation to create an enabling environment for local governments to identify and implement their human rights obligations, and to ensure that the latter respect human rights in their everyday political decisions, policies and practices.²⁰

Conclusion

Against the background of the unprecedented challenge of an ageing population and the recent developments at the regional and universal level, strengthening the protection of older persons’ rights at all levels of government through the ESC and other Council of Europe instruments is key. The ESC system presents a rich source of precise and distinct legally binding standards vis-à-vis the protection of older persons, embodying the values and principles permeating a human rights-based approach to ageing. Furthermore, the ESC system assumes a structural

¹⁵ Council of Europe, The Congress of Local and Regional Authorities, *Promoting human rights at local and regional level: The human rights dimension of the activities of the Congress of Local and Regional Authorities*, 2016.

¹⁶ Council of Europe, The Congress of Local and Regional Authorities, *Developing indicators to raise awareness of human rights at local and regional level*, CG(21)10, 2011.

¹⁷ Council of Europe, The Congress of Local and Regional Authorities, *Ageing communities – ensuring access to quality social care for older persons*, Recommendation 517, 2024.

¹⁸ For an overview see Council of Europe, *Local Authority Competences in Europe*, 2007.

¹⁹ Council of Europe, The Congress of Local and Regional Authorities, *Revised Role of local and regional authorities in the implementation of human rights*, Recommendation 280, 2010.

²⁰ Council of Europe, The Congress of Local and Regional Authorities, *Best practices of implementation of human rights at local and regional level in member states of the Council of Europe and other countries*, CG(26)5, 2014.

approach in dealing with economic and social rights concerns affecting groups of society, such as older persons, rather than an approach based merely on individual grievances. It also embraces the participation of civil society and other actors advocating for age issues in its monitoring mechanisms.

Furthermore, under a combined reading of the ESC and the ECLSG, local governments, as State agents of the Parties, have a central role to play in fulfilling economic and social rights responsibilities, including vis-à-vis older persons. Therefore, through its interaction with the ECLSG and the work of the Congress of Local and Regional Authorities, the ESC, as interpreted by the ECSR, could provide detailed guidance not only on central but also on local governments in identifying their legal obligations, coordinating their actions and implementing policies, on the basis of international social rights standards. In other words, the ESC, alongside the ECLSG, offers a potential avenue for enhancing local government accountability and effectiveness in implementing age-related policies in line with Council of Europe standards.

Towards these goals, this contribution proposes that this priority topic is addressed during the plenary sessions and/or side events of the High-Level Conference, as well as in the future directions of the Council of Europe, with the objectives to:

- Ensure that responses to the above-described social rights challenge are aligned with the Council of Europe's framework, and in particular the ESC combined with the ECLSG, in consideration of the recent developments at the UN level.
- Strengthen collaboration of the Department of Social Rights with the Congress of Local and Regional Authorities and other Council of Europe bodies such as the Parliamentary Assembly, to improve coordinated action on the social rights of older persons.
- Reinforce strategic partnerships with the European Union, the UN and other key international actors to elevate the social rights of older people on the global agenda and strengthen joint initiatives.
- Improve reporting to the ECSR by States Parties, by providing more in-depth information on accepted and non-accepted provisions of the ESC relevant to older persons.
- Encourage and support States to accept the non-accepted provisions of the ESC which are relevant to older persons.
- Encourage and support States to accept the Additional Protocol providing for a system of collective complaints.
- Grant representative national NGOs within the jurisdiction the right to lodge complaints before the ECSR by making a declaration under the Additional Protocol Providing for a System of Collective Complaints or pursuant to Article D§2 of the Revised Charter.
- Encourage and support States to engage with the work of the ECSR on the rights of older persons in the design and implementation of laws and policies, as well as with the ESC and ECLSG standards for the identification of the social rights obligations of national and local governments and their role in the realisation of the relevant rights.

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