



INTERNATIONAL LEGAL RESEARCH GROUP ON SOCIAL RIGHTS

CONCLUDING REPORT ON AUSTERITY MEASURES AND THEIR IMPLICATIONS: MAIN FINDINGS

Austerity measures and its implications.
The role of the European Social Charter in maintaining minimum social standards in countries undergoing austerity measures.

THE EUROPEAN LAW STUDENTS' ASSOCIATION

(ELSA)

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FOREWORD

I. What is ELSA?

ELSA is a non-political, non-governmental, non-profit making, independent organisation which is run by and for students. ELSA has 43 member and observer countries with more than 250 Local Groups and 42,000 students. It was founded in 1981 by 5 law students from Poland, Austria, West Germany and Hungary. Since then ELSA has aimed to unite students from all around Europe, to provide a channel for the exchange of ideas and opportunities for law students and young lawyers to become internationally minded and professionally skilled. Our focus is to encourage individuals to act for the good of society in order to realize our vision; “*A just world in which there is respect for human dignity and cultural diversity*”. You can find more information on www.elsa.org and legalresearch.elsa.org.

II. What is the Legal Research Group on Social Rights?

The International Legal Research Group on Social Rights is a cooperation between ELSA and the Council of Europe. The Department of the European Social Charter provided ELSA with the task of assessing what was the impact of austerity measures on fundamental rights among their State-members. To achieve this goal 28¹ National Legal Research Groups were formed within our network. This was a tremendous task considering the number of the countries and differences and scope of protection between each legal system. Therefore the legal assessment mainly covered the situation of vulnerable groups and the rights of the European Social Charter most affected by the ongoing economic crisis. Thus, each national research group strived to provide the general legal framework and analysed the impact that austerity measures, if any, have had on the right to fair remuneration (Article 4), the right to organise (Article 5), the right to bargain collectively (Article 6), the right to social and medical assistance (Article 13), the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15), the right of children and young persons to social, legal and economic protection (Article 17) while also analysing youth

¹ Albania, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Finland, France, Georgia, Germany, Greece, Hungary, Italy, Latvia, Malta, Norway, Poland, Portugal, Romania, Russian Federation, Slovak Republic, Slovenia, Spain, The Netherlands, Ukraine, United Kingdom.

unemployment, and finally, the right to protection against poverty and social exclusion (Article 30) up to July 2015.

III. What is the Concluding Report?

The Legal Research Group on Social Rights concluded with a 1577 page report.² Its goal was to assess the effects of austerity measures on social rights in Europe. The research considered the social rights of the European Social Charter perceived to have been most affected by austerity measures and paid close attention to the situation of vulnerable groups. Each ELSA country report covered some of the main challenges that the participating countries are facing since the financial crisis started in 2008. Some infringements of the European Social Charter have been found to be connected to austerity measures, while others have been linked to State inaction to provide proper minimum standards of protection. Amidst these different scenarios, and considering that not all Member States have been found to have adopted austerity measures, it was deemed necessary to give a closer look and comparatively analyse each ELSA country report, highlight their main findings, ascertain how each region in Europe has been affected by the financial crisis and how the European Social Charter and its collective complaint procedure has contributed to alleviating the effects of austerity measures.

² Currently available on the Council of Europe's website for the European Social Charter at:
http://www.coe.int/T/DGHL/Monitoring/SocialCharter/LRG_Social_Rights_Final_Report_EN.pdf

1. Introduction

Before embarking on the task to highlight and comparatively analyse the main findings of ELSA's report, in cooperation with the Council of Europe's Department of the European Social Charter, on how social rights have been affected by austerity measures during the financial crisis that began in 2008, some notes have to be provided. This report is organised in 6 sections: Labour Rights, Social Protection, Social Exclusion, Persons with Disabilities Rights, Children and Young Persons Rights and Youth Unemployment and the Collective Complaints System. Each section will start by framing the issues identified in each ELSA country report under the corresponding European Social Charter provisions and case-law, then analyse the information provided and confront it with Council of Europe's and other international reports, thereupon highlighting and identifying breaches of the European Social Charter and finally conclude by analysing how social rights in each Member State in each region of Europe were affected differently by the financial crisis.

2. Labour Rights

With a view to ensuring the effective exercise of the right to work, the Charter requires State Parties to take both legal and practical action so as to achieve and maintain a high but stable level of full employment in their domestic legal orders. However, the economic crisis, which has been predominant in Europe since 2008, has had a heterogeneous impact on labour relations within the domestic legal orders of the various European states, in respect of individual contracts, as well as social dialogue and collective bargaining. The main findings of the ELSA Legal Research Group on Social Rights (hereinafter, ‘the Report’) on this topic, may be summarised as follows.

The Right to Fair Remuneration (Article 4)

A. The right to fair remuneration (Article 4 §1 ESC)

In accordance with Article 4 of the revised version of the European Social Charter (ESC), State Parties undertake the obligation to ensure the effective exercise of the right to a fair remuneration; to that effect, workers have the right to a fair remuneration. This remuneration can provide them and their families a decent standard of living. To be considered ‘fair’ within the meaning of Article 4 §1, the net wage (*i.e.* the remuneration provided by the employer in money or in kind, calculated after deduction of taxes and social security contributions) must be above the poverty line in the country, namely 50% of the national average wage. In any case, the net wage must not fall too far short of the national average wage, the minimum threshold being 60%.³ When a national minimum wage exists, its net value is used as a basis for comparison with the net average wage. The yardstick for comparison is otherwise provided by the minimum wage determined by collective agreement or the lowest wage actually paid.⁴ However, a net wage which falls below the 60% threshold is not automatically considered unfair within the meaning of the Charter: if the wage lies between 50% - 60%, the state has to demonstrate that the said wage is sufficient for a decent standard of living, *e.g.* by providing

³ European Committee of Social Rights, ‘*Conclusions XIV-2, Statement of Interpretation on Article 4§1*’, 1998, <http://hudoc.esc.coe.int/eng?i=XIV-2_Ob_V1-6/Ob/EN>, accessed 31 October 2015, 50-52.

⁴ European Committee of Social Rights, ‘*Conclusions XVI-2 (Denmark)*’, <https://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/DenmarkXVI2_en.pdf>, accessed 30 October 2015 [English], 203.

detailed information on the cost of living.⁵ However, a net wage which is less than 50% of the net national average wage will be deemed to be unfair in breach of Article 4 §1.

Turning to the situation on the ground, preliminary observation findings indicate that the economic crisis has had an uneven impact on the respect of labour rights in the various States across Europe. Despite the fact that several states, such as Finland, Malta, Norway and the Netherlands provide adequate measures of protection with regards to fair remuneration and a decent standard of living, the Report identifies multiple breaches of Article 4 §1 ESC in various State Parties to the European Social Charter. State Parties which have adopted heavy austerity measures in conformity with the Memoranda of Understanding (MoU), reflect a serious decline in the level of protection of the right to a fair remuneration, in the sense of Article 4 of the ESC.

For example, in an effort to reduce labour costs, Greece passed a series of laws imposing direct cuts in wages, amounting to a 15% reduction on wages in the public sector. The general minimum wage was further reduced by 22% (EUR 476) for workers older than 25 years old and by 32% (EUR 426.64) for younger workers. This gave rise to a new social phenomenon: the ‘working poor’.⁶ In complaint no. 66/2011, the Committee concluded that by establishing sub-minimum wages for young people, Greece violated Article 4 §1 ESC in light of the non-discrimination principle, to the effect that the lowering by 32% of the minimum wage of young people fell inadmissibly under the poverty level.⁷ What is more, the minimum wage for workers over 25 years old has been found to violate Article 4 §1 ESC, to the extent that it is not sufficient to ensure a decent standard of living.⁸ Similarly in Cyprus, the hair-cut of the bank deposits in 2013 led many Cypriots to the brink of poverty; thenceforth, the minimum net wage was set to EUR 870, impoverishing large segments of the working population, whereas the law did not even provide sufficient guarantees to prevent workers from waiving their right to limitation of deduction from wages.⁹ In view of the economic deadlock, young people often

⁵ European Committee of Social Rights, ‘*Conclusions 2003. (France)*’, 2003
<http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/France2003_en.pdf> accessed 30 October 2015, 120

⁶ European Law Students’ Association and Council of Europe, *Austerity Measures and their Implications: The Role of the European Social Charter in Maintaining Minimum Social Standards in Countries Undergoing Austerity Measures* (Council of Europe 2015) [hereinafter, ‘Final Report’], 655-656.

⁷ *General Federation of employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece* Complaint No. 66/2011 (ECSR, 23 May 2012) 7.

⁸ European Committee of Social Rights, ‘*Conclusions XX-3 (2014), (Greece)*’ 2014
<<http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/GreeceXX3en.pdf>>, accessed 30 October 2015, 12.

⁹ European Committee of Social Rights, ‘*Conclusions 2014, (Cyprus)*’, 2014,

accept working at even lower salaries, or as unpaid interns, on the pretext that these workers lack previous working experience.¹⁰

Following the adoption of the MoU in Portugal, the nominal monthly minimum wage was frozen for four years during the Adjustment Programme, at the lowest value compared with the Member States. As of 2014, the national minimum salary is set to EUR 505, whereas the ECSR found that the minimum wage for private sector workers did not ensure a decent standard of living, violating Article 4 §1 of ESC.¹¹ By the same token, following the Memorandum of Cooperation, Slovakia applied serious austerity measures on the wages of public administration employees, to the effect that nowadays many categories receive sub-minimal wages, *i.e.* lower than EUR 380 (*i.e.* minimal wage in 2015); as a result, the ECSR concluded in 2014 that the minimum wage in Slovakia does not ensure a decent standard of living.¹² In the same line, Slovenia has applied substantial cost-cutting measures targeted at public servants' salaries (which were progressively reduced by 8%) and other work-related benefits, thus jeopardising the safeguards of Article 4 § 1.¹³ In examining the situation in Albania, the ECSR took note of the fact that in 2007 the net minimum wage amounted to 11,932 lek (EUR 86) compared to the net average wage of 26,595 lek (EUR191) – namely, 45% of the average wage falling short of the 60% minimum threshold – and thus concluded that the minimum remuneration was manifestly unfair within the meaning of Article 4 § 1.¹⁴ In Poland, as of 2015, the minimum wage is set to EUR 438 for full-time monthly work. This stands at 44% of the average wage, which is set at EUR 945. Therefore it falls short of the 60% threshold set by the ECSR, in breach of Article 4 §1 ESC.¹⁵ In Bulgaria, the minimum wage is insufficient for the needs of a person (in view of the rise of the cost of living), contrary to Article 4 §1.¹⁶ Besides, although Armenia has submitted a reservation

<http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Cyprus2014_en.pdf>, accessed 31 October 2015, 12 (albeit no breach of Article 4 §1 ESC was identified therein).

¹⁰ Final Report, 386.

¹¹ European Committee of Social Rights, '*Conclusions 2014, (Portugal)*,' 2014, <http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Prep/Portugal2014_en.pdf>, accessed 31 October 2015, 29-31.

¹² European Committee of Social Rights, '*Conclusions 2014, (Slovak Republic)*,' 2014, <http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/SlovakRepublic2014_en.pdf>, accessed 31 October 2015. Final Report, 1203.

¹³ Final Report, 1261.

¹⁴ European Committee of Social Rights, '*Conclusions 2010, (Albania)*,' 2010, <http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Albania2010_en.pdf>, accessed 31 October 2015, 9.

¹⁵ Final Report, 1036.

¹⁶ *Ibid*, 282.

on Article 4 §1 ESC, it is noteworthy that the minimum monthly wage is equal to AMD 50,000 (EUR 95), which raises serious issues on the substantial respect of the standards of a decent living.¹⁷

Another worrisome trend that may be inferred from the main findings of the Report, is the increasing rate of income inequality across Europe between the poorest and richest segments of the population. The OECD warns that the economic crisis leads to a marked rise in income poverty, especially when comparing pre- and post-crisis incomes: income inequality has reached record highs in the post-crisis era, to the effect that the richest 10% of the population today has almost 10 times the income of the poorest 10%.¹⁸ The highest rates are in Turkey, Greece, Spain, Italy, the United Kingdom and Estonia (which are above the OECD average) and consequently in France, Ireland, Poland, Hungary, Austria, the Netherlands, Germany, Sweden, Norway and Belgium (which are below average).¹⁹ The declines were particularly striking in countries most severely hit by the crisis: in Greece, the average household lost over 8% of its real net annual income and in Spain, Ireland and Iceland, average annual losses exceeded 3.5%.²⁰ Nonetheless, recent statistical data of the European Parliament identifies an increase in the annual and monthly income in all EU member states,²¹ even in those which held a positive growth rate during the crisis. For example, the Report highlights that in Germany, the low-wage sector is growing constantly, giving rise to new forms of marginal and part time employment, such as mini-jobs and midi-jobs.²² In this connection, the ECSR has recently concluded that the lowest wage paid in Germany does not secure a decent standard of living,²³ whereas Austria has not established that the lowest wage is sufficient to ensure a decent standard of living.²⁴

¹⁷ *Ibid*, 71-72.

¹⁸ OECD, *Forum 2015: Income Inequality in Figures*, 2015, <<http://www.oecd.org/forum/issues/oecd-forum-2015-income-inequality-in-figures.html>> accessed 31 October 2015. Cingano, Federico, *Trends in Income Inequality and its Impact on Economic Growth*, OECD Social, Employment and Migration Working Papers, 2014, No. 163, OECD Publishing, <<http://www.oecd.org/els/soc/trends-in-income-inequality-and-its-impact-on-economic-growth-SEM-WP163.pdf>> accessed 31 October 2015, 8-10.

¹⁹ OECD (2015), *In It Together: Why Less Inequality Benefits All*, OECD Publishing, Paris, <<http://dx.doi.org/10.1787/9789264235120-en>> accessed 31 October 2015, 56.

²⁰ *Ibid*, 24.

²¹ Directorate General for Internal Policies, Policy Department A, Economic and Scientific Policy, *Wage and Income Inequality in the European Union*, European Parliament, 2015, <europarl.europa.eu/document/activities/cont/201107/20110718ATT24284/20110718ATT24284EN.pdf>, accessed 31 October 2015, 42-44.

²² Final Report, 611-612. Kai Daniel Schmid, Ulrike Stein, *Explaining Rising Income Inequality in Germany, 1991-2010*, Institut für Makroökonomie und Konjunkturforschung, 2013, <http://www.boeckler.de/pdf/p_imk_study_32_2013.pdf>, accessed 31 October 2015, 37-38.

²³ European Committee of Social Rights, 'Conclusions XX-3 (2014), (Germany)', 2015, <http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/GermanyXX3_en.pdf>, accessed 31 October 2015.

²⁴ European Committee of Social Rights, 'Conclusions 2014, (Austria)', 2014,

Throughout the economic crisis, the ECtHR has adopted a more reserved approach. According to its case law, human rights are interrelated and interdependent, in the sense that there is no watertight division between civil and political rights on one hand and social and economic rights on the other. As a result, it is possible to interpret the ECHR in the light of the ESC.²⁵ However, a complaint relying solely on a right belonging to the realm of socio-economic rights, will usually be rejected as incompatible *ratione materiae* or manifestly ill-founded.²⁶ In respect of the right to a fair remuneration, the Court has stressed that the right to property does not guarantee, as such, any right to a particular amount of salary or pension.²⁷ In this connection, in addressing the compatibility with the ECHR of the MoU concluded between Romania and the Troika, the Court concluded that national authorities are in principle better placed than the international judge to decide what is in the public interest, whereas States enjoy quite a wide margin of appreciation in regulating their social policy and rationalizing public expenditure, as dictated by the exceptional context of a global crisis on a financial and economic level.²⁸ Furthermore, in *Koufaki and Adedy v. Greece*, the applicants claimed that austerity measures enacted in conformity with the MoU violated the right to property. The Court reiterated the wide margin of appreciation enjoyed by the State in regulating its social policy, noting that a decrease in the remuneration shall not amount to a breach of the right to property, unless the applicant risks of falling beneath the minimum threshold of subsistence, and thus rejected the application as manifestly ill-founded.²⁹ This case does not suggest that austerity measures are immune from human rights considerations, but has to be read in its specific factual circumstances. In principle, the Court will conclude a violation of the ECHR, in case of extreme poverty or wholly insufficient means of decent living and subsistence.³⁰

http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Austria2014_en.pdf, accessed 31 October 2015.

²⁵ *Stefanetti and Others v. Italy*, App. No. 21838/10 etc., (ECHR 15 April 2014), § 62. *Konstantin Markin v. Russia* [GC], App. No. 30078/06, (ECHR, 22 March 2012). *Annoni di Gussola and Others v. France*, App. Nos. 31819/96 and 33293/96, (ECHR, 14 November 2000), § 56. *Airey v. Ireland*, App. No. 6289/73, (ECHR, 9 October 1979), pp. 14-15, § 26.

²⁶ *Balakin v. Russia*, App. No. 21788/06 (ECHR 4 July 2013), § 33. *Budina v. Russia* (dec.), App. No. 45603/05 (ECHR 12 February 2008). *Larioshina v. Russia*, App. No. 56869/00 (ECHR 23 April 2002).

²⁷ *Valkov and others v. Bulgaria*, App. Nos. 2033/04 etc., (ECHR, 25 October 2011), § 84 and *infra* note 26.

²⁸ *Khoniakina v. Georgia*, App. No. 17767/08, (ECHR, 19 June 2012), § 79. *Panfile v. Romania* (dec.), App. No. 13902/11, (ECHR, 20 March 2012), § 16.

²⁹ *Koufaki and Adedy v. Greece* (dec.), App. Nos. 57665/12, 57657/12 (ECHR 7 May 2013), §§ 31, 41-46.

³⁰ *M.S.S. v. Belgium and Greece* [GC], App. No. 30696/09, (ECHR, 21 January 2011), §§ 253, 254, 263.

B. The right to higher compensation for overtime work (Article 4 §2 ESC)

Article 4 §2 - which is inextricably linked to Article 2 §1 of the Charter - guarantees the right to be paid at a higher rate for overtime than the normal wage rate.³¹ An alternative form of compensation for overtime may be the granting of leave, as long as this leave is longer than the overtime worked. An overview of the main findings of the Report, however, shed light on multiple breaches of this particular provision in domestic legal order.

In particular, the ECSR has found Italy to be in breach of Article 4 § 2 on the grounds that the national collective agreement in the food industry sector foresees the possibility of a worker to benefit from a compensatory rest that is equivalent, but not longer than the overtime worked. Although Italian authorities believe that the situation is not in breach of the ESC, the ECSR recalls that where remuneration for overtime is entirely given in the form of time off, such time must be longer than the additional hours worked.³² Furthermore, Poland has been found to be in breach of that provision, to the effect that the Polish Labour Code introduces a minimal rate for extra reimbursement for overtime work of civil servants (extra 100% or 50% of nominal reimbursement value) and the possibility of receiving leave equivalent to the overtime work performed; if the leave is granted at the request of the employee, it is equal to the number of overtime hours worked, but if it is given without the employee's request, an additional 50% is added.³³ Furthermore, the Report identifies the lack of extra reimbursement for overtime work for civil servants in Poland as a violation of Article 4 §2 of ESC.³⁴ In addition, the ECSR has found that Armenia, Malta, Finland and Russia have failed to establish that the right to an increase in time off in lieu of overtime remuneration is guaranteed;³⁵ workers in the

³¹ European Committee of Social Rights, '*Conclusions I, Statement of Interpretation on Article 4§2*,' 1969, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Austria2014_en.pdf, accessed 31 October 2015, 28

³² European Committee of Social Rights, '*Addendum to 13th Report (Italy) 2014*', 13-15. European Committee of Social Rights, '*Conclusions 2014, (Italy)*,' 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Prep/Italy2014_en.pdf, accessed 31 October 2015, 9.

³³ Final Report, 1037.

³⁴ European Committee of Social Rights, '*Conclusions XX-3 (2014), (Poland)*,' 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/PolandXX3_en.pdf, accessed 31 October 2015.

³⁵ European Committee of Social Rights, '*Conclusions 2014, (Armenia)*,' 2014, <http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Prep/Armenia2014_en.pdf>, European Committee of Social Rights, '*Conclusions 2014, (Finland)*,' 2014 http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Prep/Finland2014_en.pdf, European Committee of Social Rights, '*Conclusions 2014, (Malta)*,' 2014 http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Malta2014_en.pdf, European Committee of Social Rights, '*Conclusions 2014, (Russian Federation)*,' 2014

Netherlands may be asked to work extended hours without any of these counting as overtime and therefore not remunerated at an increased rate.³⁶ Whereas the Workers' Statute in Spain does not guarantee increased remuneration or an increased compensatory time-off for overtime work.³⁷

France also holds a striking negative record in respect of this provision. In complaint nos. 9/2000 and 16/2003, the ECSR concluded that the number of hours of work performed by employees who come under the annual working days system and do not benefit from a higher rate for overtime under a flexible working time system, was 'abnormally high'.³⁸ In complaints nos. 55/2009 and 56/2009, the Committee held that the fact that when on-call periods (during which no effective work is undertaken) are assimilated to rest periods, this amounts to a breach of Article 4 § 2,³⁹ whereas the flat rate compensation for overtime work performed by the ordinary members of the supervision and members of the police did not guarantee an increased rate of remuneration.⁴⁰

In Portugal, on the other hand, the measures taken in conformity with the MoU amounted to a 50% decrease of the payment of overtime hours, in particular, from an extra 50% reimbursement (on the initial remuneration) to 25% for the first hour of overtime, and from 75% to 37.5 % for further hours.⁴¹ Albeit this decrease does not constitute a breach of Article 4 §2 *per se*, it is dubious whether the minimum standards on a fair remuneration are met.

C. Equality in payment (Article 4 §3 ESC)

Furthermore, Article 4 §3, in close ties with Article 20, guarantees the right to equal pay without discrimination on grounds of sex.⁴² Women and men are entitled to "equal pay for work of equal value". The principle of equality should cover all the elements of pay, that is basic or minimum wages or salary plus all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter's employment. The right of women and men to "equal pay for work of equal

<http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/RussianFederation2014_en.pdf>,

All accessed 31 October 2015.

³⁶ European Committee of Social Rights, 'Conclusions 2014, (The Netherlands)', 2014,

<http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/TheNetherlands2014rev_en.pdf>, accessed 31 October 2015.

³⁷ European Committee of Social Rights, 'Conclusions XX-3 (2014), (Spain)', 2014,

http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/SpainXX3_en.pdf, accessed 31 October 2015.

³⁸ *Confédération Française de l'Encadrement (CFE-CGC) v. France* (No. 9/2000 and No. 16/2003)

³⁹ *Confédération Générale du Travail (CGT) v. France*, Complaint No. 55/2009.

⁴⁰ *European Council of Police Trade Unions (CESP) v. France*, No. 57/2009.

⁴¹ Final Report, 1101.

⁴² European Committee of Social Rights, 'Conclusions XIII-5, Statement of Interpretation on Article 1 of Additional Protocol' 1997, <http://hudoc.esc.coe.int/eng?i=XIII-5_Ob_-1/Ob/EN> accessed 31 October 2015, 257-259.

value" must be expressly provided for in legislation.⁴³ Domestic law must ensure that violations of the principle of equal pay will be sanctioned and must lay down the general rules applying to labour and management when they are negotiating wages (for example, differential pay scales and discriminatory clauses must be ruled out). If full equal pay cannot be achieved through collective bargaining, the state must intervene using legal wage-fixing methods or any other appropriate means.⁴⁴

Yet, despite the national legal frameworks prohibiting pay discrimination, application of the equal pay principle in practice remains problematic. This is illustrated by the persistent gender pay gap and the low number of pay discrimination cases being brought before the national courts in most Member States of the EU,⁴⁵ as well as the fact that the gender pay gap currently stands at an average of 16.2 % in the EU Member States.⁴⁶ For example, statistics in Croatia show that the average monthly net earnings of women employed in legal entities in Croatia in 2012 amounted to HRK 5,172 contrary to HRK 5,719 for men, a difference in payment which by amounts to a breach of Article 4 §3 ESC.

D. Reasonable period of notice for termination of contract (Article 4 §4)

Article 4 §4 guarantees the right of all workers to a reasonable period of notice for termination of employment. This allows the person concerned a certain amount of time to look for other work before his or her current employment ends, while he or she is still receiving wages. Although the Committee has not defined the concept of "reasonable" notice *in abstracto*, it assesses the situations on a case by case analysis, allowing for particular weight on the 'length of service'. The right to reasonable notice of termination of employment applies to all categories of employees,⁴⁷ independent of their status/grade, including those employed on a non-standard basis. It also applies during the probationary period.⁴⁸

⁴³ Note that Belgium, Denmark, Poland and Serbia do not dispose of explicit ban on gender-based pay inequality; however, this is covered by the general gender-equality principle.

⁴⁴ European Committee of Social Rights, 'Conclusions XIII-5, *Statement of Interpretation on Article 1 of Additional Protocol*' 1997, <http://hudoc.esc.coe.int/eng?i=XIII-5_Ob_-1/Ob/EN>, accessed 31 October 2015, 257-259.

⁴⁵ Report on the application of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), 2014, 6.

⁴⁶ Eurostat Online Database 2011, <<http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tsdsc340>> accessed 31 October 2015.

⁴⁷ European Committee of Social Rights, 'Digest of the case-law of the European Committee of Social Rights' 2008, <http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf> accessed 31 October 2015, 47.

⁴⁸ *Ibid*, 47.

Nonetheless, following the emergence of the economic crisis, several European States have introduced new labour provisions, by minimising the procedural constraints for firing an employee and by lowering both the firing cost and the length of the notice period. This was done with a view to establish a more flexible labour market and a more favourable environment for the private sector.

In this regard, the Committee has concluded that Italy violated Article 4 §4, by providing for one week's notice for less than six months of service.⁴⁹ So did Albania in providing a one-month period of notice for workers with five or more years' service.⁵⁰ The situation in Slovenia does not appear to be in conformity with Article 4 §4 either, given that notice periods are not reasonable for employees with more than three years of service whereas no notice period is provided for in the circumstances of dismissal or refusal to transfer a contract to a successor employer, of dismissal during probationary periods, expiry of work permits and of liquidation where no administrator has been appointed.⁵¹

In Greece, the austerity measures have made dismissals easier and cheaper, by reducing both notice periods and severance pay, to the extent that the period of notice cannot exceed 4 months, regardless of the duration of the employment relationship. What is more, the first year of a permanent contract shall be deemed to be a probation period during which dismissal is possible without notice or severance pay, a measure which has been found to be in violation of Article 4 §4 ESC in complaint no. 65/2011.⁵²

The Right to Organise (Article 5)

Article 5 of the ESC guarantees the workers' and employers' freedom to organise without prior authorisation. Initial formalities - declaration, registration or minimum number of members - should

⁴⁹ European Committee of Social Rights, '*Conclusions 2014, (Italy)*,' 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Prep/Italy2014_en.pdf, accessed 31 October 2015, 10.

⁵⁰ European Committee of Social Rights, '*Conclusions 2010, (Albania)*,' 2010, http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Albania2010_en.pdf, accessed 31 October 2015. Final Report, 23.

⁵¹ European Committee of Social Rights, '*Conclusions 2014, (Slovenia)*,' 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Slovenia2014_en.pdf, accessed 31 October 2015, 20.

⁵² *General Federation of employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece* Complaint No. 65/2011 (ECSR, 23 May 2012).

be simple, reasonable⁵³ and easy to apply, without prejudice to the right of founding organisations.⁵⁴ Trade unions and employers' organisations must be independent in respect of their organisation, infrastructure or functioning. Trade union members shall be protected from any harmful consequence that their trade union activities may have on their employment, particularly in any form of discriminatory reprisal in recruitment, dismissal or promotion. In Armenia, however, there seems to be no adequate protection against discrimination for employees who are members of a trade union or participate in trade union activities, nor do trade union representatives have access to workplaces to carry out their duties and responsibilities.⁵⁵ In Azerbaijan, on the other hand, it has not been established that in practice, the free exercise of the right to form trade unions is ensured in multinational companies, nor that there is an adequate and proportionate compensation to the harm suffered by a worker discriminated for having joined a trade union.⁵⁶

With regards to representativeness, domestic law may restrict participation in various consultation and collective bargaining procedures to representative trade unions alone. For the situation to comply with Article 5, certain criteria need to be met: a) decisions on representativeness must not present a direct or indirect obstacle to the founding of trade unions; b) areas of activity restricted to representative unions should not include key trade union prerogatives; c) criteria used to determine representativeness must be reasonable, clear, predetermined, objective, prescribed by law and open to judicial review.⁵⁷ In Albania, on the other side, it has not been established that refusals of the representative status to trade unions are subject to judicial review.⁵⁸ In addition, the compatibility with Article 5 ESC of the French legislation, which provides for a 10% threshold for trade unions,⁵⁹ remains questionable. Conversely, it is noteworthy that Germany intends to introduce a new legislative act

⁵³ For example, the high number of members to form a trade union in Latvia constitutes an unreasonable obstacle to the right to organize.

⁵⁴ In Azerbaijan, for example, the minimum membership requirements set for forming trade unions and employers' organisations are considered to be too high.

⁵⁵ European Committee of Social Rights, '*Conclusions 2014, (Armenia)*,' 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Prep/Armenia2014_en.pdf, accessed 31 October 2015.

⁵⁶ European Committee of Social Rights, '*Conclusions 2014, (Azerbaijan)*,' 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Azerbaijan2014_en.pdf, accessed 31 October 2015.

⁵⁷ European Committee of Social Rights, '*Digest of the case-law of the European Committee of Social Rights*' 2008, <http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf> accessed 31 October 2015, 51.

⁵⁸ European Committee of Social Rights, '*Conclusions 2010, (Albania)*,' 2010, http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Albania2010_en.pdf, accessed 31 October 2015.

⁵⁹ Final Report, 516.

according to which, in every enterprise only the trade union with the most members can agree on collective agreements,⁶⁰ a measure which potentially could minimise small trade unions' power. In Armenia, on the other hand, the Committee has found that minimum membership requirements excessively limit the possibility of trade unions to participate effectively in consultations under Article 6 §1 ESC.⁶¹

A. Restrictions with regards to the police and other sectors

With regard to the police, the Committee has held that “from the second sentence of Article 5 and from the ‘travaux préparatoires’ on this clause, that while a state may be permitted to limit the freedom of organisation of the members of the police, it is not justified in depriving them of all the guarantees provided for in Article 5”.⁶² Police officers must therefore enjoy the basic trade union rights, such as the right to negotiate their salaries and working conditions and the freedom of association under Article 11 ECHR.⁶³ To this end, blindfold measures, which strip large groups of employees from their freedom to organise, contravenes Article 5 of the ESC.

Nonetheless, the Report highlights the fact that in practice, most European States impose serious limitations to large groups of the public sector, on the freedom to unionise. For example, the Armenian Trade Unions Law bans employees of the Police, the National Security Service, the bodies of the Prosecutor's Office, as well as judges and members of the Constitutional Court, from being members of trade unions. By the same token, police personnel in Albania do not enjoy the right to form trade unions whereas the prohibition from enjoying the right to form a trade union has been applied to an excessively high proportion of senior civil servants.⁶⁴ In Azerbaijan, the social and

⁶⁰ Bundesministerium für Arbeit und Soziales, *Tarifeinheit stärkt Sozialpartnerschaft*, <<http://www.bmas.de/DE/Service/Presse/Pressemitteilungen/Tarifeinheit-staerkt-sozialpartnerschaft.html>>, accessed 6 April 2015 [German].

⁶¹ European Committee of Social Rights, ‘*Conclusions 2014, (Armenia)*’, 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Prep/Armenia2014_en.pdf, accessed 31 October 2015.

⁶² European Committee of Social Rights, ‘*Conclusions I, Statement of Interpretation on Article 5*’ 1969, http://hudoc.esc.coe.int/eng?i=I_Ob_-21/Ob/EN, accessed 31 October 2015, 31.

⁶³ *European Council of Police Trade Unions (CESP) v. Portugal*, Complaint No. 11/2001, Decision on the merits of 22 May 2002, §§25-26.

⁶⁴ European Committee of Social Rights, ‘*Conclusions 2010, (Albania)*’, 2010, http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Albania2010_en.pdf, accessed 31 October 2015.

economic interests of the police are not protected by professional organisations or trade unions⁶⁵. In Armenia, police officers, employees of the Prosecutor's Office, civilians employed by the police and security service and even self-employed workers and those working in liberal professions, are prohibited from joining trade unions.⁶⁶ The compatibility of these measures with the Charter requires further investigation by the European Committee of Social Rights.

The Right to Collective Bargaining (Article 6)

A. Joint consultation and collective agreements

By virtue of Article 6 §1 ESC, States undertake to promote joint consultation between employers and workers, especially the representative organisations. Such consultation can take place within tripartite bodies, as long as social partners are represented in these bodies on an equal footing.⁶⁷ Although consultation must take place both in the private and public sectors (including the civil service),⁶⁸ in Albania consultation does not seem to take place in the public sector.⁶⁹ Nor do consultative bodies exist in the public service of Bulgaria, whereas the machinery for voluntary negotiations is not adequately promoted.⁷⁰

Furthermore, according to Article 6 §2 ESC, domestic law must recognise that employers' and workers' organisations may regulate the relations between them by collective agreement. If necessary and useful, in particular if the spontaneous development of collective bargaining is not sufficient, positive measures should be taken to facilitate and encourage collective agreements.

