



INTERNATIONAL LEGAL RESEARCH GROUP ON SOCIAL RIGHTS

FINAL REPORT

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



The European Law Students' Association

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Austerity Measures and their Implications

The Role of the European Social Charter in Maintaining Minimum Social Standards in Countries Undergoing Austerity Measures

The European Law Students' Association

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FOREWORD

1. 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 40,000 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, 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 realise 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.

2. LEGAL RESEARCH GROUPS IN ELSA

A Legal Research Group (LRG) is a group of law students and young lawyers carrying out research on a specified topic of law with the aim to make their conclusions publicly accessible. Legal research was one of the main aims of ELSA during our early years. When ELSA was created as a platform for European cooperation between law students in the 1980s, sharing experience and knowledge was the main purpose of our organisation. In the 1990s, our predecessors made huge strides and built a strong association with a special focus on

international exchange. In the 2000s, young students from Western to Eastern Europe were facing immense changes in their legal systems. Our members were part of such giant legal developments such as the EU expansion and the implementation of EU Law. To illustrate, the outcome of the ELSA PINIL (Project on International Criminal Court National Implementation Legislation) has been the largest international criminal law research in Europe. In fact, the final country reports have been used as a basis for establishing new legislation in many European countries.

The results of our more recent LRGs are available electronically. [ELSA for Children](#) (2012) was published on [Council of Europe's web pages](#) and resulted in a [follow up LRG](#) (2014) together with, among others, Missing Children Europe. In 2013, ELSA was involved in Council of Europe's 'No Hate Speech Movement'. [The final report](#) resulted in a concluding conference in Oslo that same year and has received a lot of interest from academics and activists in the field of discrimination and freedom of speech. The [results of the LRG conference](#), a guideline, have even been translated into Japanese and were presented in the Council of Europe and UNESCO!

3. WHAT IS THE LEGAL RESEARCH GROUP ON SOCIAL RIGHTS?¹

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 research questions that 28 National Groups in our network have investigated in the framework of their respective national legislation. The background of the project is the ongoing economic crisis that has hit Europe. How does a declining economy impact social and economic rights?

For this aim, the focus of our research was on vulnerable groups that were most severely 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 labour, social, education and health frameworks up to 2015. This was a tremendous task considering the number of the countries and differences and scope of protection between each legal system. Therefore our legal assessment mainly covered the provisions of the European Social Charter which affected more closely the situation of vulnerable groups, particularly

¹ The responsibility for the information and views set out in the reports lies entirely with their authors.

employees, children and youth, women, persons with disabilities and persons living in poverty.

It was clear from the beginning that austerity measures are not equally present everywhere in Europe. For this reason you will naturally find that some reports focus on describing the current status of social rights without elaborating on the questions concerning austerity measures.

This final report, produced as a result of the concerted efforts of these 28 national research groups, has hopefully raised awareness among law students, academics and practitioners of the challenges and/or human rights violations in light of the European Social Charter. Noteworthy is the fact this report does not solely focus on the flaws verified in each country, but also describes the efforts/measures that each State made to solve the crisis nationally.

We hope the information provided can be used as a comparative source to come up with innovative measures and best practices that may benefit the groups most affected by the economic challenges. You can find more information about the project on <http://www.elsa.org/page/socialrights>.

ACKNOWLEDGEMENTS

The achievements of the International Legal Research Group on Social Rights would not have been possible without the kind support and help from many individuals.

The International Coordination Team would first and foremost like to thank and congratulate the National Research Groups for their extraordinary effort. Close to 300 students and academics from 28 countries have participated as Researchers, Coordinators, Linguistic Editors and Supervisors. Thanks to your great work, this project has put social rights on the agenda of many law students and you have provided a valuable source of information for readers who seek to learn more about the legal status and impact of austerity measures on social rights within different national legislations throughout Europe.

Academic and institutional support is crucial for a student initiative. We are very grateful for the assistance we received from Barbara Orkwiszewska and the Directorate of Communications within the Council of Europe. Without you this project never would have happened. Further, we would like to acknowledge the academic support by the Department of the European Social Charter. Mr. Karl-Friedrich Bopp had the role as International Academic Advisor and your contribution is highly appreciated by everyone in ELSA.

This Legal Research Group was followed by an Essay Competition on the right to housing of irregular migrants in Europe. A Panel of Experts was needed to assess the submissions we received. We were overwhelmed by the positive response from a large number of recognised professors and other legal professionals. We are honoured to have received support from the following persons: Annalisa Ciampi (University of Verona), Francesco Costamagna (University

oá Turin), Donata Gottardi (University of Verona) Giovanni Guiglia (University of Verona), Lorenza Mola (University of Turin), Claudio Panzera (Mediterranea University of Reggio Calabria), Neliana Rodean (University of Verona), Evelyne Schmid (University of Bern), Gregor T. Chatton (Swiss Federal Supreme Court), Jaume Saura Estapa (University of Barcelona), Mercedes Fernández (Universidad Pontificia Comillas), Joaquín Eguren (Universidad Pontificia Comillas), Cristina Cortázar (Universidad Pontificia Comillas), José Luis Rey (Universidad Pontificia Comillas), Anders Narvestad (University of Oslo), Azin Tadjdini (University of Oslo), Johan Leiss (University of Oslo), Marit Frogner (Labour Court of Norway), Benedita Mac Crorie (University of Minho), Tiago Fidalgo De Freitas (University of Lisbon) and Brigitte Napiwocka (ANESC).

Finally, ANESC (Academic Network on the European Social Charter and Social Rights) and ICADE School of Law (Universidad Pontificia Comillas) in Madrid became partners of the Essay Competition. We would not have been able to find and reward the winning essay without their contribution.

Thankfully yours,

Carlota, Desirée, Bruno, Ioannis and Olav

International Coordination Team of the International Legal Research Group on Social Rights.

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ACADEMIC FRAMEWORK

1. INTRODUCTION

- 1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?¹
- 1.2. Please provide a brief overview of austerity measures² that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any.³

2. LABOUR RIGHTS

- 2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC).
- 2.2. Has the right to collective bargaining and respect of social dialogue⁴ been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC).

¹ For reference please see:

https://www.coe.int/t/dghl/monitoring/socialcharter/presentation/SignaturesRatifications_en.pdf

² Austerity measures refer to official actions taken or announced by the government, during a period of adverse economic conditions, to reduce its budget deficit using a combination of spending cuts or tax rises.

³ For the purposes of this report, unless highly relevant to explain the workings of the social security scheme/social protection today, please only report on any measures taken or announced, or already implemented and remain unchanged, since 2008.

- 2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country?
If so, please specify the legal consequences of the austerity measures on these rights.

3. SOCIAL PROTECTION

- 3.1. Has the social security scheme in your MS provided assistance and/or care for:
- 3.1.1. Persons who are unable to secure adequate resources either by their own efforts or from other sources?
 - 3.1.2. Persons who are unable to secure adequate resources either by their own efforts or from other sources due to illness?
- 3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?
- 3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

⁴ Social dialogue includes all types of negotiation, consultation and exchange of information between, or among, representatives of governments, employers and workers on issues of common interest.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

- 5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?
- 5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?
- 5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

5.2. Children and Young Persons (Article 17 ESC)

- 5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?
- 5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?
- 5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

- 5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue.
- 5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

6. OTHER ISSUES

Are there any other relevant issues regarding the ESC, and not covered by the questions above, in your MS? Please describe the applicable legal framework and explain how it is not in compliance with the ESC.

7. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

8. CONCLUSION

Please provide a brief summary of your main findings (maximum three pages). Please focus on your MS's compliance with the ESC and how this has developed after the introduction of austerity measures.

NATIONAL REPORTS

- | | |
|------------------------------------|--------------------------------|
| ELSA ALBANIA | ELSA ITALY |
| ELSA ARMENIA | ELSA LATVIA |
| ELSA AUSTRIA | ELSA MALTA |
| ELSA AZERBAIJAN | ELSA NORWAY |
| ELSA BOSNIA AND HERZEGOVINA | ELSA POLAND |
| ELSA BULGARIA | ELSA PORTUGAL |
| ELSA CROATIA | ELSA ROMANIA |
| ELSA CYPRUS | ELSA RUSSIA |
| ELSA FINLAND | ELSA SLOVAK REPUBLIC |
| ELSA FRANCE | ELSA SLOVENIA |
| ELSA GEORGIA | ELSA SPAIN |
| ELSA GERMANY | ELSA THE NETHERLANDS |
| ELSA GREECE | ELSA THE UNITED KINGDOM |
| ELSA HUNGARY | ELSA UKRAINE |

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

Albania ratified the revised European Social Charter on 14/11/2002 and has accepted 64 of the Revised Charter's 98 paragraphs and according to Article 122 of the Albanian Constitution, the Charter is automatically part of the domestic law.

Albania has not signed yet the Additional Protocol providing for a system of collective complaints.

