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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

**Statement
on COVID-19 and social rights**

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This text may be subject to editorial revision

Introduction

The COVID-19 pandemic and the responses of States thereto have had a very significant impact on the enjoyment of a wide range of social rights. The Council of Europe's European Social Charter provides a framework for the measures that must be taken by States Parties to cope with the pandemic as it unfolds. The treaty also provides a necessary framework for the post-pandemic social and economic recovery as well as for preparation for and responses to possible future crises of this nature.

With the present statement the European Committee of Social Rights (ECSR) aims to highlight those Charter rights that are particularly engaged by the COVID-19 crisis. (It does not address the right to protection of health under Article 11 of the Charter, which was the subject of a separate statement adopted in April 2020¹). The statement provides guidance to States Parties, organisations of workers and employers, civil society and other key stakeholders by clarifying certain aspects of the Charter rights in question as they apply in the current crisis.

In the context of the COVID-19 crisis, every State Party must assess whether its existing legal and policy frameworks are adequate to ensure a Charter-compliant response to the challenges presented by COVID-19. Where those frameworks are not adequate, the State must amend them, including through the adoption of any additional measures that are required to ensure that the State is able to comply with its Charter obligations in the face of the social rights risks posed by the COVID-19 crisis.

In designing and implementing new additional measures, States Parties must take due account of all social rights-holders, according special attention and appropriate priority to the most socially vulnerable groups and individuals. States Parties must ensure that measures taken in response to the crisis, including economic and social policy measures, do not result in discrimination in terms of social rights enjoyment, whether direct or indirect (as provided by Article E of the Charter).

More generally, the ECSR takes the view that investment in social rights and in their delivery – consistent with the use of maximum available resources – will mitigate the adverse impact of the crisis and accelerate the post-pandemic social and economic recovery. The ECSR recalls its long-standing jurisprudence that the implementation of the Charter requires the State Parties to take not merely legal action but also practical action, making available the necessary resources to give full effect to the rights recognised in the Charter.² It also recalls that when the achievement of one of the rights under the Charter is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources.³ These requirements are not obviated by the COVID-19 crisis.

Employment and labour rights

- *Full employment and employment services*

The impact of the COVID-19 crisis on employment poses a serious challenge in terms of the obligation on States Parties laid down by the Charter in its very first provision on the right to work, Article 1§1 of the Charter, namely to maintain a high and stable level of employment with a view to realising the objective of full employment.

¹ ECSR, Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020.

² International Association Autism-Europe v. France, Complaint No.13/2002, decision on the merits of 4 November 2003, §53.

³ Ibid.

The ECSR considers that employment policy measures must be key elements of the response to the crisis. Article 1§1 of the Charter requires that States Parties apply a mix of “active” and “passive” labour market measures which are conducive to creating and preserving jobs, while adequately assisting in finding and/or qualifying for jobs. It further requires that such measures be adequately funded, notably as a function of unemployment levels.⁴

Pertinent active labour market measures in the current crisis include facilitating flexible working arrangements, notably teleworking and work-sharing, up- and/or re-skilling measures to enhance workforce adaptability, and increased use of digital delivery of employment services (also Article 1§3 of the Charter). Passive measures that have been widely applied by States Parties to the Charter since the outbreak of the pandemic include innovative uses of unemployment benefit systems and other income replacement schemes (furloughs, short-time work, wage subsidies, basic/minimum income provision, etc.).

In the shorter term, the ECSR considers it essential that such labour market policy measures be pursued for as long as necessary to maintain a high and stable level of employment. Ensuring that these measures be extended to vulnerable categories of workers, for example those who are not covered by unemployment benefits, is vital (notably Articles 1§1, 12 and 13 of the Charter).

In the longer term, compliance with the Charter obligations relating to the right to work, will require employment creation, including through public employment programmes, public works, hiring subsidies and various support measures for the creation of quality jobs with decent working conditions. Workforce reallocation will be necessary, which will require investment in training for employability (up- and/or re-skilling) and in incentives for geographical mobility. Finally, efficient employment services as required by Article 1§3 of the Charter will be crucial to meet increased demand for job mediation, counselling and labour market information, not least where redundancies become inevitable.