⁶⁵ European Committee of Social Rights, '*Conclusions 2014, (Azerbaijan)*,' 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Azerbaijan2014_en.pdf, accessed 31 October 2015.

⁶⁶ European Committee of Social Rights, '*Conclusions 2014, (Armenia)*,' 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Prep/Armenia2014_en.pdf, accessed 31 October 2015.

⁶⁷ European Committee of Social Rights, '*Conclusions V, Statement of Interpretation on Article 6§1*' 1977, http://hudoc.esc.coe.int/eng?i=V_Ob_-8/Ob/EN, accessed 31 October 2015.

⁶⁸ *Centrale générale des services publics (CGSP) v. Belgium*, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41.

⁶⁹ European Committee of Social Rights, '*Conclusions 2010, (Albania)*,' 2010, http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Albania2010_en.pdf, accessed 31 October 2015.

⁷⁰ European Committee of Social Rights, '*Conclusions 2014, (Bulgaria)*,' 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Prep/Bulgaria2014_en.pdf, accessed 31 October 2015.

Nonetheless, in the aftermath of the economic crisis, many European countries have tried to complicate the social dialogue and the bargaining of collective contracts, in order to impede the configuration options of trade unions. As it will be shown below, such measures may be summarised in the decentralisation of wage bargaining (for example in Greece, Portugal, Spain, Italy), the tightening of the rules when trade unions are represented in collective contracts negotiations (e.g. in Croatia), whereas in many countries proven institutions for the social dialogue have been substantially weakened.⁷¹

To start with, the emergence of the financial crisis brought about substantial changes in the industrial relations in Greece by, *inter alia*, decentralising collective bargaining and individualising the conclusion of contracts. During the implementation of the fiscal adjustment programme, company level Collective Employment Agreements (CEAs) would take precedence over sectoral or occupational ones even if the latter contained more favourable provisions. This measure put an end to the principle of favourability. In addition, recent legislation introduced a new actor in the arena of industrial relations: the ‘associations of persons’ which are not elected by the workers of the company; hence, by extending the right to conclude company level CEAs to them, Greece contravenes with the right of workers to be represented by freely elected persons and seriously compromises the unions’ collective autonomy. Besides, the setting of the minimum wage by the government and not by a CEA and the reform of the institution of arbitration violate the ‘voluntary’ character of collective bargaining. The ILO Committee on Freedom of Association stated that the measures taken imposed ‘extensive interventions in the voluntary nature of collective bargaining’ which could ‘destabilise the overall framework for labour relations’.⁷² On the same line, following the hair-cut of deposits in the largest Cypriot banks, many businesses and individuals were led to bankruptcy or on the verge thereof. Consequently, companies have reduced wages of workers without prior negotiations, whereas the workers accepted the new working conditions (not having any alternative solution), in flagrant violation of the right to negotiate and sequentially of the CEAs.⁷³

⁷¹ Wolfgang Greif, Oliver Röpke, ‘Herausforderungen & Handlungsoptionen der Gewerkschaften in Europa vor dem Hintergrund der sozialen und politischen Folgen der Krise’ [2014] WISO 100, <isw-linz.at/themen/dbdocs/LF_Greif_Roepke_01_14.pdf> accessed 31 October 2015 [German].

⁷² Eleni Patra, ‘Social Dialogue and Collective Bargaining in Times of Crisis: The Case of Greece’ (ILO Working Paper No. 38, 2012) <http://ilo.org/ifpdial/information-resources/publications/WCMS_174961/lang--en/index.htm> accessed 16 February 2015, 28.

⁷³ Final Report, 385-386.

Furthermore, the new Italian legal framework decentralised the system of collective bargaining, giving precedence to decentralised bargaining over the rules set up by national CEAs, on the conditions of work performance, working hours and organisation of work. In fact, in-company collective agreements may even derogate rules of national collective agreements (save for the guarantees provided in the Italian Constitution).⁷⁴ Following the same pattern, Portugal implemented its MoU obligation on the decentralisation of collective bargaining, by allowing workers' councils – as legitimate counterparts – to negotiate at company level in firms with a minimum of 150 workers, under the authorization of trade unions. Thenceforth, the number of CEAs published in Portugal has declined significantly, whereas company CEAs have been predominant.⁷⁵

Quite strikingly, the Spanish legislation (Act No. 3/2012) allows employers unilaterally to 'opt-out' from the application of the CEA in force (both on wage matters and on the working conditions) thus paving the way for the marginalisation of trade unions.⁷⁶ What is more, in the United Kingdom workers and trade unions do not have the right to bring legal proceedings in the event that employers offer financial incentives to induce workers to exclude themselves from collective bargaining.⁷⁷ In Azerbaijan, on the other hand, the Committee has found that the promotion of joint consultation between workers and employers on most matters of mutual interest covered by Article 6 §1 is not adequately ensured, nor is there adequate promotion of voluntary negotiations between employers or employers' organisations and workers' organisations.⁷⁸ In Hungary, although the coverage of workers by collective agreements is manifestly low, no promoting measures have been taken in order to facilitate and encourage the conclusion of collective agreements.⁷⁹

Furthermore, by virtue of Article 6 §2, public officials always retain the right to participate in any processes that are relevant to the determination of the procedures applicable to them.⁸⁰ In this regard,

⁷⁴ *Ibid*, 819-821.

⁷⁵ *Ibid*, 1095.

⁷⁶ *Ibid*, 1328. European Committee of Social Rights, 'Conclusions XX-3 (2014), (Spain)', 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/SpainXX3_en.pdf, accessed 31 October 2015.

⁷⁷ European Committee of Social Rights, 'Conclusions XX-3 (2014), (United Kingdom)', 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/UnitedKingdomXX3_en.pdf, accessed 31 October 2015.

⁷⁸ European Committee of Social Rights, 'Conclusions 2014, (Azerbaijan)', 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Azerbaijan2014_en.pdf, accessed 31 October 2015.

⁷⁹ European Committee of Social Rights, 'Conclusions 2014, (Hungary)', 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Hungary2014_en.pdf, accessed 31 October 2015.

⁸⁰ Conclusions III, Germany, p. 34. *European Council of Police Trade Unions (CESP) v. Portugal*, Complaint No. 11/2001, Decision on the merits of 21 May 2002, §58.

both in Albania and in Croatia civil servants are not entitled to participate in the processes that result in the determination of the regulations applicable to them.⁸¹

B. Conciliation, mediation, arbitration

Additionally, according to Article 6 §3, conciliation, mediation and arbitration procedures should be instituted to facilitate the resolution of collective conflicts. These procedures may be instituted by law, collective agreement or industrial practice.⁸² Although such procedures should exist for conflicts between the public administration and its employees as well, the ECSR has emphasised that conciliation and arbitration facilities in the public sector of Azerbaijan, Armenia, Bulgaria and Croatia are inexistent.⁸³

Besides, arbitration systems must be independent, and the outcome of arbitration shall not be predetermined by pre-established criteria.⁸⁴ However, following the measures taken by Greece in conformity with the MoUs, the arbiter can decide only upon wage matters, and in any event taking into consideration ‘the general economic conditions of the country, the progress in enhancing the country’s competitiveness and the reduction of labour cost during the adjustment programme’; to the extent that this provision predisposes pre-determined criteria in the reasoning of the arbitral, this could amount to a breach of Article 6 §3.

Finally, it has to be stressed that any form of conciliation needs to be voluntary; as a result, the circumstances in which recourse to compulsory arbitration is authorised in Albania, have been found

⁸¹ European Committee of Social Rights, ‘*Conclusions 2010, (Albania)*,’ 2010, http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Albania2010_en.pdf, accessed 31 October 2015. European Committee of Social Rights, ‘*Conclusions XIX-3, (2010), (Croatia)*, 2010, <http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Hungary2014_en.pdf>, accessed 31 October 2015.

⁸² European Committee of Social Rights, ‘*Conclusions I, Statement of Interpretation on Article 6§3*,’ 1969, http://hudoc.esc.coe.int/eng?i=I_Ob_-25/Ob/EN, accessed 31 October 2015, 37.

⁸³ European Committee of Social Rights, ‘*Conclusions 2014, (Azerbaijan)*,’ 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Azerbaijan2014_en.pdf, accessed 31 October 2015. European Committee of Social Rights, ‘*Conclusions 2014, (Armenia)*,’ 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Prep/Armenia2014_en.pdf, accessed 31 October 2015. European Committee of Social Rights, ‘*Conclusions 2014, (Bulgaria)*,’ 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Prep/Bulgaria2014_en.pdf, accessed 31 October 2015. European Committee of Social Rights, ‘*Conclusions XIX-3, (2010), (Croatia)*, 2010, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Hungary2014_en.pdf, accessed 31 October 2015.

⁸⁴ European Committee of Social Rights, ‘*Digest of the case-law of the European Committee of Social Rights*’ 2008, <http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf> accessed 31 October 2015, 55.

to go beyond the limits of Article G ESC.⁸⁵ The same conclusion has been reached in the case of Portugal.⁸⁶ Besides, the fact that decisions of the court of inquiry in Malta are binding on the parties only with their joint consent, amounts to a breach of Article 6 §3.⁸⁷

C. The right to collective action

In case of conflicts of interest, Article 6 §4 of the ESC guarantees the right to collective action, therein included the right to strike. Within those limits, the right to strike should be guaranteed in the context of any negotiation between employers and employees in order to settle an industrial dispute. The decision to call a strike can be taken only by a trade union provided that forming a trade union is not subject to excessive formalities.⁸⁸ On the contrary, limiting the right to call a strike to the representative or the most representative trade unions constitutes a restriction which is not in conformity with Article 6§4.⁸⁹

Prohibiting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health. However, simply banning strikes even in essential sectors – particularly when they are extensively defined, i.e. “energy” or “health” – is not deemed proportionate to the specific requirements of each sector. At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4.⁹⁰ In this respect, the ECSR has not been convinced by the State of Armenia that the restrictions on the right to strike in the energy supply services comply with the conditions established by Article G, since workers are not protected from

⁸⁵ European Committee of Social Rights, ‘*Conclusions 2010, (Albania)*,’ 2010, http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Albania2010_en.pdf, accessed 31 October 2015.

⁸⁶ European Committee of Social Rights, ‘*Conclusions 2014, (Portugal)*,’ 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Prep/Portugal2014_en.pdf, accessed 31 October 2015.

⁸⁷ European Committee of Social Rights, ‘*Conclusions 2014, (Malta)*,’ 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Malta2014_en.pdf, accessed 31 October 2015.

⁸⁸ In Armenia, for example, the required majority of workers to call a strike has been found to be too high.

⁸⁹ European Committee of Social Rights, ‘*Digest of the case-law of the European Committee of Social Rights*’ 2008, http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf accessed 31 October 2015, 56.

⁹⁰ Conclusions I, Statement of Interpretation on Article 6§4, p. 38. *Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour “Podkrepa” and European Trade Union Confederation (CES) v. Bulgaria*, Complaint n° 32/2005, Decision on the merits of 16 October 2006, §24.

dismissal after strike.⁹¹ In Azerbaijan and the Slovak Republic, the restrictions on the right to strike for public officials and employees working in essential services do not comply with Article G.⁹²

Conclusion

In conclusion, it seems that the financial crisis has brought into light the deep differences in the societal structure of the various states of the European continent, which seems to pace ‘at two speeds’. Several countries (e.g. Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Greece, Italy, Latvia, Portugal and Spain) appeared to be significantly more vulnerable to the crisis than the richer countries of Northern Europe (e.g. Germany, Austria, Sweden, Norway, Finland, and the Netherlands). Instead of putting forward the necessary administrative reforms and macro-economic adjustments, most governments adopted the austerity package as the panacea to the financial crisis.

As a general trend, public sector remuneration and jobs were cut, wages and other benefits were significantly curtailed and non-wage labour rights were significantly restricted, successive tax hikes were implemented and welfare benefits became less generous and more conditional. Collective bargaining and social dialogue was affected in most countries (Spain, Italy, Croatia, Albania), in some others however, it was almost annihilated (Greece, Cyprus). The crisis had an impact on labour rights both at an economic level but also on a normative basis: the labour market became more flexible due to new forms of employment; collective bargaining was considerably decentralised (especially on a company level, where the employer disposes of an authoritative presence) and workers’ mobility was increased. Procedural constraints on the termination of employment were loosened and – in lack of control mechanisms – labour law breaches multiplied.

Withal, austerity measures have had a major impact on labour rights in most European States, but have not yet managed to provide with a sustainable solution to the economic crisis. Rather, between the second quarter 2008 and mid-2010 the unemployment level in the EU went up by more than 6.6

⁹¹ European Committee of Social Rights, ‘*Conclusions 2014, (Armenia)*,’ 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Prep/Armenia2014_en.pdf, accessed 31 October 2015.

⁹² European Committee of Social Rights, ‘*Conclusions 2014, (Azerbaijan)*,’ 2014, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Azerbaijan2014_en.pdf, accessed 31 October 2015. European Committee of Social Rights, ‘*Conclusions 2014, (Slovak Republic)*,’ http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/SlovakRepublic2014_en.pdf, accessed 31 October 2015.

million, taking the rate up to 9.7 % (at that time the highest value recorded). Since the second quarter of 2011 and until the first quarter of 2013 unemployment steadily and markedly increased taking it to the record level of 26.4 million, corresponding to a record rate of 10.9 %, the highest rates being in Spain (48.8 %), Greece (48.3 %), Croatia (43.5 %) and Italy (40.7 %).⁹³ Nonetheless, poverty is not just a problem for the unemployed. A considerable percentage of workers in Europe earn too little to lift them above the poverty line, especially in the light of growing numbers of flexible employment forms, such as part-time work, temporary contracts or self-employment. According to the OECD, the phenomenon of the ‘working poor’ is significantly higher in Turkey, Greece, Spain, Portugal, Italy, Poland, Estonia and Slovakia (the percentage of workers with income below the poverty line being between 17.8 and 8%) whereas the lowest rates may be found in Finland, Denmark and Germany (below 6%).⁹⁴

The research conducted in this chapter has investigated the impact of the economic crisis and austerity measures on labour rights across Europe. Taking a step further, we should underline that empirical research conducted in the context of the IMF, which provides consistent evidence that the long-term rise in inequality of disposable incomes and poverty puts a significant brake on long-term growth. In addition, efforts to reduce inequality through redistribution, taxes, benefits and employment reforms, do not lead to slower growth, but are robustly correlated with faster and more durable growth.⁹⁵ What is more, prominent scholars and economists reject the theory that countries which refuse to comply with internationally recognised labour standards enjoy a comparative advantage in the sense of better performance in international trade;⁹⁶ rather, according to the OECD, sustained competitiveness and long-term economic success within the world trading system is closely correlated to the observance of fundamental labour rights, a point also made by the ILO’s World Commission on the Social Dimension of Globalisation.⁹⁷ As the World Bank concluded in 2001, ‘keeping labour standards low is not an effective way of gaining a competitive advantage over trading partners. Indeed, low labour

⁹³ Eurostat, Unemployment statistics, Recent developments in unemployment at a European and Member State level, <http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics>, accessed 31 October 2015.

⁹⁴ OECD (2015), *In It Together: Why Less Inequality Benefits All*, OECD Publishing, Paris, 56, <<http://dx.doi.org/10.1787/9789264235120-en>> accessed 31 October 2015.

⁹⁵ Jonathan D. Ostry, Andrew Berg, Charalambos G. Tsangarides, *Redistribution, Inequality, and Growth*, International Monetary Fund Research Department (2014), 4, 11-26, with further notes in literature.

⁹⁶ Simon Lester, Bryan Mercurio, Arwel Davies, *World Trade Law*, Hart Publishing, 2012, 876.

⁹⁷ OECD, *Trade and Structural Adjustment*, 2005, <<http://www.oecd.org/general/34753254.pdf>> accessed 2 November 2014, 23. ILO’s World Commission on the Social Dimension of Globalization, *A Fair Globalization: Creating Opportunities For All*, ILO Publications, 2004 <<http://www.ilo.org/public/english/wcsdg/docs/report.pdf>> accessed 2 November 2014, 23, ix.

standards are likely to erode competitiveness over time because they reduce incentives for workers to improve skills and for firms to introduce labour-saving technology.’⁹⁸ In short, four major international institutions, as well as world-leading economists and jurists agree that the protection of fundamental workers’ rights can be ensured without prejudice to the implementation of the State’s economic, trade and investment policy.

In light of the above, one might reasonably question the correctness and effectiveness of MoUs and austerity measures both from a macro-economic and a social perspective, in conjunction with the legal consequences that the latter may entail as to their compatibility with human rights instruments and in particular, the European Social Charter and the EU Charter, at a regional level.

⁹⁸ The World Bank, *Global Economic Perspectives and the Developing Countries*, 2001, <http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2001/01/20/000094946_0101100548509/Rend/red/PDF/multi_page.pdf> accessed 2 November 2015, 82.

3. Social Protection

The Charter guarantees a wide range of fundamental rights, mainly relating to working conditions, health, housing and social protection, with special emphasis on the protection of vulnerable persons such as elderly people, children, and persons with disabilities or migrants. Specifically for the purpose of social and economic development and, moreover, for the protection and realisation of basic human rights, the European Social Charter guarantees the right of social and medical aid to every person in need (Article 13). As far as social protection is concerned, there is no universally accepted definition, but for the purpose of this report, it could be taken into account the definition given by ESSPROS, which understands that social protection “encompasses all interventions from public or private bodies intended to relieve households and individuals of the burden of a defined set of risks or needs, provided that there is neither a simultaneous reciprocal nor an individual arrangement involved. The list of risks or needs that may give rise to social protection is, by convention, as follows: 1) Sickness/Health care; 2) Disability; 3) Old age; 4) Survivors; 5) Family/children; 6) Unemployment; 7) Housing; 8) Social exclusion not elsewhere classified.”. Yet, social protection has to do with the set of measures in the social sphere, which allows substantial contribution to the generation of frameworks of equality, by reducing the gaps in inequality and the eradication of poverty and social exclusion.⁹⁹ The objectives of social protection vary widely, from reducing poverty and vulnerability, building human capital to empowering women and girls, etc. and it can be supported through various aid modalities, including budget support, sector approaches and technical assistance.

The ESC in Article 13 ensures the right to social and medical aid to every person in need. Moreover, the right to adequate assistance for every person in need is provided by paragraph 1 of this provision. Furthermore, paragraph 2 of the same Article completes this right, as it makes compulsory the provision of social and medical assistance in favour of persons in need, giving them information and help in order to enable them to exercise effectively the right.

Nonetheless, the crisis experienced by Europe in recent years has revealed the gaps in European states for the protection of fundamental rights. Yet, when public spending cuts are at stake, the sectors such as social protection, health care or education are the most likely candidates for reductions. At this point, it should be noted the importance of the analysis of the impact of the austerity measures on social protection since it realizes the basic human rights (such as social security or education) and is a key element of sound economic policy. At the same time, social protection contributes to reduce

⁹⁹ United Nations Commission for Social Development (2011), ‘*Emerging Issues: Social Protection*’, <<http://www.un.org/esa/socdev/csocd/2011/chair-summary-socialprotection.pdf>> accessed 31 October 2015

poverty, exclusion and inequality and it could be said that it also contributes to economic growth by supporting household income and thus domestic consumption. The main finding of our research may be summarized as follows.

The Right to Adequate Assistance for Every Person in Need (Article 13 §1)

The right covered by the Article 13 §1 imposes an obligation on State Parties which takes the form of an individual right of access to social and medical assistance in circumstances where a basic condition of eligibility is satisfied.¹⁰⁰ *i.e.* pursuant to the Article 13 §1 the State Parties should guarantee the adequate assistance for every person in need as of “individual”,¹⁰¹ regardless of the nature of the assistance or the care required, which could be materialise in cash or in kind, but which must be made available as of right to all people in need and must be sufficient to permit a decent life.¹⁰²

This obligation arises as soon as a person is in need, or, in other words, unable to obtain “adequate resources” and must be provided for as long as the situation of need persists.¹⁰³ In this regard, the right covered by the Article 13 §1 ESC is intimately linked with human dignity; *i.e.* there is a fundamental right of individuals to be able to access sufficient resources and social assistance in order to live in manner compatible with human dignity.¹⁰⁴

However, this provision could not be understood uniquely as a guarantee to the medical assistance in so far as by virtue of it, it should be granted both social and medical assistance.

On the one hand, with regard to the adequate social assistance, the ESCR has understood social assistance as those benefits for which individual need is the main criterion for eligibility, without any requirement of an affiliation to a social security scheme aimed to cover a particular risk.¹⁰⁵ Moreover, it has pointed out that this assistance must be: (i) *universal*, *i.e.*, the benefits must be payable to any person on the sole ground that he or she is in need; (ii) *appropriate* –the ESCR takes into account, to assess the level of “*appropriateness*” of it, basic benefits, additional benefits and the poverty threshold in the country and it will be appropriate where the monthly amount of assistance benefits (basic

¹⁰⁰ *European Roma Rights Centre (ERRC) v. Bulgaria*, Collective Complaint No. 48/2008, Decision on the merits of 18 February 2009, para. 38

¹⁰¹ *Finish Society of Social Rights v. Finland*, Complaint No. 88/2012, Decision on the merits of 9 September 2014, paras. 110 *et seq.* Conclusions XII-4

¹⁰² Conclusions XIII-4, General Introduction, paras. 54-56

¹⁰³ Digest of the case law of the European Committee of Social Rights, 1 September 2008, p. 98

¹⁰⁴ *European Roma Rights Centre (ERRC) v. Bulgaria*, (n 2), para. 37

¹⁰⁵ Conclusions XIII-4, General Introduction, p. 42.

and/or additional) paid to a person living alone is no manifestly below the *poverty threshold*;¹⁰⁶ furthermore, the Committee also takes into account the level of medical assistance—. ¹⁰⁷ At the same time, it implies, as of “individual right” that is to be supported by a right of appeal to an independent body. The ECSR has developed a number of indicators and benchmarks by which it assesses the adequacy of the social assistance covered by Article 13 §1 ESC, such as the increase or decrease in public expenditure¹⁰⁸ or, in the case that there was effectively an increase in expenditure, the fact that the increase in expenditure is lower than the increase in beneficiaries; the cost of living with minimum subsistence;¹⁰⁹ the level of unemployment insurance¹¹⁰, the consumer price index;¹¹¹ etc.

On the other hand, by virtue of the right to adequate medical assistance should be regarded as the grant to persons in need financial assistance for the purpose of obtaining medical care or to provide them with such care free of charge should be subject to an appeal to an independent body.¹¹² In fact, the ECSR has said that it is not sufficient to provide urgency medical services to poor or socially vulnerable persons, but Article 13 also embrace treatment for a sickness not considered an emergency, primary or specialised outpatient medical care, without the prejudice to the obligation of the State Parties to actively address the exclusion, marginalisation and environmental risks and other problems encountered in accessing health care services by ethnic communities. As the social assistance, the ECSR has considered that the nature of the care required or the place where it is given is competence of the States.

In this regard and turning to the situation on the ground, since the beginning of the economic crisis and in response to it, some States has been reforming their social protection systems for cost-savings as a result of fiscal consolidation policies, which tends to cutting welfare coverage, reducing benefits and limiting access to quality public services, with significant adverse social impacts. In fact, with the exception of the United Kingdom, the ECSR has found infringements to the Article 13 §1 in all State Parties.¹¹³

However, it could be said that the reasons for those infringements were mainly twofold: (i) due to a manifestly inadequacy of the level of social assistance;¹¹⁴ and (ii) because of the lack of the granting of

¹⁰⁶ The level of resources below which a person is entitled to assistance is assessed by reference to the poverty threshold (set at 50 per cent of the median equalised income).

¹⁰⁷ Conclusions 2004, Lithuania, p. 373.

¹⁰⁸ *v.gr.* Conclusions XII-1, Denmark; Conclusions XIV-1, Greece, para. 359.

¹⁰⁹ Conclusions XIII-4, General Introduction, para. 56.

¹¹⁰ Conclusions XIV-I, Norway, para. 632.

¹¹¹ Conclusions XIV-I, Ireland, para. 439.

¹¹² Conclusions XII-4, p. 56.

¹¹³ Conclusions XX-II and 2013.

¹¹⁴ See the case of Austria, Bosnia and Herzegovina, Latvia, Croatia or Spain.

social assistance benefits to foreign nationals were subject to an excessive length of residence condition.¹¹⁵

(i) Levels of Social Assistance Manifestly Inadequate

Here, it must be said that the inadequacy of the levels of social assistance may be connected with the different type of government response to the financial crisis. Actually, on the one hand, we found that in some emerging countries, although the bold measures taken to expand social protection to promote economic and social development, the efforts made were not sufficient to guarantee or cover the real social protection need. On the other hand, we found that the levels of social assistance were reduced in some State because of the austerity measures taken to grappling with their fiscal consolidation; *i.e.* governments scaled up social expenditure in order to sustain growth and protect their population from the adverse effects of the crisis, but, reforming and adjusting their social protection systems to make for cost savings they receded on social protection.

Preliminary observation findings indicate that the implementation of austerity measures have reduced a range of social protection benefits and limited access to quality public services in almost of the States. According to the figures, several countries appears to have undergoing excessive fiscal contraction in 2013-15, compared with the pre-crisis period, defined as cutting public expenditures below pre-crisis levels.¹¹⁶

In general, it could be said that high-income countries were contracting their social security and social assistance systems while many developing countries were expanding them. Thus, the data available for middle- and high-income countries show a decline in social protection in terms of GDP.¹¹⁷ Moreover, reductions in social expenditures were most severe in those countries which have had the highest budget deficits (Greece, Spain, Portugal and Ireland).¹¹⁸ In this way, and as a general rule, expenditures on social protection have decreased in most EU countries during the last years.¹¹⁹ Meanwhile, according to the Eurostat report in 2013, the number of people living in poverty or social exclusion – as defined for the purposes of the Europe 2020 Strategy– has been increasing and, in this way, the currently available statics suggest that this represented 124.4 million people, which supposed an increase of approximately 4 million in one year.

¹¹⁵ See the case of Austria, Bosnia and Herzegovina, Croatia, Latvia or Poland.

¹¹⁶ ILO, Calculations based on the IMF'S World Economic Outlook database, (2014)

¹¹⁷ ILO, Calculations based on ILO, OECD, Eurostat, CEPAL, ADB, World Bank, IMF and national data <<http://www.social-protection.org/gimi/gess/RessourceDownload.action?ressource.ressourceId=43321>>

¹¹⁸ For instance, Greece reduced public spending by more than €30 billion (10% of GDP) between 2009-2011; Ireland, intended to save 18 per cent of GDP by 2015

¹¹⁹ Eurostat. Expenditure on social protection per inhabitant

In this regard, Greece has failed to meet the requirement of the adequate assistance because of the lack or absence of a precise legal threshold below which a person is considered in need or of a common core of criteria underlying the granting of benefits.¹²⁰ Furthermore, the ECSR observed that pension reform measures would “risk bringing about a large-scale pauperization of a significant segment of the population”.¹²¹ Despite all, the impact of social transfer on poverty reductions have been quite low in Greece, as compared with another countries like Denmark (13.7% in the first one from 54.2% in the last).¹²²

As another of the European countries most affected by the crisis, Spain should be mentioned. The ECSR has found Spain to be in breach of Article 13 §1 on the grounds that in all autonomous communities –with the exception of Basque country and Navarra– the level of social assistance paid to a single person were manifestly inadequate. It was also observed that the minimum income is not paid for as long as the need persists.¹²³ Moreover, the ECSR’s 2014 conclusions stated that Spain was one of the countries that has receded on social rights since the economic crisis began compared with earlier periods. In particular, Spain scored negatively on 6 out of 17 points of the research.¹²⁴ Furthermore, in the scope of social protection, the Spanish Constitutional Court has already enunciated as a purpose of the Social Security system the reduction, remedy or elimination of situations of necessity, through assistance or adequate social benefits, sufficiency which also preaches specifically pensions.¹²⁵

On the other hand, many emerging economies have been taking bold measures to expand social protection to promote economic and social development, as well as to extend social protection coverage and enhance at least the social assistance provided to the poorest segments of their population.

As an example of such a situation, Albania could be mentioned. Indeed, the country, and although the situation in general was not favourable, has done many efforts to offer social services and fulfil the international standards, such as the guidelines on adjusting disability and caretaker allowance payments to the inflation rate-increased consumer price index or the vocational training centres.¹²⁶ As another example, Latvia could also be mentioned. Here, the ECSR found some positive steps on social

¹²⁰ Conclusions XX-2, Greece, pp. 34-37

¹²¹ *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*, complaint No. 76/2012, Decision on the merits of 7 December 2012, para. 81

¹²² Caritas Europa, ‘Crisis monitoring report: *The European crisis and its human cost*’, (2014) p. 32

¹²³ Conclusions XX-2, Spain, pp. 24-27

¹²⁴ Conclusions XX-3 (2014)

¹²⁵ Final Report, pp. 1363-1364

¹²⁶ European Commission, in the Progress report of Albania (2013), p. 34, where achievements done in the field of social services have been noted.

protection – such as the removal of the upper limit on the total amount of GMI which could be granted to family households or the fact that the number of beneficiaries of social assistance almost doubled from 2009 to 2010– but, finally, it concluded that the level of social assistance benefit continued to be manifestly inadequate.¹²⁷ Something similar has occurred in Croatia, a country in which the ECSR concluded the non-conformity with Article 13 §1 since it was not established that means of subsistence are guaranteed to persons in need, whose social assistance is withdrawn as penalty for having refused a job offer, regardless of their qualifications or experience, including temporary and seasonal jobs and since the level of social assistance is manifestly inadequate.¹²⁸

As can be noted, despite the increasing of expenditure on health care and social protection in these countries, the level of adequate assistance is still lower than the EU average, which is further complicated given the large number of vulnerable low-income households in these countries. In this sense, a number of countries observed that the efforts done on social protection are still insufficient or inefficient (E.g. Armenia,¹²⁹ Bosnia and Herzegovina¹³⁰ or Ukraine¹³¹) either because the level of adequate assistance is still lower than the EU average or because the inefficiency of their social protection systems to distribute the social assistance. That is why the ECSR have found that these countries were not in conformity with some of the provisions of the Article 13).¹³²

(ii) Excessive Length of Residence Condition to Foreign Nationals for Granting of Social Assistance Benefits

In addition, with regard to the personal scope of the Article 13 §1 ESC, the ESCR has found that in some States, foreign nationals were subject to an excessive length of residence requirement to be eligible for social assistance. In fact, under Article 13§1, equality of treatment of foreign nationals legally residents in the State concerned should be guaranteed in matters such as access to assistance. This implies that entitlement to assistance benefits, including income guarantees, is not confined in law to nationals or to certain categories of foreigners and that additional conditions such as length of residence, or conditions which are harder for foreigners to meet may not be imposed on them.¹³³

¹²⁷ Conclusions XX-2, Latvia, pp. 12-13

¹²⁸ Conclusions XX-2, Croatia, pp. 9-12

¹²⁹ Final Report, p. 89; Conclusions 2013, Armenia, pp. 5-7.

¹³⁰ Final Report, p. 262.

¹³¹ Final Report, pp. 1495-1497.

¹³² Conclusions XX-2, Croatia, p. 9-12; Conclusions XX-2, Poland, pp. 26-17.

¹³³ Conclusions, 2013, Austria.

This was the case of, for example, Austria, in which, in order to prevent social tourism, the entitlement to the benefit is linked to the right of permanent residence in the country. For its part, in Finland, if the resident permit is temporary, social assistance is often granted only in urgent cases and for indispensable cost of living. Furthermore, non-EU or EEA nationals or from other different specific countries (Switzerland, Liechtenstein) are not entitled to social and medical assistance unless they have a permanent residence, which requires a regular and continued residence in the country for at least four consecutive years.¹³⁴ In Bulgaria, the infringement was twofold; 1) due to the granting of social assistance to foreign nationals is granted only to “long-term residents”, which means a residence authorised by the Ministry of Interior for an indefinite period and for which is required a proof that the claimant has sufficient financial means; and 2) because of the people registered with the Employment Office Directorates are not entitled to social assistance before a minimum period of six months¹³⁵.

Prevention, Abolition or Alleviation of Need (Article 13 §3 of the ESC)

With a view to ensuring the effective exercise of the right to social and medical assistance, the Article 13 §3 of the Charter requires the Contracting Parties to provide that everyone may receive social assistance *in the form of advice* and personal help enabling them to be fully aware of their rights to social and medical assistance and of the ways to exercise those rights, the aim being to prevent, to remove, or to alleviate personal or family want. The role of the social assistance covered by this provision is to enable those concerned to overcome difficulties arising from their state of want, to avoid benefit dependency and to re-establish their autonomy.¹³⁶ As a consequence, it applies specifically to persons without adequate resources or at risk of becoming so.¹³⁷

It should be noted that there are not specific services separate in Article 13 §3 from the social welfare services of Article 14, but what distinguish one from another is the different types of benefits and services under consideration. In this regard, the ECSR has recognised that “Article 13 §3 and Article 14 of the Charter overlap since they refer to services of the same kind (social), despite their slightly different wording: “appropriate” services offered as “social” (and medical) assistance in the case of Article 13 §3, and services “using methods of social work” in the case of Article 14 §1”.¹³⁸

¹³⁴ Conclusions 2013, Finland, pp. 22-23.

¹³⁵ Conclusions 2013, Bulgaria, pp. 28-31.

¹³⁶ Conclusions 2009, Denmark, Turkey

¹³⁷ Conclusions 2009, Moldova, Malta, Sweden

¹³⁸ *International Federation for Human Rights (FIDH) v. Belgium*, Complaint No. 75/2011, para. 158-159.