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

During recent years, Albania has remained one of the growing economies in Europe. The increase is result of structural transformations, mainly supported by labour movement of occupations in agriculture with low productivity regarding services, construction, and -to a lesser extent- production. During the period 2001-2011, Gross Domestic Product (GDP) per capita rose twice (up to USD 4,555) or the equivalent of 31 per cent of the average of the European Union.¹ This growth was accompanied by stable macroeconomic fiscal policies and structural reforms to improve business environment and investments in infrastructure, technology and human resources. As a result, labour productivity grew by an average of 6.4 per cent per year. However, in 2009, economic activity began to slow down (3.3 per cent per year), as a result of depletion of growth factors, combined with global economic and financial crisis. In 2012, production growth was still positive, however below its potential (1.2 percent annually), while during 2013 growth declined further. Growth slow rate influenced almost all economic sectors, being more evident in services sector, an also processing industry and construction. Currently,

¹ INSTAT (GDP in Albania) 2012 [Produkti i BrendshëmBruto në Shqipëri] accessed on April 2015 at: http://www.instat.gov.al/media/101280/llogarite_rajonale_4faqeshi_ang_.pdf; World Bank, Development Indicators 2001-2010 at: <http://data.worldbank.org/data-catalog>; EUROSTAT, News release 97/2012, at: http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/2-20062012-AP/EN/2-20062012-AP-EN.PDF.

there is a large number of bad loans in bank files, which constitutes a significant barrier to efficient intermediation of capital. Most recent fiscal projections for the years to come, predict a problematic environment in terms of Albania's economic growth.²

The fiscal deficit rose 7 per cent due to comprehensive fiscal policies, that were undertaken in 2008-2009 to mitigate the impact of the crisis. As a result, in 2009, public debt rose to 55.5 per cent of GDP, and continued increasing from 2011 and later. With the decline of over 4 per cent of public expenses between 2010 and 2011, the gradual withdrawal of the stimulating package brought fiscal deficit back to year 2007 level (3.5 per cent of GDP) in 2012. However, lower activity caused economic decline of tax revenues (by 2 points percentage). At the same time, exports rose more than imports (respectively 22.7 per cent and 18.3 per cent of GDP). In 2012, shipments fell 4.9 per cent of GDP (from 12.2 per cent recorded in 2007), reflecting the deterioration of the economic situation in Europe. During the period 2009-2012, inflation remained mostly within the range given by the World Bank (i.e. 2-4 per cent per year), after two years of residence in a slightly higher quota (2010-2011). As reflected in Table 1,³ the macro-economic situation of the country had a significant deterioration, with an increase in overall of public debt, which for the first time crossed the ceiling of 60%. Also, the overall fiscal balance is currently more than 6%, and this requires fiscal policies and strict measures for inhibiting its growth.

The previous decade was characterized by significant changes in product structure. In 2012 construction and services accounted over 60 per cent of GDP, while industry covering approximately 10 per cent of agriculture accounted less than 18 percent (by figures that ranged over 23.5 percent in 2001).⁴ Agriculture is still the largest source of employment, although there seems to exist a downward trend compared to 2000. In 2012, the agricultural sector covered 47.4 per cent of total employment; this applied especially to women (58.4 per cent of employed women worked in agriculture, compared with 43.1 per cent for men). Employment in the service

² Ministry of Social Wellness and Youth (National Strategy on employment) 2014-2020 [Strategjia kombëtare për punësim].

³ Ministry of Finance macro-economic indicators accessed on April 2015 at: http://www.minfin.gov.al/minfin/Macroeconomics_Indicators_in_the_Years_58_2.php; Bank of Albania, Statistics of the foreign sector accessed on April at: http://www.bankofalbania.org/web/Time_series_22_2.php.

⁴ Ministry of Social Wellness and Youth (National Strategy on employment) 2014-2020 [Strategjia kombëtare për punësim].

sector accounted 36.1 per cent of total employment, while employees in the industry accounted 16.5 per cent of all workers, therefore, men have more than twice as likely to be employed in industry compared to women.⁵ In the private sector dominate small and medium enterprises (businesses). 91 per cent of active enterprises in 2011, had employed up to 4 workers, with a total contribution to employment of 37 per cent, mainly in the services sector. Enterprises employing 20 or more workers make up only two per cent of all active enterprises, and simultaneously make up 47 per cent of employment in general. Enterprises branches that deal with the production of goods (i.e, industry, agriculture and construction) constitute 17 per cent of all active enterprises, while almost 46 per cent of them operate in the trade sectors, like hotels and restaurants. In 2011, the enterprises establishment's rate was 11.8 per cent, unlike figures recorded a year before of 16 per cent.⁶

The structure of employment shows that wage employment accounted 35.6 per cent of total employment in 2012, a figure much lower than that of 84 per cent registered in the EU27 in the same year.⁷ Freelancers constitute up to 27 per cent of total employment and those who contribute to their family accounted for more than a third of total employment (37.3 per cent), where women are two times more likely than men to be contributing in family (respectively, 51.9 per cent and 25.9 per cent). Most young people (age 15-24) work and contribute in their families (58.3 per cent of total youth employment). Even after the reprocessing of data, the picture remains almost the same. The slowing of economic growth in 2009 seems to have had an impact not only in employment in general, but even in its structure, in which part-time work, as well as full-time work, have declined. In year 2012, part-time employment accounted for 22 per cent of total employment (Compared with 19.2 per cent in the EU27), in which women are more likely to be employed part-time than men. The share of workers with temporary employment in 2012 was 11 per cent, a figure lower than 13.7 per cent registered in EU27. However, more than a third of them agreed to work temporarily, being unable to find a permanent job. Regarding age, the wage gap between young and adult people is about 36.5%. In the labour market, young people have about 5 years of work experience, compared with about 26 years of adults, and

⁵ INSTAT (Labour Market) 2011-2012 [Tregu i Punës].

⁶ INSTAT (Results of the annually structurally questionnaire of the enterprises) 2011 [Rezultatet e anketës vjetore strukturore të ndërmarrjeve] accessed at: http://www.instat.gov.al/media/178154/rezultatet_e_asn_2011.pdf.

⁷ INSTAT (Questionnaire of labour forces) 2007-2012 [Anketa e forcave të punës] www.instat.gov.al.

young people have an average of 10.9 years of education compared with 11.4 of adults. About half of young employed people announce that they have the right to social security, specifically 50.64%, compared with 70.27% of the adult group. This leads to a high level of possible informality when it comes to youth employment, which is then linked to their professions, thus exacerbating their vulnerability in the labour market.⁸ Nevertheless, it occurs that there exists a much higher gap between employment statistics comparing rural and urban areas.⁹

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

According to the Albanian Law, joining the trade union is a right guaranteed by law. Anyone is free to participate in the union. The Albanian Constitution, in article 50 guarantees the right of collective bargaining, in order to provide the free will of employers to unite. The employment of an employee is not conditional on participation in the union. His labour relations do not stop and neither can be affected because of the participation in the union. To form a union, it is necessary to gather 20 workers who must sign the union acts of creation. The Albanian Labour Code protects trade union from outside interference and unions enjoy freedom of association, which is unconditioned by any government body or the owner himself. Once formed, trade unions are free to operate and be administered according to rules established by members themselves. They own complete freedom of administration and operation and it can not be limited by any act of the state administration or the employer (Article 184 paragraph 1 and 2 of the Labour Code).

If no such intervention can be made in certain situations such as: formation of unions controlled by the owners; obstruction of trade union activity or discrimination because of membership in the union, etc., the latter may address the Court on the prohibition of any action interventionists (Article 186 of the Labour Code). Protecting the union members may be made by the court itself if it violated the Labour Code, or even the collective or individual contracts. So the union has a

⁸ Living Standards Measurement Survey, 2012.

⁹ *Supra*.

representative role and it can form a legal defense, organize meetings in public, media call, seek the intervention of representatives of the National Labour Inspectorate, etc. Specifically, the Albanian Labour Code has granted a set of rights for union representatives, in order to guarantee the fulfillment of their duties (Article 181 of the Labour Code).

In relation to collective dismissals from work, the owner is obliged to notify in advance the trade union and take part into negotiations.

An active role, certainly adds to the benefits of workers. It is to be noted that unfortunately the Labour Code lacks provisions that prohibit collective dismissal in certain cases, for example: when the financial results of the company does not justify such a thing.

The union is the only body that declares and organizes the strike. Every employee has the right to participate in the strike. The strike is a constitutional right that cannot be stopped by force. The employer cannot replace employees who participate in the strike. Promotion of the strike through peaceful means is guaranteed by the Code.

Strike has a very limited field of implementation. It should aim at achieving the signing of a collective labour contract, or if there is such, the fulfillment of requirements stemming from labour relations and which are not regulated by this contract. The strike organized against collective dismissal does not seem to find legitimacy in the Albanian Labour Code.¹⁰

National Legislation relevant to labour rights:

- Law n. 7961 (Labour Code of the Republic of Albania, amended) 1995 [Kodi i Punës i Republikës së Shqipërisë];
- Law no. 8549 (Status of Civil Servant) 1999 [Statusi i nënpunësit civil];
- Law no. 7995 (On the promotion of employment) 1995 [Për nxitjen e promovimit];
- Law no. 8492 (For foreigners) 1999 [Për të huajt];
- Law no. 8485 (Code of Administrative Procedure of the Republic of Albania) 1999 [Kodi i Procedurave Administrative];
- Law no. 9634 (On Inspection of Labour and National Labour Inspectorate) 2006 [Mbi inspektimin e punës dhe Inpektoriatit Kombëtar të Punës];

¹⁰ <http://opolitike.org/teori/dokument-mbi-te-drejtat-e-punetoreve-dhe-nevoja-per-organizim/>.