- *Health and safety at work*

Article 3 of the Charter guarantees the right of every worker to a safe and healthy working environment. The SARS-CoV-2 virus is a biological agent posing a risk to health and safety at work. A response in terms of national law and practice, covering both preventative and protective measures, is required if the rights set out in Article 3 are to be secured.⁵ This involves the introduction of immediate health and safety measures at the workplace such as adequate physical distancing, the use of personal protective equipment, reinforced hygiene and disinfection and also closer medical supervision, where appropriate.⁶ In this respect, due account should be taken of the fact that certain categories of workers are exposed to heightened risks, such as frontline health care workers, social workers, teachers, transport and delivery workers, garbage collection workers, agro-food processing workers. States Parties must ensure that their national policies on occupational safety and health, and their health and safety regulations, reflect and address the hazardous agent and the particular psychosocial risks faced by different groups of workers in the COVID context.

At a more general level, the situation requires a thorough review of occupational risk prevention at national policy level as well as at company level in close consultation with the social partners as stipulated by Article 3§1 of the Charter. The national legal framework may require amendment and risk assessments at company level must be adapted to the new circumstances.

⁴ See Conclusions 2002, Article 1§1, Italy.

⁵ Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, Decision on the merits of 6 December 2006, §224. See also Conclusions XIV-2 (1998), Statement of interpretation on Article 3§2 of the Charter (Article 3§1 of the 1961 Charter).

⁶ In this respect, see also the Statement of interpretation on the right to protection of health in times of pandemic, *op.cit.* at fn 1.

Under Article 3§§2 and 3 of the Charter all workplaces and all sectors of activity must be covered by health and safety regulations. The ECSR notes that many States Parties have taken rapid steps to issue new health and safety standards specifically related to the COVID-19. In some cases, States have decided that contracting COVID-19 may be classified as a work-related injury or disease. Insurance and health coverage for work-related accident or injury due to contracting COVID-19 should extend to travel to and from the workplace, especially when telework is not possible or is not enabled by the employer. On the other hand, the ECSR also notes that teleworking, remote working or work from home practices may be associated with specific health and safety risks, including unsuitable workplace ergonomics and psychosocial stress factors⁷ such as isolation, electronic surveillance and “hyperconnected” working methods.

Health and safety regulations must be adequately enforced through labour inspection. In the current situation therefore, labour inspections must be provided with appropriate powers and adequate resources, especially labour inspection staff as required by Article 3§3 of the Charter.

- *Just working conditions, including fair remuneration*

Other labour rights are also implicated in the current situation. Article 2 of the Charter guarantees the right of all workers to just working conditions, including reasonable daily and weekly working hours (Article 2§1), annual holiday with pay (Article 2§3), and weekly rest periods (Article 2§5).

New forms of work organisation such as teleworking and work from home practices often lead to de facto longer working hours, due to inter alia a blurring of the boundaries between work and personal life. Consideration must therefore be given to ensuring that home-based workers can disconnect from the work environment.

The ECSR refers to its long-standing jurisprudence on what constitute reasonable working hours and recalls that the defined outer limits must not be exceeded except in situations of *force majeure*.⁸ In this respect, the ECSR also recalls that overtime work must be paid at an increased rate of remuneration pursuant to Article 4§2 of the Charter.

Precarious and low-paid workers, including in the gig economy and those on zero-hour contracts, are particularly vulnerable to the impacts of the COVID-19 crisis. States Parties must ensure that these categories of workers enjoy all the labour rights set out in the Charter. This includes not only those pertaining to safe and healthy working conditions, reasonable working hours and fair remuneration (see below), but also rights relating to notice periods, protection against deduction from wages, dismissal protection, trade union membership, information and consultation at the workplace (notably Articles 4, 5, 21, 22 and 24 of the Charter).

Fair remuneration is a key Charter right (Article 4§1 of the Charter) which requires that net minimum wages do not fall below 60% of average wage in the labour market.⁹ States Parties must devote necessary efforts to reaching and respecting this minimum requirement and to regularly adjust minimum rates of pay also during the COVID-19 crisis. The ECSR also considers that the right to fair remuneration includes the right to an increased pay for workers most exposed to COVID-19-related risks. More generally, income losses during lockdowns or additional costs incurred by teleworking and work from home practices due to COVID-19 should be adequately compensated.

⁷ See Conclusions 2013, Statement of interpretation on Article 3.

⁸ See for example Conclusions XIV-2 (1998), Article 2§1, Norway.

⁹ Conclusions XIV-2 (1998), Statement of interpretation on Article 4§1.