Therefore, the social services covered by Article 13 §3 must play a preventive, supportive, and those concerned must be fully aware of their entitlement to social and medical assistance and how they can exercise those rights¹³⁹.

Finally, it should be said that there is no specification of the nature of the care required, or the place where it is given. Thus, States are given considerable discretion and will respond differently with a view to complying with the provisions of Article 13. Moreover, the Committee have considered that under this provision of the ESCR, labour inspection should cover all sectors of activity, “no matter whether public or private”.¹⁴⁰ Even though this margin of discretionally of them, they are also expected to take proportionate steps to secure the social rights of vulnerable groups and to ensure that ESC rights are effectively enjoyed by the population¹⁴¹.

In this regard, the ECSR has found that five State Parties were not in conformity with Article 13 §3 of the Charter. Specifically, those not in conformity with this provision were Latvia, Malta, Poland, Romania and the Slovak Republic.

On one hand, countries such as Latvia or Poland, did not comply with this provision on the ground that the granting of personal help and advice services to foreign nationals were subject to an excessive length of residence requirement. In the cases of Romania and the Slovak Republic,¹⁴² the infringement was because they failed to ensure that people without resources or at risk of becoming so have effective access to adequate services offering advice and personal assistance to prevent, remove or to alleviate personal or family want.

On the other hand, as far as Romania is concerned, the ECSR considered that the resources allocated to these services were admittedly insufficient to meet the needs, so there was an infringement of the Article 13 §3 in the sense that it has not been established that people without resources, or at risk of becoming so, have effective access to adequate services offering advice and personal assistance.¹⁴³

¹³⁹ Conclusions XIV-1, Statement of Interpretation on Article 13, p. 52.

¹⁴⁰ Conclusions 2013, p. 7

¹⁴¹ H. Cullen, ‘The Collective Complaints System of the European Social Charter: Interpretative Methods of the European Committee on Social Rights’, *Human Rights Law Review*, 9 (2009), pp. 61-93 and 76-81

¹⁴² *v.gr.* the ECSR found that spending on social assistance in Slovak Republic was particularly low, compared to the EU average (Conclusions, 2013, Slovak Republic, p. 35)

¹⁴³ Conclusions 2013, Romania, pp. 38-39

Conclusion

Both social security and social assistance have suffered setbacks derived from the austerity measures. Thus, although the crisis implies that the demand for social protection for a large number of population has increased, the social expenditure on those services have experienced strong budget cuts in several countries. The combination of austerity measures with the economic crisis in most countries hit the poorest, as cut backs in benefits and public services tend to have a disproportionate effect on those on the lowest incomes who depend on them most.¹⁴⁴

The truth is that the ECSR has found, in its 2013 Conclusions, no less than 180 cases of violations of the Charter concerning health, social security and social protection. In particular, Greece, Poland, and Romania received a high number of negative conclusions.¹⁴⁵ However, as developed above, it could be said that the implementation of the austerity measures and their impact on Social Protection among the State Parties of the ESC, presented significant differences between developing and transition countries and those with high-income. In other words, we can say that there were two different responses to the crisis with regard to the Social Rights guaranteed by the Charter:

In the first case, the Countries did not implement austerity measures or, at least, they did not affect or change the State's Social Protection plan (*v.gr.* Albania, Armenia). Further, some States have incremented their budgetary allocations for Social Protection and some of them have done positive steps in terms of social services,¹⁴⁶ notwithstanding that they met their objectives or not.

In the second case, States have implemented important austerity measures (such as budget cuts), which, directly or indirectly, have affected their social protection schemes. Austerity measures, where they have been implemented, translated into an increasing demand for information and emergency social services and front line social services. State resource constraints are limiting the ability of agencies to respond and there has been a reduction on the ability of services to respond to urgent needs; a situation which is most suffered by the poor and vulnerable population. The immediate consequence of the budget cuts on health, social security and social assistance or any aspect related to social protection, carried out by some States (E.g. Latvia, Austria, Cyprus, Greece, Spain, Portugal, or Italy), has resulted in a lack of social protection for the citizens of these countries at the expense of the fulfilment of Article 13. A European Commission report has reflected and concluded that these

¹⁴⁴ European Commission, EU Network of independent experts on social inclusion. *Social impact of the crisis and developments in the light of fiscal consolidation measures* (February 2011)

¹⁴⁵ Conclusions 2013

¹⁴⁶ *v.gr.* Albania (p. 32 of the Final Report)

kinds of cuts could lead to significant reductions in the level of real household incomes, sometimes putting a heavy strain on the living standards of low income household.¹⁴⁷

The Council of Europe has stressed in this regard that States should ensure a minimum of protection for all through a solid legal and institutional framework, including in times of economic crisis, in accordance with international and CoE standards.¹⁴⁸ It should also be brought up that the ECSR has specified that “even when reasons pertaining to the economic situation of a state party make it impossible for a state to maintain their social security system at the level that it had previously attained, it is necessary (...) for that state party to maintain the social security system on a satisfactory level that takes into account the legitimate expectations of beneficiaries of the system and the right of all persons to effective enjoyment of the right to social security”.¹⁴⁹

It should be pointed out however that, in general, most of all of the countries found that the measures and policies for social protection carried out by their own governments –before, during and after the crisis– was not sufficient to guarantee or cover the real social protection need.

Conversely, other States not only did they not take any austerity measures which might have affected their social protection schemes, but also they have taken some positive steps in this field and even reportedly have increased their budget allocations for this purpose.

One conclusion can be drawn from the Report: in most countries where austerity measures were implemented, it has been found that these policies have resulted in the rise of inequality between the poorest and the richest population, as well as in a general deterioration of the living and health condition of all those who lack sufficient resources.

Moreover, it should be pointed out that, despite many governments have implemented direct policies aimed to improve the living conditions of all those who are in need, the States have concluded in most cases (and, more often, in the case of countries from Eastern Europe) that their design is not efficient.

Another remarkable fact is that, despite not every measure were directly designed to affect the social protection, it could be said that every cut on public expenditures have affected, in a bigger or smaller scale, social protection and social conditions.

In 2012, the Parliamentary Assembly of the Council of Europe expressed its concern about austerity measures and pointed out that “the restrictive approaches currently pursued, predominantly based on budgetary cuts in social expenditure, may not reach their objective of consolidating public budgets,

¹⁴⁷ European Commission, *Social protection budgets in the crisis in the EU*, Working paper No. 1/2013.

¹⁴⁸ Council of Europe, Report by Nils Muižnieks following his visit to Spain from 3 to 7 June 2013, CommDH (2013) 18, of 9 October 2013, para. 41.

¹⁴⁹ *IKA-ETAM v. Greece*, Complaint No. 76/2012, Decision on the merits of 7 December 2012.

but risk further deepening the crisis and undermining social rights as they mainly affect lower income classes and the most vulnerable categories of the population”.¹⁵⁰

For its part, the European Commission has pointed out that, in response to the crisis there was a “clear tendency in many countries for an increasing number of people to depend on often inadequate social assistance schemes”.¹⁵¹ The main findings of our research confirm this statement.

In view of the above, concluding, with the words of the Commissioner for Human Rights, who reminds us that “periods of financial dire straits should not be seen as emergency situations that automatically entail the curtailment of social and economic rights and the deterioration of the situation of vulnerable social groups. On the contrary, such periods of time should be viewed by states as windows of opportunity to overhaul their national human rights protection systems and reorganise their administration in order to build or reinforce the efficiency of national social security systems, including social safety nets that should be operational when necessary”.¹⁵²

¹⁵⁰ PACE, Res. 1884, Austerity measures – a danger for democracy and social rights, of 26 June 2012

¹⁵¹ European Commission, DG Employment, Social Affairs and Inclusion, Social impact of the crisis and developments in the light of fiscal consolidation measures,

¹⁵² Commissioner’s Report on Portugal, CommDH (2012), 22. P.15

4. Social Exclusion

The European Committee on Social Rights has clearly stated that living in a situation of poverty and social exclusion violates the dignity of human beings.¹⁵³ Poverty has been defined as a deprivation due to a lack of resources.¹⁵⁴ Article 30 requires States Parties to adopt a set of priorities and measures to prevent and remove obstacles to access fundamental social rights. The measures taken must promote and remove obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance. It should be noted that this is not an exhaustive list of the areas in which measures must be taken to address the multidimensional phenomena of poverty and social exclusion. Adequate resources are one of the main elements of the overall strategy to fight social exclusion and poverty, and should consequently be allocated to attain the objectives of the strategy. Moreover, adequate resources are an essential element to enable people to become self-sufficient. Finally, the measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned. The at-risk-of-poverty rate before and after social transfers (Eurostat), is used as a comparative value to assess national situations.¹⁵⁵

Member States Action under Article 30

Throughout the financial crisis each State tackled the issue of poverty and social exclusion differently. Although it ought to be noted that only a few countries have ratified Article 30¹⁵⁶, this section will analyse the main State programmes and how they had an impact on poverty levels in times of the economic crisis.

Albania has not adopted Article 30 of the ESC. However, the Albanian legal research group found that that country has nevertheless adopted some new laws, *inter alia* the Law for Social Assistance and Services,¹⁵⁷ which provides that people in need of two main categories of aid: Social assistance¹⁵⁸ and

¹⁵³ *European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France*, Complaint No. 82/2012, para. 71.

¹⁵⁴ *Ibid.*

¹⁵⁵ Digest of the case-law of the European Committee of Social Rights, 1 September 2008, 167, 168.

¹⁵⁶ Finland, France, Italy, Latvia, Norway, Slovak Republic, Slovenia, the Netherlands and Ukraine.

¹⁵⁷ Law No. 9355 for Social Assistance and Services. Final Report, 31.

¹⁵⁸ Article 4 of Law No. 9355, date 10 March 2005, “For Social Assistance and Services”. Final Report, 32.

Social services,¹⁵⁹ offered in two different forms: Services of Social Care and Services of Social-Medical Care.¹⁶⁰ The institution that implements social assistance policies and legislation is the State Social Service.¹⁶¹ The level of poverty in Albania grew by 1.9% in the period between the years 2008 and 2012, reaching 14.3% of the total population.¹⁶² Albanian legislation has extended the umbrella of social assistance to additional groups that have not been protected by this system until 2011.¹⁶³

Armenia has not adopted Article 30 of the ESC. The Armenian legal research group noted that as even before the economic crisis the poverty level in the country was significant, the government adopted the Strategic Programme on Poverty Reduction, starting in 2003.¹⁶⁴ One of the main features of the programme was the opportunity of civil society to participate in open discussions. Moreover, the country has put into force the law on State Benefits.¹⁶⁵ The in-kind aid is provided by social service agencies. The economic crisis had a severe impact on economic growth and poverty reduction hindering Armenia's progress. According to statistical data the poverty level rose from 27.6% to 34.1% in 2009. In 2010, the rate of poverty continued to grow reaching 35.8%. In response to the economic crisis, the Government reduced the marginal points of family benefit, which allowed more vulnerable families to receive benefits.¹⁶⁶

Austria has also not adopted Article 30 of the ESC. According to the Austrian legal research group, the country established the Austrian Platform against Poverty and Social Exclusion in order to realise the national implementation of the European Platform against Poverty and Social Exclusion.¹⁶⁷ The Public Employment Services, in cooperation with external support agencies, are providing targeted advisory services in order to support risk groups for poverty and social exclusion. From the most recent data we see that Austria has invested EUR 1.5 billion in risk areas, such as housing and social

¹⁵⁹ *Ibid.*, paragraph 5.

¹⁶⁰ *Ibid.*, Article 12.

¹⁶¹ Article 2 of the DCM, No. 542, (For Approval of the Statute of State Social Service) 2005 [VKM Për miratimin e statutit të shërbimit social shtetëror]. Final Report 34.

¹⁶² INSTAT accessed on April 2015 at: <http://www.instat.gov.al/media/101435/tab.6.xlsx>. Final Report, 36.

¹⁶³ Final Report 36.

¹⁶⁴ *Ibid.*, 93.

¹⁶⁵ The law was adopted on 12 December 2013 and was entered into force on 1 January 2014. Final Report, 94.

¹⁶⁶ Final Report, 97.

¹⁶⁷ European Commission, *European platform against poverty and social exclusion* <<http://ec.europa.eu/social/main.jsp?catId=961&langId=en>> accessed 15 April 2015. Final Report 141.

exclusion.¹⁶⁸ The Austrian Europe 2020 goal to reduce the number of those vulnerable to poverty or exclusion by 235,000 people has been half achieved. This ratio has decreased in Austria from 20.6% (in 2008) to 18.8% (in 2013).¹⁶⁹

Azerbaijan has not adopted Article 30 of the ESC. According to the Azerbaijani legal research group, the country adopted several measures, namely: the State programme for 2008-2015 on the reduction of poverty and sustainable development; Law of Azerbaijan Republic on Social Service; Presidential Decree on Measures on the improvement of the social protection of the population with low income. Moreover, each year, the need criterion and costs of living are calculated.¹⁷⁰ In general, between 2003 and 2013 more than 1 million new jobs have been created in this country; the vast majority of them are permanent. In 2005, the amount of unemployed in the country was 7.5%, however this amount decreased to 5.4% in 2011.¹⁷¹ Last year, the unemployment rate was 5%, while the poverty rate has fallen to 5.3%. The elimination of unemployment has had a direct impact on poverty reduction and the State Programme on the Elimination of Unemployment is presumed as one of the key measures.¹⁷²

Bosnia and Herzegovina has not ratified Article 30 of the ESC. However, the country is currently undergoing transition towards the social inclusion framework adopted in the EU. According to the findings of the Bosnian legal research group, the State has adopted the Law on Social Exclusion in 2013.¹⁷³ However, almost one third of the population of Bosnia and Herzegovina (1.5 million people) is at-risk-of-poverty.¹⁷⁴

Bulgaria is another country that has not adopted Article 30 of the ESC. Nonetheless, the Bulgarian legal research group found that the State aims to decrease the number of people living in poverty by 260,000 by 2020.¹⁷⁵ For example, an employer must hire a person who has been registered as unemployed for more than 1 year. Other measures taken are related to EU programmes funding and

¹⁶⁸ Federal Ministry of Labour, Social Affairs and Consumer Protection, *National Social Report 2012* (August 2012) 10-11. Final Report, 142.

¹⁶⁹ Statistik Austria, 'Zahl der Armuts- oder Ausgrenzungsgefährdeten in Österreich seit 2008 gesunken' <http://www.statistik.at/web_de/presse/079201> accessed 12 April 2015 [German]. Final Report, 146.

¹⁷⁰ Final Report 202.

¹⁷¹ *Ibid.*, 204.

¹⁷² *Ibid.*, 205.

¹⁷³ Final Report 247.

¹⁷⁴ World Bank, 'Social Exclusion in Bosnia and Herzegovina and global crisis', March 2012. Final Report 247.

¹⁷⁵ National programme for development: Bulgaria 2020. Final Report, 289.

include various programmes for first jobs for young people, governmental internships for students as well as programmes for additional qualifications and gathering of new skills.¹⁷⁶ The state implemented a national programme called Activation of the Inactive Persons.¹⁷⁷

Croatia has signed but not yet ratified the ESC. According to data given by Croatian Bureau of Statistics, the at-risk-of-poverty rate is 19.5% and 29.9% are at risk of poverty or social exclusion. 14.7% of people are severely materially deprived, and 14.8% of people are living in households with very low work intensity.¹⁷⁸ Key amendments, adopted at the very beginning of the financial crisis, are: Act on Special Tax on Salaries, Pensions and Other Income, Act on Support for Job Preservation, Act on Salaries in Local and Regional Self-Government, Act on Amendments to the Value Added Tax Act and the decision on the Amount of the Base for Calculating Salaries for Civil Servants and Employees.¹⁷⁹ Main policies for fighting poverty and social exclusion have been presented in Strategy for Fighting Poverty and Social Exclusion in the Republic of Croatia, 2014-2020.¹⁸⁰ On January 1 2014, the new Social Welfare Act was put into effect.¹⁸¹ Croatia has also signed the Joint Inclusion Memorandum and has passed the National Implementation Plan on Social Inclusion 2011-2012.¹⁸² One of the most talked-about measures in this field was the introduction of Professional Training through Temporary Employment. The Employment Promotion Act was passed in 2012.¹⁸³

Cyprus has not accepted Article 30 of the ESC. It has however made significant efforts to promote the protection against poverty and social inclusion through legislation. The national legal research group found that the Employment Service of the Labour Department offers free counselling to job seekers through a network of 14 Provincial and Local Labour Offices throughout Cyprus.¹⁸⁴ In July

¹⁷⁶ Final Report, 289.

¹⁷⁷ *Ibid.*, 292.

¹⁷⁸ *Ibid.*, 338.

¹⁷⁹ Predrag Bejaković and Viktor Gotovac, Activities in economic recovery in Republic of Croatia with an Emphasis on Labour Market, Review of Social Policy, 2011. 343. Final Report, 339.

¹⁸⁰ Final Report 339. Government of the Republic of Croatia, Strategy for Combating Poverty and Social Exclusion in the Republic of Croatia (2014 - 2020)

<https://vlada.gov.hr/UserDocsImages/ZPPI/Strategije/STRATEGY_COMBATING_POVERTY_SOCIAL_EXCLUSION_2014_2020.pdf>, accessed 15 January 2015. Final Report 339.

¹⁸¹ Social Welfare Act 2014. Final Report 339.

¹⁸² Final Report 340.

¹⁸³ Employment Promotion Act 2012. (Zakon o poticanju zapošljavanja). Final Report, 340.

¹⁸⁴ Ministry of Labour, Welfare and Social Insurance,

<http://www.mlsi.gov.cy/mlsi/mlsi.nsf/faq_gr/faq_gr?OpenDocument>, accessed on 17 March 2015. Final Report, 403.

2013, the President of Cyprus announced the reform of the social welfare system which would be based on ensuring the Guaranteed Minimum Income.¹⁸⁵ Equally important is the Decree on minimum wage of 2012, which specifies that the amount of the minimum wage is to be EUR 870 (gross). In addition, Cyprus has a broad system of social protection protecting its citizens from social exclusion and poverty under the Public Assistance and Services Law of 2006.¹⁸⁶

In Finland, the ESC has been ratified and entered into force on 1 August 2002, including Article 30.¹⁸⁷ According to the Finnish legal research group, many of these concepts were part of the Finnish legislative and social security systems already before the Revised ESC came into force. The ECSR noted in their conclusions concerning Finland in 2013 that the country uses multiple approaches combined and compared for analysing the extent of poverty.¹⁸⁸ After the ratification it has not been found that Finland would have violated Article 30. Starting from 2017, Finland will implement a reform of the pension system, which aims at prolonging working careers and improving the sustainability of public finances.¹⁸⁹

France considers itself bound by all the articles of the revised ESC. The national legal research group first noted that it raised the Active Solidarity Income and the Welfare for Retired.¹⁹⁰ In March 2014, France ratified the European regulation regarding the Fund for European Aid to the Most Deprived.¹⁹¹ To prevent poverty for the most deprived families with children, Family Support Allowance and the Family Complement have been increased.¹⁹² Most of the public welfares have been increased between 2007 and 2014.¹⁹³ Not only has there been a global increase in the amount of each social welfare, there

¹⁸⁵ Politis Online Newspaper, <<http://www.politis-news.com/cgi-bin/hweb?-A=241736&-V=articles>>, 26 July 2013, accessed 7 April 2015. Final Report, 404.

¹⁸⁶ The Public Assistance and Services Law of 2006 (95(I)/2006). Final Report, 405.

¹⁸⁷ ECSR, Conclusions 2013 – Finland – Article 13(3). Final Report, 463.

¹⁸⁸ ECSR Finland 2013, 37. Final Report, 466.

¹⁸⁹ Final Report, 469. Sopimus vuoden 2017 työeläkeuudistuksesta <http://www.eläkeuudistus.fi/media/linkkitiedostot/sopimus-vuoden-2017-tyoeläkeuudistukseksi.pdf>, accessed 21 April 2015

¹⁹⁰ Final Report, 544. Decree n. 2014-1127 (Decree related to the uprising of the standard amount of the Active Solidarity Income) [Decret portant revalorisation du montant forfaitaire du revenu de solidarité active]. and Decree n. 2014-1215 (Decree on the revalorisation of the welfare for retired people) 2014 [Decret portant revalorisation de l'allocation de solidarité aux personnes âgées]. [French]

¹⁹¹ Final Report, 533. Regulation n° 223/2014 of the European Parliament and of the Council of 11 March 2014 on the Fund for European Aid to the Most Deprived.

¹⁹² Final Report, 533. Inter-ministerial circular n. DSS/SD2B/2014/84 (Circular related to the rising of the familial aids in overseas departments) 2014 [Circulaire relative à la revalorization des prestations familiales servies dans les départements d'outre-mer et à Mayotte au 1er Avril 2014]. [French]

¹⁹³ Final Report, 540. <http://www.insee.fr/fr/themes/tableau.asp?reg_id=0&ref_id=NATTEF04602>

is also a general increase in the number of beneficiaries of those aids. As France has not taken any real austerity measure, the main consequences of the crisis can be observed through the budget cuts. However, it does not seem that these budget cuts have had any negative impact on the social inclusion measures. In fact, all the statistics agree to show increasing social service and welfares.¹⁹⁴ The ECSR concludes that the situation in France is not in conformity with Article 30 of the ESC on the grounds that: (i) follow-up of decisions on the merits of Collective Complaints No. 33/2006 and 51/2008 remains unsatisfactory; (ii) there was discrimination of migrant Roma in respect of housing policy during the reference period (Collective Complaint No. 67/2011).¹⁹⁵

Article 30 of the ESC has not been recognised as mandatory to be implemented by Georgia. The Government also promotes the creation of proper programmes for vulnerable groups, for instance to arrange various types of holidays, medical support, etc. Additionally, according to the 2014-2020 action plan, a growth diagnostic method has been launched. Despite that, poverty index within children is high, particularly in families with three children. Georgia attempts to ensure social support for the scarcest groups.¹⁹⁶

The revised ESC was signed by Germany in 2007, though it has not been ratified yet. The provision of Article 30 of the ESC is therefore not applicable. In 2010, 15% of the German population were living in poverty.¹⁹⁷ Germany currently has the lowest level of unemployment within the EU at a rate of 5.3% in 2013.¹⁹⁸ The Act to Improve the Chances of Integration in the Labour Market was introduced in December 2011.¹⁹⁹ The National Pact to Promote Training and Young Skilled Workers promotes in-company vocational training and thereby tries to ensure that young people have access to safe jobs.²⁰⁰ With regard to demographic change in Germany, the ministry also promotes the integration of workers aged over 50 by enhancing the programme Perspective 50plus.²⁰¹ The joint

¹⁹⁴ Final Report, 540.

¹⁹⁵ European Committee on Social Rights Conclusions 2013, p. 52
http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/France2013_en.pdf, accessed 17 October 2015.

¹⁹⁶ Final Report 584-585.

¹⁹⁷ Final Report, 617.

¹⁹⁸ Final Report, 618.

¹⁹⁹ Final Report 620.

²⁰⁰ Final Report 633.

²⁰¹ Final Report 623.

National Strategy for Literacy and Basic Education of Adults in 2012 has been adopted.²⁰² 16% of elderly people in Germany are at risk of living in poverty.²⁰³ Health problems contribute to reducing their earning capacity. The pension for reduced earning capacity pursuant to § 43 SGB VI (German Social Security Code – Book VI) aims at preventing people with a reduced earning capacity from falling into poverty.²⁰⁴

Greece has signed but not ratified the ESC. However, the measures taken would notably mean a breach of Article 30. Therefore this will be further elaborated in the section on “Violations”.

The percentage of people living in a situation of severe material deprivation has significantly risen from 11% in 2009 to 20.3% in 2013, according to Eurostat; the gap of unemployment has widened dramatically from 9% in 2009 to 27.5% in 2013 and has fallen to 25.5% in 2014, according to the ELSTAT. In 2012, youth unemployment in Greece reached 57.6%.²⁰⁵

Hungary has not accepted Article 30 of the ESC. The rate of at risk of poverty or social exclusion ranks among the highest in Europe. According to Eurostat statistics, the rate rose from 29.4% (2007) to 33.5% (2013), but fell by 2.4% in the last year.²⁰⁶ The especially distressing rate of severely materially deprived people has been significantly increasing in the last years, from 17.9% in 2008 to 26.8% in 2013. The EU average of this rate was 9.9% in 2013.²⁰⁷ The Hungarian legal research group noted that the Hungarian financial market was severely hit by the global crisis. The Job Protection Action Plan encourages creation of new jobs and the preservation of existing jobs from January 2013.²⁰⁸ The social inclusion policy in Hungary is aligned with the National Sustainable Development Framework

²⁰² Final Report 623.

²⁰³ Final Report 625.

²⁰⁴ Final Report 625.

²⁰⁵ European Commission, Eurostat, ‘Unemployment rate by sex and age groups’ <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=une_rt_a&lang=en> accessed 10 February 2015 and Hellenic Statistical Authority (EL. STAT.), ‘Labour Force Survey: Third Quarter of 2014’ (Press Release, 18.12.2014) <http://www.statistics.gr/portal/page/portal/ESYE/BUCKET/A0101/PressReleases/A0101_SJO01_DT_Q_Q_03_2014_01_F_GR.pdf> accessed 10 February 2015 [Greek]. Final Report 668.

²⁰⁶ Eurostat <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_peps01&lang=en> accessed 1 April 2015. Final Report, 777.

²⁰⁷ Eurostat, <http://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=t2020_53&language=en> accessed 1 April 2015. Final Report, 777.

²⁰⁸ Final Report, 779. Government of Hungary, ‘Job Protection Action Plan Summary’ <http://2010-2014.kormany.hu/download/e/8c/90000/Job%20protection%20action%20plan.pdf>. accessed 1 April 2015. .

Strategy, which was adopted in 2013.²⁰⁹ The National Social Inclusion Strategy, being a horizontal strategy, focuses on the social inclusion of the most disadvantaged social groups, especially Roma, children and those living in disadvantaged regions for the period 2011-2020.²¹⁰ Extended public work scheme has been introduced in 2008 (Way to Work Programme) and in 2011 (The National Public Work Programme). Due partly to these, the unemployment rate – which has reached record level at the peak of the crisis at 11.2 per cent in 2010 – recovered to its pre-crisis level of 7.7 per cent in 2014. The National Reform Programme 2014 includes 10 main measures concerning education. An important aim is reducing the number of early school leavers. A model project of the Swiss-Hungarian Cooperation Programme, focusing on the organisation of basic care in national health services through the promotion of a virtual care centre, targets the involvement of Roma communities in screening programmes, in cooperation with the National Roma Self-Government.²¹¹

In compliance with the obligations undertaken under the ESC, Italy extended its security scheme aiming at avoiding social exclusion and adopted financial aid measures for vulnerable groups. Thus, the national expense for social protection pertains to pension benefits by 66.7%, to healthcare by 24% and to general welfare assistance by 8.1%.²¹² The Italian Ministry of Labour had instituted the Fund for Employment already in 1993, with the aim to increase employment rates. In 2008, it received a new task to finance also professional trainings. The National Strategy Framework especially focused on Roma, Sinti and Travellers community based, taking into account the peculiar characteristics of these groups.²¹³ On the other hand, the ECSR criticised the action of the Government, as its plan seems to be too general and with a limited scope compared to the priorities of the 2006-2008 National Strategy Report for Social Protection and Social Inclusion.²¹⁴ Austerity measures adopted in Italy to reduce public debt have had a negative impact on national poverty rates.

²⁰⁹ 'National Council for Sustainable Development Homepage' < <http://nfft.hu/en/> > accessed 10 April 2015. Final Report, 780.

²¹⁰ Minister of State for Social Inclusion, Ministry of Public Administration and Justice, '*Social Inclusion Strategy – Extreme Poverty, Child Poverty, the Roma*' [2011] 17 http://ec.europa.eu/justice/discrimination/files/roma_hungary_strategy_en.pdf, accessed 1 April 2015. Final Report, 780.

²¹¹ 'National Social Report Hungary' 10. Final Report, 787.

²¹² Final Report, 831. Italy, *National Strategy Report on Social Protection and Social Inclusion 2008-2010*, pt I, 6-7.

²¹³ *Ibid.*

²¹⁴ European Committee of Social Rights, *Conclusions 2013 (Italy)*, 48. Final Report, 832.

Latvia has adopted Article 30 of the ESC. The registered unemployment rate in Latvia was 9% as of 31 January 2015, as provided by the statistics of the State Employment Agency.²¹⁵ The Latvian legal research group found that all activities related to the housing of homeless persons are provided by institutions of local governments. This includes maintaining rest-houses and pensions, allocating social flats according to law, as well as providing educational, social and cultural assistance to those in need. The main focuses regarding the reduction of poverty levels are: the reduction of tax burden for the economically active persons, the promotion of employment for the socially excluded persons, as well as reduction of discrimination threats and stereotypes. On 20 December 2012, the National Development Plan of Latvia for 2014-2020 was adopted.²¹⁶

Malta has not ratified Article 30 of the ESC. According to the national legal research group, the State has witnessed a steady increase in the number of people living at risk of falling into poverty and social exclusion.²¹⁷ The impact that austerity measures had on the Maltese population cannot be quantified in an effective manner and the increase in the percentage of people risking poverty cannot be attributed to the aftermath of the implementations of the measures due to the fact that the increase has been steady and is likely to be the result of internal economic and social policy. The State has created work and training exposure schemes to improve the chances of students to create links with the workplace. The fundamental principle employed by Malta in its policy-making is to safeguard the interests of the most vulnerable, thus ensuring that families, youth, adults and the elderly are entitled to assistance from the government.²¹⁸

Norway considers itself bound by Article 30 of the ESC. According to the national legal research group, acts regulating social rights are the Social Services Act, the Education Act, the Norwegian Culture Act and the Patient's and User's Rights Act, respectively.²¹⁹ Norway did not impose any austerity measures in response to the 2008 financial crisis. There does not seem to be any serious deficiencies in the assessment of the measures taken by the Norwegian Government to meet the

²¹⁵ Reģistrētais bezdarba līmenis valstī <<http://nva.gov.lv/index.php?cid=6>> accessed 12 March 2015 [Latvian] Final Report, 894.

²¹⁶ *National Development Plan of Latvia for 2014–2020* <http://www.pkc.gov.lv/images/NAP2020%20dokumenti/NDP2020_English_Final.pdf> accessed 15 June 2015. Final Report 896.

²¹⁷ *Ibid.*, 935.

²¹⁸ Final Report, 937.

²¹⁹ *Ibid.*, 995.

requirements of Article 30 – neither when it comes to legislation nor policies.²²⁰ The Committee concludes that the situation in Norway is in conformity with Article 30 of the ESC.²²¹

Poland has not ratified the Revised ESC, thus it is not bound by Article 30. The reason for this is, according to the national legal research group, a lack of possibility to sufficiently fulfil duties set forth there.²²² Statistic research conducted in Poland shows that the group most vulnerable to poverty and social exclusion is the youth. Research conducted by Central Statistical Office in 2013 shows that over 700,000 children and young people are affected by poverty.²²³ The National Programme of Countering Poverty and Social Exclusion 2020 have been adopted.²²⁴ In the period of 2005-2012, the percentage of Poles living in extreme poverty decreased by almost half (from 12.5% in 2005 to 5.7% in 2010), although since 2011 a slow growth can be noticed.²²⁵

Portugal has ratified the revised ESC. The national legal research group emphasised that Portuguese Constitution is embedded in social concerns, therefore it widely grants protection to people facing social deprivations and living in situations of poverty.²²⁶ As the ECSR observes, in 2010, the social transfers to combat poverty were effective, since they had a great impact on poverty reduction; without this set of social transfers the poverty rate would increase from 17.9% to 26.4% - in the subsequent years the situation has deteriorated.²²⁷ In an initial stage, the most significant measures pursued by the Government to alleviate the impact of the economic crisis for persons who live or risk living in a situation of poverty, as well as their families, were enacted in 2011 through the National Social Emergency Programme.²²⁸ Secondly, the unemployment subsidy was increased from 10% to 20% for those couples with children where both members are unemployed. Thirdly, a few changes were also

²²⁰ *Ibid.*, 1001-1002.

²²¹ European Committee on Social Rights Conclusions 2013, p. 42

<http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Norway2013_en.pdf> accessed 17 October 2015.

²²² Final Report, 1049.

²²³ Poverty in Poland in Central Statistical Office's research, Warsaw 2013. Final Report, 1050.

²²⁴ Final Report, 1053. <<https://empatia.mpips.gov.pl/-/krajowy-program-przeciwdzialania-wykluczeniu-spoiecznemu-2020>> accessed 14 April 2015.

²²⁵ *Polish poverty in the European Year of Fight with Poverty and Social Exclusion - Conference Materials*, edit. Hieronim E. Kubiak, Akademia im. A. F. Modrzewskiego, Cracow 2012. Final Report 1054.

²²⁶ Final Report, 1113.

²²⁷ *Ibid.*, 1115.