- Law no. 10237(On the Safety of Health in Work) 2010 [Për sigurinë në punë]

During the year 2013, there have been further developments regarding the labour market. Through the Decision of the Council of Ministers (here and after DCM) n. 47 (For the program of employment through job training) 2013 [Për programin e punësimit nëpërmjet trajnimit të punës] 28 subjects which have trained 436 unemployed were inspected. After the training period 58% of the participants, or 252 people (of whom 134 women) were kept on for at least a period of 6 months to determine the criteria of the program. In this program, the most dominant age was up to 35 years, although compared with the previous year shows a tendency to capture even greater age. Compared again with a year ago now the dominant educational level is not up to 9 years, but secondary education.¹¹

Through the DCM n. 48 (For the amount and eligibility criteria of employment promotion program for unemployed job seekers in trouble) 2013 [Për sasinë dhe kriteret e punësimit dhe nxitjen e programit të punësimit dhe punëkërkueseve], 8 subjects which have employed 282 unemployed in trouble for a duration of 12 months were inspected. In this program, the dominant age of participants is over 35 years old, with 9-year educational level and middle education. But there were also participants in the schemes of income support, of the rom community etc.¹²

Through the DCM n. 873 (For the amount of funding, criteria and procedures for implementation of professional practice programs for unemployed workers who have completed higher education), 80 unemployed (graduate students last 24 months) who have practices developed in 31 subjects were assisted. Through the application of the apprenticeship program for graduate students, it was enabled the acquisition of appropriate experience as a long-term employment.¹³

Through the DCM n. 27 (On the promotion of employment of female jobseekers) four programs were implemented, where 36 women were employed.¹⁴

¹¹ National Employment Service (Bulletin of the Labour Market) 2013 [Buletini i Tregut të Punës].

¹² *Supra*.

¹³ *Supra*.

¹⁴ *Supra* pg. 28.

Furthermore, functions that require greater attention are: individualized assistance for the unemployed to find suitable employment; announcement of jobseekers and job vacancies; facilitating the mobility of professions; collection and analysis of information on the full potential concerning the situation in the labour market and its development throughout the country, both branches of industry and various professions; and drafting, effective monitoring and evaluation of programs aimed at facilitating the (re) entry of employment seekers at risk of exclusion from the labour market.¹⁵

National Labour Inspectorate (*Inspektoriati Kombëtar i Punës*) is one of the main tools used with regards to the labour market. According to statistics of years 2009-2010, results show that:

- In the period of January-September 2010, 10,920 subjects were inspected;
- In the period of January - September 2009, 8,277 subjects were inspected.

Over 94% of fines, are violations of labour legislation regarding the safety and health at work.

For the period of January-September 2010, a total of 449 fines were imposed, with a total value of ALL 62,076,000. While in the period of January-September 2009, there were imposed a total of 114 fines, with a total value ALL 22,835,000.

During the period January-September 2010, 297 children aged under 18, were employed and authorized. For the same period in 2009, 237 children aged under 18, were employed and authorized.

- A 21.3% increase of the number of complaints from employees who approach the Labour Inspectorate.
- Compared with the first nine months of 2009, the number of employees with individual contracts increased 46%.¹⁶

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

¹⁵ Ministry of Social Wellness and Youth (National Strategy on employment) 2014-2020 [Strategjia kombëtare për punësim].

¹⁶ Department of Public Administration, The Ministry of Internal Affairs Labour relations pgs. 13-19.

According to the Conclusions of Council of Europe regarding Albania's reports in 2010, there have been identified certain problems. Regarding Article 6§1:

- It has not been established that refusals of the representative status to trade unions are subject to judicial review;
- It has not been established that consultation also takes place in the public sector.¹⁷

The Committee has concluded that the situation in Albania is not in conformity with Article 5 of the Revised Charter on the grounds that:

- Police personnel do not enjoy the right to form trade unions;
- It has not been established that the prohibition from enjoying the right to form a trade union was not applied to an excessively high proportion of senior civil servants.¹⁸

The Committee has concluded that the situation in Albania is not in conformity with Article 6§4 of the Revised Charter on the following grounds:

- Civil servants are denied the right to strike;
- Employers in electricity and water supply services are denied the right to strike.¹⁹

The Committee has also concluded that the situation in Albania is not in conformity with Article 6§3 of the Revised Charter on the ground that the circumstances in which recourse to compulsory arbitration is authorized, go beyond the limits set out in Article 6 of the Revised Charter.²⁰ According to the Committee, the situation in Albania is not in conformity with Article 6§2 of the Revised Charter on the ground that it has not been established that civil servants are entitled to participate in the processes that result in the determination of the regulations applicable to them.²¹ There are no conclusions toward Albania in the years 2011-2014 regarding Articles 4-6 of the Charter.

Based on these findings, it seems that Albania has more procedural than substantive errors on the rights of employees. It is to be evaluated that there has not been made any other criticism against Albania in recent years in relation to Articles 4-6 of the European Social Charter.

¹⁷ <http://hudoc.esc.coe.int/eng?i=2010/def/ALB/6/1/EN>.

¹⁸ <http://hudoc.esc.coe.int/eng?i=2010/def/ALB/5//EN>.

¹⁹ <http://hudoc.esc.coe.int/eng?i=2010/def/ALB/6/4/EN>.

²⁰ <http://hudoc.esc.coe.int/eng?i=2010/def/ALB/6/3/EN>.

²¹ <http://hudoc.esc.coe.int/eng?i=2010/def/ALB/6/2/EN>.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

According to the analysis above, austerity measures have affected labour rights in Albania (Article 4 ESC). Because of the problematic amount of informality that occupies our labour market, it is quite challenging to discover whether social and collective bargaining rights (Article 5 and 6 ESC) have been significantly affected. Based on the jurisprudence of the Albanian Administrative Courts, there are only a few references made to the European Social Charter. Trade union rights and the rights to compensation are guaranteed by the Albanian Labour Legislation which guarantees the same rights as the European Social Charter. Up until now, the Constitutional Court has never referred to the European Social Charter, while ordinary courts limit their decision-making only on national legislation.²² During the year 2010, the Council of Europe (here and after COE) has published its conclusions according to which:

Regarding Article 4§4:

- Five days notification is insufficient for workers with less than three months' service, even in the probationary period;
- In case of written agreement or a collective agreement, one month is not a sufficient period of notice for workers with five or more years' service.²³

The Committee has also concluded that the situation in Albania is not in conformity with Article 4§1 of the Charter as the minimum net wage is manifestly unfair.²⁴

Changes have affected the whole structure of the Customs Directorate and employees of this system. According to these changes, the head of an institution is paid the salary of II category, ALL 107,800/month, which adds another ALL 20,000 per month in addition to working conditions. As a Deputy General the payment is of the II /b category, which is ALL 91,700/month and ALL 15,000 added a monthly pay and working conditions. Adviser, director, regional director, chairman of the Customs Tirana, Durrës, Vlora, Shkodra, Kakavijë and Rinas

²² National Report. The Constitutional Court of the Albanian Republic. https://www.vfgh.gv.at/cms/vfgh-kongress/downloads/landesberichte/LB_albanie_MS.pdf.

²³ <http://hudoc.esc.coe.int/eng?i=2010/def/ALB/4/4/EN>.

²⁴ <http://hudoc.esc.coe.int/eng?i=2010/def/ALB/4/1/EN>.

are paid according to category III-a, which is ALL 65,200/month, which adds ALL 15,000 per month for working conditions.²⁵

While people who work as internal auditor positions, shift supervisor, office manager, head of anti-smuggling group, specialist and network administrator are paid according to category III-b, which is ALL 57,000/month and ALL 14,000/month are added for a job position and other allowances according to the law. Persons who are in the position of Director of Treated Unit belong to the wage category II-A, which is ALL 107,800/month. Lawyer, inspector and coordinator will be dealt with the wage category II-b, which is ALL 107,800/month, which meets other supplements provided by law. Persons working in public administration department in the coordinator position will be treated with the salary of category III-a, which is ALL 74,400/month.²⁶

These changes prove that measures are continuously being taken to maintain balance in a difficult economic situation caused also by austerity measures. This presents a favorable tendency towards applying and improving the conclusions of the COE.

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by their own efforts or from other sources?

Constitution and different laws of the Republic of Albania provide social protection and care for the families with sufficient income. In article 52/2 of Albanian Constitution it is stated: 'Everyone who is without work involuntarily, and has no other means of support, has the right to benefits under the conditions embedded by law.'

Law No. 9355 (On social benefits and services) of 2005 [Për ndihmën ekonomike dhe përkujdesjen shoqërore] as amended, defines the system of benefits assistance and social care to give economic assistance to families of Albanian citizens, who entirely lack any income or can

²⁵ http://www.qbz.gov.al/botime/fletore_zyrtare/2011/PDF-2011/110-2011.pdf.