During the pandemic, Article 26 of the Charter, which guarantees the right of all workers to protection of their dignity at work, is also of the utmost importance. Indications are that the COVID-19 situation has led to increased tensions at the workplace and that in particular healthcare workers and other frontline workers have more often experienced attacks and harassment. Employers must ensure that all workers are protected against all forms of harassment. It must be possible to hold employers liable when harassment occurs in relation to work, or on premises under their responsibility, even when it involves a third person not employed by them, such as visitors, clients, etc.¹⁰

Protection against termination of employment without a valid reason guaranteed under Article 24 of the Charter must also not be overlooked during the pandemic and in its aftermath. The ECSR emphasises in this respect that termination of employment for certain reasons is explicitly prohibited under Article 24 as well as in the context of other provisions of the Charter, in particular, discrimination (Article 1§2, 4§3, 15 and 20), trade union activities and participation in strikes (Articles 5 and 6§4, see below), maternity (Article 8§2), family responsibilities (Article 27), worker representation (Article 28). The filing of a complaint or participation in proceedings against an employer involving alleged violation of laws or regulations (Article 24, Appendix para. 3.c), or temporary absence from work due to illness or injury (Article 24, Appendix para. 3.f) also do not constitute valid reasons for termination of employment.

In cases of collective dismissals due to a reduction or change in the company's activities caused by the COVID-19 crisis, due respect must be accorded to the Charter requirement that workers' representatives are informed and consulted in good time before redundancies and that the purpose of such consultations is respected in redundancy procedures, namely that the workers are made aware of reasons and scale of planned redundancies and that the position of the workers is taken into account when their employer is planning collective redundancies. This applies in particular to the scope, mode and manner of such redundancies and the extent to which their consequences can be avoided, limited and/or mitigated (Article 29).¹¹ The COVID-19 crisis cannot be an excuse for not respecting the important role of social dialogue in finding solutions to the problems caused by the COVID-19 that also affect the workers. Simple notification of redundancies to workers or their representatives is not sufficient.¹²

The COVID-19 pandemic and its consequences may also increase the risk of companies becoming insolvent, despite the different measures taken by States Parties aiming to support enterprises facing difficulties due to the pandemic. In such cases, the workers affected are at a higher risk to lose their regular remuneration, i.e. their basic and often the only means of subsistence for them and their families. The protection of workers' claims in the event of the insolvency of their employer must therefore effectively be guaranteed during the COVID-19 crisis, in accordance with the requirements of Article 25 of the Charter.

- *Right to organise and collective bargaining*

The right to organise, the right to collective bargaining and social dialogue guaranteed by Articles 5 and 6 of the Charter have taken on new dimensions and new importance during the COVID-19 crisis. Trade unions and employers' organisations should be consulted at all levels on both employment-related measures focused on fighting and containing COVID-19 in the short term and efforts directed towards recovery from the economically disruptive effects of

¹⁰ Conclusions 2003, Sweden; Conclusions 2014, Finland.

¹¹ Conclusions 2014, Statement of Interpretation on Article 29

¹² Conclusions 2014, Georgia.

the pandemic in the longer term. Agreements to this effect, whether tripartite or bipartite, should be concluded where appropriate.

This is called for at all levels, including the industry/sectoral level and the company level where new health and safety requirements, new forms of work organisation (teleworking, work-sharing, etc.) and workforce reallocation, all impose obligations with regard to consultation and information of workers' representatives in terms of Articles 21 and 22 of the Charter.

Under Article 6§4 of the Charter the right of workers in essential services to take collective action may be subjected to limited restrictions in order to ensure the continued operation of such services, for example during a public health emergency. However, any such restrictions must satisfy the conditions laid down by Article G of the Charter (see below on limitations).

In this respect, the ECSR notes that Article 6§4 of the Charter entails a right of workers to take collective action (e.g. work stoppage) for occupational health and safety reasons. This means, for example, that strikes in response to a lack of adequate personal protective equipment or inadequate distancing, disinfection and cleaning protocols at the workplace would fall within the scope of the protection afforded by the Charter.

- Gender equality and the world of work

The COVID-19 crisis must not be allowed to eradicate or roll back progress made in relation to gender equality in the labour market, especially having regard to the fact that such gender equality was far from achieved prior to the onset of the crisis.¹³ Indications are that women's employment has been placed at greater risk than men's by the pandemic. Women workers are likely at a greater danger of infection as they make up the vast majority of exposed domestic, health and social care workers. The need to reconcile family life with teleworking from home (see below on Article 27 of the Charter), home-schooling of children and childcare, combined with the stresses of potential COVID-19 health concerns, has led to serious pressures and challenges for many families, frequently with a disproportionate impact on women.

In effect, women, more so than men, are confronted with a "double burden" of both paid and unpaid work making it difficult or impossible to achieve an appropriate work-life balance. The disadvantage for women is not only short-term in terms of loss of income because of the higher likelihood of their giving up remunerated work or opting for part-time work in order to respond to family needs, to carry out home-schooling of children or to carry out unpaid work generally, including as unpaid caregivers (e.g. for older or ill relatives). Such disadvantage is also likely to be more lasting in terms of reduced career prospects and even ultimate exit from the labour market.