²²⁸ Final Report, 1116. Available at

<<http://www.portugal.gov.pt/media/747090/programa%20emergencia%20social.pdf>> accessed 30 June 2015.

introduced in the Social Inclusion Income.²²⁹ The ECSR concludes that the situation in Portugal is not in conformity with Article 30 on the ground that there was a lack of a co-ordinated policy in housing matters with regard to Roma (Collective Complaint No. 61/2010).²³⁰

Article 30 was not accepted by Romania when the ESC was ratified in 1999. Statistics provided by Eurostat showed that at the end of 2013, 40.4% Romanians were at risk of poverty and social exclusion. In the period 2008-2013, the number decreased slightly. In the same period, the relative poverty percentage of the population was situated between 23.3% (2008) and 22.4% (2013).²³¹ The main reasons associated with the increased risk of poverty and social exclusion are material resources deprivation, social transfers and households with low working rates. At the end of 2014, the National Strategy and the Action Plan for Social Inclusion and Fight against Poverty for 2014-2020 was approved by the Romanian Government.²³² The institution in charge for most of the objectives is the National Agency for Employment.²³³ With the role to offer a better coordination of the measures settled by the law, the National Strategy and the Action Plan for Occupying the Labour Force 2014-2020 was developed, whose main objective is to reach a sustainable level of labour employment, supported by economic competitiveness, social cohesion and sustainable development.²³⁴ Another measure, launched after the financial crisis stroke in 2008, is the First Home programme - the State guarantees the loans contracted for the purchase or the construction of a dwelling.²³⁵ The level of relative poverty, referred to an average of the population of a country, decreased between 2008-2013, but on the other hand, the level of the absolute poverty increased during the period 2008-2012 from 23.2% to 27.7%.²³⁶

Russia has not ratified Article 30 of the ESC. According to the Russian legal research group, Russian Labour Code does not contain provisions that would encourage employers to hire persons who live

²²⁹ Final Report, 1117.

²³⁰ The European Committee on Social Rights Conclusions 2013, p. 46

<http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Portugal2013_en.pdf> accessed 17 October 2015.

²³¹ Final Report, 1145.

²³² *Ibid.*

²³³ More information about the Agency can be found at the address

<http://www.anofm.ro/files/NAE%20Romania%20Overview.pdf>. Final Report, 1146.

²³⁴ Final Report, 1146.

²³⁵ *Ibid.*, 1147.

²³⁶ *Ibid.*, 1148.

or at risk of living in a situation of poverty. Federal Law on Employment in Russian Federations regulates a situation of unemployment.²³⁷ The Russian Federation provides social housing for persons who are officially indigent and have a need for housing. The austerity measures did not have an impact on the poverty level in the Russian Federation.²³⁸ Moreover, in accordance with the Federal Service of State Statistics report, the number of indigent citizens in 2008 appeared to be lower than it was in 2005-2006. The poverty rate has decreased to 13.1% in comparison with 13.3% in 2007.²³⁹

The Slovak Republic is bound to Article 30 of the ESC. The inclusion policies, as specified in the Commission Recommendation 2008/867/EC of 3 October 2008 on the Active Inclusion of People Excluded from the Labour Market, are based on the recognition that social exclusion and poverty harm humans in many spheres of life and thus represent multiple disadvantages.²⁴⁰ In reaction to the meeting of the Council of the European Union for Employment, Social Policy, Health and Consumer Affairs on 19 May 2011 and the meeting of the European Council dated 24 June 2011 the Government Office of the Slovak Republic adopted the Strategy of the Slovak Republic for Roma Integration by 2020.²⁴¹ The ECSR could not reach the conclusion due to insufficient information provided in the report by the State; it imposes an obligation to provide the requested information in the next report on this provision.²⁴²

Slovenia has ratified Article 30 of the ESC. The country implemented new social legislation, which gave more people access to social benefits and raised the minimum wage; active employment policy measures and programmes of social activation, intended primarily for the use of long-term unemployed; formal establishment of a working body at national and regional level to harmonise policies and actions that affect the social status of individuals and families; access to health care is revised and amended by the Law on Health Care and Health Insurance; Free public education and the

²³⁷ Federal Law of 19.04.1991 “On employment in Russian Federation” No 1032-1. Final Report, 1176.

²³⁸ Final Report, 1177.

²³⁹ Final Report., 1177

²⁴⁰ *Ibid.*, 1215.

²⁴¹ Final Report, 1216. Stratégia Slovenskej republiky pre integráciu Rómov do roku 2020 (Strategy of the Slovak Republic for Roma Integration by 2020)

<http://www.minv.sk/swift_data/source/romovia/dokumenty/StrategiaSR_integraciaRomov.pdf> accessed 28 March 2015 [Slovak].

²⁴² The European Committee on Social Rights Conclusions 2013, p. 47

<http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/SlovakRepublic2013_en.pdf> accessed 17 October 2015.

possibility of obtaining social scholarships.²⁴³ The risk of poverty in 2012 (13.5%) remained approximately at the level of the previous year. From 2009 to 2012, the poverty rate in Slovenia however increased by 2.2%, which is more than the EU average (0.5%). In 2013, the risk of poverty reached up to 14.5%.²⁴⁴ The level of the risk for social exclusion was 20.4% in 2013 and rising. The Operational Programme for Material Assistance to the Most Deprived for the Period 2014-2020, which is based on the implementation of European aid to the most threatened by poverty, began by cutting wages in public sector and everywhere where the employer is the State.²⁴⁵ Various additional contributions to monthly earnings have been temporary abolished, promotions have been frozen. Social security has declined also in the area of health care. The impact of crisis of course deteriorated social welfare for a significant part of the population; however, Slovenia remains one of the EU members with a low risk of poverty.²⁴⁶ The ECSR concluded that Slovenia is in conformity with Article 30.²⁴⁷

Spain has signed but not ratified the ESC. The national legal research group found that in December 2013, the Spanish Council of Ministries approved a national social plan against poverty.²⁴⁸ Since the start of the economic crisis, poverty in Spain has increased. Austerity measures have influenced the poverty level in Spain. In 2008, 23.7% of the population in EU27 was considered poor, while in Spain the rate was 24.5%. In 2012, it rose in Europe 2.2%, but in Spain it rose by 3.6% (compilation based on INE and Eurostat database). Accordingly, also social exclusion or deprivation was raised in this period.²⁴⁹

²⁴³ Final Report, 1277.

²⁴⁴ Final Report, 1277. Kazalniki dohodka in revšćine, Slovenija, 2013
<<http://www.stat.si/StatWeb/glavnanavigacija/podatki/prikazistaronovico?IdNovice=6490>> accessed 16 April 2015 [Slovenian].

²⁴⁵ Final Report, 1277. 70. redna seja vlade, <http://www.vlada.si/medijsko_sredisce/porocila_za_javnost/porocilo_za_javnost/article/70_redna_seja_vlade_rs_48320/> accessed 16 April 2015 [Slovenian].

²⁴⁶ Final Report, 1280.

²⁴⁷ The European Committee on Social Rights Conclusions 2013
<http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Slovenia2013_en.pdf> accessed 17 October 2015.

²⁴⁸ Final Report, 1342.

²⁴⁹ *Ibid.*, 1344.

The Netherlands is bound by Article 30 of the ESC and is one of the top performers with 15.7% of the population at risk of poverty or social exclusion.²⁵⁰ According to the Dutch legal research group, the State offers a relatively satisfactory unemployment insurance in comparison with other countries, as the net replacement rate in the first year of unemployment is more than 70%.²⁵¹ To help integrate young people, especially those who live or who are at risk of living in a situation of poverty, into the labour market, in 2009 the Investment in the Young Act was introduced, which obliges municipalities to offer work combined with schooling to young individuals between the ages of 18 and 27 applying for welfare or social assistance.²⁵² Social housing was created for people that have a low income. Housing companies are obliged to appoint 90% of the vacant houses to this group of people.²⁵³ Inequalities in social and medical assistance are present in the Netherlands, and usually due to different opportunities and resources that are caused by the difference in social class, gender, country of origin, territory, age and other factors. The problem with regards to social and medical assistance is partly linked to the austerity measures but also in the inaction and lack of help of the government in this respect, as while people's real incomes declined, user fees in the health sector have risen.²⁵⁴

The United Kingdom has signed but not ratified the ESC. The national legal research group noted that the State is suffering from wealth inequality, as millions of its citizens are socially excluded from society, living in a situation of poverty and deprivation.²⁵⁵ In the context of the Education Endowment Foundation, the promotion of effective access to adequate education is enhanced by the provision of a teaching and learning toolkit.²⁵⁶ The Jobcentre plus, which is an executive agency of the Department of Work and Pensions, works closely with employers in order to provide jobseekers, between the ages of 18-24, with valuable work experience placements ranging from 2 to 8 weeks available through the

²⁵⁰ Eurostat, '1 Europe 2020 Targets: Poverty and Social Exclusion Active Inclusion Strategies' [s.d.] 1. Final Report, 1380.

²⁵¹ Eurostat, '1, Europe 2020 Targets: Poverty and Social Exclusion Active Inclusion Strategies' <http://ec.europa.eu/europe2020/pdf/themes/33_poverty_and_social_inclusion.pdf> accessed 5 May 2015. Final Report, 1381.

²⁵² R Euwals, "Policy Measures on Youth Unemployment in the Netherlands" [2013] 1, 7. Final Report, 1382.

²⁵³ Final Report, 1384. <<http://www.rijksoverheid.nl/onderwerpen/huurwoning/sociale-huurwoning-huren>> accessed on 24 April 2015>

²⁵⁴ Oxfam, 'The True Cost of Austerity and Inequality: The Netherlands Case Study'. <<https://www.oxfam.org/sites/www.oxfam.org/files/cs-true-cost-austerity-inequality-netherlands-120913-en.pdf>>. Final Report, 1387.

²⁵⁵ Final Report, 1435.

²⁵⁶ Final Report 1436.

<<https://www.gov.uk/government/policies/raising-the-achievement-of-disadvantaged-children>> accessed 15 March 2015.

Youth Contract.²⁵⁷ Interestingly, the austerity measures have impacted citizens' perspectives of what constitutes minimum living standards. According to the national legal research group, the tight austerity measures of the current coalition government are set to hit persons living without adequate living standards the hardest.²⁵⁸

Ukraine is bound by Article 30 of the ESC. The national legal research group found that on 31 August 2011, the Cabinet of Ministers approved the National Programme of overcoming poverty and poverty reduction for the period 2015.²⁵⁹ The main objectives of the Programme are: reducing the number of poor people among workers, families with children, orphans and children deprived of parental care, homeless children, the unemployed, the disabled, the homeless, those who live in rural areas and the prevention of chronic poverty. According to the Institute of Demography and Social Studies of National Academy of Sciences of Ukraine, 15.2% of Ukrainians live below the subsistence level.²⁶⁰ The unemployment rate in Ukraine is estimated at about 7.2%, which is quite a normal rate in modern European countries.²⁶¹ The unemployment benefits were approved by the order of Ministry of Social Policy on 20 November 2000. The emphasis must be put on Law n. 2623-15 On the Essentials of Social Protection of Homeless People and Homeless Children from 2005.²⁶² This law defines risk groups and measures to prevent homelessness, establish a system of social reintegration of homeless people by social patrolling, contains a list of institutions of social protection for the homeless.²⁶³ The Committee concludes that the situation in Ukraine is not in conformity with Article 30 of the ESC on the ground that it has not been established that there is an effective overall and coordinated approach to combat poverty and social exclusion.²⁶⁴

²⁵⁷ Final Report, 1436.

<[https://www.gov.uk/government/policies/helping-people-to-find-and-stay-in-work/supporting-
pages/introducing-measures-to-give-jobcentre-plus-flexibility-in-helping-people-back-to-work](https://www.gov.uk/government/policies/helping-people-to-find-and-stay-in-work/supporting-pages/introducing-measures-to-give-jobcentre-plus-flexibility-in-helping-people-back-to-work)> accessed 15 March 2015.

²⁵⁸ Final Report, 1438.

²⁵⁹ Постанова! Кабінету! Міністрів! про! затвердження! Державної! цільової! соціальної! програми! подолання! та! запобігання! бідності! на! період! до! 2015! року <[http://zakon4.rada.gov.ua/laws/show/1057-2011-
%D0%BF](http://zakon4.rada.gov.ua/laws/show/1057-2011-%D0%BF)> accessed 1 April 2015 [Ukrainian]. Final Report, 1505.

²⁶⁰ За! межею! бідності! перебуває! кожен! десятий! українець (18 November 2013) <[http://dt.ua/UKRAINE/za-
mezheyu-bidnosti-perebuvaye-kozh-den-desyatiy-ukrayinec-132069.html](http://dt.ua/UKRAINE/za-mezheyu-bidnosti-perebuvaye-kozh-den-desyatiy-ukrayinec-132069.html)> accessed 1 April 2015 [Ukrainian]. Final Report, 1506.

²⁶¹ Final Report 1506.

²⁶² Закон! України! про! державну! допомогу! сім'ям! з! дітьми

<<http://zakon2.rada.gov.ua/laws/show/2811-12>> accessed 1 April 2015 [Ukrainian]. Final Report, 1508.

²⁶³ Закон! України! про! основи! соціального! захисту! бездомних! осіб! і! безпритульних! дітей <<http://zakon2.rada.gov.ua/laws/show/2623-15>> accessed 1 April 2015 [Ukrainian]. Final Report, 1508.

²⁶⁴ The European Committee on Social Rights Conclusions 2013, p. 38.

The Right to be Protected from Poverty and Exclusion (Article 30)

In the Netherlands, the ECSR considers that the legislation and policy concerning the access to emergency shelter has brought about a situation where homeless persons in need of shelter are not offered shelter regardless of genuine need. Subsequently, this is not in keeping with the obligation to prevent poverty and social exclusion. It further appears that the measures to improve the coordination between the responsible municipalities were envisaged for addressing the situation. However, in light of the information at its disposal, the ECSR finds that the coordination between the responsible authorities is currently insufficient for the purposes of Article 30.²⁶⁵

In France, the Committee takes note of the Strategy of the French Government for the inclusion of Roma (received by the European Commission on 8 February 2012) in the context of the EU Framework for National Roma Integration Strategies up to 2020. However, it failed to adopt a coordinated approach to promote effective access to housing for these persons who live or are at risk of living in a situation of social exclusion. It also noticed that the Government has failed to take specific measures in this field towards the migrant Roma population when it should have. Treating the migrant Roma in the same manner as the rest of the population when they are in a different situation constitutes discrimination.²⁶⁶

In Italy, the ECSR considered that the respondent State has not proved that it has invested real efforts to prevent or eradicate the poverty situation affecting Roma and Sinti population, especially those evicted people who were rendered homeless without any social assistance from the Italian authorities in a context of isolated ghettos with highly substandard conditions and inadequate public infrastructure or services.²⁶⁷ Hence, Italy failed to adopt an overall and coordinated approach in promoting effective access to housing for persons who live or who are at risk of living in a situation

<http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Ukraine2013_en.pdf> accessed 17 October 2015.

²⁶⁵ *European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands*, Collective Complaint No. 86/2012, paras. 66, 67.

²⁶⁶ *Médecins du Monde - International v. France*, Collective Complaint No. 67/2011, paras. 58-60.

²⁶⁷ *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Collective Complaint No. 58/2009, para. 98.

of social exclusion.²⁶⁸

In Portugal, the Committee held that the inability and unwillingness of central authorities to correctly oversee/coordinate the implementation of housing programmes at a local level, taking into consideration the specific situation of Roma, for instance by taking action against those municipalities where housing projects have led to the isolation or segregation of Roma, demonstrates the lack of an “overall and coordinated approach” in this area, amounting to a violation of Article E taken in conjunction with Article 30.²⁶⁹

Although Georgia is not bound by Article 30, the Georgian legal research group noted that the exemption from income taxes covers only people with disabilities from childhood; as for other vulnerable groups like homeless persons, families and their members who have problems in deprivation, poverty and persons with special needs, they are not able to use relevant support and opportunity needed.²⁷⁰

In addition, and although noting that Greece is not bound by Article 30, the Greek legal research group highlighted that the impact of austerity measures can be inferred by means of the transformation of the welfare state realised by the Greek government and it is, in a way, reflected by today’s high percentages of vulnerable groups. The reduction of salaries under Laws nos. 3833/2010, 3845/2010, 3899/2010, the reduction of the lowest income under Law no. 4093/2012 and as a result, the reduction of the subvention of unemployment predicted for under Joint Ministerial Decision no. 3800/359/1.3.2012, resulted in a fall of the poverty threshold, increasing poverty and making the already poor people poorer.²⁷¹ Through Law n. 4021/2011, a special tax ‘haratsi’ was imposed on built surfaces with electricity connection, and was levied via electricity bills. The sanction for non-payment was the interruption of electricity connection, resulting in material deprivation of electricity. According to a part of the majority in decision n. 1972/2012 of the Greek Council of State, which annulled this specific sanction, this sanction infringed the right to a decent living.²⁷² As far as Roma population in Greece is concerned, the negative impact of austerity measures is, somewhat, confirmed by the

²⁶⁸ *Ibid.*, para. 102.

²⁶⁹ *European Roma Rights Centre (ERRC) v. Portugal*, Collective Complaint No. 61/2010, para. 62.

²⁷⁰ Final Report, 585.

²⁷¹ *Ibid.*, 666.

²⁷² Greek Council of State (Plenary Session), Judgment No. 1972 (2012), thought 25. Final Report, 667.

Conclusions of the ECSR,²⁷³ as well as by the ECtHR jurisprudence. Under the National Strategic Reference Framework 2007-2013, a programme is being implemented to assure access to education for the vulnerable groups.²⁷⁴ This measure is in conformity with Article 30 of the ESC. Furthermore, in order to assure social integration in Greece, the National Centre of Social Solidarity has been created, providing short-period hosting hostels and social hostels for the homeless.²⁷⁵ These measures are in conformity with Article 30 of the ESC. A series of measures have been taken with a remarkable delay or with lack of coordination, which is inferred by the impact of austerity measures, as well as the high percentages of poverty and social exclusion.²⁷⁶

Conclusion

To conclude, the majority of European States, reportedly all except Norway, have adopted austerity measures in response to the economic crisis. There have been good and bad practices, however, and all have faced challenges in their attempt to combat the economic crisis as well as they could, with regard to their financial resources. Mostly, austerity measures have been linked with an increase in poverty levels. In 2013, more than a third of the population was at risk of poverty or social exclusion in five Member States: Bulgaria (48.0%), Romania (40.4%), Greece (35.7%), Latvia (35.1%) and Hungary (33.5%). On the contrary, the lowest shares of persons being at risk of poverty or social exclusion were recorded in the Czech Republic (14.6%), the Netherlands (15.9%), Finland (16.0%) and Sweden (16.4%). Among Member States for which data was available, the at-risk-of-poverty or social exclusion rate has increased from 2008 to 2013 in most of the Member States, the only decreases being recorded in Poland (from 30.5% in 2008 to 25.8% in 2013), Romania (from 44.2% to 40.4%), Austria (from 20.6% to 18.8%), Finland (from 17.4% to 16.0%), Slovakia (from 20.6% to 19.8%), the Czech Republic (from 15.3% to 14.6%) and France (from 18.5% to 18.1%).²⁷⁷ Living standards, as

²⁷³ Final Report, 669. Council of Europe, 'Greece and the European Social Charter' (Country Factsheets, Greece) <http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Greece_en.pdf> accessed 8 April 2015.

²⁷⁴ Final Report, 672. Operational Programme 'Human Resources Development (EPANAD)' <<http://www.epanad.gov.gr/default.asp?pID=13&la=1>> accessed January 20 2014 [Greek].

²⁷⁵ Final Report, 673.

²⁷⁶ *Ibid.*, 675.

²⁷⁷ Eurostat: At risk of poverty or social exclusion in the EU28, 4 November 2014, available at <<http://ec.europa.eu/eurostat/documents/2995521/6035076/3-04112014-BP-EN.pdf/62f94e70-e43a-471f-a466-2e84d1029860>>, accessed 31 October 2015.

measured by the median equivalised disposable income, fell in 15 Member States in 2010 compared with a year earlier, after adjusting for inflation.²⁷⁸

It is a common result that austerity measures hit persons living without adequate living standards the hardest. According to Eurostat, it seems that the most vulnerable group is children. In 2011, 27% of children (aged 0-17) in the EU-27 were at risk of poverty or social exclusion (AROPE) compared to 24.3 % of adults (18-64) and 20.5 % of the elderly (65 or over). Children with a migrant background were at a greater risk of poverty than children whose parents were born in that country.²⁷⁹

The most affected countries are seen as Greece, Italy, Portugal and Spain, which has probably also been a result of their governmental crisis and thus lack a coordinated approach. Nonetheless, it would be preferable to see a more widespread ratification of Article 30. The reasons for non-adoption were usually the States' awareness of their lack of possibility of respecting it. More effort will have to be put into respect for social rights as such.

²⁷⁸ Eurostat, Living standards falling in most Member States - Issue number 8/2013, 22 March 2013, available at <<http://ec.europa.eu/eurostat/en/web/products-statistics-in-focus/-/KS-SF-13-008>>, accessed 31 October 2015.

²⁷⁹ Eurostat: Children were the age group at the highest risk of poverty or social exclusion in 2011 - Issue number 4/2013, 26 February 2013, available at <<http://ec.europa.eu/eurostat/en/web/products-statistics-in-focus/-/KS-SF-13-004>>, accessed 31 October 2015.

5. Persons with disabilities

As reported by the Secretary General Thorbjørn Jagland in 2013 on the occasion of the International Day of Persons with Disabilities:

Around the 15% of the European population has some form of disability. In some members states persons with disabilities are still institutionalised against their wish. Some are deprived of the right to vote. Others put aside the mainstream society, to attend specialised and segregated schools. Those who do find a work are often employed in sheltered workshop without any protection under national labour law provision. European society and member states' authorities must safeguards the right of all people to full participation in society and should encourage active citizenship and inclusion from a very early stage.²⁸⁰

For this purpose, Article 15 protects the right to vocational training, rehabilitation and social settlement of disabled persons, in respect of all disabilities; physical, mental or intellectual.²⁸¹ In particular under the provision of the Revised Charter the country has to have non-discriminatory legislation.²⁸² Furthermore, a compelling justification has to be given in case children with disabilities are not integrated into mainstream education and there must be a possibility of remedying a mistake of putting a child into a specialised school.²⁸³ In addition as reported by the Commissioner for Human Rights “the life-long exclusion of people with disabilities starts with segregation in “special” schools or “special” classes”.²⁸⁴ Besides, disabled persons have the right to enter and to remain in employment. As the tendency is to prepare disabled jobseekers to move into open market, “sheltered employment facilities must be reserved for those persons with disabilities who, due to their disability, cannot be integrated into the open labour market”.²⁸⁵ However, it perpetuates segregation and employees cannot benefit from the protection provided by ordinary labour law.²⁸⁶ Finally the Revised Charter underlines

²⁸⁰ Secretary General Thorbjørn Jagland, ‘*News 2013. Many peoples with disabilities are been deprived of basic human rights*’ <<http://goo.gl/3GIpJP>> accessed 30 September 2015

²⁸¹ Council of Europe, ‘*Rights of people with disability: Facts sheet on Article 15 of the Revised European Social Charter*’ <http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Theme%20factsheets/FactsheetDisabled_en.pdf> accessed 1 October 2015

²⁸² *Ibid.*

²⁸³ European Committee of Social Rights, *Digest of the Case of Law of the European Committee of Social Rights* (1 September 2008), <https://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf> accessed 21 September 2015 112

²⁸⁴ Council of Europe Commissioner for Human Rights Nil Muižnieks, ‘*Pitfall in the implementation of the human rights of persons with disabilities*’ (High-level meeting on disability: “Forum Inclusive Education to Inclusive Employment for People with Disabilities”, Riga, 11-12 May 2015) <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2756527&ScMode=1&DocId=2275652&Usage=2>> accessed 27 September 2015

²⁸⁵ *Ibid.*, 281 and 283.

²⁸⁶ *Ibid.*, 284.

that for persons with disabilities to fully and effectively enjoy their rights, a coherent state policy which must be implemented in a clear legal framework is required.²⁸⁷ And along these lines, the adjustment measures are meant to overcome the barriers of communication and to give access to disabled persons to transport, cultural and leisure activities.²⁸⁸

The Right to Independence, Social Integration and Participation in the Life of the Community of Persons with Disabilities (Article 15)

According to the European Committee Finland is in conformity with the Article 15 of the ESC.²⁸⁹ In particular, the Finnish legal research group highlights that all people with disabilities are provided with a personal services plan and the disabilities services are mainly the responsibility of municipalities. Hence education is based on the principle of community schooling and integration, but there are still special schools and special needs vocational institutes. Furthermore, according to the Finnish legal research group, in 2011 the employment rate of people with work limitation caused by health condition was more than 50%.²⁹⁰

Also Germany, as reported by the German legal research group, is in conformity with Article 15 §1 and 15 §2.²⁹¹ Furthermore, regarding higher education all students benefit from equal access to courses and facilities at university.²⁹² However, when in time of economic crisis, the employer can settle a large number of operations to maintain profitability which might result in work dismissal. In those cases there is no protection for disabled persons under section 85 and seq. SGB IX.²⁹³

Despite the European Committee of Social Rights' conclusions that Italy is in conformity with the Article 15 §1 and 15 §3, it defers its conclusions regarding Article 15 §2.²⁹⁴ Notwithstanding, the Italian legal research group states that since for more than twenty years, the inclusion of persons with special needs in school and in employment has improved in Italy.²⁹⁵ However, it is required to harmonise

²⁸⁷ *Ibid* 281 and 283.

²⁸⁸ *Ibid*

²⁸⁹ European Committee of Social Rights, '*Conclusions 2012. (Finland)*', 2012, <www.coe.int/dghl/monitoring/socialcharter/Conclusions/State/Finland2012_en.pdf> accessed 21 September 2015

²⁹⁰ Final Report 474.

²⁹¹ European Committee of Social Rights, '*Conclusions XX-1 (2012). (Germany)*', 2012, <www.coe.int/dghl/monitoring/socialcharter/Conclusions/State/GermanyXX1_en.pdf> accessed 21 September 2015

²⁹² Final Report 630.

²⁹³ Final Report 634.

²⁹⁴ European Committee of Social Rights, '*Conclusions 2012. (Italy)*', 2012, <www.coe.int/dghl/monitoring/socialcharter/Conclusions/State/Italy2012_en.pdf> accessed 21 September 2015

²⁹⁵ Final Report 837.

national laws to envisage and to counter the negative effects of the economic crisis on disabled employment.²⁹⁶

In the same way, Malta respects the provisions under Article 15 but the Committee has deferred its conclusion on Article 15 §2.²⁹⁷ In particular, the Maltese legal research group found that in 2012, the news of the government's financial cuts concerning the *Aġenzija Sapport* (Support Agency) generated ONGs concerns²⁹⁸, but the European Social Fund is to be put into force again.²⁹⁹

Another state in conformity with Article 15 is Norway.³⁰⁰ Notably the Norwegian legal research group states that during the financial crisis, the Oil Fund prevented financial cuts, and as a result there were not any austerity measures taken which could affect persons with disabilities.³⁰¹

As well as Portugal,³⁰² however the Portugal legal research group reports that since 2008 the decreasing and the postponement of social and independence programmes has worsened the situation for people with disabilities, and their income largely depends on subsidies.³⁰³

Moreover, the Polish legal research group finds that the Anti-crisis Act 2009-2013 did not adopt any measures which, reportedly, had an impact on the functioning of the labour market for disabled or on education or vocational training for disabled persons, whose enjoyment is guaranteed by Article 15 of the ESC.³⁰⁴

According to the European Committee of Social Rights, Romania is in conformity with the provisions of Article 15 §2, but defers its conclusions on Article 15 §1³⁰⁵ and finally Article 15 §3 has not been accepted.³⁰⁶ Besides, the Romanian legal research group underlines that the only effects registered in the disability policy were small cuts which were forced upon the state by the International Monetary Fund.³⁰⁷

As a result of the pending receipt of the information requested, the Committee defers its conclusion regarding the Russian Federation.³⁰⁸ Despite the Russian legal research group reporting no relevance

²⁹⁶ *Ibid*, 839.

²⁹⁷ European Committee of Social Rights, 'Conclusions 2012. (Malta)', 2012, <www.coe.int/dghl/monitoring/socialcharter/Conclusions/State/Malta2012_en.pdf> accessed 21 September 2015

²⁹⁸ Final Report 947.

²⁹⁹ *Ibid*, 948

³⁰⁰ European Committee of Social Rights, 'Conclusions 2012. (Norway)', 2012, <www.coe.int/dghl/monitoring/socialcharter/Conclusions/State/Norway2012_en.pdf> accessed 21 September 2015

³⁰¹ Final Report 1014.

³⁰² European Committee of Social Rights, 'Conclusions 2012. (Portugal)', 2012, <www.coe.int/dghl/monitoring/socialcharter/Conclusions/State/Portugal2012_en.pdf> accessed 21 September 2015

³⁰³ Final Report 1121.

³⁰⁴ *Ibid*, 1061

³⁰⁵ European Committee of Social Rights, 'Conclusions 2012. (Romania)', 2012, <www.coe.int/dghl/monitoring/socialcharter/Conclusions/State/Romania2012_en.pdf> accessed 21 September 2015

³⁰⁶ Council of Europe, 'Romania and the European Social Charter', <www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Romania_en.pdf> accessed 1 October 2015

³⁰⁷ Final Report 1150.

³⁰⁸ European Committee of Social Rights, 'Conclusions 2012 (Russian Federation)', 2012,

of austerity measures on the measures implemented in the last five years, the Minister of Finance has created a draft act, with the purpose of cutting approximately USD11.5 billion and reducing funding for NGOs which support vulnerable group of population.³⁰⁹

Also regarding Ukraine, the Committee defers its conclusions³¹⁰, and in particular today according to the Ukrainian legal research group in times of armed conflict the paternalism model applied in social politics prevents cuts.³¹¹

Finally, the United Kingdom follows the provisions under Article 15 §1 and 15 §2.³¹² In the UK, as described by the British legal research group, the budget cuts are estimated at GBP 9 billion (among all the end of the Independent Living Fund, the restriction on Employment and Support Allowance, and the introduction of the Personal Independence Payment) is targeted at people who need more protection and in particular disabled persons who bear disproportionate costs of the re-allocation of resources which is estimated to be 19 times bigger than any other British citizen. In monetary terms, it amounts to GBP 8,832 per person (GBP 467 as the rest of the population, GBP 934 as people in poverty, GBP 1,081 as the result of disability benefit cuts and finally GBP 6,349 as the result of the social care cuts).³¹³

Albania ratified the Revised European Social Charter although it did not accept Article 15.³¹⁴ The Albanian legal research group underlines that austerity measures have produced increasingly negative effects on the labour market and increasing social insurance outlays (in the period 2008-2010 by 52%), as a consequence the resources available for education significantly decreased (-0,5% of GDP).³¹⁵ According to the European perspective the new (draft) Social Protection Strategy highlights the Albanian Government's commitment to reform the assessment system for persons with disability increasing the transparency of the Disability Cash Entitlements through better data systems, establish/strengthen multidisciplinary teams at central/regional level for assessment of disability, develop an integrated social services system in synergy and to compliment the cash payments, review the legislation to comply with the best international standards, and establish and strengthen the

<www.coe.int/dghl/monitoring/socialcharter/Conclusions/State/RussianFederation2012_en.pdf> accessed 21 September 2015

³⁰⁹ Final Report 1181-1182.

³¹⁰ European Committee of Social Rights, 'Conclusions 2012 (Ukraine)', 2012, <www.coe.int/dghl/monitoring/socialcharter/Conclusions/State/Ukraine2012_en.pdf> accessed 21 September 2015

³¹¹ Final Report 1513.

³¹² European Committee of Social Rights, 'Conclusions XX-1 (2012) (United Kingdom)', 2012, <www.coe.int/dghl/monitoring/socialcharter/Conclusions/State/UnitedKingdomXX1_en.pdf> accessed 21 September 2015

³¹³ Final Report 1442-1443; Simon Dufy, 'A Fair Society? How the Cuts Target Disabled People' (The Centre for Welfare Reform, 2013) 22-24

³¹⁴ Council of Europe, 'Albania and the European Social Charter', <www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Albania_en.pdf> accessed 1 October 2015

³¹⁵ Final Report 42.

monitoring and inspection mechanisms for the quality of services offered for the persons with disability at local and central level.³¹⁶

According to the Minister of Education and Science of the Republic of Armenia's decisions, as reported by the Armenian legal research group,³¹⁷ the inclusion³¹⁸ of children with special needs is done on the general ground. However, the Armenian legal research group underlines that instead of inclusive education, the Republic of Armenia operates integration, since the lack of specialists and Institutions are not adapted to the needs of disabled persons.³¹⁹ While Article 15 §1 has not been one of the accepted provisions³²⁰, Article 15 §2 has been and there are still not any sufficient and efficient guarantees. Finally, as stated by the Armenian legal research group the Establishment of strategy for disabled persons' social protection period 2006-2015 ensures a full integration in all areas of the social life, in light of Article 15 §3.³²¹

In 2012, the European Committee for Social Rights deferred its conclusion regarding Austria, pending the information requested.³²² The Austrian legal research group highlights that in Austria there are still nine different branches of special needs school and there were 307 special needs school in 2014.³²³ However, the Federal Ministry of education announced that they will be abolished by 2020.³²⁴ Moreover, as reported by the Austrian legal research group, even though Austria has not ratified Article 15 §2³²⁵ but it has taken measures mentioned in the section,³²⁶ such as: *Entgeltbeihilfe* (long-term

³¹⁶ Republic of Albania, Ministry of Social Welfare and Youth, 'Recent developments on Social Inclusion, Social Protection, Gender Equality and Youth policies in Albania',

<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802ffd53>> accessed 1 November 2015

³¹⁷ Final Report 101.