²⁶ <http://www.shekulli.com.al/p.php?id=42861>.

nor secure their maintenances or have insufficient income to support their families. Article 6 states that benefiting from social services are the children, young people up to 25 years, senior people, persons with limited capacities, as well as girls and women in need.²⁷ Meanwhile girls and women with limited capacities are included with the general term of the person with limited capacities. Furthermore, this law in the article 7 provides that persons with limited abilities enjoy the right to gain a monthly payment due to their limited capabilities or the right to a caretaker, for the first group.²⁸ This right is guaranteed both for women and girls with limited capacities. In cases where it is possible and necessary instead of economic support, the person in benefits is offered free public services from the state.²⁹ These Social services are divided into: social care services and social services and medical care where for both of types is predicted to be provided provided by specialized staff in reintegration and rehabilitation centers.³⁰

In terms of regulatory legislations some changes are made that anticipate the use of an evaluation mechanism with the sole purpose of include every family that leaves under poverty in this scheme. The novelty of these changes, in particular the entry into power of the Law No. 10399 (On amendments and additions to the Law No. 9355 Law On social benefits assistance and services', 2005) of 2011 [Ligji 'Për disa ndryshime dhe shtesa në Ligjin nr. 9355, datë 10.03.2005 Për ndihmën dhe shërbimet shoqërore], is the inclusion on the economic scheme of victims, once they leave the admission and rehabilitation institutions, the orphans who are not in orphanage as well as victims of domestic violence, for the duration of the protection order.³¹

Moreover Article 11, paragraph 2 is amended as follows: '2. Beneficiaries, classified in the group of people with disability, the payment shall be stopped after 24 months of employment. Procedures in the event of returning to profitability from Disability Payment Scheme determined by the Council of Ministers.' Council of Ministers is the body that approves or not the Statute of State Social Service. State Social Service is a public institution under the Ministry of Social

²⁷ Law n. 9355 (On social benefits and services) 2005, article 6.

²⁸ *Supra*, article 7.

²⁹ *Supra*, Article 12.

³⁰ *Supra*, Article 13.

³¹ Republic of Albania Ombudsman's annual rapport pg126 accessed on February 2015 at: http://www.avokatipopullit.gov.al/sites/default/files/ctools/Annual%20Report%20on%20People%27s%20Advocate%20Activity%202013_0.pdf.

Welfare and is responsible for implementing the policies of the Ministry for issues of social assistance and services in the field of assistance and social care services.³²

3.1.2. Persons who are unable to secure adequate resources either by their own efforts or from other sources due to illness?

The Constitution of the Republic of Albania, referring to article 52/1 has emphasized that: ‘According to the system set by law, everyone has the right to social security if he/she is unable to work and is above elder group age.’

This article defines two main categories benefiting from Social Security:

- The category of elder age, which is defined in detail in the social security law, which is in principle 65 years for men and 60 years for women;
- People who become unable to work, whom are naturally regulated by the respective legislation, primarily by the social security law.

Social objectives are embedded into the constitution of Albania in the Chapter V. Article 59 defines that the state with its constitutional powers, using the means at its disposal, and in support of private initiative and responsibility, aims, among others, the highest standard of health, physical and mental potential; providing education and training skills for children, young people, and unemployed persons, to the best of their abilities; care and help for the elderly, orphans and the disabled, health rehabilitation, specialized education and integration of disabled people in the society, as well as continuous improvement of their living conditions.³³

Besides the Constitution, there is the Law ‘On Social Insurance’ that underpins the entire system of by laws regulating disability evaluation and benefits from disability schemes. LIST Referring to Law No. 7703, (On Social Insurance in the Republic of Albania) 1993 [Për sigurimet shoqërore të Republikës së Shqipërisë], as amended. The law requires for the payment of disability benefits to people who have become totally or partially disabled during the insurance phase, as a result of an accident at work, an occupational or general condition. Evaluation of the work capability of disabled persons is regulated by the LIST Disability Assessment Regulation,

³² On amendments and additions to the Law No. 9355 (On social benefits assistance and services) 2011, article 27.

³³ Minister of Labor, Social Affairs and Equal Opportunities (2010), Manual “Implementation of social standards on People with Disabilities” [Internet], Available from: <http://www.sherbimisocial.gov.al/wp-content/uploads/2014/03/Libri-i-rregullt-3.pdf> date of access 01 November 2014.

issued by MSWY in cooperation with the Ministry of Health, with Order No. 362, 26 February 2007. The regulation describes the types of diagnoses, symptoms and key features, as well as evaluation of the degree of gravity of the condition, in order to establish the amount of benefit due and any deadlines for the future reassessment of the applicant.

Persons with disabilities can be evaluated and are eligible for additional benefits and special equipment based on distinct statuses, as provided by:

- Law No. 8098 (On the Status of the Blind) 1996 [Ligji 'Për statusin e të verbrit];
- Law No. 8626 (On the Status of Paraplegic and Quadriplegic Persons) 2000 [Për statusin e invalidit paraplegjik dhe tetraplegjik];
- Law No. 7889 (On the Status Work invalids) 1994 [Për statusin e invalidëve të punës];

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

DCM n. 870 and n. 871, dated 18.06.2008, define to what extent will people with status of the paraplegic and tetraplegic and blind will benefit. For the afore mentioned reasons, it is decided not to be calculated on the value of 70% of the minimum state wage but to be on the value in ALL 8,700 per month and this beneficiary amount shall be index every year with the rate of increase of the minimum state wages. After further changes through the Council of Minister decision, among which DCM n. 602, DCM n. 603, and DCM n. 604 dated 23 July 2010, it has been determined that 'The measurement of benefaction for the reason of blindness shall be ALL 9,800 per month and this measure shall be indexed based on the consumer price index', while 'measurement of beneficiary for invalids with disabilities paraplegia and tetraplegia, is ALL 8,700 per month and this measure shall be indexed based on the consumer price index'.

Given this measurement and provisions, we note that for these categories of individuals with limited abilities, the legal criteria to define the monthly payment (referred to as beneficiary measurement), recognized by law has changed twice, in 2008 and later in 2010, changes which are reflected even in the in the calculation of the monetary value of this payment.

According to Instruction n. 114, dated 08 April 2011 of the Minister of Labor, Social Affairs and Equal Opportunities, it is evident that with new formula in power since first of September 2011,

the measurement of beneficiary for the reason of the limited ability for the categories of blinds, paraplegics and tetraplegics, is calculated at ALL 9,300 per month.

If this payment would be calculated with the old formula based on the minimum state wage, it would have been 70% of the ALL 19,000 (current minimum wage according to DCM n. 566, dated 14 July 2010), which means ALL 13,300 per month.

Clearly, the monthly payment for the blinds, paraplegics and tetraplegics has undergone deterioration in monetary value with the legal changes. This case has been subject of Constitutional Court judgment, which has asset that the fulfillment of social objectives is not incorporated in the domain of legal cases that belong to the constitutional jurisdiction. As such, the claim of the National Council for Persons with Limited abilities for the infringement of the principle of Judicial Assurance as a result of changes of the way of calculation of payment due to Limited ability, as not justified and as such should be rejected.³⁴

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

Although Albania has not ratified Article 13(3) of European Social Charter, many efforts have been done to offer social services for vulnerable categories. Albania has adopted Law No. 9355 (Aid and Social Services) 2005 [Ndihma dhe shërbimet sociale] in 2005 which determines the categories which benefit from social services. Article 6 of the Law prescribes the beneficiaries of the social services: children, youngsters until 25 years old, elderly people, people with disabilities, women, girls in need, and all other categories which are considered as 'groups in need'.³⁵

3.3.1. Social Services

The main public body which offers social services is the 'State Social Service' which was established initially as 'The general Administrative for Aid and Social Services' in 1996.³⁶ In 2002

³⁴ Constitutional Court of Republic of Albania, Verdict no 37, Dated 13 06 2012.

³⁵ Law No. 9355 (Aid and Social Services) 2005 [Ndihmadheshërbimetsociale].

³⁶ DCM No. 52 (The general Administrative for aid and Social Services) 1996 [Përkrijimindhefunksionimin e Këshillitpërndihmëdheshërbimesocialetheadministratapërndihmëdheshërbimesociale].

the name was changed to 'State Social Service' and in 2005 its statute was established by a DCM.³⁷ Since then, it operates in Albania and gives services for the categories described in Art. 6 of the Law. The State Social Service is a public institution under the jurisdiction of the Ministry of Labour and Social Affairs.³⁸ Types of services offered, vary from the beneficiary category. According to their nature, social services shall be divided into: Social care services and socio-medical care services.

3.3.2. Children

The state offers financial support for poor families (The Financial Aid Program), residential treatment for abandoned children and those with social problems and many facilities for orphans.³⁹ Lately the awareness towards children related issues has increased and many private bodies are offering social services for them. Most of NGOs operate in Tirana, Shkodra and Elbasan. There are 9 public and 13 private residential institutions.⁴⁰ Services offered are: Psychological (advice, team work, therapy and different activities), health, educational and other alternative services. Since 2011 the state is making attempts to offer the custody service and a pilot project has began in Tirana and Shkodra.

3.3.3. Roma Community

An Emergency Transit Centre⁴¹ is established in 2013⁴² and provides housing for Roma community. Currently 53 families live there and it is serving as a transit solution for families in difficult social and economic situation. The center offers a package of services for the families: accommodation, education, health service, legal and social assistance etc.

3.3.4. Social Assistance

Under Law n.9355 (On Aid and Social Services) of 2005(Art.5) and DCM n. 787⁴³ the categories who can apply for financial aid are: families with insufficient or no incomes; unemployed

³⁷ DCM No. 542 (For the approval of the statute of the State social service) 2005 [Përmiratimin e statutit të shërbimit social shtetëror].

³⁸ Now the name has changed to Ministry of Youth and Social Welfare.

³⁹ State Social Service Website : www.shssh.org.

⁴⁰ *Supra*.

⁴¹ Decision of the Administrative Council of the State Social Service on 06 February 2014.

⁴² Prime Minister Order on 27 September 2013.