Faced with this situation, States Parties must take all necessary measures to apply and reinforce as appropriate Charter rights such as Article 1§2 (non-discrimination in employment), Article 4§3 (equal pay for women and men for work of equal value), Article 20 (equal opportunities in employment, including in respect of working conditions, dismissal protection, vocational training and career development) and Article 27 (reconciliation of work and family life, notably through non-discrimination of workers with family responsibilities, childcare provision and the granting of parental leave arrangements).

- Migrant workers

¹³ See for example the ECSR's recent decisions in collective complaints lodged by University Women of Europe (UWE) against several States Parties finding insufficient progress in eliminating the gender pay gap in violation of Articles 4§3 and 20 of the Charter.

Migrant workers are frequently over-represented in the sectors hardest hit by the COVID-19 crisis, for example the construction, care and service sectors. They are also often employed in essential jobs with significant exposure to health risks, such as in health care, elderly care, agriculture and agro-food processing.

Migrant workers face particular obstacles in achieving full enjoyment of the rights guaranteed by the Charter and formal guarantees in domestic law of equal treatment and non-discrimination do not always suffice.¹⁴ The obstacles faced by these workers in terms of Charter rights can be legal, administrative or practical in nature:

- In case of redundancies due to the crisis, migrant workers have often been among the first to lose their jobs and experience considerable difficulty in finding new employment. In addition to loss of income, this may also lead to the loss of their work and residence permits. In this respect, The Committee recalls that Article 18§3 of the Charter requires that loss of job does not automatically lead to revoking the residence permit of a foreign worker.
- Due to lack of accessible information or language barriers migrant workers may not be aware of their rights or available benefits and support or be disinclined to access them. Information and support services for migrant workers may have had to scale down or even close during the pandemic, especially in lockdown periods. The ECSR recalls that rights to information and support for migrant workers and their families are guaranteed by Articles 19§§2 and 3 of the Charter.
- Migrant workers often live in overcrowded accommodation with only basic or inadequate sanitary facilities, which may increase their exposure to COVID-19 and in some cases lead to their becoming victims of xenophobia and stigmatisation. Under Article 19 of the Charter, States Parties are obliged to guarantee equal treatment of migrant workers with respect to working conditions, trade union rights and accommodation (Article 19§4) and to take measures against misleading propaganda and xenophobia (Article 19§1).

The pandemic has in some cases led to separation of migrant workers and their families for extended periods, for example due to closure of borders, travel restrictions and quarantine requirements or due to fear of job loss in case of travel. The ECSR recalls that Article 19§6 requires States Parties to facilitate family reunion as far as possible and refers to the possibility for the States Parties to take extraordinary measures to avoid separation of families in the current crisis.

The pandemic has also revealed increased risk of labour exploitation and human trafficking, including in domestic work and the agro-food processing sector. This raises issues in terms of Articles E, 16 and 7§10 of the Charter.

Social security, social and medical assistance and the fight against poverty and social exclusion

The ECSR notes that from the beginning of the pandemic many States Parties in accordance with their obligations to provide adequate social security benefits (Article 12 of the Charter) and social and medical assistance to persons in need (Article 13 of the Charter) have allocated budgetary resources towards income replacement and other assistance and support for persons and families affected. However, existing social security benefits and minimum income schemes (social assistance) are not always sufficient to ensure an adequate level of benefit for the purposes of Articles 12, 13 and 14. Nor do they always adequately reach the poorest and most vulnerable groups. Access requirements may be unnecessarily complex, bureaucratic and exclusionary (e.g., requiring formal links to the labour market, proof of fixed abode, age limits or excluding certain categories of workers). The amounts of the various

¹⁴ Conclusions I, Statement of interpretation on Article 19.

benefits may not be adequate or they may be limited in duration. Such shortcomings risk compounding previous findings of the ECSR prior to the pandemic that States were not in conformity with Charter obligations in terms of Articles 12, 13, 14, 16 and 30.

The ECSR further notes in this respect that Article 30 of the Charter obliges States Parties to implement an overall and coordinated approach to combating poverty and social exclusion. This approach should consist of an analytical framework, a set of priorities and corresponding measures to remove obstacles to access to social rights, in particular employment, housing, training, education, culture and social and medical assistance. It must link and integrate public policies in a consistent way, embedding the fight against poverty and social exclusion in all strands of policy and moving beyond a purely sectoral or target group approach. Effective coordination mechanisms should exist at all levels, including at the level of delivery of assistance and services to the end users.