³¹⁸ "Integration. Disabled people of all ages and/or those learners with 'Special Educational Needs' labels being placed in mainstream education settings with some adaptations and resources, but on condition that the disabled person and/or the learner with 'Special Educational Needs' labels can fit in with pre-existing structures, attitudes and an unaltered environment. For example: The child is required to "fit in" to what already exists in the school. Inclusion. Disabled people of all ages and/or those learners with 'Special Educational Needs' labels being educated in mainstream education settings alongside their non-disabled peers, where there is a commitment to removing all barriers to the full participation of everyone as equally valued and unique individuals. For example: Education for ALL". The Alliance for Inclusive Education, 'Inclusion is not integration', <http://www.allfie.org.uk/pages/useful%20info/integration.html>, accessed 2 November 2015

³¹⁹ Final Report 101-102.

³²⁰ Council of Europe, 'Armenia and the European Social Charter',

<www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Armenia_en.pdf> accessed 1 October 2015

³²¹ Final Report 105.

³²² European Committee of Social Rights, 'Conclusions XX-1(2012). (Austria)', 2012,

<www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/AustriaXX-1_en.pdf> accessed 21 September 2015

³²³ Final Report 149.

³²⁴ 'Sonderschule bis 2020 zur Ausnahme werden' (Der Standard), <<http://derstandard.at/2000004102169/Sonderschule-soll-bis-2020-zur-Ausnahme-werden>> accessed 21 September 2015

³²⁵ Council of Europe, 'Austria the European Social Charter',

<www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Austria_en.pdf> accessed 1 October 2015

³²⁶ Final Report 151.

subsidies), *Arbeitsplatzsicherungsbeihilfe* (short-term subsidies), *Arbeitsassistenten* (work assistance) and *persönliche Assistenten am Arbeitsplatz* ('PAA'; personal assistance at the workplace).³²⁷

Azerbaijan has not accepted Article 15 of the Revised ESC.³²⁸ Regarding education the Azerbaijani legal research group has found that a good range of benefits are presented in the legislative acts, which need to be implemented.³²⁹ Furthermore, the Employment Strategy of the Republic of Azerbaijan 2011-2015, for the Azerbaijani legal research group, provides an inclusion for disabled workers in the open market through vocational courses and counselling.³³⁰

In Bosnia and Herzegovina the provisions under Article 15 were not accepted.³³¹ Since 2008, according to Bosnia and Herzegovina's legal research group, the country has adopted a new approach in the area of disability;³³² among them the Council for Persons with Disabilities³³³ and the Fund for Vocational Rehabilitation and Employment of Persons with Disabilities (*FPRZOSI*)³³⁴ were established in 2010. However, they have been weakened by the economic crisis (lack of time and impairment of mandatory payment the Federal and Cantonal Employment Services' funds, a significant decrease of Federal budget grants, difficulties in collecting the funds for professional rehabilitation and employment benefits).³³⁵

Also Bulgaria did not ratify the provisions under Article 15.³³⁶ Among the relevant programmes and projects created by the government or by NGOs analysed by the Bulgarian legal research group Assistants for people with disabilities³³⁷ and the long term Strategy for employment of people with disabilities 2011-2020.³³⁸ However, the Bulgarian legal research group states that the measures are barely in line with the ESC. As a consequence of the weakness of authority control, and not of the measures' implementation or funding, many persons are not considered highly qualified workers and they do not find respective jobs.³³⁹ In 2009, Croatia signed the Revised European Social Charter, but the ratification process has not yet taken place.³⁴⁰ According to the Croatian legal research group, the

³²⁷ *Ibid* 152-153.

³²⁸ Council of Europe, 'Croatia and the European Social Charter', <www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Croatia_en.pdf> accessed 1 October 2015

³²⁹ Final Report 212.

³³⁰ *Ibid* 214-215

³³¹ Council of Europe, 'Bosnia and Herzegovina and the European Social Charter', <www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/BH_en.pdf> accessed 1 October 2015

³³² Final Report 252.

³³³ *Ibid* 253

³³⁴ *Ibid* 253-254

³³⁵ *Ibid* 255

³³⁶ Council of Europe, 'Bulgaria and the European Social Charter', <www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Bulgaria_en.pdf> accessed 1 October 2015

³³⁷ Final Report 301.

³³⁸ *Ibid* 302

³³⁹ *Ibid* 304

³⁴⁰ Council of Europe, 'Croatia and the European Social Charter', <www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Croatia_en.pdf> accessed 1 October 2015

harmonisation between anti-discrimination and labour legislation, as well as a social awareness is the key to provide disabled persons equal opportunity in the open employment.³⁴¹ As a result of the Employment of the Disabled person Act, the Anti-discrimination Act and the measures of the Croatian Employment Service last year an additional 7% of persons with disability were employed, this was the best result in ten years. The temporal nature of these measures is the biggest disadvantage, however. Furthermore, the Croatian legal researched group stated that if the ratification process was concluded, the new legal system (through the vocational training, employment quota and appropriate access to workplace) would not amount to a breach.

Despite the fact that Cyprus did violate Article 15 of the ESC³⁴², on the assumption the Committee Conclusion states that disabled people are not effectively protected against discrimination (housing, transport, cultural and leisure activities but there are considerable improvements in technological communication). In particular, Cyprus's legal research group states that children have suffered the consequences of austerity measures and cuts both on inclusive and special education.³⁴³ Furthermore, according to the legal research group of Cyprus, since 2013, the financial cuts have had particular effects on persons with disabilities and their families which have sharply increased in 2008-2010 by 8.11%, due to direct cuts to benefits on a scale ranging from 20% to 40%.³⁴⁴

Since 2002,³⁴⁵ France, according to the French legal research group, was repeatedly found in violation of Article 15, on the ground that it failed to achieve inclusive education for persons with autism. Despite this, the French legal research group states that the Law for equal opportunities and the integration of disabled people³⁴⁶ introduced the obligation for schools to integrate disabled children in the mainstream school system. The European Committee of Social Rights in its decision *Action européenne des handicapés v. France*, states that 64% of all autistic children were deprived of formal education.³⁴⁷ Moreover, as reported by the French legal research group, measures such as Autism Plan aimed at improving scientific knowledge, professional training, assistance to disabled children and individualised processes but the number of children depriving of schooling is more than 20,000, and around 5,000 children are placed in Belgium Institutions.³⁴⁸ Moreover, the provision of the Labour Code the *Conseil d'Etat* provides a better definition of the disabled worker under the French Law and

³⁴¹ Final Report 351.

³⁴² Council of Europe, 'Cyprus and the European Social Charter', <www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Cyprus_en.pdf>, accessed 1 October 2015

³⁴³ Final Report 415.

³⁴⁴ *Ibid* 414-415

³⁴⁵ *Autism-Europe v. France* (No. 13/2002) [2003] European Committee of Social Rights

³⁴⁶ Final Report 542.

³⁴⁷ *Action européenne des handicapés v. France* (No. 81/2012) [2013] European Committee of Social Rights.

³⁴⁸ Final Report 544; Academic Network of European Disability Experts, *ANED country report on equality of educational and training opportunities for young disabled people* (May, 2010), <http://www.disability-europe.net/content/aned/media/FR-12-ANED%202010%20Task%205%20request-11%20-%20report_final.pdf>, accessed 3 October 2015, 11; European Committee of Social Rights, 'Conclusions 2012. (France)', 2012, <www.coe.int/dghl/monitoring/socialcharter/Conclusions/State/Francea012_en.pdf>, accessed 21 September 2015.

the EU Directive 2000/78³⁴⁹ with the aim to enable self-employed workers, professional workers, legal workers, magistrates or public agents working within the Parliament to benefit from the protective legislation.³⁵⁰ According to the European Committee of Social Rights, Georgia is not in conformity with Article 15 §3 of the ESC on assumption that there is an ineffective enjoyment for disabled of the protection against discrimination regarding housing, transport, communications and leisure activities.³⁵¹

However, according to the Georgian legal research group, it is noteworthy to mention that facility adjustments such as traffic lights and parking places which are essential to promote integration, have been brought about due to a number of different reforms.³⁵²

As well as Georgia, Greece has violated the Article 15 §2 of the ESC on the ground that for disabled persons there is not equal access. Furthermore, considering the absence of the information required for the Committee there is a breach of Article 15 §1.³⁵³ However, the number of students continuing education after primary school is still too low.³⁵⁴ Despite the lack of concise data according to the Greek legal research group, the Greek Ombudsman notes cuts on financial resources regarding permanent educative, special and educative helping professionals.³⁵⁵

Hungary has also violated the provisions of Article 15.³⁵⁶ In particular, the Mental Disability Advocacy Centre (MDAC) provides six indicators that suggest if the provisions under article 15 §3 are implemented in Hungary.³⁵⁷ According to the MDAC's visit to the Ray of Hope Habilitation Institution (*Reménysugar Habilitációs Intézet*) only one person, in a period of 5 years moved out and there were 25 adults and children with disabilities living together. Furthermore, the deinstitutionalisation policy embraced by the Hungarian Ministry of National Resources whose funds are estimated around EUR 24 million (HUF 7 billion), has created '*lakócentrum*', a group of buildings divided into different flats where up to 50 disabled persons live together. However, the MDAC and other NGOs brought

³⁴⁹ Council Directive 2000/78/EC, (Establishing a general framework for equal treatment in employment and occupation) 2000.

³⁵⁰ Case n. 301572 [2010]; Case n. 347703 [2012]; Case n. 298348 [2009] Administrative Supreme Court Lebon Vol. IV [2011] [French].

³⁵¹ European Committee of Social Rights, '*Conclusions 2012. (Georgia)*', 2012, <www.coe.int/dghl/monitoring/socialcharter/Conclusions/State/Georgia2012_en.pdf> accessed 21 September 2015

³⁵² Final Report 591.

³⁵³ European Committee of Social Rights, '*Conclusions XX-1. (2012). (Greece)*', 2012, <www.coe.int/dghl/monitoring/socialcharter/Conclusions/State/GreeceXX1_en.pdf> accessed 21 September 2015.

³⁵⁴ European Committee of Social Rights, '*Conclusions XX-1. (2012). (Greece)*', 2012, <www.coe.int/dghl/monitoring/socialcharter/Conclusions/State/GreeceXX1_en.pdf> accessed 21 September 2015.

³⁵⁵ Final Report 682.

³⁵⁶ European Committee of Social Rights, '*Conclusions 2012. (Hungary)*', 2012, <www.coe.int/dghl/monitoring/socialcharter/Conclusions/State/Hungary2012_en.pdf> accessed 21 September 2015.

³⁵⁷ Mental Disability Advocacy Centre, '*Parallel report to the European Committee of Social Rights on Article 15(3) of the Revised European Social Charter with regard to HUNGARY of Social Rights*', 2012, <http://www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/MDACShadowReport2012_en.pdf> accessed 2 November 2015.

this matter to the attention of the European Commission, as a 50-bed residential structure is anything other than a segregated institution.³⁵⁸ Besides, the Hungarian legal research group reports that in 2007, the country is in line with the Europe 2020 Strategy plan by 2020 the employment rate between 25-64 years it is expected to be 75%, including disabled workers.³⁵⁹ The objective of the Strategy is to ensure the full utilisation of the labour potential by encouraging disabled to participate in the labour market, in order to achieve this aim a revision of the regulation on disability declaration is under preparation.³⁶⁰ At the moment there are no conclusions available from the European Committee of Social Rights upon the provisions of Article 15.

The Latvian legal research group finds that since the Latvian Presidency of the Council of Europe in 2015, Latvia has embraced many reforms and measures in the national policy concerning people with disabilities.³⁶¹ In addition, according to the Latvian legal research group, there will be a complete new and changed approach relating to disability policy in Europe, as the Minister of Welfare of Latvia has promised.³⁶²

In relation to Spain, the Commissioner for Human Rights welcomed the long-standing inclusion policy but he has expressed his concerns about the serious impact that budgetary cuts have had on the living conditions of these persons and their social inclusion. Furthermore, the Commissioner is particularly worried about the potential impact of shrinking educational budgets on the inclusion of children with disabilities in mainstream education, taking into account the already high drop-out rate among these children in Spain and on the implementation of the 2006 law on personal autonomy and care for dependency. However, it is important to underline that no impact assessment of budgetary cuts on persons with disabilities has yet been carried out.³⁶³ In particular, as reported by the Spanish legal research group, the Commissioner's report of June 2013 caused a huge commotion in the country which resulted in a direct reply of the Ministries of Education, Health and Justice.³⁶⁴

During the Slovak Republic's assessment, the Committee found that there was a violation of Article 15³⁶⁵ since the lack of information, numbers and data regarding the inclusion of disabled into mainstream education, the employment and unemployment rates of the disabled, the mandatory

³⁵⁸ *Ibid.*

³⁵⁹ Final Report 791.

³⁶⁰ Government of the Republic of Hungary, '*National Reform Programme of Hungary*', <http://ec.europa.eu/europe2020/pdf/nrp/nrp_hungary_en.pdf> accessed 30 October 2015.

³⁶¹ Final Report 898-899.

³⁶² *Ibid* 904.

³⁶³ Council of Europe Commissioner for Human Rights Nil Muižnieks, '*Report*' (Following his visit to Spain from 3 to 7 June 2013) <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2389885&ecMode=1&DocId=2077824&Usage=2>> accessed 2 November 2015.

³⁶⁴ Final Report 1353.

³⁶⁵ European Committee of Social Rights, '*Conclusions 2012. (Slovak Republic)*', 2012, <www.coe.int/dghl/monitoring/socialcharter/Conclusions/State/Slovakia2012_en.pdf>, accessed 21 September 2015.

quota, the updating of information regarding sheltered employment in the Slovakian report.³⁶⁶ Besides, a new programme from the Slovakian Ministry of Education Concept on Education and Training of Disabled Children 2014-2020³⁶⁷, as reported by the Slovakian legal research group, creates a new policy on education, which implements individual skills and enable disabled to the fullest extent possible to enjoy the teaching process.

Slovenia is also not in conformity with the revised ESC³⁶⁸, as a consequence of the failure to integrate child with disabilities into the mainstream education. However, the Slovenian legal research group found that recently the legal framework seems to offer good solutions with open space for improvement.³⁶⁹ Unfortunately since 2015, according to the Slovenian legal research group, the additional professional help will not be financed any longer, although, teachers are still obliged to perform the additional professional help.³⁷⁰

In the Netherlands, according to the European Committee of Social Rights, the situation there is in conformity with the provisions under Article 15 §1 and 15 §3. However, there is a violation regarding Article 15 §2 of the ESC³⁷¹ on the ground of the lack of facts numbers and data regarding the percentage of employment and of case law regarding reasonable accommodation in the workplace. For the above-mentioned reasons it has not been established that persons with disabilities are guaranteed an effective equal access to employment. In addition, concerns were presented by the Commissioner for Human Rights³⁷²; according to the Dutch legal research group, the austerity measures cannot be yet consider a breach of the ESC however, they have a huge impact on human rights.³⁷³ The Dutch legal research group states that in order to fulfil an efficient management of the resources a reassessment of disability benefits eligibility, a cut of allowances and available working places were introduced, which has a huge impact on the education system as well.³⁷⁴

³⁶⁶ European Committee of Social Rights, 'Conclusions 2012. (Slovak Republic)', 2012, <www.coe.int/dghl/monitoring/socialcharter/Conclusions/State/Slovakia2012_en.pdf>, accessed 21 September 2015.

³⁶⁷ Final Report 1221-1222.

³⁶⁸ European Committee of Social Rights, 'Conclusions 2012. (Slovenia)', 2012, <www.coe.int/dghl/monitoring/socialcharter/Conclusions/State/Slovenia2012_en.pdf>, accessed 21 September 2015.

³⁶⁹ Final Report 1290.

³⁷⁰ *Ibid* 1289.

³⁷¹ European Committee of Social Rights, 'Conclusions 2012. (The Netherlands (Kingdom in Europe))', 2012, <www.coe.int/dghl/monitoring/socialcharter/Conclusions/State/Netherlands2012_en.pdf> accessed 21 September 2015.

³⁷² Council of Europe Commissioner for Human Rights Nil Muižnieks, 'Report following his visit to the Netherlands from 20 to 22 May 2014', <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2662990&SecMode=1&DocId=2218416&Usage=2>> accessed 27 September 2015.

³⁷³ Final Report 1396.

³⁷⁴ *Ibid*.

Conclusion

As reported by the national legal research groups, persons with disabilities have to bear a disproportionate cost of the effects of austerity measures but if we consider that for every ten Europeans there is one disabled person there is still a too high a cost to pay.³⁷⁵ Furthermore, children's rights to a full inclusion into mainstream education are denied in most of the countries covered by the study (e.g. Azerbaijan, Austria, Cyprus, Bulgaria, France, Greece, Slovakia and Slovenia). In particular, the collective complaints concerning France³⁷⁶ (and Belgium)³⁷⁷ highlight that the State's failure to provide full inclusion into the mainstream education. As a consequence of the lack of education or vocational training, meeting special needs, and the persistence of illegal discriminatory practices, the chances to enter and to remain in employment for disabled are significantly decreasing.³⁷⁸

Regarding employment, the national legal research groups have found that in most of the States covered by the study, employers hire disabled people according to legally based quotas, they have to make reasonable adjustments in order to give disabled people access to the work place and they are entitled to fiscal benefits (e.g. Croatia, France, Germany, Hungary, Russia, Slovenia, the Netherlands and United Kingdom). However, the current practice of some States in which employers can pay a fee for the unfulfilled quota might be strongly questionable (e.g. Austria and Romania). Since the financial crisis began, European States, instead of implementing inclusion measures, have settled budgetary cuts and efficiently rearranging finances which could compromise the results achieved so far (e.g. Spain, Greece, the Netherlands and U.K.). In particular, in the Communication on the Situation of Disabled People it has expressed serious concern at the level of labour market exclusion of persons with disabilities, not only from the perspective of equal opportunities but also from an economic imperative to make the most of the untapped potential of disabled people.³⁷⁹

Nevertheless, in the last number of years persons with special needs mostly rely on social benefits, which prevent them from self-managing their own lives and having an active role in society. As a result, it has been reported that the postponed inclusion projects, families and NGOs are in charge of

³⁷⁵ Council of Europe, 'Persons with disabilities. Removing barriers to creates an inclusive and accessible society' <<http://www.coe.int/en/web/portal/people-with-disabilities>> accessed 14 October 2015.

³⁷⁶ *Action européenne des handicapés v. France* (No. 81/2012) [2013] European Committee of Social Rights.

³⁷⁷ According to the European Committee of Social Rights in Belgium only over 6% of school children are in need of some sort of reasonable educational accommodation but, 85% attend special schools that exist in separate buildings, segregated from the mainstream educational system. *Mental Disability Advocacy Centre v. Belgium* (No. 109/2014) [2014] European Committee of Social Rights.

³⁷⁸ Academy Network of European Disability experts 'The employment of disabled people in European countries', <<http://www.disability-europe.net/theme/employment/employment-disabled-people-european-countries>>, accessed 31 October 2015.

³⁷⁹ European Commission, 'Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. Situation of disabled people in the European Union: the European Action Plan 2008-2009', COM (2007), 26 November 2007, <<http://ec.europa.eu/transparency/regdoc/rep/2/2007/EN/2-2007-1548-EN-1-0.Pdf>> accessed 29 October 2015.

fulfilling the lost benefits (e.g. Bosnia and Herzegovina). In the EU, more than 1 out of 5 persons with disabilities are at risk of poverty (21.1%) as compared to 14.9% for persons without disabilities, a difference of 6.2 points and the higher risk of poverty for persons with disabilities is present in all Member States without exception; only in a very few countries is the risk of poverty rate for persons with disability slightly higher than for persons without disability or less than 4%.³⁸⁰ In addition, austerity measures are a clear signal that a new disabled policy it is needed, the financial crisis could be seen as a chance to finally create a real inclusion policy not only for persons with disability but for vulnerable and marginalised. However, it is compulsory to change the approach related to disability policy. In accordance to the Council of Europe Commissioner for Human Right Nils Muižnieks's keynote speech:

We, governments, parliaments, international organisations, need to abandon the arrogance of thinking that we know better than “them”. Persons with disabilities do not need paternalism or charity: like everyone else, they are full holders of rights; and, like everyone else, they are entitled to the attention, empathy and humility one owes to a fellow human being whose human rights have been violated.³⁸¹

³⁸⁰ Council of Europe Commissioner for Human Rights Nil Muižnieks, *Monitoring the Human Rights of Persons with Disabilities in Europe* (International Symposium “Human Rights and Disability”, Vienna, Austria, 10-11 April 2014) <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2503663&SecMode=1&DocId=2130702&Usage=2>> accessed 14 October 2015.

³⁸¹ Hungary 0.7%, Poland 1.2%, Romania 2.9% Slovak Republic 1.2%. European Foundation Centre, *Assessing the impact of European governments' austerity plans on the rights of people with disabilities*, http://www.enil.eu/wp-content/uploads/2012/12/Austerity-European-Report_FINAL.pdf, accessed 31 October 2015.

6. Children and Young Persons Rights and Youth Unemployment

Article 17 of the Social Charter covers all persons residing within a country that are below the age of 18 years. This holds that, unless applicable national law stipulates otherwise, the age of majority is attained at an earlier age³⁸². The article is divided in two paragraphs, where 17 §1 regulates the legal status of the child; the right to education; children in public care; protection of children from violence, ill-treatment and abuse; and the status of young offenders. 17 §2 stipulates that primary and secondary education must be available and free of charge for all. This necessitates arrangements that can provide assistance for children in vulnerable groups. The effects of the financial crisis that occurred in 2009 were substantial in all fields of the economy, and have had to some degree an impact on all countries of the European Union and Council of Europe. The ability to uphold the guaranteed rights of children are in this context just as important, as the potential negative effects on the younger generation will shape the future of their countries. This report will summarize the main findings on the effects of the crisis on these rights guaranteed by the charter.

The Right to Education (Article 17 § 1 a))

Article 17 §1 of the revised social charter integrates the rights guaranteed by the United Nations Convention on the Rights of the Child, and is to be interpreted in light of this convention.³⁸³ It follows directly from §1 a) that the state parties are obligated to ensure children and young persons have the care, assistance and education they need. In this lies a particular obligation to establish and maintain institutions and services that are adequate and sufficient for this purpose. Education must be equally accessible to all students, without prejudice to their situation. Vulnerable groups such as children from minorities, children seeking asylum, refugee children, children in hospital and institutional care, or those otherwise disadvantaged must receive the same opportunities.³⁸⁴

To ensure this, the state-parties are required to establish and maintain an education system, comprising of both primary and secondary education. Every child has the right to education. The objective of the article is that enrolment in school should reach 100% of those of the relevant age. Attendance must

³⁸² Digest of the case law of the European Committee of Social Rights, 1 September 2008 120-121.
<https://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf>

³⁸³ Conclusions XV-2, Statement of Interpretation Article 17 26.

³⁸⁴ Digest of the case law of the European Committee of Social Rights, 1 September 2008 120-121.
<https://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf>

therefore be compulsory until the minimum age of employment and free of any direct costs. Indirect costs need to be imposed with caution.³⁸⁵

To be both accessible and effective there must be an adequate number of schools, fairly distributed over the geographical area, particularly between rural and urban areas to reduce long travel. To ensure that the education reaches a satisfactory level of quality there must also be a reasonable ratio between the number of teachers and class sizes.³⁸⁶

From the information gathered in the National Reports of the ELSA Legal Research Groups, it seems that at least on paper all countries have laws in place that fulfils the obligations under Article 17 § 1 a. Primary and secondary education is free and compulsory to all within the relevant age, up until the age at which they are eligible to enter into the working economy. In 2014, the average enrolment in primary and lower-secondary (5-14 years) was 98% for the EU21 countries.³⁸⁷

However, in the countries most affected by the financial crisis, MoUs required a reduction in spending for education.³⁸⁸ In Greece, the State budget for the Ministry of Education was reduced by over EUR 1,100 million in 2014. Similarly, in Portugal the MoU established that the costs in education must be rationalised with the aim of saving EUR 195 million.³⁸⁹ The measures taken to reduce the budgets, in Greece and Italy, among others, were the closing of schools. In Italy the effect of this was by-and-large regional. In Sicily and Sardinia, two-thirds of schools were merged. In Greece, 780 schools units in primary education were closed, with plans to continue the mergers of another 231 units in 2014-2015.³⁹⁰ The effect of this merging was in all the countries reviewed in the study, except for Belgium,

³⁸⁵ Directorate General for Internal Policies, *'The impact of the crisis on fundamental rights across Member States of the EU – Comparative analysis'* (February 2015) 43.

<[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510021/IPOL_STU\(2015\)510021_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510021/IPOL_STU(2015)510021_EN.pdf)> accessed 3 November 2015.

³⁸⁶ Conclusions 2003 174.

³⁸⁷ OECD, *'Education at a Glance'* (October 2014) 312. <<http://www.oecd.org/edu/Education-at-a-Glance-2014.pdf>> accessed 15 November 2015.

³⁸⁸ Directorate General for Internal Policies, *'The impact of the crisis on fundamental rights across Member States of the EU – Comparative analysis'* (February 2015) 43.

<[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510021/IPOL_STU\(2015\)510021_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510021/IPOL_STU(2015)510021_EN.pdf)> accessed 3 November 2015.

³⁸⁹ Directorate General for Internal Policies, *'The impact of the crisis on fundamental rights across Member States of the EU - Country Report on Greece'* (February 2015) 13.

<[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510014/IPOL_STU\(2015\)510014_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510014/IPOL_STU(2015)510014_EN.pdf)> accessed 3 November 2015; *'Country Report on Portugal'* (February 2015) 18.

<[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510020/IPOL_STU\(2015\)510020_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510020/IPOL_STU(2015)510020_EN.pdf)> accessed 3 November 2015.

³⁹⁰ Directorate General for Internal Policies, *'The impact of the crisis on fundamental rights across Member States of the EU – Comparative analysis'* (February 2015) 44.

<[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510021/IPOL_STU\(2015\)510021_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510021/IPOL_STU(2015)510021_EN.pdf)> accessed 3 November 2015.

an increase in the student-to-teacher ratio. This could, according to the report, result in a situation where the quality of the education is decreased, and students with slower learning abilities will receive less individual attention.³⁹¹ The number of students in each class has also been increased in Portugal, where in April 2012 it was announced that the number of pupils per class would increase to 30.³⁹²

The reduction in number of schools and teachers, along with fewer auxiliary staff has resulted in difficulties, especially for vulnerable students. Due to school mergers in Greece many students now have to travel significantly longer distances. Coupled with deficiencies in the free transportation of students this significantly affects students in rural areas, and particularly Roma children who often reside in isolated settlements.³⁹³ In Cyprus there was a cut in school transport in 2011, and in Slovenia school transport is also not free³⁹⁴. Cuts to education services in Spain have reduced the support previously granted to disadvantaged students by reducing extracurricular activities, provisions for textbooks and free meals for students from families with limited income.³⁹⁵

In regards to children with disabilities, the budget cuts have affected the attainment of inclusive education, which could have enabled them to participate to a larger extent in mainstream schools. Furthermore, many special schools, which provided education exclusively for children with disabilities, were closed in Portugal in 2013. Furthermore, organisations providing support to children with disabilities in mainstream education had to withdraw or reduce their staff.³⁹⁶ In Greece, an estimated 180,000 children with disabilities are currently excluded from education.³⁹⁷

The above-mentioned examples might well be said to constitute a breach of Article 17§1 which requires the establishments and maintenance of sufficient and adequate institutions and services for

³⁹¹ Ibid. p. 46. The countries reviewed were Belgium, Ireland, Greece, Spain, Italy, Cyprus and Portugal.

³⁹² Eurochild, *How the economic and financial crisis is affecting children & Young people in Europe* (December 2012) <http://www.eurochild.org/fileadmin/public/05_Library/Thematic_priorities/02_Child_Poverty/Eurochild/Eurochild_Crisis_Update_Report_2012.pdf> accessed 11 November 2015 12

³⁹³ Directorate General for Internal Policies, *The impact of the crisis on fundamental rights across Member States of the EU - Country Report on Greece* (February 2015) 39-40.

<[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510014/IPOL_STU\(2015\)510014_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510014/IPOL_STU(2015)510014_EN.pdf)> accessed 3 November 2015. Similarly, an increase in transportation costs in Ireland has also affected children with disabilities, immigrants and traveller children along with many students from lower-income families

³⁹⁴ Eurochild, *How the economic and financial crisis is affecting children & Young people in Europe* (December 2012) <http://www.eurochild.org/fileadmin/public/05_Library/Thematic_priorities/02_Child_Poverty/Eurochild/Eurochild_Crisis_Update_Report_2012.pdf> accessed 11 November 2015 13

³⁹⁵ Ibid., 12

³⁹⁶ European Foundation Centre, *Assessing the impact of European Governments' Austerity Plan on the Rights of People with Disabilities* (October 2012) 6. <<http://www.eesc.europa.eu/resources/docs/austerity2012.pdf>> accessed 5 November 2015.

³⁹⁷ Directorate General for Internal Policies, *The impact of the crisis on fundamental rights across Member States of the EU – Comparative analysis* (February 2015) 47-48. <[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510021/IPOL_STU\(2015\)510021_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510021/IPOL_STU(2015)510021_EN.pdf)> accessed 3 November 2015.

the purpose of education. For relevant case law, France was found to be in breach of article 17§1 a, in Complaint No. 13/2002, because statutory instruments relating to the provision of education to persons with disabilities were not adequate. The majority of young adults and children with autism had no access to an adequate educational service, and the progress towards bettering the situation was lacking.³⁹⁸

Children in Public Care (Article 17 § 1 c))

It follows directly from Article 17 § 1 c) that the Parties undertake to take all appropriate and necessary measures designed: “to provide protection and special aid from the state for children and young persons temporarily or definitely deprived of their family’s support”. The outset for the article is that it is in the best interest of the child to remain with family whenever possible. It is stated that any restriction of limitation of parents’ custodial rights must be based on criteria laid down in law, and should not go beyond what is necessary to ensure the child’s interest.³⁹⁹ There must also be a possibility to lodge an appeal against a decision to restrict parental rights, and an available procedure to raise complaints against the care and treatment in institutions. To ensure a stable environment, long-term care outside the home should primarily take place in suitable foster families. If placement in institutions is deemed necessary, such institutions must provide conditions promoting all aspects of children’s growth and, to the highest degree, secure their emotional needs and physical well-being.⁴⁰⁰ A unit in a child welfare institution should accommodate no more than 10 children, and resemble a home environment.⁴⁰¹

In a 2009 survey conducted by Eurochild⁴⁰², on the situation of children in alternative care in Europe, found that roughly 1% of children in the EU, approximately 1 million, are taken into public care. Although there is an expressed consensus that placement in institutions should be a last resort, the number of children in institutions were also rising in several EU countries. The economic crisis has contributed to this trend as another study by Eurochild in 2012⁴⁰³ shows that poverty is one of the

³⁹⁸ *International Association Autism-Europe v. France*, Collective Complaint No. 13/2002 (ECSR, 8 March), Decision on the merits. <<http://hudoc.esc.coe.int/eng?i=cc-13-2002-dmerits-en>>

³⁹⁹ Digest of the Case Law of the European Committee of Social Rights, 1 September 2008 121.

⁴⁰⁰ *Ibid.*

⁴⁰¹ *Ibid.*

⁴⁰² Eurochild, ‘*Children in Alternative - National Surveys-2nd Edition - Executive Summary*’ (January 2010) <http://www.eurochild.org/fileadmin/public/05_Library/Thematic_priorities/06_Children_in_Alternative_Care/Eurochild/FINAL_EXEC_SUMMARY.pdf> accessed 5 November 2015

⁴⁰³ Eurochild, ‘*How the economic and financial crisis is affecting children & Young people in Europe*’ (December 2012)

main reasons for resorting to alternative care of children in Bosnia and Herzegovina. Also, in the UK, the number of children being looked after in the care system rose by 30% between 2007/2008 and 2012.⁴⁰⁴ In Bulgaria, the numbers for 2008 were 7,276 children in residential homes, compared to only 72 placed in foster care.⁴⁰⁵ It was further noted that in several countries, Roma children were particularly over-represented. For instance in Bulgaria, Roma children accounted for almost 45% of the children in care, and in Hungary, children of Roma origin were over-represented in institutions, sometimes by a factor of 11 compared to their representation in the population as a whole.

The study also found that the involvement of children and parents in the decision-making process were weak in many of the countries, and that at the time several countries had not implemented standards regulating this. In some countries, e.g. Estonia, Finland and Sweden regular reports were published, whereas in many others data concerning monitoring and regulations of such standards were lacking.⁴⁰⁶

The 2011 Conclusions of the ECSR further identifies several problems concerning the situation of children in public care. The absence of State mechanisms in Georgia monitoring and providing follow-up assistance for those leaving institutional care was noted as a concern by the UNCRC. The ECSR further notes concern about the large number of children in Georgian institutions that are neither State-funded nor regulated.⁴⁰⁷ The situation in Romania has also been called into question by the ECSR on several points, as there is no harmonized set of standards to guide the decision on placing a child in out-family care. There is also a reported deficiency in the processes for follow-up and review, and any mechanism through which children or their families can submit complaints.⁴⁰⁸

The Conclusion also reported that The Netherlands was in breach of the charter because unlawfully present children were not provided with shelter for as long as they are in the jurisdiction of the Netherlands.⁴⁰⁹ The situation of unaccompanied children seeking asylum is mentioned in the National Report from The Netherlands, which cites that children who are asylum seekers and who are unaccompanied receive foster thanks to the activity of Foundation Nidos.⁴¹⁰

<http://www.eurochild.org/fileadmin/public/05_Library/Thematic_priorities/02_Child_Poverty/Eurochild/Eurochild_Crisis_Update_Report_2012.pdf> accessed 11 November 2015

⁴⁰⁴ *Ibid.*

⁴⁰⁵ Eurochild, *Children in Alternative - National Surveys-2nd Edition - Executive Summary* (January 2010)

<http://www.eurochild.org/fileadmin/public/05_Library/Thematic_priorities/06_Children_in_Alternative_Care/Eurochild/FINAL_EXEC_SUMMARY.pdf> accessed 5 November 2015 1-2

⁴⁰⁶ *Ibid.*, 3

⁴⁰⁷ Conclusions 2011, Georgia 519.