⁴³ DCM n. 787/2005.

orphans over 25 years old; orphans 18-25 years old who are not set in the institutions of social services or to whom is not set a custody; parents belonging to families in need and who gave birth to triplet children or more.⁴⁴

3.3.5. Elderly people

Based on DCM n. 425, date 26 June 2012, elderly people who have no sufficient personal incomes or who live alone may address a request to the State Social Service in order to benefit from this service. They can be set in respective residences and benefit from the services. Actually the whole system of social care for the elderly are offered from public and private bodies. Public elderly homes are in Tirana, Shkodra, Kavaja, Fier, Gjirokastra, Poliçan. Also in Kamëz Polyvalent Day Centre and some residential treatment centers for the elderly who are not public function. In whole system of residential services handled a total of 480 people, of whom 300 are in public and 180 in non-public centers.⁴⁵

3.3.6. People with disabilities

Beneficiaries of the disability payment shall be: blind persons, with total or partial loss of eyesight, born so or who have acquired it, who have been declared incapable of working by decision of the Medical Commission on Determining Blindness (KMPV); Paraplegics and tetraplegics, declared as such by decision of the Commission on Determining Disability at Work (KMCAP), who have developed such a condition irrespective of its cause or age; disabled persons, declared as unable to work by decision of the Medical Commission on Determining Disability at Work; persons who have been declared work invalids by decision of the Medical Commission on Determining Disability at Work (KMCAP) shall benefit a monthly supplement over the invalidity payment under the status of work invalid.⁴⁶

3.3.7. Impact of austerity measures

Initially we should take into consideration that:

⁴⁴ The beneficiaries of economic assistance shall be:

1. Families without income or with insufficient income;
2. Unemployed orphans over 25 years, who are not living in institutions or under foster care;
3. Parents with more than two children born simultaneously, who belong to families in need.

⁴⁵ Social State Service accessed on April 2015 at: <http://www.sherbimisocial.gov.al/q-p-v-trafikimit/>.

⁴⁶ Article 7 Law No. 9355 (Aid and Social Services) 2005 [Ndihmadheshërimit sociale].

The Albanian economy has been slowing sharply since 2012. Output growth held up relatively well in the aftermath of the global financial crisis, but has been slowing sharply since 2012. Although remittances (which come primarily from Italy and Greece) have been on a downward trend, the direct impact of the global financial crises was small because of the limited financial exposure to international markets and an expansionary fiscal policy initiated before the crisis.⁴⁷

The law and decisions quoted in the previous paragraphs show that there have been no major impacts in the social services in Albania. Although the situation in general was not favorable during the Global Economic Crisis, still appears that Albania has done some positive steps in terms of social services. Also, the European Commission in the Progress Report of Albania (2013) mentions some achievements done in the field of social services:

As regards people with disabilities, the Convention on the Rights of People with disabilities was ratified and the National Action Plan 2012–2021 was published in November 2012. The Minister of Labor, Social Affairs and Equal Opportunities adopted three guidelines on adjusting disability and caretaker allowance payments to the inflation rate- increased consumer price index. The employment offices and vocational training centers were trained on the law on employment promotion, including the quota for persons with disabilities. Awareness-raising activities took place on the need to integrate sign language in schools. The draft framework law on inclusion of and accessibility for persons with disabilities was not finalized.⁴⁸

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

Although Albania is not part to the Article 30 of the ESC, deliberately or not, it has taken many steps toward the satisfaction of this article's requirements.

⁴⁷ IMF Country Report No. 14/78, March 2014, page 47, paragraph 2.

⁴⁸ Commission Staff working document Albania 2013 Progress Report of European Commission 2013 page 34.

In order to ensure the effective exercise of the right to protection against poverty and social exclusion, article 30 sets out the obligation of each party to take overall and coordinated measures to reach such purported objectives. Those measures, according to second paragraph of the same article, should be adapted to the protected people's needs, what implies a commitment to strike an optimal combination between monetary aid and other social, educational and medical services.

In Albania, the process of social inclusion and protection of vulnerable categories against poverty is governed by the law for Social Assistance and Services⁴⁹ (henceforth LSAS) and other sublegal acts rendered by Council of Ministers⁵⁰ and competent Minister⁵¹.

Albanian legislator seems to be aware of the importance of coordination and comprehensiveness during the coverage of vulnerable groups with social assistance, as it has laid down amidst other fundamental principles of social assistance, principles as: universality, partnership, equality, decentralization, social integration and participation in community life.⁵²

LSAS provides people in need two main categories of aid:

- Social assistance, 'which is the monetary and non-monetary support';⁵³
- Social services, defined as 'entirety of the services provided for individuals and groups in need, who are not able to face, with the resources they have, their life needs, for storage, development and rehabilitation of individual abilities to overcome emergent or long-lasting needs'.⁵⁴

⁴⁹ Law No. 9355 For Social Assistance and Services.

⁵⁰ DCM 787, dated 14 December 2005 "On defining the criteria and procedures and measures of economic assistance", as amended; DCM No.904, dated 12 December 2011 "On defining the criteria, procedures and documentation economic assistance in the pilot areas"; DCM No. 375, dated 06 November 2014 for some additions and changes to the Decision No. 904, dated 12. December 2012, the Council of Ministers, "To determine the criteria, procedures and documentation economic assistance in the pilot areas"; Decision No. 376, dated 06 November 2014 for some changes and additions to the decision No. 787, dated 14 December 2005, the Council of Ministers, "To determine the criteria, procedures and measures of economic assistance", as amended; Instruction No. 8, dated 23 June 2014 on the calculation of economic assistance in pilot areas; Instruction No. 9, dated 23 June 2014 on the implementation of DCM. 904, dated 12 December 2012, "to determine the criteria, procedures and documentation economic assistance in the pilot areas".

⁵¹ Decree of the Minister No.338/3, dated 10 March 2006, on the implementation of the DCM No. 787, dated 14.12.2005 "On defining the criteria and procedures and measures of economic assistance", as amended.

⁵² Law No. 9355, , "For Social Assistance and Services".

⁵³ Article 4 of Law No. 9355, date 10 March 2005, " For Social Assistance and Services".

⁵⁴ *Supra*, paragraph 5.

The law covers with economic assistance based in the criteria of economic needs these categories: families with no income or low income; orphans over 25 years old, unemployed, who are not in institutions or under custody; parents with more than two children born simultaneously, belonging families in need.⁵⁵

This article of the Law 'For Social Assistance and Services' was amended in 2011 and 2014, calling those additional social groups to benefit from the economic assistance program:

Victims of trafficking, after leaving social care institutions, until the time of their employment; victims of domestic violence, for the duration of the protection order or an emergency protection order; victims of domestic violence, during the protection order.

In regard to the second criteria (inability to work), are covered with economic assistance these categories of people who are unable to work: persons with full or partial loss of eyesight, which have been declared unfit to work by decision of Commission of Determination of Blindness (KMPV); paraplegics and quadriplegics, who are declared so, by decision of Commission of Determining Disability to Work (KMCAP), that are being so regardless of the cause and age; Persons with disabilities who are declared unfit for work decision of the Medical Commission on Work Capability Assessment (KMCAP); persons who are working invalids, determined so by the decision of the Medical Commission of Determining Disability at Work (KMCAP), take an additional benefit on monthly disability pension under the status of a disabled worker.⁵⁶

Social services are offered in two different forms:⁵⁷

- Services of social care, and
- Services of social-medical care.

Social care services include services provided for individuals, families, vulnerable groups, communities, as specified in Article 6 of this law, for the fulfilment of their basic needs. Services of social and medical care are provided by a specialized staff in reintegration and rehabilitation centres, residential, day-care centres or at home, for individuals who are unable to live normally, due to temporary or permanent physical, psychological, mental and sensory deterioration.

⁵⁵ *Supra*, Article 5.

⁵⁶ *Supra*, Article 7.

⁵⁷ *Supra*, Article 12.

Public social services which include social care services provided in residential institutions, day-care institutions or at home, are funded by the central budget and the budgets of independent local government bodies.⁵⁸

It's evident that Albanian legislation provides a miscellaneous entirety of goods and services that aims a unique goal; to provide people who are living or risk living in poverty, the possibility to fulfil their material, medical and educational needs.

The implementation of the social coverage established by the law "For Social Assistance and Services" is an output of coordinated efforts that involve several public and private organisations as well as many volunteers.

The institution charged with the duty to implement social assistance's policies and legislation is the State Social Service.⁵⁹ It is compound by the representatives of several governmental institutions and protected groups, namely: Ministry of Labour and Social Affairs, State Social Service, Social Insurance Institution, National Employment Service, Ministry of Finance, Ministry of Local Government and Decentralization, Ministry of Agriculture, Ministry of Health, Institute of Healthcare, Faculty of Social Sciences, Representatives of associations of Persons with Disabilities, representatives of associations of children.⁶⁰

State Social Service is the institution responsible for general coordination of the implementation of social assistance but the assessment of each individual's need and final payment of social aid or execution of social services is what Local Governance is responsible for.⁶¹

This furthers the concept of generalisation and coordination in implementing social inclusion's policies by merging into it, the horizontal coordination (between central governmental bodies) with the vertical one (between central and local institutions).

The latest creates flexibility in the social assistance scheme, as local governance is near to people's needs and conditions, following the principle of subsidiarity. Thus, local governance is definitely the state's most precise tool to strike the most perfect combination of goods and

⁵⁸ Article 17 Law (For Social Assistance and Services) 2014 [Për asistencën dhe shërbimet sociale].