Adequate resources must be made available for the implementation of the measures taken in the context of the overall and coordinated approach under Article 30.¹⁵ In many instances, a significant and enduring expansionary fiscal policy effort by the States Parties will be necessary to prevent an increase in poverty and social exclusion.

More particularly concerning social exclusion (understood as involving obstacles to inclusion and citizen participation¹⁶) the ECSR notes that the rapid digitalisation of social and other services during the pandemic has tended to accentuate the social exclusion of people living in poverty due to lack of equipment, broadband connections and digital skills (the digital divide¹⁷). In this respect, the ECSR also draws the attention to Article 14 of the Charter which guarantees the right to social welfare services, including counselling and advice, to everyone facing social problems.¹⁸ Delivery of such services frequently involve and depend on in-person contact and where digital delivery becomes preferable or necessary in the current context, States Parties should ensure that users of social welfare services have effective access to the requisite technology.

Education

The right to education is a right both in and of itself and an enabling right that contributes significantly to the realisation of other human rights, including other social rights. The ECSR recalls that the Charter protects the right to education from multiple perspectives, for example through Article 17§2 (primary and secondary education for children), Article 7§3 (protection of children in compulsory education), Article 10 (vocational education and training, including for adults) and Article 15§1 (right to education and training for persons with disabilities, see below in more detail).

The closures of schools and other educational institutions during the pandemic have unmasked and exacerbated pre-existing inequalities in education, raising issues in terms of Articles 10, 15, 17, and Article E of the Charter. The necessary recourse to remote learning during lockdown periods has highlighted and exacerbated the issue of digital exclusion. There is a generalised risk of learning loss and a development gap that for many children, and also for a number of adolescents and adults, will be difficult if not impossible to make up. In many instances, a move from face-to-face teaching has severely impacted on access to, and the quality of education enjoyed by, child with disabilities and special educational needs, with implications for Article 15 and Article 17 of the Charter.

¹⁵ See for example Conclusions 2005, Article 30, Slovenia.

¹⁶ Statement of interpretation on Article 30, Conclusions 2013.

¹⁷ On this, see for example Committee of Ministers Recommendation on the public service value of the Internet (2009) and Committee of Ministers Recommendation on the human rights of Internet users (2014).

¹⁸ Statement of interpretation on Article 14§1, Conclusions 2009.

The ECSR considers that access to education is crucial for every child's life and development. Under Article 17§2 of the Charter equal access to education must be ensured for all children during the COVID-19 crisis. In this respect, particular attention should be paid to vulnerable groups such as children from minorities, children seeking asylum, refugee children, children with disabilities, children in hospital, children in care, pregnant teenagers, children deprived of their liberty, etc.¹⁹

The ECSR finally points out that technical and vocational education and training as guaranteed by Article 10 of the Charter are key factors in determining access to the labour market and in realising stable employment. Vocational education and training have been impacted by closures of institutions during prolonged periods and by disruptions in the labour market making it difficult, for example, to implement work-based learning schemes and apprenticeships (Article 10§§1 and 2 of the Charter). The situation has been detrimental for the effectiveness of study programmes and qualifying exams. It has also frequently plunged students into precariousness and isolation.

Children and families

Although children have generally not suffered the most severe health effects associated with COVID-19 they have been affected in multiple ways.

The economic impact of the pandemic carries the risk of many children experiencing reduced enjoyment of their rights under the Charter. Parents/carers losing jobs and reduced household income has been a key cause of reduced rights enjoyment for children in many instances. The situation has been aggravated during lockdown periods by other factors such as only partially operating social services for children, the absence or limitation of access to meal services, reduced social contacts, poor quality housing, and school closures for face-to-face teaching for many children.²⁰ These and other challenges faced by children raise issues of conformity with Charter provisions such as Articles 16, 17, 7 and 30.

In addition to its implications for Article 30,²¹ the ECSR considers that the prevalence of child poverty in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of States Parties' efforts to ensure the right of children and young persons to social, legal and economic protection guaranteed by Article 17§1 of the Charter. The obligation of States Parties to take all appropriate and necessary measures to ensure that children and young persons have the assistance they need is strongly linked to measures directed towards the amelioration and eradication of child poverty and social exclusion.²² This also applies where child poverty and social exclusion are caused or exacerbated by a public health crisis such as the current COVID-19 pandemic.

Loss of jobs and income are not the only causes of rights harms experienced by children and families during the pandemic. Domestic violence tends to increase in times of crisis and emerging data covering the lockdown periods show an alarming increase in the reported cases of such violence worldwide and in numerous Council of Europe member States.²³

With respect to children, Article 17§1 of the Charter requires States Parties to prohibit all forms of violence against children (including all forms of corporal punishment). States must act with due diligence to ensure that violence is eliminated in practice.²⁴ This obligation is of crucial

¹⁹ See MDAC v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, §34.