⁴⁰⁸ Conclusions 2011, Romania 997. The Committee is here citing from

<<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/433/03/PDF/G0943303.pdf>>

⁴⁰⁹ Conclusions 2011, Netherlands 808.

⁴¹⁰ Final Report, 1400

The National Reports cite several potentially problematic practices that may lead to a breach of the Charter. In relation to Complaint No. 47/2008, the Greek National Research Group reports that the UN Special Rapporteur on the Human Rights of Migrants has raised concerns about violations of the rights of unaccompanied migrant children coming to Greece. The report states that many child refugees are arrested, and placed in reception or detention centres lacking special arrangements for children. They are often not informed of their right to claim asylum and receive little support in the application process.⁴¹¹ In regards to numbers, the National Report from Slovakia, citing national statistic reports show that in 2013 a total of 14,100 children were not with their families, a number amounting to 1.33 per cent of all the children in Slovakia.⁴¹² In the report submitted by the Research Group in Bosnia and Herzegovina it is noted that although strategic documents promote the consideration of alternative forms of accommodation before a child is placed in care, this is insufficiently followed through and few actual efforts towards deinstitutionalization is made. Furthermore, attempts to reunite children with their biological parents are also insufficient.⁴¹³

From the Bulgarian National Research Group there is a mention of the institutions' inability to provide basic needs beyond those mere physiological.

Access to Primary and Secondary Education (Article 17 § 2)

According to Article 17§2, both primary and secondary education must be free of charge, and measures must be taken nationally to encourage school attendance and to actively reduce the number of children dropping out or not completing compulsory education. With “free of charge” is meant that there must be no direct costs, and that hidden or indirect costs such as books or uniforms must be reasonable. There should also be measures in place to assist vulnerable groups, and reduce their burden of all such costs.⁴¹⁴

The aim of the article is universal access to primary and secondary education for all children who reside within the state. The number of children within the relevant age enrolled in school should be 100%, and access should be equal, both in rural and urban areas.⁴¹⁵ Though ostensible a matter covered under article 15, access to education for children with disabilities can also be reckoned as a breach of article 17, as the article is universal for all children. Access to education is even more important during

⁴¹¹ *Ibid.*, 690-691

⁴¹² *Ibid.*, 1232

⁴¹³ *Ibid.*, 257

⁴¹⁴ Digest of the Case Law of the European Committee of Social Rights, 1 September 2008 122-123.

⁴¹⁵ *Ibid.*, 120

a recession. From a reading of the Conclusions of 2011 several breaches of Article 17§2 were uncovered. As some data points to an underrepresentation of disabled children, and a connection to other breaches of Article 17§2, a mention of this will be given here.

The Committee notes that in Bulgaria, only 2.8% of the children with intellectual disabilities are integrated into mainstream primary schools, and do not have an effective access to education. In total, when those who are educated in special schools are also accounted for, only 6.2% of children who are intellectually disabled receive any form of education.⁴¹⁶ Further to this, Roma children with no specific disabilities were in large numbers, relative to their presence in the general population placed in special schools. The lack of access to education for children with disabilities in Bulgaria was found to constitute a breach of Article 17§2.⁴¹⁷ This was also stated in Complaint No. 41/2007.⁴¹⁸

Regarding access to education for all children, both in rural and urban areas, several countries were found to be in breach of the Charter. As stated above, the enrolment should be 100%. In Armenia, the gross enrolment in secondary school for 2005-2009 was 86% for males and 90% for females which is manifestly too low, and the Conclusions of 2011 found that insufficient measures had been taken to counteract this.⁴¹⁹ In Bosnia and Herzegovina the same dataset listed the enrolment in secondary school for males at 89% and 91% for females, also without evident measures having been taken to improve these numbers.⁴²⁰ In Bulgaria, measures were implemented to reduce the number of children dropping out of general education, and the rate fell from 20.8% in 2000 to 14.3% in 2009. The gross enrolment in secondary education for 2005-2009 were however still held to be too low and amounted to 90% for males and 87 for females.⁴²¹

Moreover the Committee identifies problems regarding the overall access to education in Sweden and in Turkey. In Sweden, under the Education Act, children without a valid residence permit do not enjoy the right or access to education. As they are not recognized as being residents of the country they do not have a right to enrolment. This is the case in particular for “children in hiding” and undocumented children, which makes enforcement of their participation in education a difficult matter.⁴²² In Turkey, legislation limits the access to education only to holders of residence permits or to Turkish nationals

⁴¹⁶ *Mental Disability Advocacy Center (MDAC) v. Bulgaria*, Complaint No. 41/2007 (ECSR, 12 October), Decision on the merits. <<http://hudoc.esc.coe.int/eng?i=cc-41-2007-dmerits-en>>

⁴¹⁷ Conclusions 2011, Bulgaria 293-294.

⁴¹⁸ *Mental Disability Advocacy Center (MDAC) v. Bulgaria*, Complaint No. 41/2007 (ECSR, 12 October), Decision on the merits. <<http://hudoc.esc.coe.int/eng?i=cc-41-2007-dmerits-en>>

⁴¹⁹ Conclusions 2011, Armenia 136.

⁴²⁰ Conclusions 2011, Bosnia and Herzegovina 259.

⁴²¹ Conclusions 2011, Belgium 203.

⁴²² Conclusions 2011, Slovak Republic 1124-1125

belonging to minority groups.⁴²³ This would also be in breach of the precedent set in Complaint No. 67/2011, where France was found to be in breach of Article 17§2 among others for not ensuring that children unlawfully present have effective access to education.⁴²⁴

For vulnerable groups, and particularly for the Roma communities, the situation in several countries with regard to access to education is very problematic, and several breaches were identified in the 2011 Conclusions. The Roma children in Bosnia and Herzegovina have an attendance rate for primary school of 80%, only 20% participate in secondary school and less than 1% attains a higher education. This stems partly from the hard living conditions of many Roma, but there is also a systemic problem as there has been little effective measures taken from the State to increase their enrolment.⁴²⁵ Also in the Slovak Republic, Roma are suffering from a set of discriminating circumstances. Even though Roma children only comprise 15% of the total number of children under 16, they are disproportionately enrolled in special schools even though diagnostic scores showing they were within the average intellectual capacity. In many special schools, the registered student body was nearly 100% Roma. Of those enrolled in public schools many are taught in separate classrooms or otherwise segregated.⁴²⁶ In Italy, Roma children formally have access to education, but their general living conditions make it unlikely that they are able to enjoy this to its full potential. Moreover many of the Roma living in camps lack identifying documentation, which to a large degree complicates their interaction with public authorities, including schools.⁴²⁷

These instances of low enrolment of Roma children in several countries have been identified as breaches by the Committee. A discrepancy in the Conclusions of 2011 was part of the Case, Complaint No. 67/2011. France had reported a general enrolment rate of 100%, however Médecins du Monde provided data from a study report conducted in 2010 that showed that, for the school year 2008-2009, out of the 1,132 school-aged Roma children living in Marseille, Lyon and Nantes, only 335 (29.59%) were registered for school and 168 (14.84%) of them did go to school. This was seen as a clear violation of Article 17§2.⁴²⁸

The Charter does not require Member States to provide free tertiary education as it does for primary and secondary, however the Europe 2020 Strategy set the target that at least 40% of 30-34 year olds

⁴²³ Conclusions 2011, Turkey 1185

⁴²⁴ *Médecins du Monde – International v. France*, Complaint No. 67/2011 (ECSR 27 March 2013) Decision on the merits. <<http://hudoc.esc.coe.int/eng?i=cc-67-2011-dmerits-en>>

⁴²⁵ Conclusions 2011, Bosnia and Herzegovina 261

⁴²⁶ Conclusions 2011, Slovak Republic 1032

⁴²⁷ Conclusions 2011, Italy 624

⁴²⁸ *Médecins du Monde – International v. France*, Complaint No. 67/2011 (ECSR 27 March 2013) Decision on the merits. <<http://hudoc.esc.coe.int/eng?i=cc-67-2011-dmerits-en>>

should have tertiary education or equivalent qualification by 2020. As of 2012, the share of the population aged 30-34 that had attained this was 35.7%.⁴²⁹ The goal set was based in part on projections that by 2020, 35% of all jobs would require tertiary education. The high level of attainment of tertiary education has however also been met with some problems after the financial crisis, as in Greece, Italy, Spain and Portugal, the employment rate of recent graduates has fallen below 70%.⁴³⁰ In 2012, the EU-28 had just over 20 million students in tertiary education. Of these, two thirds were in Germany, the UK, France, Poland, Spain and Italy.⁴³¹

As for costs, publicly funded institutions for tertiary education in most countries have tuition fees. The Nordic countries, Scotland, Slovenia, Greece, Cyprus, Turkey and Malta however do not require tuition and administrative fees in the first cycle of higher education programmes for full-time students.⁴³² The statistics for tertiary education attainment for the EU-28 shows that from 2009-2012, the percentages of students attaining a degree was increasing in all of the member states except for Bulgaria, where it was reduced from 27.9 to 26.9. From the numbers, Ireland had the highest degree of attainment with 51.1% and Italy the lowest with 21.7%.⁴³³

Youth Unemployment

One of the results of the financial crisis is the increasing amount of youth unemployment and the general inactivity of so many European youths that a new term *NEET* (not in employment, education or training) has become commonly known. A lower degree of participation in the labour market compared to the national average is not a new concept for most Member States. The scale of the problem has however now risen to such heights that the net economic loss to European Economies is, by some, estimated to amount to 153 Billion Euros in 2011, corresponding to more than 1.2% of the total European GDP.⁴³⁴

⁴²⁹ European Commission, 'Europe 2020 Target: Tertiary Education Attainment' available at: http://ec.europa.eu/europe2020/pdf/themes/28_tertiary_education.pdf accessed 6 November 2015, 1

⁴³⁰ *Ibid.*, 3

⁴³¹ Eurostat, 'Tertiary Education Statistics 2015' available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Tertiary_education_statistics accessed 6 November

⁴³² European Commission, 'National Student Fee and Support Systems in European Higher Education 2014/2015' http://eacea.ec.europa.eu/education/eurydice/documents/facts_and_figures/fees_support.pdf accessed 6 November, 5

⁴³³ European Commission, 'Europe 2020 Target: Tertiary Education Attainment' available at: http://ec.europa.eu/europe2020/pdf/themes/28_tertiary_education.pdf accessed 6 November 5.

⁴³⁴ European Foundation for the Improvement of Working and Living Conditions, 'NEETs Young people not in employment, education or training: Characteristics, costs and policy responses in Europe' 2012.

In 2015, over 5 million young people aged 15-24 are unemployed. Moreover, this is an ongoing problem, as more than 33% of unemployed youths in 2013 had at that time been unemployed for more than one year. Of those who were employed, 31.9% had part-time jobs and 42.7% were on temporary contracts, compared respectively to 19.6% and 13.8% of the overall working population, reflecting a serious structural problem.⁴³⁵ For the EU-28, the unemployment rate for youths aged 15-24 was at 23% in 2012. In the data-set, some countries were clearly worse off. The highest rate was in Greece, where 55.3% were unemployed, followed by Spain, Croatia and Portugal at 53.2%, 43.0% and 37.7% respectively.⁴³⁶

To reduce the unemployment rates among young Europeans, the Youth Guarantee programme seeks to ensure that the Member States can offer all young people up to the age of 25, either a job, a continued education, an apprenticeship or a traineeship within four months of leaving formal education or becoming unemployed. The International Labour Organisation has estimated the annual cost for setting up the Youth Guarantee to be around EUR 21 Billion per year. The costs are to be carried by the states.⁴³⁷ In addition, other programmes are being planned or executed, such as the Youth Employment initiative, which will allocate EUR 3.2 Billion from a specific EU budget set up by EU Structural and Investment funds national allocations. Other programmes are the European Alliance for Apprenticeships, Quality Framework for Traineeships (QFT) and Your First EURES Job, which are programmes meant to better ensure the situations of those young who are in jobs and providing information and recruitment portals.⁴³⁸ All EU countries have presented comprehensive Youth Guarantee Implementation Plans, complying with the deadlines set by the European Council.

From the National Reports, several reports of the implementation of programmes stemming from the Youth Guarantee are aimed at reducing the unemployment rate among youths. In Bulgaria⁴³⁹, an internship programme has been set up to provide talented students with practical experience and familiarising them with the working process of the state administration. In Italy⁴⁴⁰, e-Portals that allow people to connect to a national registers were set up to facilitate automatic verification of the fulfilment requirements and to send applications. Many countries have also adopted various measures aimed at

http://www.eurofound.europa.eu/sites/default/files/ef_files/pubdocs/2012/54/en/1/EF1254EN.pdf accessed 6 November, 142

⁴³⁵European Commission, *'Addressing youth unemployment in the EU'*

<<http://ec.europa.eu/social/BlobServlet?docId=13422&langId=en>> accessed 6 November 2015

⁴³⁶ Eurostat, *'Youth Unemployment'*

<http://ec.europa.eu/eurostat/statistics-explained/index.php/Youth_unemployment> accessed 6 November 2015

⁴³⁷European Commission, *'Addressing youth unemployment in the EU'*

<<http://ec.europa.eu/social/BlobServlet?docId=13422&langId=en>> accessed 6 November 2015

⁴³⁸ *Ibid.*

⁴³⁹ Final Report, 310

⁴⁴⁰ *Ibid.*, 844

giving businesses monetary incentives for employing young people in the form of reduced taxes or subsidies. In Greece, for instance, a proportion of the state fund is allocated to subsidise businesses that employ higher education graduates.⁴⁴¹ In Slovenia, a business that employs a currently unemployed person under the age of 30 is exempt from contributions for pension and disability insurance, health insurance, insurance for parental protection and unemployment insurance, for the first 24 months of employment.⁴⁴² Data on the effects of the programmes are however difficult to assess at this time.

Conclusion

To conclude, it seems that the effects of the financial crisis in respect to Article 17 has had the effect of mainly increasing the already unfavourable gap between the attainment of basic educational provisions for those who are marginalised. For the countries who implemented cuts as a result of the crisis, access to education particularly for vulnerable students were affected as schools were merged or closed down to reduce spending. This has resulted in an increased student-teacher ratio which might compromise the quality of education, and reducing the attainability for an inclusive education for those in need of special programmes as a result of disabilities. Particularly the countries required by the Troika, Greece, Portugal, Ireland, Spain and Cyprus, were seen to have made cuts in education that could in several ways compromise the attainment of education for vulnerable children. Another worrying effect has been observed with regard to children that are in public care. The effect of a worsening in the economic situation of some countries, coupled with the already inherent systemic problems in the way the States handled orphans and institutionalised children. Children from minority groups, and particularly Roma children, were seen to be over-represented in institutional care in several countries. The situation for Roma children seemed to be particularly severe in countries like Bosnia and Herzegovina, Bulgaria, Italy, The Republic of Moldova and the Slovak Republic. The 2011 Conclusions addressed several of these issues, and it seems that in the wake of the crisis, few measures have been taken to better this situation in countries with economic problems.

Access to free education in accordance with article 17§2 was also seen to have been affected by the crisis, and several countries fell short of the goal of including 100% of children in the general educational system. In countries such as Bulgaria, Armenia, Bosnia and Herzegovina and Moldova

⁴⁴¹ *Ibid.*, 694

⁴⁴² *Ibid.*, 1298

and Slovakia, the enrolment rates were significantly lower, and the exclusion seems again to be linked to groups of minorities, children from poor families and children with disabilities.

As for youth unemployment, it is a major concern in most European countries that a slowing economy has reduced the need for employees. Several measures have been taken both nationally and at EU level to reduce this, but the effects of the programmes are still difficult to assess. In the countries that have implemented the most austerity measures the lack of jobs are not only a problem for those with low education or skill, but also many with higher education are now deprived of the opportunity to finance themselves.

The crisis has then, in summary, resulted in an increased marginalisation of already vulnerable groups of children and young persons in several countries, particularly in those that have been most affected by cuts in public spending on education or as a result in the slowing of the economy which has reduced the demand for labour. The crisis has also had the effect of worsening the situation for vulnerable groups in countries, which have up until the start of the crisis, have already suffered from systemic problems in regards to children's rights.

7. Collective Complaints System

State compliance with the European Social Charter is ensured through two separate procedures:

- The State reporting system – where States are obliged to provide a report every two years on the implementation progress of the Charter.
- The collective complaints procedure – where social partners and non-governmental organisations lodge a collective complaints against a State party;

The collective complaints procedure was introduced by the Additional Protocol, providing for a system of collective complaints (hereinafter “the Additional Protocol”), was adopted in 1995. This complaints system is the product of the revitalization process of the Charter which began in December 1990. This procedure adds to the State reporting system and was meant to increase the effectiveness, speed and impact of the implementation of the Charter. However, unlike applications lodged before the European Court of Human Rights, the European Committee of Social Rights - a 13-member body of independent experts in the area of international social issues - may only examine collective complaints.⁴⁴³ As such, only European⁴⁴⁴ and national social partners and international non-governmental organisations holding participatory status with the Council of Europe may resort to this procedure. National non-governmental organisations may also lodge complaints if a Contracting Party, pursuant to Article 2 of the Additional Protocol, issues a declaration which allows so. This measure aims at stimulating further “greater interest in the Charter”.⁴⁴⁵ Furthermore, due to their collective nature, complainants do not have to argue that they are victims’ of a State’s law or practice that is in non-compliance with the European Social Charter. Nor it is necessary to exhaust domestic remedies before lodging a complaint. An application is admissible insofar that it describes a situation where a State is not in compliance with the European Social Charter.

⁴⁴³ Churchill R. and Khaliq U. (2004). “The collective complaints system of the European Social Charter: an effective mechanism for ensuring compliance with economic and social rights?” *European Journal of International Law* 15(3), 418.

⁴⁴⁴ European Trade Union Confederation (ETUC), for employees, and Business Europe and International Organisation of Employers (OIE), for employers.

⁴⁴⁵ Francois Vandamme (1994). “The Revision of the European Social Charter” *International Labour Review* 133(5-6) 635.

Any decision on the merit adopted by the European Committee of Social Rights, on a complaint deemed admissible, is merely declaratory and takes the form of ‘conclusions’.⁴⁴⁶ Although they still need to be respected by the affected State since it refers to binding legal provisions. They cannot however be directly enforceable in the domestic legal system. Nevertheless, domestic courts may rule a legislation invalid based on the decision of the European Committee of Social Rights.

In accordance with Article 7 of the Additional Protocol, the decision is then included in a report and sent to the Committee of Ministers. The Committee of Ministers plays a role in ensuring the operationalisation of the decision of the merits of the ECSR and giving concrete effect to the rights enshrined in the Charter.⁴⁴⁷ The Committee of Ministers, pursuant to Article 8, shall adopt a resolution by majority on the basis of the report. When a Contracting Party has been found to be in non-compliance with the Charter, the Committee of Ministers shall address the situation through a “recommendation”. The decisions of the Committee of Ministers (whether a resolution or recommendation) are political in nature. Therefore it may solely make social and economic policy considerations and cannot overturn the decision of the Committee of Independent Experts of the European Social Charter.⁴⁴⁸ It seems to be undisputed that any recommendations or resolutions adopted by the Committee of Ministers are not legally binding.⁴⁴⁹ When the Committee of Ministers endorses the ECSR’s non-compliance assessment, the affected Contracting Party must ‘provide information on the measures it has taken to give effect’ to the recommendation of the Committee of Ministers in the ‘next report’ that it submits under the reporting procedure.⁴⁵⁰

Findings of the ELSA reports

Several situations have been deemed not to be in compliance with the Charter by the ECSR through the collective complaints procedure. It is necessary to assess, however, what has been the overall perceived effect of the collective complaint procedure during this period. Has this procedure contributed to alleviate the effects of austerity measures? Before embarking upon this assessment

⁴⁴⁶ Similarly to the “Conclusions” adopted within the framework of the Reporting system.

⁴⁴⁷ Council of Europe, “Collective Complaints Procedure: an overview”, at <http://www.coe.int/en/web/turin-european-social-charter/collective-complaints-procedure1>, accessed 28 December 2015.

⁴⁴⁸ Council of Europe, *Explanatory Report on the Collective Complaints Protocol* (1995) para. 46.

⁴⁴⁹ Churchill R. and Khaliq U. (2004). “The collective complaints system of the European Social Charter: an effective mechanism for ensuring compliance with economic and social rights?” *European Journal of International Law* 15(3), 439.

⁴⁵⁰ Article 10 of the Additional Protocol.

some considerations are in order. So far, only 15 Contracting Parties have ratified the Additional Protocol – Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, Netherlands, Norway, Portugal, Slovenia and Sweden.⁴⁵¹ Of these 15, only 11 ELSA national groups⁴⁵² participated in this research project, thus the following assessment will focus on their findings.

ESC case law concerning austerity measures

Among the existent case law analysed by the ELSA national groups up until July 2015, 8 complaints have been found to be linked to austerity measures. Since 2010, of the 6 complaints lodged against Finland, complaint No. 70/2011 by the Central Association of Carers is particularly relevant to this study. As described by the Finnish research group, it relates to the issue of unequal delivery of services to elderly people in different regions of Finland due to lack of funding of municipalities. As put by the complainant of this case - and not contested by the Government - the financial crisis was one of the contributing factors to this situation.⁴⁵³ The lack of any other alternative support by the government amounted to a violation of Article 23 of the Charter. The ruling was accepted by the Finnish Government.⁴⁵⁴ As part of the implementing measures of the Committee's ruling: 1) a working group was created to develop a national programme for informal care to bridge the existent gaps was created; 2) state subsidies for support services of informal carers were increased; 3) and municipalities were required to draw up a plan with measures that may support the wellbeing, health, functional capacity and independent living of the older population along with the development of appropriate services and informal care needed for them.⁴⁵⁵ Progress is still ongoing,⁴⁵⁶ however it is clear that the

⁴⁵¹ Council of Europe, 'Chart of signatures and ratifications of Treaty 158 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints Status as of 29/01/2016', <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/158/signatures?p_auth=GsNUPjHE> accessed 29 January 2016.

⁴⁵² The non-participating ELSA national groups belong to Belgium, Czech Republic, Ireland and Sweden.

⁴⁵³ Association of Care Giving Relatives and Friends v. Finland (Complaint No. 70/2011), Decision on the merits para. 32

⁴⁵⁴ Press release (70/2013) of the Ministry of Social Affairs and Health and the Ministry for Foreign Affairs, available here: <http://www.stm.fi/tiedotteet/tiedote/-/view/1854561> (Finnish). See Final Report 491.

⁴⁵⁵ As may be perceived in section 5 of the Act on Supporting the Functional Capacity of the Older Population and on Social and Health Services for Older Persons (980/2012) - an act entered into force on 1 July 2013, as stated in the Final Report 492.

⁴⁵⁶ Ibid.; Resolution CM/ResChS(2013)12, The Central Association of Carers in Finland against Finland, Complaint No. 70/2011.

collective complaints system has played a role in alleviating the impact of austerity measures on elderly persons.

The other 8⁴⁵⁷ collective complaints in respect of austerity measures have been lodged against Greece.

⁴⁵⁸ For this time period, the Greek Report has identified a total of 7 complaints submitted to European Committee on Social Rights which concerned austerity measures taken by the Greek Government. Complaint no. 65/2011 and no. 66/2011 relate to austerity measures which have affected labour rights, while complaints nos. 76/2012, 77/2012, 78/2012, 79/2012 and 80/2012 concern with the right to social security. As described in this report's Labour Rights section, the first two complaints arose from the need to control public expenditure. In the first complaint, the ECSR held that Section 17§5 of Act No. 3899 of 17 December 2010 which established a probation period of 1 year, irrespective of the qualification of the contract, thereby allowing its termination without reasonable notice of termination nor compensation constitutes a violation of 4§4 of the Charter. In complaint no. 66/2011, the 'apprentice contracts' for young persons aged 15 to 18 years old that were introduced during the economic crisis were excluded from the labour legislation and were not entitled to three weeks' annual holiday with pay amounted to a violation of Article 7§ 7 of the 1961 Charter. Furthermore, since Section 74§9 of Act No. 3863/2010 did not provide for an adequate system of apprenticeship and other systematic arrangements for training young boys and girls in their various forms of employment it also violated Article 10§2 of the 1961 Charter. In addition, minors employed under 'special apprenticeship contracts' were not entitled to social security. Section 74§9 of Act No. 3863/2010 appears to have created "a distinct category of workers who are effectively excluded from the general range of protection offered by the social security system at large" which constitutes a retrogress, and consequently a breach of 12§3 of the 1961 Charter.

Lastly, taking into consideration that wages under the so-called apprenticeship contracts (70% of the national minimum wage), the combination of the Ministerial Council Act No. 6/2012 and Council Act No. 6/2012 which set out further reductions of the minimum wage for young persons below the age of 25 by 32%, makes them fall below the poverty level, in violation of Article 4§1 of the 1961 Charter. Although this measure pursued a legitimate aim of employment policy – the integration of workers in time of economic crisis- its extent and the fact that it applies to workers under 25 is

⁴⁵⁷ Regarding Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014 there has only been a decision of admissibility, thus this study is going to focus on the remaining 7.

⁴⁵⁸ Final Report, 706-707.

disproportionate, and thus constitutes a breach of Article 4§1 of the 1961 Charter in light of the non-discrimination clause of the Preamble to the 1961 Charter.

The conclusions of the ECSR in complaint no. 65/2011 and no. 66/2011 were not contested by the Greek Government, however due to their temporary character, the implementation of the decision were differed without a specific timeframe in place, to “as soon as the economic situation of his country would allow”.⁴⁵⁹ In complaint 76/2012,⁴⁶⁰ complaint 77/2012,⁴⁶¹ complaint 78/2012,⁴⁶² and complaint 79/2012,⁴⁶³ the cumulative effects of restrictive measures adopted by the Greek Government in regards to pensioners, namely by reducing Christmas, Easter and holiday bonuses, suspending or drastically reducing pension payments, reducing the pension that could previously be paid and imposing an additional tax for pensions amounting EUR 1400 or more, in the sense that ‘bring about a significant degradation of the standard of living and the living conditions of many of the pensioners concerned’ amount to a violation of Article 12§3 of the 1961 Charter.⁴⁶⁴ The above mentioned complaints were also not contested by the Greek Government, which in turn introduced several measures to implement the rulings, particularly: pensions below EUR 1000 are not subject to cuts while the ones above it are taxed progressively from 5% to 20%; elderly persons with low pensions are granted the Benefit of Social Solidarity (EKAS), for the non-insured elderly, a pension of EUR 360 is granted based on certain conditions (not receiving another pension/residing legally in the country for 20 years/fulfilling other family and income conditions).⁴⁶⁵ It is apparent the role of the collective complaints system has played in alleviating the effect of austerity measures in Finland and Greece. However it is still not clear in regards to the remaining countries which have ratified the collective complaints system.

⁴⁵⁹ Resolution CM/ResChS (2013) 2, General Federation of employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) against Greece, Complaint No. 65/2011; Resolution CM/ResChS(2013) 3, General Federation of employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) against Greece, Complaint No. 66/2011.

⁴⁶⁰ Decision on the merits: Federation of employed pensioners of Greece (IKA-ETAM) v. Greece, Collective Complaint No. 76/2012.

⁴⁶¹ Decision on the merits: Panhellenic Federation of Public Service Pensioners (POPS) v. Greece, Collective Complaint No. 77/2012.

⁴⁶² Decision on the merits: Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece, Collective Complaint No. 78/2012.

⁴⁶³ Decision on the merits: Panhellenic Federation of pensioners of the public electricity corporation (POS-DEI) v. Greece, Collective Complaint No. 79/2012.

⁴⁶⁴ Ibid paras. 56-61, 78-81.

⁴⁶⁵ Further measures are described and available at Appendix to Resolution CM/ResChS(2014)9 Pensioners' Union of the Athens Piraeus Electric Railways (I.S.A.P.) v. Greece, Complaint No. 78/2012.

Ratifying States

Up to date, since its existence, the ECSR has dealt with 119 applications. Given the number of violations of the Charter described thus far, and considering that not all of them were linked to austerity measures, in order to obtain a full picture of the impact of the collective complaints system, it is necessary to assess why there have not been more complaints. Some commentators have assessed the weaknesses of the collective complaints system based on the relationship with other treaties that protect social and economic rights, and degree of usage by taking into account the following factors: a) the number of ratifications of the Charter and the Additional Protocol; b) knowledge of the complaints system by the admissible complainants; c) nature of social rights; d) efforts to bear costs and make a complaint; e) speed of the procedure; f) perceived effectiveness of the collective complaints procedure.⁴⁶⁶ Considering these criteria:

- Degree of Usage

a) Number of ratifications of the Charter and the collective complaints procedure

The number of complaints is connected to the number of ratifications of the Charter and the collective complaints system. The collective procedure cannot be accessed by possible complainants otherwise. Currently, 43 States have ratified the 1961 and/or 1996 revised Charter. Of these 43 States, only 15 have accepted the collective complaints procedure.⁴⁶⁷ Considering that by 2009 the European Committee of Social Rights had dealt with 59 complaints,⁴⁶⁸ and by 2015, 119 complaints have been lodged, there has been a sharp increase in the number of complaints by almost double. This increase cannot be explained only by an increase in the number of acceptances of the complaint system during this period. Since the financial crisis began, there had already been 14 ratifications of the procedure, being the 15th approval, by Czech Republic in 04/04/2012, being the most recent.

b) Knowledge of the collective complaints system

⁴⁶⁶ Churchill R. and Khaliq U. (2004). "The collective complaints system of the European Social Charter: an effective mechanism for ensuring compliance with economic and social rights?" *European Journal of International Law* 15(3), 445.

⁴⁶⁷ Council of Europe, "European Social Charter: Signature & Ratifications" <<http://www.coe.int/en/web/turin-european-social-charter/signature-ratifications>>, accessed 5 January 2016.

⁴⁶⁸ European Committee of Social Rights, 'Activity Report 2009', 2010 <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048910d>>, accessed 6 January 2016, 4.

Of course, with greater awareness and knowledge among admissible complainants, the more likely the complaints system is to be used. National non-governmental organisations and trade unions, although may be involved in the reporting system, they might not be fully aware of the advantages of resorting to this procedure.⁴⁶⁹ Moreover, it seems that so far, only Finland has issued a declaration to allow national non-governmental organisations to access the collective complaints procedure. So, even with further knowledge, access to the system seems limited. Lack of knowledge and effect of the non-declaration to allow national non-governmental organisations to participate has been particularly highlighted in the Croatian and Slovenian legal report.⁴⁷⁰

c) Social Rights being too general in nature

Due to its very nature, social rights can be perceived as too general, and therefore not enforceable. This might initially reduce interest in the Charter and the collective complaints system. However, as case law of the ECSR continues to develop, and the content of each right becomes clearer, perhaps it will be possible to see a further increase in the number of complaints. Nevertheless the issue of viewing social rights as not “real” rights, of having solely a programmatic nature, concerning solely of the duties of the State to provide goods is still an ongoing hurdle, as provided by the ELSA legal reports from Greece, Slovenia and the United Kingdom.⁴⁷¹ As the number cases of non-compliance increase, so will the number of complaints.⁴⁷²

d) Efforts to bear the cost and make a complaint

As highlighted in the beginning of this chapter, all complaints are collective in nature. This means it is not possible to lodge an individual complaint. Nor is it possible to claim compensation for any damages caused by the law or practice deemed as not in compliance. It is possible however for a complainant to make a request for reimbursement of costs related to the effort of making a complaint to the ECSR, which may then invite the Committee of Ministers to recommend the Defendant State to pay these. This was a great innovation by the European Committee of Social Rights that contributed to an increase of usage of the complaints system.⁴⁷³ The request is however non-binding. The non-

⁴⁶⁹ Churchill R. and Khaliq U. (2004). “The collective complaints system of the European Social Charter: an effective mechanism for ensuring compliance with economic and social rights?” *European Journal of International Law* 15(3), 446

⁴⁷⁰ Final Report, 364-365. 1300-1301.

⁴⁷¹ Final Report 710 and 1456-1459. Hilde Reidling (2007). “The Netherlands and the Development of International Human Rights Instruments” *School of Human Rights Research Series* 22, 210.

⁴⁷² Churchill R. and Khaliq U. (2004). “The collective complaints system of the European Social Charter: an effective mechanism for ensuring compliance with economic and social rights?” *European Journal of International Law* 15(3), 446.