⁵⁹ 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].

⁶⁰ *Supra*, Article 8.

⁶¹ Article 17 and 20 of the Law For Social Assistance and Services.

services for each individual case's. This is the most subsidiary form of what second paragraph of article 30 means with 'adaptation'.

Cities or municipalities administer all social services for individuals who are residents of the city or municipality. Counties administer services when they are provided to individuals belonging to several local units in that county.⁶²

Those that are interested and satisfy the conditions for obtaining social services and economic payment must apply and submit the necessary documentation to the Social Administrator at the local governance unit.⁶³ Economic assistance and payment of persons in need is distributed in a monthly basis by a decision of local government unit.⁶⁴

4.1. Institutions of Social Care (SCI)

Social care institutions in Albania feature a network of organizations that provide services to vulnerable categories. These institutions are public (created and administered by the state) and non-public (created and administered by non-governmental organisations). Public social care institutions are financially supported by the state through the State Social Service and managed by main cities' local administrations.⁶⁵

To improve the quality and quantity of social services, State Social Service cooperates with several private social care institutions. Such private institutions are founded by NGOs and licensed by the Ministry of Social Welfare and Youth. State Social Service conducts monitoring of activities of SCIs and presents recommendations for any possible standard's improvement.⁶⁶

Notwithstanding the cooperation with other state bodies and NGOs, the State Social Service has created a broad network with many companies and volunteers which has been an important auxiliary factor to achieve the task of assuring the basic goods and services for persons in need. An important episode has been the campaign "Albania Donors" in which contributed nearly 350 businesses nationwide.⁶⁷

⁶² *Supra*, article 17.

⁶³ *Supra*, article 20.

⁶⁴ *Supra*.

⁶⁵ More information on public social care institutions in Albania and local governance units responsible for their administration can be found here: <http://www.sherbimisocial.gov.al/cfare-jane-ipsh-2/>.

⁶⁶ *Supra*.

⁶⁷ Social State Service accessed on April 2015 at: <http://www.sherbimisocial.gov.al/biznese/>.

The level of poverty in Albania grew by 1.9 per cent in the period between the year 2008 and 2012, reaching 14.3 per cent of total population.⁶⁸ The number of families which were covered by social assistance, increased by 7.7 per cent between 2009 and 2013. This may be explained by the increase of poverty and the inclusion of new categories in the scheme. Albanian legislation has extended the umbrella of social assistance to additional groups that have not been protected by this system until 2011 (victims of trafficking and domestic violence, see above).

On the same period of time, the total fund of assistance increased by 17.1 per cent, which surpasses the rate of entries in the social assistance scheme which is 7.7 per cent (see Table 3).

In conclusion, although the poverty level in Albania and the number of families covered with social assistance raised after 2008, there is no evidence that such increase in poverty happened because of any austerity measure taken by Albanian state. More than consequence of Albanian social policies, it was part of a general economic recession which struck especially southern European countries after 2008-2009.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

Albania has made significant progress towards the adoption of the legal and institutional framework to protect the rights of persons with disabilities. With the entry into force of the UN Convention on the Rights of Persons with Disabilities (CRPD) in November 2012,⁶⁹ Albania is changing the way these rights and needs of persons with disabilities are included in laws, policies,

⁶⁸ INSTAT accessed on April 2015 at: <http://www.instat.gov.al/media/101435/tab.6.xlsx>.

⁶⁹ Commission of the European Communities, Albania 2008 Progress Report, accompanying the Communication from the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2013-2014, Brussels, November 20013, SWD(2013) 414 final, p.35.

programs and services. This is due to the immediate need to overcome the approach isolation from the rest of society, in inclusive education, vocational training and labour market.

Persons with disabilities are equal citizens with others and can provide active contribution to self, community and society in which they live.

The rights of people with disabilities are sanctioned:

- In the Albanian Constitution;
- In the overall legislative framework.

One of the main points of the Albanian government social program is vocational training and employment. Despite the difficulties, measuring the level of participation of persons with disabilities in vocational training is the only way to secure an empirical basis for analyzing problems and assess the costs, interventions and policies. Involvement in professional training, in addition to increasing opportunities for employment, provides individual improvement of the economic situation, social inclusion, self-esteem, social networking and a sense of equality as everyone else.

5.1.1.1. Constitutional Rights of People with Disabilities

Article 25⁷⁰ of Albanian Constitution guarantees the rights and fundamental freedoms of People with Disabilities. In Chapter V of the Constitution, at the Social Objectives section, article 59 point (e) and (f) set out as follows:

The Albanian State, shall, in compliance with its constitutional competencies and its means, and in concert with the private initiatives and responsibilities, provide for (e) care and support for the old persons, orphans and disabled” and (f) rehabilitation, vocational training, and social integration of Disabled, and the continuous improvement of their living condition.⁷¹

5.1.1.2. Other Framework

i. National Strategy for Persons with Disabilities 2005- 2014 (Strategjia Kombëtare për Personat me Aftësi të Kufizuara 2005- 2014)

⁷⁰ Albanian Constitution, article 25.

⁷¹ *Supra*, article 59 (e), (f).

National Strategy for Persons with Disabilities has devoted several objectives employment of persons with disabilities. Education and vocational training remain the main pillars that constitute a precondition for their integration in the labour market.

ii. Sector Strategy for Employment and Vocational Training 2007 -2013

The strategy provides further measures to support persons with disabilities. Under this strategy, the main objectives in the field vocational training are; 1) Improvement of policies and programs for the training and vocational training for persons with disabilities; 2) Increasing employment opportunities for persons with disabilities and their their individual capacities for employment, 3) Encourage persons with disabilities to develop supported employment opportunities and vocational training; 4) Informing and educating employers about the possibilities of persons with disabilities to work.

iii. The amended Law Nr. 8872, dt. 29 March 2002, "On education and vocational training in the Republic of Albania", by law no. 10434, dated 23 June 2011⁷²

The purpose of this law is to support the development of a common system of education and vocational training in the Republic of Albania, which can be adapted to social, economic and technological labour market needs. And which can enable an optimal utilization of financial resources, human and infrastructure.

In section 5 it is determined who benefits from this law: c) specific groups who want professional rehabilitation, involving persons with disabilities.

Also, an important step in improving the legal framework is the change in the Law No. 69/2012 dated. 21 June 2012 'For Undergraduate Education System in the Republic of Albania'.⁷³ This law regulates in Chapter XI, the education of children with disabilities. The law introduces the principles on the basis of which should be the education of children with disabilities. However, much work remains to be implemented more effectively in the law, ranging from accessible premises of educational institutions, the revision of curricula, textbooks and teaching process, training of teachers etc.

⁷² [http://www.vet.al/files/ligje%20etj/Lligji%20i%20arsimit%20profesional%20i%20azhornuar%20\(1\).pdf](http://www.vet.al/files/ligje%20etj/Lligji%20i%20arsimit%20profesional%20i%20azhornuar%20(1).pdf).

⁷³ Law n. 69 (For Undergraduate Education System in the Republic of Albania) 2012 [Për sistemin e arsimit universitar].

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

5.1.2.1. Constitutional rights of people with disabilities

Article 49 of the Constitution provides for equal employment:

Everyone has the right to earn the living through a legal work that he/she has chosen or accepted himself/herself. He/She is free to choose the profession, position of work and also the system of qualification for his/her profession. The employees have the right of social protection of the work.

The Labour Code prohibits any kind of discrimination in employment and professional training of people with disabilities.⁷⁴ They have the right to work in appropriate jobs according to the evaluation of the Medical Assessment Commission that defines their ability to work. According to the Code the employer should provide appropriate jobs and facilities for persons with disabilities. Working hours for the disabled employees are reduced to 6 hours per day. Moreover the applicability of international treaties - including the Convention on the Rights of Persons with Disabilities⁷⁵ – is positively evaluated. Provisions on article 45 governing the workplace can be an appropriate starting point to add reasonable accommodation, assistance in the workplace and appropriate measures to ensure that persons with disabilities can exercise their right to work like others. It can be further used to provide personal assistance schemes dealing with workplace.

5.1.2.2. Other framework

i. Law No. 10221 of 4 February 2010 ‘On Protection against Discrimination’

This law brought significant changes for persons with disabilities, the rightful understanding of the concept of reasonable adjustment. Denial of reasonable adjustment is discrimination where there is a denial, or objections to make necessary and appropriate changes or adjustments in

⁷⁴ Albanian Constitution, article 49.

⁷⁵ Article 9 of Albanian Labour Code, 2012.

order that persons with disabilities can enjoy and exercise their rights on equal basis. The reasonable adjustment is not only about adjustment of the environments of work and services but also of the procedures and programs.

ii. DCM No. 27, of 2012 'For the employment promoting program of women from special groups'

The beneficiaries of this program are female job seekers from specific groups, defined in paragraph 2 of this decision -including persons with disabilities. Respective employment office finances:

- The employer, with a monthly financing in the amount up to 100 per cent of contributions to the mandatory social insurance and health (part of the employer's contribution), provided that the duration of the employment contract is not shorter than one year. This funding is made by the employment office in the Regional Directorate of Social Security, according to the relevant procedures;
- The employee engaged under this program, up to four salary, at 100 percent of the minimum wage in the country, in the fifth and six months and on the eleven and twelve months of the contract, while other months are financed by the employer.