²⁰ Council of Europe, The COVID-19 pandemic and children, September 2020.

²¹ See, 'Protecting the Child from Poverty: The Role of Child Rights in the Council of Europe' (COE, 2019).

²² See e.g. Conclusions 2019, Article 17§1, France.

²³ Declaration of the Committee of the Parties to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) on the implementation of the Convention during the COVID-19 pandemic, Council of Europe, 20 April 2020.

²⁴ See e.g. APPROACH v. Belgium, Complaint No. 98/2013, decision on the merits of 20 January 2015.

importance given the evidence of increased physical, psychological and sexual violence against children during lockdowns. Article 7§10 of the Charter guarantees protection against sexual and other exploitation of children as well as protection against the misuse of information technology and social media (for the purposes of online bullying, child pornography, grooming, harassment, etc.),²⁵ which is particularly pertinent in view of the acceleration of digitalisation and online activity brought about by the pandemic.

Women

Women are on the frontlines of the COVID-19 crisis. According to OECD data, up to 70% of health workers are women. Women workers are also more likely than men to have lower paid and less secure jobs. Women's burden of housework and care for children and elderly household members is much greater and in need of redistribution. The ECSR refers to its comments above on gender equality and the world of work (work-life balance) and more generally to Article E of the Charter, which prohibits all forms of discrimination so as to secure the equal effective enjoyment of all the rights concerned regardless of the specific characteristics of certain persons or groups of persons.

More particularly, the COVID-19 crisis and some of the measures to contain it are putting women's lives and personal safety at risk. The evidence is clear that policies of isolation and lockdown have been associated with an increase in levels of domestic, sexual and gender-based violence.

The ECSR recalls that Article 16 of the Charter applies to all forms of violence against women and domestic violence and States Parties are required to ensure an adequate protection against such violence in both law and practice.

It follows that States Parties must show due diligence in deploying measures such as restraining orders penal sanctions for perpetrators, adapted judicial procedures, and adequate compensation for victims, and training, particularly for police officers and other working directly with victims as well as collection and analysis of reliable data.²⁶ States must ensure provision of shelter or protected accommodation for victims or for women at risk of violence, as well as services to reduce the risk of violence and support and rehabilitate victims. Victim empowerment should also be strengthened through early advice and protection measures as well as minimum or supplemented income for victims or would-be victims.

Older persons

The pandemic has had devastating effects on older persons' rights, in particular their right to protection of health (Article 11 of the Charter), with consequences in many cases for their rights to autonomy and to make their own decisions and life-choices, their right to continue to live in the community with adequate and resilient supports to enable them to do so, as well as their right to equal treatment in terms of Article E when it comes to the allocation of health care services including life-saving treatments (e.g., triage and ventilators). Whether still living independently or not, many older persons have had their services removed or drastically reduced. This has served to heighten the risk of isolation, loneliness, hunger and lack of ready access to medication.

The lack of stability, continuity and resilience in service models has considerably undermined the goal of community living as the main means of achieving long term care for older persons. This isolation has been exacerbated for those older persons living in institutions due to the withdrawal of services, lack of personal protective equipment for staff and residents, bans of visitors (including bans on third parties normally relied on to police institutions). It is no accident that some of the highest rates of morbidity experienced has been in such residential

²⁵ See e.g. Conclusions 2004, Article 7§10, Bulgaria.

²⁶ Statement of interpretation on Article 16, Conclusions 2006.

settings. To the human rights-based argument for investment in the community to give reality to the right to community living is now added a public health argument in favour of moving away from residential institutions as an answer to long term care needs. All of this has impacted on the social inclusion and social citizenship of older persons across a wide range of Council of Europe states.

The COVID-19 crisis has exposed examples of a lack of equal treatment of older persons, such as in medical care where rationing of scarce resources (e.g. ventilators) has sometimes been based on stereotyped perceptions of vulnerability and decline in old age. Too much space was allowed for implicit judgments about the 'quality of life' or 'worth' of lives of older persons when setting the boundaries for such triage policies. Equal treatment calls for an approach based on the equal recognition of the value of older persons' lives.

Article 23 of the Charter requires the existence of an adequate legal framework for combating age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services, healthcare, education, services such as insurance and banking products, allocation of resources and facilities. This article must be fully respected during the COVID-19 crisis.²⁷ Discrimination against older persons in terms of social rights enjoyment, including those related to health, is also contrary to Article E.