⁴⁷³ Ibid.

admissibility of individual claims for compensation nor direct participation of individuals, as suggested by the ELSA legal reports (Greece, Slovenia, the United Kingdom),⁴⁷⁴ might be impeding the European Social Charter's and its complaints' procedure to live to its full potential.

e) Speed of the Procedure

The faster the decisions (on admissibility and the merits), the more attractive the procedure will look.⁴⁷⁵ According to the Activity reports⁴⁷⁶ from the European Committee on Social Rights, it seems the duration of the proceedings has been steadily increasing since 2012 as portrayed in the following table:

	Duration of decisions on admissibility (Average)	Duration of decisions on the merits (Average)
2014	6.6 months	14.9 months
2013	5.6 months	12.2 months
2012	4.7 months	9.8 months
2011	4.3 months	12.8 months
2010	4.5 months	10.8 months

⁴⁷⁴ Final Report 710, 1301, 1459.

⁴⁷⁵ Churchill R. and Khalik U. (2004). "The collective complaints system of the European Social Charter: an effective mechanism for ensuring compliance with economic and social rights?" *European Journal of International Law* 15(3), 446.

⁴⁷⁶ European Committee of Social Rights, 'Activity Report 2014', 2015

<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168047cebb>> accessed 6 January 2016, 12; European Committee of Social Rights, 'Activity Report 2013', 2014

<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680489115>> 12; European Committee of Social Rights, 'Activity Report 2012', 2013

<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680489113>> , 12; European Committee of Social Rights, 'Activity Report 2011', 2012

<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680489111>> , 15; European Committee of Social Rights, 'Activity Report 2010', 2011

<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048910f>> , 16.

The longer duration of the proceedings could be a consequence of the increasing number of collective complaints.

f) Perceived effectiveness of the Complaints

An issue that is often brought up, although Contracting Parties are required to respect the provisions of the Charter and the decisions of the European Committee of Social Rights and of the Committee of Ministers, they are not directly enforceable in domestic law. This situation might make admissible complainants to look at the collective complaints system sceptically – as illustrated in the Greek⁴⁷⁷, UK⁴⁷⁸ and Slovenian reports - therefore making use of this procedure is unlikely.⁴⁷⁹ This is a particular sensitive issue, to which some situations reported by the ELSA national groups will help shed light on. According to the French report, among a period where complaints and, consequently, solutions for breach of social rights, it seems that among the twenty (out of the thirty completed proceedings) complaints where the ECSR found a breach of the Charter by France, no progress in regards to sixteen, while for one complaint progress is ongoing. Since none of the complaints were related to austerity measures, it was not possible to determine how the procedure has contributed to alleviating the effect of austerity measures directly.⁴⁸⁰

In regards to Bulgaria, so far, there have been five complaints (out of six completed proceedings) where the Bulgarian State was found to be in non-compliance with the Charter, of which no progress has been made on three.⁴⁸¹ From the beginning of the financial crisis in 2008, two collective complaints have been brought against Bulgaria.⁴⁸² None of the facts of these cases⁴⁸³ however concerned austerity measures. Nonetheless, it is noteworthy that, has identified by the Bulgarian National research group, the decision on the merits of Complaint No. 48/2008 European Roma Rights Centre (ERRC) v. Bulgaria brought about the abrogation of the Social Assistance Act that permitted the interruption of

⁴⁷⁷ Final Report, 710.

⁴⁷⁸ Final Report, 1459.

⁴⁷⁹ Novitz, T. (2002). “Are social rights necessarily collective rights? A critical analysis of the Collective Complaints Protocol to the European Social Charter” *European Human Rights Law Review* 1, 53.

⁴⁸⁰ Final Report, 561. Council of Europe, ‘France and the European Social Charter’ (Country Factsheets, France) <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492882&format=pdf>> accessed 10 December 2015, 2-6.

⁴⁸¹ Council of Europe, ‘Bulgaria and the European Social Charter’ (Country Factsheets, Bulgaria) 2-3 <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492882&format=pdf>> accessed 10 December 2015

⁴⁸² Final Report, 364-365.

⁴⁸³ Complaint No 46/2007 European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No 48/2008 European Roma Rights Centre (ERRC) v. Bulgaria

social assistance for 6 or 12 months for unemployed persons after the age of 18, regardless of their financial need.⁴⁸⁴ Conversely, in regards to the period of time relevant to this study, no complaint has been brought against Croatia. Moreover, historically, there have been a total of two complaints where the ECSR has found a breach (out of two completed proceedings), although a remedy has only been provided in one of the cases.⁴⁸⁵ The Croatian legal research group argues that the lack of remedial powers might be contributing to the lack of usage of the complaints system. In times of financial crisis, the Croatian Constitutional court seems to have been the preferred path for redress.⁴⁸⁶ Although not non-existent, so far there has only been one complaint against Cyprus, albeit it was found to be inadmissible.⁴⁸⁷ So it is not possible to assess what kind of direct impact the collective complaints system had so far,⁴⁸⁸ it seems nonetheless that the Court of Justice of the European Union has been the preferred venue to contest austerity measures.⁴⁸⁹ In regards to Italy, it seems that so far, the ECSR has found a violation in three complaints (out three completed proceedings). Disappointingly, it seems none have been remedied so far. According to the Italian report, none of the complaints related to austerity measures, and they argue that further usage of the complaints system is needed be able to assess its impact.⁴⁹⁰ This seems to suggest that domestic measures provide more effective redress. However, the Charter has been referenced to in Italian jurisprudence, namely in the proceedings No. 69789/2002 of the Court of Rome, and No. 2365/2005 of Court of Cagliari which related to the education of persons with disabilities.⁴⁹¹ Although the ESC was invoked in some national cases, according to the Italian legal research group, Italian judges seem to be unsure about the weight that should be given to the Charter.⁴⁹²

⁴⁸⁴ Final Report, 318

⁴⁸⁵ Council of Europe, '*Croatia and the European Social Charter*' (Country Factsheets, Croatia) 2
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492883&format=pdf>> accessed 10 December 2015

⁴⁸⁶ Final Report, 364-365.

⁴⁸⁷ Council of Europe, European Committee on Social Rights No. 97/2013 Association for the Protection of All Children (APPROACH) Ltd v. Cyprus;

⁴⁸⁸ Final Report, 430; Council of Europe, '*Cyprus and the European Social Charter*' (Country Factsheets, Cyprus) 2
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492884&format=pdf>> accessed 10 December 2015

⁴⁸⁹ See for e.g.: Case T-293/13, Theophilou v Commission and ECB [2014].

⁴⁹⁰ Council of Europe, '*Italy and the European Social Charter*' (Country Factsheets, Italy) 2
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492891>> accessed 10 December 2015

⁴⁹¹ Final Report, 852.

⁴⁹² Final Report, 851.

So far, in regards to Portugal, the ECSR has found violations of the Charter in four complaints (out of twelve completed proceedings), where only one has been remedied, while for another, progress is ongoing.⁴⁹³ During the financial crisis there have been three complaints, but according to the Portuguese legal research group, it is hard to consider the complaint effective under the current financial crisis, since no complaint has been brought in respect of it.⁴⁹⁴ Similarly in the cases of Cyprus and Croatia, the Court of Justice of the European Union⁴⁹⁵ and the Portuguese Constitutional court⁴⁹⁶ seems to have been the preferred venue to contest austerity measures for Portuguese complainants. Since Slovenia ratified the Additional Protocol, two collective complaints have been lodged against the State, and in both, the ECSR found a violation. Unfortunately it seems none of these have been remedied yet and neither are related to austerity measures.⁴⁹⁷ The Slovenian Government's reaction concerning FEANTSA v. Slovenia is particularly relevant, where it has explicitly denied being bound to the decisions of the European Committee of Social Rights.⁴⁹⁸ Even more puzzling is when confronted of this issue by the Slovenian Human Rights Ombudsman, the Government dismissed the situation arguing that since in the case of Berger-Krall and Others vs. Slovenia, which dealt with similar issues, since the European Court of Human Rights held that there have been no violations, there can be no breach of the Charter.⁴⁹⁹ On a positive note, when negotiating the new Employment

⁴⁹³ Council of Europe, 'Portugal and the European Social Charter' (Country Factsheets, Portugal) 2-3
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492891>>
accessed 10 December 2015

⁴⁹⁴ Final Report, 1127.

⁴⁹⁵ See Case C-128/12, Sindicato dos Bancários do Norte et al. v. BPN – Banco Português de Negócios SA [2013]; case C-264/12, Sindicato Nacional dos Profissionais de Seguros e Afins v. Fidelidade Mundial - Companhia de Seguros, SA (once more from the Tribunal do trabalho do Porto, concerning this time budget law 2012); Case C-566/13, Jorge Ítalo Assis dos Santos v. Banco de Portugal; case C-665/13, Sindicato Nacional dos Profissionais de Seguros e Afins (from the Tribunal do Trabalho de Lisboa).

⁴⁹⁶ See Judgement nos. 253/2012, 187/2013, 474/2013 and 602/2013.

⁴⁹⁷ Council of Europe, 'Slovenia and the European Social Charter' (Country Factsheets, Slovenia) 2
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804928a2>>
accessed 10 December 2015; European Federation of National Organisations Working with the Homeless (FEANTSA) v Slovenia (2008) No. 53/2008. Association for the Protection of All Children (APPROACH) Ltd. v Slovenia (2013) No. 95/2013; Final report 1300.

⁴⁹⁸ Informacijski urad Sveta Evrope v Republiki Sloveniji 'Novica: Novinarska konferenca o kršitvi Evropske socialne listine' (February 2010)
http://www.sveteurope.si/sl/novice/napoved_novinarska_konferenca_o_krsitvi_evropske_socialne_listine/ accessed 14 March 2015 [Slovenian]. Final Report 1301-1303.

⁴⁹⁹ Human Rights Ombudsman of the Republic of Slovenia 19th Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for the Year 2013 [2013]
<http://www.varuhrs.si/fileadmin/user_upload/pdf/lp/Devetnajsto_redno_letno_porocilo_Varuha_CP_RS_za_letno_2013.pdf> accessed 15 March 2015; The Government of the Republic of Slovenia, The Government Response to the Annual Report 2013 of the Ombudsman and Information on Fulfilment of the Recommendations of the Parliament for 2012 [2013]. <http://www.varuh-rs.si/publikacije-gradiva-izjave/letna-porocila-priporocila-dz-odzivna-porocila-vlade/> accessed 15 March 2015 [Slovenian]

Relationships Act, experts based their arguments on to not lower labour standards on the case law of the ECSR, particularly the issues brought up in complaint no. 65 and 66 against Greece.⁵⁰⁰ With regard to the Netherlands, it seems that there have also been no complaints linked to austerity measures.⁵⁰¹ There has been however two complaints within this study's period so far, out of a total of three violations by the Netherlands since ratification of the Additional Protocol. So far only one violation has been found that has not been remedied.⁵⁰² Even though the Committee has not assessed whether the remaining two violations have been fully remedied, the decisions brought about several positive consequences; for example, a motion was adopted in Haarlem on access to basic shelter for all in the city.⁵⁰³ And it is this collective complaint won by FEANTSA, highlighting the unfair criteria of local connection in order to access shelter which has influenced this motion.⁵⁰⁴

According to the report of the legal research group from the United Kingdom, the impact of the complaints procedure in alleviating the impact of austerity measures has also been difficult to assess since there have not been any complaints related to the Charter.⁵⁰⁵ Similarly, in regards to Norway, since there have been no complaints against it regarding austerity measures been taken, it cannot be said that the collective complaint has contributed to alleviating their effects.⁵⁰⁶ Since ratification, there have been two complaints lodged against Norway, of which one was found to be in violation and it seems to have been remedied.⁵⁰⁷ Overall, as put by the Greek report, "...the collective complaints' system represents one important development that has the potential to enhance the efficiency of the ESC system as a whole".⁵⁰⁸ Considering the numbers presented thus far, it seems that each Contracting

⁵⁰⁰ Final Report, 1304-1305.

⁵⁰¹ Final Report, 1408-1409.

⁵⁰² Defence for Children International (DCI) v. the Netherlands (Complaint No. 47/2008); Council of Europe, *'The Netherlands and the European Social Charter'* (Country Factsheets, Netherlands) 2-3
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492967>>
accessed 10 December 2015.

⁵⁰³ 'Motie Daklozenopvang voor iedereen' (Feantsa.org 2014)
www.feantsa.org/spip.php?action=accéder_document&arg=2297&cle=6ca4df068d1013671c51fc622e857830398c5e00&file=pdf%2Fmotie_daklozenopvangvooriedereen-c.pdf accessed 5 May 2015.

⁵⁰⁴ Habitact, 'European exchange forum on local homeless strategies' [2014] E-Bulletin, vol.21
http://www.habitact.eu/files/news/news/issue21_final.pdf accessed 5 May 2015. Final Report, 1408-1410.

⁵⁰⁵ Final Report, 1456-1459; Council of Europe, *'The United Kingdom and the European Social Charter'* (Country Factsheets, United Kingdom) 2
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492967>>
accessed 10 December 2015.

⁵⁰⁶ Final Report, 1017;

⁵⁰⁷ Council of Europe, *'Norway and the European Social Charter'* (Country Factsheets, Norway) 2
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168049289b>>
accessed 10 December 2015.

⁵⁰⁸ Final Report, 710.

Party reacts differently to a decision from the ECSR and the Committee of Ministers. Although social, economic and cultural social should be progressively realized and is dependent on each State's (varied) resources; efforts have to continue to ensure the implementation of their decisions. Further usage of the collective complaints system is unlikely to happen otherwise.

Non-ratifying States

Of particular relevance to this assessment is also to strive to determine why there seems to be such a low number of ratifications of the Additional Protocol that establishes the collective complaints system. A preliminary assessment, taking into consideration the conclusions of the ELSA legal reports from Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Malta, the Russia Federation, Slovak Republic and Ukraine, suggests that the aforementioned Contracting Parties have not taken any steps towards ratification.⁵⁰⁹ Several explanations were brought to the forefront, however the relationship between these individual States and the European Social Charter may shed light on this issue. The Albanian delegates declared that there are no technical reasons not to accept the complaints procedure. The Albanian Government has an ongoing cooperation with social actors through different bodies, such as the Council of Education and Vocational Training, and overall transparency has been achieved, thus the collective complaints could be approved.⁵¹⁰

The Azerbaijani delegates however were not as welcoming, and reiterated that “they were currently not in the position to accept the collective complaints procedure”.⁵¹¹ A similar stance was taken by the delegates from Bosnia and Herzegovina.⁵¹² The Georgian delegates have taken a more cautious approach. Even though Georgian representatives of public authorities and civil society, which were present at the meeting, were highly supportive for the ratification of the Additional Protocol, the Georgian delegates expressed that they would rather focus on accepting additional provisions of the

⁵⁰⁹ Final Report, 58-59, 117-118, 219-220, 261, 599, 967, 1240-1241, 1564.

⁵¹⁰ European Committee of Social Rights, ‘*Report on the Non-Accepted Provisions of the European Social Charter: Albania*’, 2013, <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483153>>, accessed 6 January 2016, 4 and 77.

⁵¹¹ European Committee of Social Rights, ‘*Second Report on the Non-Accepted Provisions of the European Social Charter: Azerbaijan*’, 2014, <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483155>> accessed 6 January 2016, 10.

⁵¹² European Committee of Social Rights, ‘*First Report on the Non-Accepted Provisions of the European Social Charter: Bosnia and Herzegovina*’, 2013, <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483157>> accessed 6 January 2016, 7.

Charter before the collective complaints system.⁵¹³ On a more positive note, the Ukrainian delegates have expressed that the collective complaints procedure is under consideration, although without providing any sort of indication for ratification.⁵¹⁴ Even though Austria and the Slovak Republic have signed the Additional Protocol thus showing some political willingness, and despite efforts made by the European Committee of Social Rights, they have yet to ratify.⁵¹⁵ Similarly, the Maltese delegates expressed an interest in the collective complaints procedure in 2010, since then they have yet to take any action.⁵¹⁶ This is in contrast to the Russian Federation and Armenia which have not even signed or provided any indication of possible signature or ratification of the Additional Protocol.⁵¹⁷ In regards to the remaining countries, the ELSA legal reports have indicated that there has been support towards ratification. In Germany, although there seems to exist some support from political and human rights actors (e.g.: the German Institute for Human Rights), there are still some lingering concerns between the role of the national governmental committee with the collective complaints system and the European Committee on Social Rights.⁵¹⁸ Hungary has signed the Additional protocol, but has not ratified it. According to the Hungarian legal research group, the reason seems to be related to a lack of necessary resources in the State budget that would allow a full commitment to the RESC, beyond

⁵¹³ European Committee of Social Rights, *'Second Report on the Non-Accepted Provisions of the European Social Charter: Georgia'*, 2015

<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804966d6>> accessed 6 January 2016, 39.

⁵¹⁴ European Committee of Social Rights, *'First Report on the Non-Accepted provisions of the European Social Charter: Ukraine'* 2012

<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483174>> accessed 6 January 2016, 5.

⁵¹⁵ European Committee of Social Rights, *'First Report on the Non-Accepted provisions of the European Social Charter: Slovak Republic'*, 2015

<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048c312>> accessed 6 January 2016, 4

⁵¹⁶ European Committee of Social Rights, *'Report on the Meeting with the Maltese Government within the Framework of the Procedure on Non-Accepted Provisions'*, 2011

<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483169>> accessed 6 January 2016, 19. European Committee of Social Rights, *'Malta and the European Social Charter'* (Country Factsheets Malta), 2015

<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492896>> accessed 10 January 2016, 1.

⁵¹⁷ European Committee of Social Rights, *"Armenia and the European Social Charter"* (Country Factsheets Armenia), 2015 <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492804&format=pdf>> accessed 10 January 2016, 1; Final Report 173; European Committee of Social Rights, *"First report on the non-accepted provisions of the European Social Charter: The Russian Federation"* (Country Factsheets Russia Federation), 2015 <<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492964>> accessed 10 January 2016, 5.

⁵¹⁸ Bundestagsdrucksache 17/5315, 9 [German]; Final Report 644.

the “optimal minimum”.⁵¹⁹ As for Spain, even though it has not ratified the Additional Protocol,⁵²⁰ Spanish jurisprudence has taken the case law of the European Committee of Social Rights into consideration.⁵²¹ In regards to Latvia, despite discussions brought forth by the Director of Latvian Human Rights Centre Anhelita Kamenska about the benefits to ratify Part D of the European Social Charter, no concrete steps have been taken so far.⁵²² Romania has also yet to ratify the Additional Protocol. Despite a declaration in 2010 from the Romanian Secretary of State for Labour, Family and Equality that the possibility of acceptance would be examined, and an attempt of passing a bill towards ratification in 2015, success has yet to be achieved.⁵²³ Although this might be a good opportunity to further encourage the Romanian Government to accept the collective complaints procedure. Despite a campaign pressuring the Polish Government on the fiftieth anniversary of European Social Charter, so far ratification of the Additional Protocol has not been achieved.⁵²⁴ According to the Polish legal research report, the former Ministry of Labour and Social Policy has expressed concerns that such may lead to some sort of misinterpretation of social rights, which will be taken in turn to make the ECSR involved in social policy, which falls under the exclusive competence of the State Government.⁵²⁵

⁵¹⁹ European Committee of Social Rights, “*Hungary and the European Social Charter*” (Country Factsheets Hungary), 2015 <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168049288e>> accessed 10 January 2016, 798.

⁵²⁰ European Committee of Social Rights, “*Spain and the European Social Charter*” (Country Factsheets Spain), 2015 <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492969>> accessed 10 January 2016, 1; Final Report, 1362-1363.

⁵²¹ See Labour Court in Spain (Labour Court no. 2 of Barcelona, judgment no. 412 of 19 November 2013. Final Report, 1362.

⁵²² European Committee of Social Rights, “*Latvia and the European Social Charter*” (Country Factsheets Latvia), 2015 <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492892>> accessed 10 January 2016, 1; Final Report, 912.

⁵²³ European Court of Human Rights, “*Rapport: Reunion Sur les Dispositions de la Charte Sociale Europeene Revisee Non Acceptees par la Roumanie*”, 2009

<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048bb66>> accessed 10 January 2016, 9; Final Report, 1154-1156; European Committee of Social Rights, “*Romania and the European Social Charter*” (country Factsheets Romania), 2015 <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168049289d>> accessed 10 January 2016, 1.

⁵²⁴ Final Report, 1071.

⁵²⁵ Final Report, 1070. European Committee of Social Rights, “*Poland and the European Social Charter*” (Country Factsheets Poland), 2015 <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492968>> accessed 10 January 2016, 1.

The Relationship between the Collective Complaints System and Other Economic and Social Treaty Provisions

The standards of protection of social rights within each international treaty are different. So is the mechanism that allows their enforcement. “[A] decision by potential complainants whether to use the CCP [Collective Complaints Procedure] or whether to try an alternative mechanism will always be strategic in attempting to achieve a certain objective”.⁵²⁶ As highlighted above, individuals cannot access the CCP to obtain redress from harm caused by State law or practice not in compliance with the Charter. So for the possibility of an individual remedy, a victim might consider to resort to the ECtHR⁵²⁷ and the CJEU^{528, 529}. However the relationship between the EU and the ECSR seems to have become tense during the economic crisis, as particularly highlighted by ELSA Greece’s report.⁵³⁰ Portugal, Ireland, Greece and Cyprus entered into a financial assistance agreement with the so-called *Troika* (comprised of officials of the European Commission, the European Central Bank and the International Monetary Fund) to overcome their financial hardships. These adjustment programmes, established within Memoranda of Understanding (MoU) and Council Decisions, and implemented under strict conditionality,⁵³¹ pressed for reforms in the education, labour, healthcare and pension systems. A comprehensive study by Andreas Fischer-Lescano⁵³² however, clearly shows how the MoUs, negotiated with the intervention of EU institutions, have infringed social rights, particularly Articles 1-6, 9-11 and 24 of the 1996 revised Charter.⁵³³ Furthermore the MoU’s implementing austerity measures have also contributed to the violation of these rights as described throughout this

⁵²⁶ Churchill R. and Khaliq U. (2004). “The collective complaints system of the European Social Charter: an effective mechanism for ensuring compliance with economic and social rights?” *European Journal of International Law* 15(3), 454.

⁵²⁷ See ECtHR judgments in *Mateus and others v Portugal*, Nos 62235/12 and 57725/12, 08.10.2013; *Koufaki and ADEDY v Greece*, Nos 57665/12 and 57657/12, 07.05.2013; *R.Sz. v Hungary*, No 41838/11, 02.07.2013.

⁵²⁸ Although unsuccessful see *ADEDY et al. v. Council*, GC Case T-541/10 (Nov. 27, 2012), <<http://curia.europa.eu/>>; *ADEDY et al. v. Council*, GC Case T-215/11 (Nov. 27, 2012), <<http://curia.europa.eu/>>; *Sindicato dos Bancarios do Norte and Others v. BPN - Banco Portugues de Negocios, SA*, CJEU Case C-128/12 (Mar. 7, 2013), <<http://curia.europa.eu/>>; *Sindicato Nacional dos Profissionais de Seguros e Afins v. Fidelidade Mundial*, CJEU Case C-264/12 (Jun. 26, 2014), <<http://curia.europa.eu/>>.

⁵²⁹ Churchill R. and Khaliq U. (2004). “The collective complaints system of the European Social Charter: an effective mechanism for ensuring compliance with economic and social rights?” *European Journal of International Law* 15(3), 454.

⁵³⁰ Final Report, 710.

⁵³¹ Article 136 (3) of the Treaty on the Functioning of the European Union (TFEU).

⁵³² Andreas Fischer-Lescano, *Human Rights in Times of Austerity Policy: The EU institutions and the conclusion of Memoranda of Understanding*, Centre of European Law and Politics, University of Bremen, 2014, 48.

⁵³³ Articles 14, 17, 27 – 32 and 34 of the Charter of Fundamental Rights of the European Union (CFREU), Articles 1-6, 9-11 and 24 of the Revised European Social Charter (RESC), Articles 2, 3, 8, 11, 14 and Article 1 of Protocol 1 of the European Convention of Human Rights (ECHR), Articles 6-8, 12-13 of the International Covenant on Social, Cultural and Economic Rights, Articles 24, 25 and 27 of the International Convention on Persons with Disabilities Rights and Article 28 of the International Convention on the Rights of the Child. *Ibid.* 41.

report.⁵³⁴ The negotiated measures should have undergone an *ex ante* human rights impact assessment⁵³⁵ to prevent any violations and mitigate any possible negative effects.⁵³⁶ Member States that have adopted austerity measures have not been considered as implementing EU law within the meaning of Article 51 of the Charter of Fundamental Rights of the European Union (CFREU), thus rendering the EU Charter inapplicable.⁵³⁷ However some commentators have argued nevertheless, that the actions of the EU, even if “borrowed”, are still bound to EU law and the CFREU. Therefore, the MoUs should have been negotiated with greater care for social rights, taking also into account the other international commitments from Member States, i.e. the European Social Charter. It seems that the relationship between the ECSR and the EU has to continue to grow to avoid a situation where the action of two different treaties clash and reduce the impact of their efforts.⁵³⁸ As the ECSR stated there is nothing in later international obligations, such as the loan arrangement with the EU organs, may absolve the government from the obligations arising from the Charter.⁵³⁹

Conclusions and Way Forward

Despite the Additional Protocol's over 15 years of existence, at the time of this study there have been 119 lodged complaints. During the economic crisis when social rights were most affected, one would

⁵³⁴ See also for e.g. Jernej Letnar Cerni, 'State Obligations Concerning Socio-Economic Rights in times of the European Financial Crisis' [2015] 11 International Law & Management Review 128-131. Matina Yannakourout and Chronis Tsimpoukis, 'Flexibility without Security and Deconstruction of Collective Bargaining: the New Paradigm of Labor law in Greece' [2013-2014] 35 Comparative Labor Law & Policy Journal 339-358. Luis Barroso, 'Political choices and constitutional determinations in times of constraint: the case of Portugal' [2014] 2014 Tijdschrift voor Constitutioneel Recht 339-343.

⁵³⁵ Principle 14 of the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights; Olivier De Schutter, Asbjørn Eide, Ashfaq Khalfan, Marcos Orellana, Margot Salomon & Ian Seiderman, 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights' [2012] 34(4) Human Rights Quarterly 1115-1119. Mary Dowell-Jones, 'The Economics of the Austerity Crisis: Unpicking Some Human Rights Arguments' [2015] 15 Human Rights Law Review 199-200.

⁵³⁶ CEDAW, *Concluding observations on the seventh periodic report of Greece*, adopted by the Committee at its fifty fourth session (11 February - 1 March 2013), CEDAW/C/GRC/CO/7, 26 March 2013, para. 40.

⁵³⁷ *Pringle v. Government of Ireland, Ireland and the Attorney General*, CJEU Case C-370/12 (Nov. 27, 2012), <<http://curia.europa.eu/>> para. 163; Margot E. Salomon, 'Of Austerity Measures, Human Rights and International Institutions', LSE Law, Society and Economy Working Papers 2/2015, 2015, 12. Michael Schwarz, 'A Memorandum of Misunderstanding – The Doomed Road of the European Stability Mechanism and a Possible Way Out: Enhanced Cooperation' [2014] 51 Common Market Law Review 398-400.

⁵³⁸ Fischer-Lescano, *supra* at 56-57. Olivier de Schutter, 'Conference on the future of the protection of social rights in Europe', Brussels, 12-13 February 2015. Jörg Luther, *Is there any "perspective" for an European Accession to the European Social Charter?*, University of "Piemonte orientale", Italy, 2014, 1, 8-10, Available at:

<<https://racseanesc.files.wordpress.com/2014/10/jc3b6rg-luther-is-there-any-perspective-for-an-european-accession-to-the-european-charter.pdf>> accessed 30 October 2015.

⁵³⁹ *Pensioners' Union of the Agricultural Bank of Greece (ATE) v. Greece* (Complaint No. 80/2012), para. 48.

think there might have been an increase in the number of complaints contesting austerity measures. Particularly from countries most affected by the crisis, such as Ireland, Portugal, Italy and Cyprus. It seems that during this period mostly all complaints linked to austerity measures were brought against Greece. Considering the issues identified that might be impeding collective complainants to act and assist in alleviating the effects of austerity measures it is clear that: 1) the Council of Europe has to continue their efforts to increase the number of ratifications of the Additional Protocol - the number of complaints is connected to the number of Contracting Parties which have accepted the collective complaints procedure; 2) complaints lodged by individuals are inadmissible, which further reduces the pool of possible applicants, thus limiting usage of the collective system, perhaps broadening the criteria of admissibility to allow individuals should be further explored; 3) to date, only Finland has issued a declaration allowing national non-governmental organisations to use the collective complaint procedure, which further reduces the number of possible complainants; 4) remedial power is apparently limited, with some Contracting Parties seemingly disregarding ECSR decisions of non-compliance. On the other hand, despite the aforementioned weaknesses, the ECSR has played a commendable role during the financial crisis. Among the identified complaints against Finland and Greece which were connected to austerity measures, the decisions of the ECSR and the Committee of Ministers clearly contributed to alleviating the effects of the contested austerity measures. The measures taken by these two States seemingly reverse the effects of the laws and practice deemed in breach of the Charter. Concluding, it is also noteworthy that despite the low number of ratifications, the usage of the charter seems to be steadily increasing.