All persons with disabilities who enjoy status of quadriplegic under the Law No. 8626, dated 22 June 2000 (changed) 'The status of the paraplegic and quadriplegic' and those who have status of the blind under Law No. 8098, dated 28 March 1996 'On the status of the blind' have the right to benefit from the facilities fiscal if the persons with disability status pre-tetraplegic and blind self-employed status as natural persons and are subject to tax on small business, the tax quota fixed annual shall be calculated as half.⁷⁶

Moreover article 7 of this law regulates that legal entities, state or private who hire people with disability under the status of paraplegia and tetraplegia, in addition to the criteria defined in the law nr.7955, dated 20 November 1995 'On the promotion of employment' benefit for each

⁷⁶ Article 6, Law n. 8626, (The status of the paraplegic and quadriplegic) 2000 [Statusi i invalidit paraplegjik dhe tetraplegjik].

calendar year income tax cuts, equal to the percentage of the workforce of the paraplegic and tetraplegic. The Ministry of Finance shall enact relevant laws under this law.⁷⁷

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

The austerity programmes have had increasingly negative effects on labour markets in SEE and have led to sharply worsening employment outcomes. As the economic crisis has been through successive stages, the social problems in Albania have deepened, leading to deterioration in the quality of life. Education services have come under increasing pressure leading to difficulty in providing the labour market with required skills.

The effect of the economic crisis on the labour market unfolded through a decrease in the number of jobs available and employment losses, especially among young people (15 to 24 years old). The composition of public expenditures had to be shifted to accommodate higher capital spending and increasing social insurance outlays (the first item increased by roughly 65 per cent, while social outlays increased by 52 per cent in the period 2008-2010). This caused a decrease of the resources available for education (-0.5 per cent of GDP) and for the National Employment Service (-12.5 per cent overall in 2008-2011). The allocation for employment promotion programmes and vocational training decreased by approximately 30 per cent in the period, while spending on unemployment benefit increased by over 12 per cent.

To deal with the issue of unemployment, the Albanian institutions implemented the Strategy Employment Sector 2007-2013 which was accompanied by an Action Plan. In particular this strategy includes the program encouraging the employment of women from special groups and youth from Roma community.

Some progress has been made in a few areas. In 2007 most vocational training participants were young people (15-24), with secondary educational attainment and over, and less than 24 per cent were registered unemployed. In 2012, over 36 per cent of trainees were prime age individuals (25 years old and over); 30 per cent had only eight years basic education; and the share of individuals at risk (Roma population groups, persons with disabilities, women victims of violence and returning migrants) more than doubled (from 2 per cent to 4.4 per cent of total participants).

⁷⁷ *Supra*, Article 7.

The new government elected in 2013 launched a program. The program has been the focus of employment and qualitative development of the labour force, in accordance with the vision and directives European Union, the European Employment Strategy in 2020 as well as requirements Albania's European integration. Employment and Skills Strategy 2014-2020 aims to answer these priorities that Albanian government has.

5.2. Children and Young Persons (Article 17 ESC)

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

In the Republic of Albania, education is being developed according to the millennium objectives and those settled by UNESCO, UNDP, OECD, EU legislation and the national legislation at the same time. Albania, alongside to many other countries has not slipped away from the global crisis, which is principally mirrored in the economy, but also has directly affected various social sectors, among them: education. Considering education as a crucial sector, the government has made positive steps to minimize the effects of the crisis in this vital sector. The economic crisis hasn't substantially infringed the right of children and youth in general for education, implying here 9-year compulsory education and secondary education attendance over 90%. In addition, the state has guaranteed the access of 50% of children who attend pre-school education in the city and about 20% in the countryside, however, these levels remain very low.

On the other hand, school attendance of vulnerable social categories such as, children coming from families with basic economic income or social assistance, and other social strata as for example: blind children, children with other mental and physical disabilities, orphans, quadriplegic, children of families which have suffered political persecution is guaranteed by the state.⁷⁸

⁷⁸ Articles 63 and 64 of Law n. 69 (For the pre-university educational system in the Republic of Albania) 2012 [Për sistemin arsimor parauniversitar në Republikën e Shqipërisë].

In general, referring to Article 17/1/a of the European Social Charter,⁷⁹ Albania has made positive efforts, to compensate the right to education of children and young persons, when this right for objective reasons has been impossible to be fulfilled by their parents,⁸⁰ referring to the commitment of parental obligations to meet the economic, social, and educational needs of their children. However Albania spends less on education as a percentage of GDP, than other countries in the region, (3.8% of GDP in 2009, and in 2013 the budget was reduced in 3.1%, compared to 4.6% which is the average in Eastern European countries. Besides this fact, the expenditure per student in primary and secondary education is one of the lowest in the region. In 2005, the population had an average of 8.6 years of education, which is very low compared with an average of 12 years of education in 10 member countries of the EU, and 14 years established in OECD. Today Albania has an average of 11.9 years of education per student.⁸¹ The Council of Europe has defined three basic objectives for the whole European community about average years of education:

- The average years of education for every citizen of Europe to be not less than 15 years, while Albania today, has an average of 11.9 years education per person.⁸²
- Average school abandonment not to be more than 10%, while the state figures are lower than 0.9-1.5% (USAID's data say that this percentage is closer to 13%).⁸³
- While about 82% of the population in the European area should be completed with secondary education, in Albanian territory this percentage varies 68%.⁸⁴

Of course, such programs with broad dimensions and monitored by international organizations have given positive impact, but still Albanian educational system problems exist such as: lack of infrastructure for children with special needs, lack of community interest towards Roma children, families with divorced parents etc.

⁷⁹ European Social Charter, Strasbourg, 3 May 1996.

⁸⁰ Article 62 of Law n. 69 (For the pre-university educational system in the Republic of Albania) 2012 [Për sistemin arsimor parauniversitar në Republikën e Shqipërisë].

⁸¹ World Bank Report (Evaluation on the government regarding education) 2012 [Vlerësimi mbi qeverisjen në arsim].

⁸² Ministry of Education and Sports (National Strategy for the Education) 2009-2013 accessed on March 2015 at: www.arsimi.gov.al.

⁸³ USAID Report for Albania 2011.

⁸⁴ Statistics provided from the Ministry of Education and Sport for the year 2012.

Programs with a very broad dimension, being monitored by international organizations have given a very positive impact, however, Albanian educational system remains problematic especially in areas such as lack of adequate infrastructure to fulfill the needs to children with special needs.

Taking into account this problematic issue, international agencies or programs that are currently working in Albania have set their agendas in full coherence with the National Education Strategy 2013-2017 of the Albanian Government.

A very important challenge is also granting rights to education for special categories, such as minorities and Roma children. No statistics are complete and accurate on the exact number of Roma in Albania. According to Roma representatives, they are about 30,000 to 120,000 Roma people living in Albania. Their condition indicates the presence of poverty, related to social exclusion, poor living conditions and inadequate health care. Not having even basic education, they become inexistent for the labour market and enjoy fewer opportunities for the labour market than the rest of society.

This phenomenon has become a vicious circle in which 'poverty breeds poverty' with social problems being recycled from one generation to the next one. Even though that the Albanian Constitution (Article 18) and Law No. 10221 (Protection against Discrimination) of 2010 (Ligji kundër Diskriminimit) define very clear obligation, the government hasn't undertaken effective measures to guarantee the above mentioned rights and avoid discrimination.

Abandonment of school is a existent phenomenon especially amongst Roma children. There are about 5,000 Roma children aged 3-16 years while the enrollment rate of children (at the age required by law), is low. Only 27% of children under age 6 currently attend first grade and according to the statistics of the Ministry of Education and Sport 1 to 2 Roma children of school age (6-16 years) has left school.

54% of Roma children aged from 6 to 16 years have not completed any grades. 43% Roma children aged 15-16 years are illiterate.⁸⁵ The phenomenon becomes even more concerning when it comes to Roma girls. The dropout rate for Roma girls after age of 11 years were significantly

⁸⁵ Statistics provided from the Ministry of Education and Sport for the year 2012.

higher than those of boys (at age 12 Roma girls attend school at a rate of 23% less than boys).⁸⁶ The education system in Albania is built in three main stages. 9-year primary education, 3 -year secondary education and 3-6 year university depending on the field on study.

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

Protecting children's rights is one of the most important social protection policies. Albanian legal framework is complete with respect to children's rights.

The Constitution of the Republic of Albania is the fundamental law sanctioning the protection of the rights of children in general, and of those without parental care, in particular. It contains a special chapter on the economic, social and cultural rights of the citizens, and a chapter on the social objectives. These chapters sanction the State's obligation to provide children without parental care with care and help throughout the process of their upbringing, development and education (Article 59/e).

- The International Convention on the Rights of the Child, ratified by the Albanian Government in February 1992, entered into force in March 1992;
- The obligations deriving from the current Convention with regard to respect for the rights of the child are guided by the principle of respect for 'the child's best interests';
- European Social Charter revised with Decision no.458, dated 27 April 1998, of the Council of Ministers, recognizes and protects the right of the people to enjoyment of social services;
- The Convention on the International Labour Organisation (ILO) No. 138 'Concerning Minimum Age for Admission to Employment,' was ratified in 1998, and the Convention no. 182 'Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour' was ratified in 2001;
- The Hague Convention (1993) 'On Protection of Children and Cooperation in Respect of Inter-country Adoption' was ratified by Law n. 8624, dated 15 June 2000;

⁸⁶ National Strategy of the Ministry of Education and Sport for 2009-2013.