Under Article 23 of the Charter States Parties must also ensure that older persons have adequate resources such as will allow them to lead a decent life and play an active part in public, social and cultural life. This applies equally in the COVID-19 context. The ECSR refers to its remarks above on social security and social assistance and the importance of benefits being adequate and reaching all the persons concerned.

Enabling older persons to remain in their familiar surroundings as required by Article 23 of the Charter has become even more important in view of the heightened risk of contagion in the congregated settings of nursing homes and other long-term institutional and residential facilities.

There is an overall emphasis in the Charter on using social rights to underpin personal autonomy and respect the dignity of older persons and their right to flourish in the community, resulting in a pressing need to re-invest in community-based supports as an alternative to institutions. Where, in the transition period, institutionalisation is unavoidable, Article 23 requires that living conditions and care be adequate and that the following basic rights are respected: the right to autonomy, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the institution, the protection of property, the right to maintain personal contact (including through internet access) with persons close to the elderly person and the right to complain about treatment and care in institutions.²⁸ This also applies in the COVID-19 context.

Due to the specific COVID-19 related risks and needs in nursing homes, States Parties must urgently allocate sufficient additional financial means towards them, organise and resource necessary personal protective equipment and ensure that nursing homes have at their disposal sufficient additional qualified staff in terms of qualified health and social workers and other staff in order to be able to adequately respond to COVID-19 and to ensure that the above mentioned rights of older people in nursing homes are fully respected.

Lastly, Article 23 requires that older persons and their organisations be consulted on policies and measures that concern them directly, including on ad hoc measures taken with regard to the current crisis. Planning for the recovery after the pandemic must take into account the views and specific needs of older persons and be firmly based on the evidence and experience gathered in the pandemic so far.

²⁷ Conclusions 2009, Article 23, Andorra.

²⁸ Conclusions 2003, Article 23, Slovenia.

Persons with disabilities

The rights of persons with disabilities have been impacted very severely by the COVID-19 crisis and state responses thereto. The particularly vulnerability of persons with disabilities to the virus – at least some of which results from the environmental factors (including social and economic policy factors) that expose them to increased risk of harm – has resulted in high rates of transmission and death. Containment measures have resulted in many disabled persons having had necessary social protection support removed from them or drastically reduced. Persons with disabilities in an institutional context have faced particular risks from the virus due to the increased risk of transmission in such contexts, as well as reduced regulation and monitoring of institutions during the pandemic.

Article 15 of the Charter has as its underlying vision the equal citizenship for persons with disabilities and, fittingly, the primary rights are those of “independence, social integration and participation in the life of the community” on the basis of non-discrimination. It applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age.²⁹

States Parties must ensure that basic services and support for persons with disabilities, such as health care, home care, personal assistance and rehabilitation services are not discontinued or limited in the current crisis context. Services for the population specifically set up to cope with the pandemic, including remote and online services, quarantine facilities, personal protective equipment, and public information and guidelines, should be accessible to persons with disabilities on an equal basis to other members of the community. Amongst other things, public health information must be made available in sign language and accessible means, modes and formats. Persons with disabilities and their organisations must be consulted and participate in the design, implementation and review of disability policies in the context of COVID-19. COVID-19 must not result in increased institutionalisation of persons with disabilities.

In view of the fact that school closures due to COVID-19 have frequently impacted persons with disabilities more than others, the ECSR recalls that Article 15§1 of the Charter requires States Parties to provide education, including vocational guidance and training, for this group of persons.

The existence of non-discrimination legislation is necessary as an important tool for the advancement of the inclusion of children and other persons with disabilities into general or mainstream educational schemes. In this respect, the ECSR recalls that inclusive education implies the provision of support and reasonable accommodation to which persons with disabilities must be entitled in order to access schools effectively.³⁰

Promotion of an equal and effective access to employment on the open labour market for persons with disabilities is the key requirement of Article 15§2 of the Charter. This obligation is not reduced in times of health crisis. This requires states to take the reasonable accommodation measures required to ensure that persons with disabilities are protected from the risks caused by the virus associated with the workplace context (including travel to and from work).

With persons with disabilities being less likely than others to be employed in the ordinary labour market, the COVID-19 crisis risks marginalising them further. In this situation, States Parties should, on the one hand, ensure that job and income losses of persons with disabilities

²⁹ See notably *Autism-Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, §48.