8. Bibliography

8.1. Primary Sources

8.1.1. National Legislation

8.1.1.1. Laws and decrees in chronological order

- Act on Supporting the Functional Capacity of the Older Population and on Social and Health Services for Older Persons (980/2012) of 1 July 2013
- Bundestagsdrucksache 17/5315, 9 [German]

8.1.1.2. Domestic jurisprudence

- Labour Court no. 2 of Barcelona, judgment no. 412 of 19 November 2013
- Portuguese Constitutional Court Judgement no. 187/2013;
- Portuguese Constitutional Court Judgement no. 253/2012;
- Portuguese Constitutional Court Judgement no. 474/2013;
- Portuguese Constitutional Court Judgement no. 602/2013;

8.1.2. International Law

8.1.2.1. International Treaties

- Additional Protocol to the European Social Charter, 5 May 1988, ETS No. 128.
- Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, 9 November 1995, ETS No. 158
- European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5
- European Social Charter (Revised), 3 May 1996, ETS 163
- Protocol amending the European Social Charter, 21 October 1991, ETS No. 142
- Treaty on European Union (Consolidated Version), Treaty of Maastricht , 7 February 1992, OJ C 325/5; 24 December 2002
- Treaty on the Functioning of the European Union (Consolidated version), 13 December 2007, 2008/C 115/01

8.1.3. International Jurisprudence

8.1.3.1. European Committee on Social Rights

i. Complaints

- *Association for the Protection of All Children (APPROACH) Ltd v. Cyprus*, Complaint No. 97/2013 (ECSR 2 July 2013)
- *Association for the Protection of All Children (APPROACH) Ltd. v Slovenia*, Complaint No. 95/2013 (ECSR 5 December 2014)
- *Association of Care Giving Relatives and Friends v. Finland*, Complaint No. 70/2011 (ECSR 4 December 2012)
- *Association of Care Giving Relatives and Friends v. Finland*, Complaint No. 71/2011 (ECSR 4 December 2012)
- *Centrale générale des services publics (CGSP) v. Belgium*, Complaint No. 25/2004 (ECSR 9 May 2005)
- *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Collective Complaint No. 58/2009 (ECSR 26 June 2010)
- *Confédération Générale du Travail (CGT) v. France*, Complaint No. 55/2009 (ECSR 24 June 2010)
- *Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" and European Trade Union Confederation (CES) v. Bulgaria*, Complaint No. 32/2005 (ECSR 16 October 2006)
- *European Action of the Disabled (AEH) v. France*, Complaint No. 81/2012 (ECSR, 11 September 2013)
- *European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France*, Complaint No. 82/2012 (ECSR 19 March 2013)
- *European Council of Police Trade Unions (CESP) v. Portugal*, Complaint No. 11/2001, (ECSR 21 May 2002)
- *European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands*, Complaint No. 86/2012 (ECSR, 2 July 2014)
- *European Federation of National Organisations Working with the Homeless (FEANTSA) v Slovenia*, Complaint No. 53/2008 (ECSR, 8 August 2009)
- *European Roma Rights Centre (ERRC) v. Bulgaria*, Complaint No. 46/2007 (ECSR 3 December 2008)

- *European Roma Rights Centre (ERRC) v. Bulgaria*, Complaint No. 48/2008 (ECSR 18 February 2009)
- *European Roma Rights Centre (ERRC) v. Portugal*, Complaint No. 61/2010 (ECSR 30 June 2011)
- *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*, Complaint No. 76/2012 (ECSR 7 December 2012)
- *Finish Society of Social Rights v. Finland*, Complaint No. 88/2012 (ECSR, 9 September 2014)
- *General Federation of employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*, Complaint No. 66/2011 (ECSR, 23 May 2012)
- *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, (ECSR 19 May 2015)
- *International Association Autism-Europe v. France*, Collective Complaint No. 13/2002 (ECSR, 8 March 2004)
- *International Federation for Human Rights (FIDH) v. Belgium*, Complaint No. 75/2011 (ECSR 18 March 2013)
- *Médecins du Monde – International v. France*, Complaint No. 67/2011 (ECSR 27 March 2013)
- *Mental Disability Advocacy Center (MDAC) v. Bulgaria*, Complaint No. 41/2007 (ECSR, 12 October 2008)
- *Panhellenic Federation of pensioners of the public electricity corporation (POS-DEI) v. Greece*, Complaint No. 79/2012 (ECSR 7 December 2012)
- *Panhellenic Federation of Public Service Pensioners (POPS) v. Greece*, Complaint No. 77/2012 (ECSR 7 December 2012)
- *Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece*, Collective Complaint No. 78/2012 (ECSR 7 December 2012)
- *Pensioners' Union of the Agricultural Bank of Greece (ATE) v. Greece*, Complaint No. 80/2012 (ECSR 7 December 2012)

ii. Conclusions

- European Committee of Social Rights, Addendum to 13th Report (Italy) 2014
- European Committee of Social Rights, Conclusions 2003 (France), 2003
- European Committee of Social Rights, Conclusions 2004 (Lithuania), 2004
- European Committee of Social Rights, Conclusions 2009 (Denmark), 2009

- European Committee of Social Rights, Conclusions 2009 (Malta), 2009
- European Committee of Social Rights, Conclusions 2009 (Moldova), 2009
- European Committee of Social Rights, Conclusions 2009 (Sweden), 2009
- European Committee of Social Rights, Conclusions 2009 (Turkey), 2009
- European Committee of Social Rights, Conclusions 2010, (Albania), 2010
- European Committee of Social Rights, Conclusions 2011 (Armenia), 2011
- European Committee of Social Rights, Conclusions 2011 (Belgium), 2011
- European Committee of Social Rights, Conclusions 2011 (Bosnia and Herzegovina), 2011
- European Committee of Social Rights, Conclusions 2011 (Georgia), 2011
- European Committee of Social Rights, Conclusions 2011 (Italy), 2011
- European Committee of Social Rights, Conclusions 2011 (Netherlands), 2011
- European Committee of Social Rights, Conclusions 2011 (Romania), 2011
- European Committee of Social Rights, Conclusions 2011 (Slovak Republic), 2011
- European Committee of Social Rights, Conclusions 2011 (Turkey), 2011
- European Committee of Social Rights, Conclusions 2013 (Austria), 2013
- European Committee of Social Rights, Conclusions 2013 (Bulgaria), 2013
- European Committee of Social Rights, Conclusions 2013 (Finland), 2013
- European Committee of Social Rights, Conclusions 2013 (Romania), 2013
- European Committee of Social Rights, Conclusions 2013 (Slovak Republic), 2013
- European Committee of Social Rights, Conclusions 2014, (Armenia), 2014
- European Committee of Social Rights, Conclusions 2014, (Armenia), 2014
- European Committee of Social Rights, Conclusions 2014, (Austria), 2014
- European Committee of Social Rights, Conclusions 2014, (Azerbaijan), 2014
- European Committee of Social Rights, Conclusions 2014, (Bulgaria), 2014
- European Committee of Social Rights, Conclusions 2014, (Cyprus), 2014
- European Committee of Social Rights, Conclusions 2014, (Finland), 2014
- European Committee of Social Rights, Conclusions 2014, (Hungary), 2014

- European Committee of Social Rights, Conclusions 2014, (Italy), 2014
- European Committee of Social Rights, Conclusions 2014, (Malta), 2014
- European Committee of Social Rights, Conclusions 2014, (Malta), 2014
- European Committee of Social Rights, Conclusions 2014, (Portugal), 2014
- European Committee of Social Rights, Conclusions 2014, (Russian Federation), 2014
- European Committee of Social Rights, Conclusions 2014, (Slovak Republic), 2014
- European Committee of Social Rights, Conclusions 2014, (Slovenia), 2014
- European Committee of Social Rights, Conclusions 2014, (The Netherlands), 2014
- European Committee of Social Rights, Conclusions I, Statement of Interpretation on Article 4§2, 1969
- European Committee of Social Rights, Conclusions I, Statement of Interpretation on Article 5 1969
- European Committee of Social Rights, Conclusions I, Statement of Interpretation on Article 6§3, 1969
- European Committee of Social Rights, Conclusions I, Statement of Interpretation on Article 6§4
- European Committee of Social Rights, Conclusions V, Statement of Interpretation on Article 6§1 1977
- European Committee of Social Rights, Conclusions XII-1 (Denmark)
- European Committee of Social Rights, Conclusions XIII-4, General Introduction
- European Committee of Social Rights, Conclusions XIII-4, General Introduction
- European Committee of Social Rights, Conclusions XIII-5, Statement of Interpretation on Article 1 of Additional Protocol 1997
- European Committee of Social Rights, Conclusions XIII-5, Statement of Interpretation on Article 1 of Additional Protocol 1997
- European Committee of Social Rights, Conclusions XIV-1 (Greece)
- European Committee of Social Rights, Conclusions XIV-1, Statement of Interpretation on Article 13

- European Committee of Social Rights, Conclusions XIV-2, Statement of Interpretation on Article 4§1 (1998)
- European Committee of Social Rights, Conclusions XIV-I (Ireland)
- European Committee of Social Rights, Conclusions XIV-I (Norway)
- European Committee of Social Rights, Conclusions XIX-3, (2010), (Croatia), 2010
- European Committee of Social Rights, Conclusions XV-2 (1998)
- European Committee of Social Rights, Conclusions XVI-2 (Denmark)
- European Committee of Social Rights, Conclusions XX-2 (Croatia)
- European Committee of Social Rights, Conclusions XX-2 (Greece)
- European Committee of Social Rights, Conclusions XX-2 (Latvia)
- European Committee of Social Rights, Conclusions XX-2 (Spain)
- European Committee of Social Rights, Conclusions XX-2, (Poland)
- European Committee of Social Rights, Conclusions XX-3 (2014)
- European Committee of Social Rights, Conclusions XX-3 (2014), (Germany), 2015
- European Committee of Social Rights, Conclusions XX-3 (2014), (Greece), 2014
- European Committee of Social Rights, Conclusions XX-3 (2014), (Poland), 2014
- European Committee of Social Rights, Conclusions XX-3 (2014), (Spain), 2014
- European Committee of Social Rights, Conclusions XX-3 (2014), (Spain), 2014
- European Committee of Social Rights, Conclusions XX-3 (2014), (United Kingdom), 2014
- European Committee of Social Rights, Conclusions XX-II

iii. Resolutions

- Committee of Ministers Resolution, CM/ResChS (2013)2, General Federation of employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) against Greece, Complaint No. 65/2011, 18 June 2012
- Committee of Ministers Resolution, CM/ResChS(2013)3, General Federation of employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) against Greece, Complaint No. 66/2011, 5 February 2013

- Committee of Ministers Resolution, CM/ResChS(2013)12, The Central Association of Carers in Finland against Finland, Complaint No. 70/2011, 16 October 2013
- Committee of Ministers Resolution, CM/ResChS(2014)9, Pensioners' Union of the Athens Piraeus Electric Railways (I.S.A.P.) v. Greece, Complaint No. 78/2012, 2 July 2014

8.1.3.2. European Court of Human Rights

- *Airey v. Ireland*, App. No. 6289/73, (ECHR, 9 October 1979).
- *Annoni di Gussola and Others v. France*, App. Nos. 31819/96 and 33293/96, (ECHR, 14 November 2000).
- *Balakin v. Russia*, App. No. 21788/06 (ECHR 4 July 2013).
- *Budina v. Russia (Dec.)*, App. No. 45603/05 (ECHR 12 February 2008).
- *Khoniakina v. Georgia*, App. No. 17767/08, (ECHR, 19 June 2012).
- *Konstantin Markin v. Russia*, App. No. 30078/06, (ECHR, 22 March 2012).
- *Koufaki and ADEDY v. Greece*, Nos 57665/12 and 57657/12, 07.05.2013;
- *Koufaki and Adedy v. Greece (Dec.)*, App. Nos. 57665/12, 57657/12 (ECHR 7 May 2013).
- *Larioschina v. Russia (Dec.)*, App. No. 56869/00 (ECHR 23 April 2002).
- *M.S.S. v. Belgium and Greece [GC]*, App. No. 30696/09 (ECHR, 21 January 2011)
- *Mateus and others v Portugal*, Apps. Nos. 62235/12 and 57725/12 (ECHR, 8 October 2013)
- *Panfile v. Romania (Dec.)*, App. No. 13902/11 (ECHR, 20 March 2012).
- *R.Sz. v Hungary*, App. No. 41838/11 (ECHR, 02 July 2013)
- *Stefanetti and Others v. Italy*, App. No. 21838/10 (ECHR 15 April 2014)
- *Valkov and others v. Bulgaria*, App. No. 2033/04, (ECHR, 25 October 2011)

8.1.3.3 Court of Justice of the European Union

- Case C-128/12 *Sindicato dos Bancarios do Norte and Others v. BPN - Banco Portugues de Negocios, SA* ECLI:EU:C:2013:149
- Case C-128/12 *Sindicato dos Bancários do Norte et al. v. BPN – Banco Português de Negócios SA* ECLI:EU:C:2013:149

- Case C-264/12 *Sindicato Nacional dos Profissionais de Seguros e Afins v. Fidelidade Mundial - Companhia de Seguros, SA* ECLI:EU:C:2014:2036
- Case C-264/12 *Sindicato Nacional dos Profissionais de Seguros e Afins v. Fidelidade Mundial* ECLI:EU:C:2014:2036
- Case C-370/12 *Pringle v. Government of Ireland, Ireland and the Attorney General* ECLI:EU:C:2012:756
- Case C-566/13 *Jorge Ítalo Assis dos Santos v. Banco de Portugal* ECLI:EU:C:2014:209
- Case C-665/13 *Sindicato Nacional dos Profissionais de Seguros e Afins* ECLI:EU:C:2014:2327
- Case T-215/11 *ADEDY et al. v. Council* ECLI:EU:T:2012:627
- Case T-293/13 *Theophilou v Commission and ECB* ECLI:EU:T:2014:979
- Case T-541/10 *ADEDY and Others v. Council* ECLI:EU:T:2012:626

8.2. Secondary Sources

8.2.1. Books

- Cullen H, 'The Collective Complaints System of the European Social Charter: Interpretative Methods of the European Committee on Social Rights', *Human Rights Law Review* (2009)
- Dufy S, 'A Fair Society? How the Cuts Target Disabled People' (The Centre for Welfare Reform, 2013)
- Lester S, Mercurio B, Davies A, *World Trade Law* (Hart Publishing, 2012)
- Ostry J D, Berg A, Charalambos Tsangarides C G, *Redistribution, Inequality, and Growth*, International Monetary Fund Research Department (2014)

8.2.2. Journal Articles

- Barroso L, 'Political choices and constitutional determinations in times of constraint: the case of Portugal' [2014] 2014 *Tijdschrift voor Constitutioneel Recht*
- Cerni J L, 'State Obligations Concerning Socio-Economic Rights in times of the European Financial Crisis' [2015] 11 *International Law & Management Review*
- Churchill R. and Khaliq U. (2004). "The collective complaints system of the European Social Charter: an effective mechanism for ensuring compliance with economic and social rights?" *European Journal of International Law* 15(3)

- De Schutter O, Eide A, Khalfan A, Orellana M, Salomon M & Seiderman I, 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights' [2012] 34(4) Human Rights Quarterly
- Dowell-Jones M, 'The Economics of the Austerity Crisis: Unpicking Some Human Rights Arguments' [2015] 15 Human Rights Law Review
- Fischer-Lescano A, Human Rights in Times of Austerity Policy: The EU institutions and the conclusion of Memoranda of Understanding, Centre of European Law and Politics, University of Bremen, 2014
- Novitz, T. (2002). "Are social rights necessarily collective rights? A critical analysis of the Collective Complaints Protocol to the European Social Charter" European Human Rights Law Review
- Reidling H, (2007). "The Netherlands and the Development of International Human Rights Instruments" School of Human Rights Research Series 22
- Salomon M E, 'Of Austerity Measures, Human Rights and International Institutions', LSE Law, Society and Economy Working Papers 2/2015, 2015
- Schwarz M, 'A Memorandum of Misunderstanding – The Doomed Road of the European Stability Mechanism and a Possible Way Out: Enhanced Cooperation' [2014] 51 Common Market Law Review
- Van Damme F, (1994). "The Revision of the European Social Charter" International Labour Review 133(5-6)
- Yannakourout M and Tsimpoukis C, 'Flexibility without Security and Deconstruction of Collective Bargaining: the New Paradigm of Labor law in Greece' [2013-2014] 35 Comparative Labor Law & Policy Journal

8.2.3. Internet sources

- Academic Network of European Disability Experts, 'ANED country report on equality of educational and training opportunities for young disabled people', (May, 2010),
<[http://www.disability-europe.net/content/aned/media/FR-12
ANED%202010%20Task%205%20request-11%20-%20report_final.pdf](http://www.disability-europe.net/content/aned/media/FR-12%20ANED%202010%20Task%205%20request-11%20-%20report_final.pdf)>, accessed 3
October 2015
- Academy Network of European Disability Experts 'The employment of disabled people in European countries',

- <<http://www.disability-europe.net/theme/employment/employment-disabled-people-european-countries>>, accessed 31 October 2015
- Cingano, Federico, Trends in Income Inequality and its Impact on Economic Growth, OECD Social, Employment and Migration Working Papers, 2014, No. 163, OECD Publishing, <oecd.org/els/soc/trends-in-income-inequality-and-its-impact-on-economic-growth-SEM-WP163.pdf>, accessed 31 October 2015
- Council of Europe Commissioner for Human Rights Nils Muižnieks, 'Pitfall in the implementation of the human rights of persons with disabilities' (High-level meeting on disability: "Forum Inclusive Education to Inclusive Employment for People with Disabilities", Riga, 11-12 May 2015) <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2756527&SecMode=1&DocId=2275652&Usage=2>>, accessed 27 September 2015
- Council of Europe Secretary General Thorbjørn Jagland, 'Many peoples with disabilities are been deprived of basic human rights', News 2013, <http://www.coe.int/en/web/secretary-general/news-2013/-/asset_publisher/EYIBJNjXtA5U/content/many-people-with-disabilities-are-being-deprived-of-basic-human-rights?inheritRedirect=false>, accessed 10 December 2015
- Council of Europe, 'Chart of signatures and ratifications of Treaty 158 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints Status as of 29/01/2016', <http://www.coe.int/en/web/conventions/fulllist//conventions/treaty/158/signatures?p_auth=GsnUpjHE>, accessed 29 January 2016
- Council of Europe, 'Persons with disabilities. Removing barriers to creates an inclusive and accessible society' <<http://www.coe.int/en/web/portal/people-with-disabilities>>, accessed 14 October 2015
- Council of Europe, 'Rights of people with disability: Facts sheet on Article 15 of the Revised European Social Charter'
- <http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Theme%20factsheets/FactsheetDisabled_en.pdf>, accessed 1 October 2015

- Council of Europe, “Collective Complaints Procedure: an overview”, at <http://www.coe.int/en/web/turin-european-social-charter/collective-complaints-procedure1> >, accessed 28 December 2015;
- Council of Europe, Commissioner for Human Rights Nils Muižnieks, ‘Monitoring the Human Rights of Persons with Disabilities in Europe’ (International Symposium “Human Rights and Disability”, Vienna, Austria, 10-11 April 2014) <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2503663&SecMode=1&DocId=2130702&Usage=2> >, accessed 14 October 2015
- Der Standard, ‘Sonderschule bis 2020 zur Ausnahme werden’, <http://derstandard.at/2000004102169/Sonderschule-soll-bis-2020-zur-Ausnahme-werden> >, accessed 21 September 2015 [German]
- European Committee of Social Rights, ‘Albania and the European Social Charter’(Country Factsheets, Albania), 2015, www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Albania_en.pdf >, accessed 1 October 2015
- European Committee of Social Rights, ‘Armenia and the European Social Charter’(Country Factsheets, Armenia), 2015, www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Armenia_en.pdf >, accessed 1 October 2015
- European Committee of Social Rights, ‘Austria and the European Social Charter’(Country Factsheets, Austria), 2015, www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Austria_en.pdf >, accessed 1 October 2015
- European Committee of Social Rights, ‘Azerbaijan and the European Social Charter’(Country Factsheets, Azerbaijan), 2015, www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Azerbaijan_en.pdf >, accessed 1 October 2015
- European Committee of Social Rights, ‘Bosnia and Herzegovina and the European Social Charter’ (Country Factsheets, Bosnia and Herzegovina), 2015,

- <www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/BH_en.pdf>, accessed 1 December 2015
- European Committee of Social Rights, 'Bulgaria and the European Social Charter' (Country Factsheets, Bulgaria), 2015
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000001680492882&format=pdf>>, accessed 10 December 2015
 - European Committee of Social Rights, 'Croatia and the European Social Charter' (Country Factsheets, Croatia), 2015,
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000001680492883&format=pdf>>, accessed 10 December 2015
 - European Committee of Social Rights, 'Cyprus and the European Social Charter' (Country Factsheets, Cyprus), 2015,
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000001680492884&format=pdf>>, accessed 10 December 2015
 - European Committee of Social Rights, 'Digest of the case law of the European Committee of Social Rights' (1 September 2008),
<https://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf> accessed 10 December 2015
 - European Committee of Social Rights, 'First Report on the Non-Accepted Provisions of the European Social Charter: Bosnia and Herzegovina', 2013,
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000001680483157>>, accessed 6 January 2016
 - European Committee of Social Rights, 'First Report on the Non-Accepted provisions of the European Social Charter: Ukraine', 2012
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000001680483174>>, accessed 6 January 2016
 - European Committee of Social Rights, 'First Report on the Non-Accepted provisions of the European Social Charter: Slovak Republic', 2015
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900000168048c312>>, accessed 6 January 2016
 - European Committee of Social Rights, 'France and the European Social Charter' (Country Factsheets, France), 2015,

- <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492889&format=pdf>>, accessed 10 December 2015
- European Committee of Social Rights, 'Italy and the European Social Charter' (Country Factsheets, Italy), 2015,
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492891>>, accessed 10 December 2015
 - European Committee of Social Rights, 'Malta and the European Social Charter' (Country Factsheets Malta), 2015
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492896>>, accessed 10 January 2016
 - European Committee of Social Rights, 'Norway and the European Social Charter' (Country Factsheets, Norway), 2015
 - <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168049289b>>, accessed 10 December 2015.
 - European Committee of Social Rights, 'Portugal and the European Social Charter' (Country Factsheets, Portugal), 2015
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492891>>, accessed 10 December 2015
 - European Committee of Social Rights, 'Report on the Meeting with the Maltese Government within the Framework of the Procedure on Non-Accepted Provisions', 2011
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483169>>, accessed 6 January 2016
 - European Committee of Social Rights, 'Report on the Non-Accepted Provisions of the European Social Charter: Albania', 2013,
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483153>>, accessed 6 January 2016
 - European Committee of Social Rights, 'Romania and the European Social Charter' (Country Factsheets, Romania), 2015,
<www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Romania_en.pdf>, accessed 1 October 2015

- European Committee of Social Rights, 'Second Report on the Non-Accepted Provisions of the European Social Charter: Azerbaijan', 2014,
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000001680483155>>, accessed 6 January 2016
- European Committee of Social Rights, 'Second Report on the Non-Accepted Provisions of the European Social Charter: Georgia', 2015
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000016804966d6>>, accessed 6 January 2016
- European Committee of Social Rights, 'Slovenia and the European Social Charter' (Country Factsheets, Slovenia), 2015
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000016804928a2>>, accessed 10 December 2015
- European Committee of Social Rights, 'The Netherlands and the European Social Charter' (Country Factsheets, Netherlands)
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000001680492967>>, accessed 10 December 2015.
- European Committee of Social Rights, 'The United Kingdom and the European Social Charter' (Country Factsheets, United Kingdom)
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000001680492967>>, accessed 10 December 2015.
- European Committee of Social Rights, "Armenia and the European Social Charter" (Country Factsheets Armenia), 2015
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000001680492804&format=pdf>>, accessed 10 January 2016
- European Committee of Social Rights, "First report on the non-accepted provisions of the European Social Charter: The Russian Federation" (Country Factsheets Russia Federation), 2015
<<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000001680492964>>, accessed 10 January 2016
- European Committee of Social Rights, "Hungary and the European Social Charter" (Country Factsheets Hungary), 2015

- <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168049288e>>, accessed 10 January 2016
- European Committee of Social Rights, “Latvia and the European Social Charter” (Country Factsheets Latvia), 2015
- <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492892>>, accessed 10 January 2016
- European Committee of Social Rights, “Poland and the European Social Charter” (Country Factsheets Poland), 2015
- <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492968>>, accessed 10 January 2016
- European Committee of Social Rights, “Romania and the European Social Charter” (country Factsheets Romania), 2015
- <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168049289d>>, accessed 10 January 2016
- European Committee of Social Rights, “Spain and the European Social Charter” (Country Factsheets Spain), 2015
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492969>>, accessed 10 January 2016,
- European Committee of Social Rights, Digest of the Case of Law of the European Committee of Social Rights (1 September 2008),
<https://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf>, accessed 21 September 2015, 112.
- European Foundation Centre , ‘Assessing the impact of European Governments’ Austerity Plan on the Rights of People with Disabilities’ (October 2012).
<<http://www.eesc.europa.eu/resources/docs/austerity2012.pdf>>, accessed 5 November 2015.
- European Foundation Centre, Assessing the impact of European governments’ austerity plans on the rights of people with disabilities’,
<http://www.enil.eu/wp-content/uploads/2012/12/Austerity-European-Report_FINAL.pdf>, accessed 31 October 2015.

- European Law Students' Association and Council of Europe, Austerity Measures and their Implications: The Role of the European Social Charter in Maintaining Minimum Social Standards in Countries Undergoing Austerity Measures (Council of Europe 2015).
- Eurostat, 'Tertiary Education Statistics 2015', <http://ec.europa.eu/eurostat/statistics-explained/index.php/Tertiary_education_statistics>, accessed 6 November
- Eurostat, 'Youth Unemployment',
<http://ec.europa.eu/eurostat/statistics-explained/index.php/Youth_unemployment>,
accessed 6 November 2015
- Eurostat, 'Social Protection Statistics', <http://ec.europa.eu/eurostat/statistics-explained/index.php/Social_protection_statistics> accessed 6 November 2015
- Habitact, 'European exchange forum on local homeless strategies' [2014] E-Bulletin, vol.21
<http://www.habitact.eu/files/news/news/issue21_final.pdf>, accessed 5 December 2015
- ILO, Calculations based on ILO, OECD, Eurostat, CEPAL, ADB, World Bank, IMF and national data,
<<http://www.socialprotection.org/gimi/gess/RessourceDownload.action?ressource.ressourceId=43321>> accessed 6 November 2015
- ILO, calculations based on the IMF'S World Economic Outlook database, (2014)
- Informacijski urad Sveta Evrope v Republiki Sloveniji 'Novica: Novinarska konferenca o kršitvi Evropske socialne listine' (February 2010)
<http://www.svetevrope.si/sl/novice/napoved_novinarska_konferenca_o_krsitvi_evropske_socialne_listine/>, accessed 14 March 2015 [Slovenian].
- 'Motie Daklozenopvang voor iedereen' (Feantsa.org 2014)
<www.feantsa.org/spip.php?action=accéder_document&arg=2297&cle=6ca4df068d1013671c51fc622e857830398c5e00&file=pdf%2Fmotie_daklozenopvangvooriedereen-c.pdf>,
accessed 5 May 2015.
- OECD (2015), In It Together: Why Less Inequality Benefits All, OECD Publishing, Paris
<<http://dx.doi.org/10.1787/9789264235120-en>>, accessed 31 October 2015.
- OECD (2015), In It Together: Why Less Inequality Benefits All, OECD Publishing, Paris,
<<http://dx.doi.org/10.1787/9789264235120-en>>, accessed 31 October 2015.
- OECD, 'Education at a Glance' (October 2014)

- <<http://www.oecd.org/edu/Education-at-a-Glance-2014.pdf>>, accessed 15 November 2015.
- OECD, Forum 2015: Income Inequality in Figures, 2015,
<<http://www.oecd.org/forum/issues/oecd-forum-2015-income-inequality-in-figures.html>>,
accessed 31 October 2015.
 - OECD, Trade and Structural Adjustment, 2005,
<<http://www.oecd.org/general/34753254.pdf>>, accessed 2 November 2014.
 - Patra E, 'Social Dialogue and Collective Bargaining in Times of Crisis: The Case of Greece' (ILO Working Paper No. 38, 2012)
<http://ilo.org/ifpdial/information-resources/publications/WCMS_174961/lang--en/index.htm>, accessed 16 December 2015.
 - Press release (70/2013) of the Ministry of Social Affairs and Health and the Ministry for Foreign Affairs, <<http://www.stm.fi/tiedotteet/tiedote/-/view/1854561>> (Finnish).

8.2.4. Reports

- Caritas Europa, 'Crisis monitoring report: The European crisis and its human cost' (2014)
- Committee on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of Greece, adopted by the Committee at its fifty fourth session (11 February - 1 March 2013), CEDAW/C/GRC/CO/7, 26 March 2013;
- Council of Europe Commissioner for Human Rights Nils Muiznieks, 'Report following his visit to the Netherlands from 20 to 22 May 2014',
<<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2662990&SecMode=1&DocId=2218416&Usage=2>>, accessed 27 September 2015 [English].
- Council of Europe Commissioner for Human Rights Nils Muiznieks, 'Report following his visit to Spain from 3 to 7 June 2013')
<<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2389885&SecMode=1&DocId=2077824&Usage=2>>, accessed 2 November 2015
- Council of Europe, Explanatory Report on the Collective Complaints Protocol (1995)

- Council of Europe, Report by Nils Muiznieks following his visit to Spain from 3 to 7 June 2013, CommDH (2013) 18, of 9 October 2013
- Directorate General for Internal Policies, 'The impact of the crisis on fundamental rights across Member States of the EU – Comparative analysis' (February 2015),
<[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510021/IPOL_STU\(2015\)510021_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510021/IPOL_STU(2015)510021_EN.pdf)>, accessed 3 November 2015
- Directorate General for Internal Policies, 'The impact of the crisis on fundamental rights across Member States of the EU - Country Report on Greece' (February 2015),
<[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510014/IPOL_STU\(2015\)510014_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510014/IPOL_STU(2015)510014_EN.pdf)>, accessed 3 November 2015
- Directorate General for Internal Policies, 'The impact of the crisis on fundamental rights across Member States of the EU - Country Report on Portugal' (February 2015)
<[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510020/IPOL_STU\(2015\)510020_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510020/IPOL_STU(2015)510020_EN.pdf)>, accessed 3 November 2015.
- Directorate General for Internal Policies, Policy Department A, Economic and Scientific Policy, Wage and Income Inequality in the European Union, European Parliament, 2015,
<europa.eu/document/activities/cont/201107/20110718ATT24284/20110718ATT24284EN.pdf>, accessed 31 October 2015
- Eurochild, 'Children in Alternative - National Surveys-2nd Edition - Executive Summary' (January 2010)
<http://www.eurochild.org/fileadmin/public/05_Library/Thematic_priorities/06_Children_in_Alternative_Care/Eurochild/FINAL_EXEC_SUMMARY.pdf>, accessed 5 November 2015
- Eurochild, 'How the economic and financial crisis is affecting children & Young people in Europe' (December 2012)
<http://www.eurochild.org/fileadmin/public/05_Library/Thematic_priorities/02_Child_Poverty/Eurochild/Eurochild_Crisis_Update_Report_2012.pdf>, accessed 11 November 2015
- Eurofound, 'NEETs Young people not in employment, education or training: Characteristics, costs and policy responses in Europe' 2012.
<http://www.eurofound.europa.eu/sites/default/files/ef_files/pubdocs/2012/54/en/1/E_F1254EN.pdf>, accessed 6 November 2015

- European Commission, 'Addressing youth unemployment in the EU' <<http://ec.europa.eu/social/BlobServlet?docId=13422&langId=en>>, accessed 6 November 2015
- European Commission, 'Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. Situation of disabled people in the European Union: the European Action Plan 2008-2009', COM (2007), 26 November 2007, <<http://ec.europa.eu/transparency/regdoc/rep/2/2007/EN/2-2007-1548-EN-1-0.Pdf>>, accessed 29 October 2015
- European Commission, 'Europe 2020 Target: Tertiary Education Attainment' <http://ec.europa.eu/europe2020/pdf/themes/28_tertiary_education.pdf>, accessed 6 November 2015
- European Commission, 'National Student Fee and Support Systems in European Higher Education 2014/2015' <http://eacea.ec.europa.eu/education/eurydice/documents/facts_and_figures/fees_support.pdf>, accessed 6 November 2015
- European Commission, DG Employment, Social Affairs and Inclusion, Social impact of the crisis and developments in the light of fiscal consolidation measures
- European Commission, EU Network of independent experts on social inclusion, Social impact of the crisis and developments in the light of fiscal consolidation measures (February 2011)
- European Commission, Social protection budgets in the crisis in the EU, Working paper No. 1/2013
- European Committee of Social Rights, 'Activity Report 2009', 2010 <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048910d>>, accessed 6 January 2016
- European Committee of Social Rights, 'Activity Report 2010', 2011 <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048910f>>, accessed 6 January 2016

- European Committee of Social Rights, 'Activity Report 2011', 2012
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680489111>>, accessed 6 January 2016
- European Committee of Social Rights, 'Activity Report 2012', 2013
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680489113>>, accessed 6 January 2016
- European Committee of Social Rights, 'Activity Report 2013', 2014
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680489115>>, accessed 6 January 2016
- European Committee of Social Rights, 'Activity Report 2014', 2015
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168047eebb>>, accessed 6 January 2016
- European Court of Human Rights, "Rapport: Reunion Sur les Dispositions de la Charte Sociale Europeene Revisee Non Accptees par la Roumanie", 2009
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048bb66>>, accessed 10 January 2016
- European Law Students' Association and Council of Europe, 'Austerity Measures and their Implications: The Role of the European Social Charter in Maintaining Minimum Social Standards in Countries Undergoing Austerity Measures' (Council of Europe 2015)
- Eurostat, at risk of poverty or social exclusion in the EU28, 4 November 2014
<<http://ec.europa.eu/eurostat/documents/2995521/6035076/3-04112014-BP-EN.pdf/62f94e70-e43a-471f-a466-2e84d1029860>>, accessed 31 October 2015
- Eurostat, Children were the age group at the highest risk of poverty or social exclusion in 2011 - Issue number 4/2013, 26 February 2013
<<http://ec.europa.eu/eurostat/en/web/products-statistics-in-focus/-/KS-SF-13-004>>, accessed 31 October 2015
- Eurostat, Living standards falling in most Member States - Issue number 8/2013, 22 March 2013
<<http://ec.europa.eu/eurostat/en/web/products-statistics-in-focus/-/KS-SF-13-008>>, accessed 31 October 2015

- Government of the Republic of Hungary, 'National Reform Programme of Hungary', <http://ec.europa.eu/europe2020/pdf/nrp/nrp_hungary_en.pdf>, accessed 30 October 2015.
- Government of the Republic of Slovenia, The Government Response to the Annual Report 2013 of the Ombudsman and Information on Fulfilment of the Recommendations of the Parliament for 2012 [2013], <<http://www.varuh-rs.si/publikacije-gradiva-izjave/letna-porocila-priporocila-dz-odzivna-porocila-vlade/>>, accessed 15 March 2015 [Slovenian]
- Greif W, Röpke O, 'Herausforderungen & Handlungsoptionen der Gewerkschaften in Europa vor dem Hintergrund der sozialen und politischen Folgen der Krise' [2014] WISO 100 [German], <isw-linz.at/themen/dbdocs/LF_Greif_Roepke_01_14.pdf>, accessed 31 October 2015
- Human Rights Ombudsman of the Republic of Slovenia 19th Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for the Year 2013 [2013] <http://www.varuhrs.si/fileadmin/user_upload/pdf/lp/Devetnajsto_redno_letno_porocilo_Varuha_CP_RS_za_letno_2013.pdf>, accessed 15 March 2015
- ILO's World Commission on the Social Dimension of Globalization, 'A Fair Globalization: Creating Opportunities for All', ILO Publications, 2004 <<http://www.ilo.org/public/english/wcsdg/docs/report.pdf>>, accessed 2 November 2015
- Jörg Luther, Is there any "perspective" for an European Accession to the European Social Charter?, University of "Piemonte orientale", Italy, 2014, <<https://racseanesc.files.wordpress.com/2014/10/jc3b6rg-luther-is-there-any-perspective-for-an-european-accession-to-the-european-charter.pdf>>, accessed 30 October 2015.
- Mental Disability Advocacy Centre, 'Parallel report to the European Committee of Social Rights on Article 15(3) of the Revised European Social Charter with regard to HUNGARY of Social Rights', 2012, <http://www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/MDACShadowReport2012_en.pdf>, accessed 2 November 2015.
- Olivier de Shutter, Presentation in the 'Conference on the future of the protection of social rights in Europe', Brussels, 12-13 February 2015.

- Parliamentary Assembly of the Council of Europe (PACE), Res. 1884, Austerity Measures – a danger for democracy and social rights, of 26 June 2012
- Parliamentary Assembly of the Council of Europe (PACE), Res. 1884, Austerity Measures – a danger for democracy and social rights, of 26 June 2012
- Republic of Albania, Ministry of Social Welfare and Youth, 'Recent developments on Social Inclusion, Social Protection, Gender Equality and Youth policies in Albania',
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000016802ffd53>>, accessed 1 November 2015
- Schmid K D, Ulrike Stein, Explaining Rising Income Inequality in Germany, 1991-2010, Institut für Makroökonomie und Konjunkturforschung, 2013,
<http://www.boeckler.de/pdf/p_imk_study_32_2013.pdf>, accessed 31 October 2015
- The World Bank, 'Global Economic Perspectives and the Developing Counties,' 2001,
<http://www.wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2001/01/20/000094946_0101100548509/Rendered/PDF/multi_page.pdf>, accessed 2 November 2015
- United Nations Commission for Social Development, Concept Paper, 'Emerging Issues: Social Protection', 2011

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