³⁰ *International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium*, Complaint No. 141/2017, decision on the merits of 9 September 2020, §170.

are compensated by adequate social security benefits and, on the other hand, reinforce efforts to integrate persons with disabilities into the labour market. In this latter respect, the pandemic conditions make it particularly important that domestic law must provide for obligations on the employer to take steps in accordance with the requirement of reasonable accommodation to ensure effective access to employment and to keep in employment persons with disabilities.³¹

Housing

The rights guaranteed by Article 31 of the Charter, have become even more crucial to right-holders during the pandemics. The crisis has highlighted the importance of the requirements of Article 31§1, notably that dwellings must be safe from a sanitary and health point of view (i.e. have all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity), and that they must not be overcrowded (i.e. the size of dwellings must be suitable in light of the number of persons and the composition of the household).³² These requirements are essential to prevention of, and protecting from, transmission of virus.

The ECSR notes that many States Parties have taken ad hoc measures to address homelessness providing emergency housing as required by Article 31§2 of the Charter and, in some cases, imposing moratoria on evictions. In this last respect, the ECSR recalls the key tenets of its interpretation of Article 31§2 of the Charter:

- Evictions should be governed by rules of procedure sufficiently protective of the rights of the persons concerned and should be carried out according to these rules.
- When evictions do take place, they must be carried out under conditions which respect the dignity of the persons concerned. Domestic law must prohibit evictions carried out at night or during the winter period. Domestic law must also provide for legal remedies and offer legal aid to those wishing to seek redress from the courts.³³

However, the COVID-related measures taken by States Parties to tackle homelessness have not always adequately reached or applied to all persons and families in need and they have generally been time-limited. The ECSR considers therefore that during a pandemic all evictions must be prohibited, except in the most exceptional and duly justified cases. If evictions must exceptionally be carried out, adequate alternative accommodation must be provided instantly.

Derogations and limitations

The ECSR notes that no State Party has found it necessary in the current context to avail itself of the possibility to derogate from its obligations under the Charter as provided for by Article F of the Charter.³⁴ As such, all States Parties have remained fully bound by their Charter obligations. Therefore, the ECSR understands that the COVID-19 pandemic, despite its gravity and profound impacts, has not been regarded by States Parties as constituting a public emergency of a nature such as to justify derogations from Charter rights pursuant to Article F.

The ECSR recalls that any restrictions on the enjoyment of the rights protected by the Charter must comply with the conditions laid down by Article G of the Charter.³⁵ Thus, any restriction must (i) be prescribed by law satisfying the requirement of precision and foreseeability, (ii) pursue a legitimate purpose, i.e. the protection of the rights and freedoms of others, of public interest, of national security, of public health or morals and (iii) be necessary in a democratic society for the pursuance of these purposes, i.e. there must be a reasonable relationship of

³¹ Conclusions 2007, Statement of interpretation on Article 15§2.

³² Conclusions 2003, Article 31§1, France.

³³ See e.g. *ERRC v. Bulgaria*, Complaint No. 31/2005, decision on the merits of 18 October 2006, §52.

³⁴ Article 30 of the 1961 Charter.

³⁵ Article 31 of the 1961 Charter.

proportionality between the restriction on a right and the legitimate aim(s) pursued.³⁶ In this last respect, the ECSR points out that any restriction should respond to a pressing social need and be the least restrictive measure in terms of its impact on Charter rights amongst those likely to achieve the aim pursued.³⁷

In this context, the ECSR wishes to emphasise that crises, whatever their cause, should not have as a consequence the reduction of protection or enjoyment of the rights recognised by the Charter. Governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most.³⁸

Concluding remarks

In order to cope with and recover from the COVID-19 pandemic, investment in social rights is necessary. States Parties to the European Social Charter must take all measures necessary, including through the redistribution of resources, to combat the virus and to secure the rights of their populations, including those of the most socially vulnerable groups. Where necessary, this will require States Parties to take positive measures to ensure equal enjoyment of rights for all as envisaged by the Charter (Article E).

The obligations set out by the Charter must serve as a human rights roadmap for the difficult decisions on law, policy and resource allocation that will have to be taken in the coming years. These decisions will need to address not only the social rights impacts of COVID-19 but the social, political and economic conditions that preceded the pandemic and exacerbated the vulnerability of social rights in the face of the pandemic.

Finally, the ECSR wishes to emphasise that the success of the efforts to overcome the current crisis depends decisively on the involvement of the social partners and civil society in the planning, implementation and evaluation of these efforts. Only thus will the efforts have the necessary legitimacy and impact.

³⁶ See for example EUROCOPI v. Ireland, Complaint No. 83/2012, decision on the merits of 2 December 2013, §§207-214.

³⁷ See in this sense, Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, §89.

³⁸ See Conclusions 2009, Comment on the application of the Charter in the context of the global economic crisis.