- The Family Code (Law No. 9062, dated 8 May 2003) specifies the State's institutional obligations towards children without parental care, and the manner in which they are met;
- Code of Civil Procedure, Articles 351/1 and 352;
- Law n. 7650 (For the Adoption of Minors by Foreign Citizens and Several Amendments to the Family Code) 1992 [Për adoptimin e të miturve nga shtetasit e huaj dhe disa ndryshime në Kodin e Familjes];
- Law No. 8153 (For the Status of the Orphan) 1996 [Për statusin e jetimëve];
- Law No. 9355 (On the Economic Support and Social Services) 2005 designed above n. 7710 (On the Economic Support and Social Services) 2010 changed with law n. 7886, date 08.12.1994 and law n. 8008, date 05.10.1995 and DCM No. 307, DCM No.510 defines the system of economic aid and social care for the Albanian citizens, in which the children out of parental care are included as well;
- DCM n. 307, 1994 (For the Services of the Social Care) 1994 [Për shërbimet e kujdesit social] has been drafted and approved according to law n.7710;
- DCM n. 209 (The criteria for the placement in residential institutions of social care and the necessary documentation for acceptance) 2006;
- DCM 658, 659 (For the standards of social care services for children in the residential institutions) 2005;
- Law n. 9382 on Social Housing of 2004;

The social-care system⁸⁷ for children without parental care is presented as either a formal or an informal system. This system is made up of:

- Adoption services;
- Care in 'home families';
- Caring through foster care;

⁸⁷ Rights of Children in Alternative Care: Filling the Gap through Peer Research Albania's National Report 2011–2012 Almandina Guma & Ingrid Jones, SOS Children's Village Albania.

- Institutional care of the residential type (homes for children from 0–6 years old as well as from 6–14 years old);
- Daily care in centers for children with social problems (beggars, street children);
- Repatriation services and family reunification, for the underage runaway children from Albania.

Albania feature a network of social care institutions that provide services to vulnerable categories.⁸⁸ These institutions are public and non-public. Public PHI's are funded by the state through the State Social Service and managed centrally and locally. SSS has under 11 PHI, respectively:

- House of child Hannah and Rozafa, Tirana;
- Child House Zyber Hallulli, Tirana;
- House of preschool child, Shkodra;
- House of elderly, Tirana;
- Center for daily polyvalent elderly, Kamza.

Non-public PHI's are managed by NGOs and licensed by the Ministry of Social Welfare and Youth. Social Service conducts monitoring standards of public and private PHI's steadily and presents recommendations for improving standards. Beneficiaries of social services under Article 6 of the Law on social services are:

- Children;
- Young people up to age 25 years;
- Seniors;
- Disabled;
- Women;
- Girls in need;
- All those who are at risk are part of vulnerable groups.

⁸⁸ www.sherbimisocial.gov.al.

In the data provided by the SSS,⁸⁹ shows that, in the network of public and private institutions of social care licensed by the Ministry of Labour, Social Affairs and Equal Opportunities, are treated a total of 585 children in need, of these 256 in public residential institutions and 329 others, in non-residential institutions. Meanwhile are treated 1,609 children in 38 services in the community, 70 children in the 3-day public institutions and 4,140 children in 48 day care centers to NGOs. 37 children were treated at the National Center for Treatment of Victims of Domestic Violence, 87 children with disabilities in 7 development centers and 23 children in a Shelter for Victims of Trafficking. The data show that about 80% of the number of children are treated in non-residential services, which shows trends and deinstitutionalization⁹⁰ of services and specific weight gradual increase of non- residential care. In grouping of orphaned children or children outside of parental care, included children 0-14 years and adolescents (children) 14-18 years old, who do not live with their parents due to: the death of both parents; relinquishment of parental custody or abandonment; temporary disability or permanent parents to care (sickness or suffering sentence of imprisonment); willfully placing the care of administrative structures (social services); removal of the parental right (on the basis of a decision given final court). Residential social care institutions, constitute the structure of caring for children outside of parental care. Living in them is organized in the way of living in groups, where a staff of paid care for children and not on the basis of family life. These structures can be community based and parental care accommodate children from the surrounding community, or may be national residential institutions, which care for children who come from more than one community.

From the inspections made in a range of Public Residential Social Care showed that:

- Baby House 0-6 years, Korce: standards of this center acceptable. The only problem in these complete environments, was the selection of a more qualified staff, who can withstand hardships and specifications requiring the growth of these children.⁹¹

⁸⁹ Paperwork of SSS nr.1064/1 dated 25 September 2012, the People's Advocate.

⁹⁰ Deinstitutionalization, has to do with a new concept of residential services to form roommate. Under this process, children in need were offered alternative community-based services and family guardianship or adoption.

⁹¹ Special Report 2013 For Rights of Orphans, including Systematic Children in Residential Institutions for Social Care and Children who used to work OMBUDSMAN, pg 18.

- House Child 6-16 years, Saranda: measures to change the quota of food per day, the addition of the organic of a social worker, the addition of a fund for the purchase of a vehicle or renting a transport vehicle for the orphanage.⁹²
- House of child 6-16 years, Shkodra: measures for the waterproofing taraces, the addition of clothing quota.⁹³
- House of preschool children 0-6 years old, Shkodra: device with an industrial washing machine + dryer, for a much better hygiene, as well as purchasing a cooking stove and utensils renewal, Hiring a nurse to attend every day to ensure the health of children.⁹⁴
- Child House "Zyber Hallulli" for ages 6-16, Tirana: measures for the reconstruction of the whole building, the addition of the organic of a maintainer.⁹⁵
- Baby House, for ages 0-6 years, Tirana: measures for partial reconstruction of the building, the addition of the organic of a pediatrician indispensable to this category and their care, establishing the safety and preservation of these facilities with private guards for 24 hours, the addition of food and budget quota for the article *Pampers*, indispensable to ensure normal life and growth of these children.⁹⁶

Children and young people who have lost parental care, suffer from discrimination and many disadvantages, as a result of the withholding of service and attention from state public structures. The current legal framework requires improvements with regard to young people leaving care, addressing their challenges, to develop the best strategies and other services to them. The status of care in residential institutions hampers the future of young people leaving care and highlights the disadvantages and their vulnerability.⁹⁷ The legal status of children in care aged 16-18 is not regulated. Current legislation does not contain definitions where are specified state responsibilities for this age group. Formal system of care is supported by a set of rules, laws and institutions. Public and private institutional services are provided by central government, local government, organizations and other service providers.

⁹² *Supra*, pg. 18.

⁹³ *Supra*, pg. 19.

⁹⁴ *Supra*, pg. 20.

⁹⁵ *Supra*, pg. 21.

⁹⁶ *Supra*, pg. 21.

⁹⁷ Young People Leaving Care In Albania: Practices, Legislation and Rights 2009, SOS Children`s Village. Albania.

Is desirable proper legal treatment of Retail orphans, for the real benefit of all facilities offered by the Law "On the Status of Orphan", but even the current legislation in force, not only for the time that these individuals are under social care, but even after age 18 years and their labeling as adults. Housing, employment, the provision of relevant social care, exemption from certain taxes, are rights of these individuals, which in turn require a real and concrete commitment of the State for their fulfillment.⁹⁸ It is necessary to review the provisions of the Law "On the Status of Orphans", in conditions where its enforcement powers are being transferred from central government bodies, to local government bodies and the separate development of the Albanian society and relationships in general has evolved , taking new dimensions and meanings.⁹⁹

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

To have a better understanding of the role of the state toward education, how the crisis and policy making have affected all the levels of the education sector it is necessary and very important to list some basic data. These data are related to:

- The amount of money addressed to education in the recent years.
- Percentage of GDP destined for education in general and specifically primary education.
- The economic growth of the country related to the crisis.
- The human resources that benefit from the budget of education.

Please see Table 4 for details on Budgetary expenditures (in million) and the respective GDP (in percentage). Comments on table 4:

- The economic crisis has affected in the reduction of the budget for education;
- The increasing of the GDP for education is far away from the targets set by international institutions, (requiring a fund of 5% of the general GDP planned for education);
- Albania's economic growth has been significantly reduced from year to year after 2008;

Besides the above conclusions it is important to note that:

⁹⁸ *Supra.*

⁹⁹ *Supra.*

- The decreasing of the number of pupils attending the primary education is a present phenomenon because of two main reasons: the decreasing number of births from one hand and immigration of active population on the other.
- Moreover, the number of students attending higher education (universities), has been notably increased from 93, 139 students in 2008-2009 to 160,000 in 2014-2015.¹⁰⁰

Due to the lack of subsidization, the state allowed the opening of private universities, which nowadays constitute 21% of the total number of students and the tuition fee is entirely afforded by the families and the students. The above data give us the opportunity to draw these conclusions: Firstly, the lower economic growth, which in recent years has decreased from 6% to 1% has reduced the opportunities to create the conditions for an education according to EU standards. Secondly, in these circumstances, the state has guaranteed free education for primary and secondary schools, even though there are serious difficulties in the process of teaching in overpopulated classes and overloaded number of teaching hours per teacher. The state doesn't finance free books for every pupil. Such possibility is limited only for vulnerable social strata. Thirdly, it is not possible with the amount of funding for education, the *ratio* in favour of vocational education and there isn't done enough to resolve the huge influx of population displacement from the rural areas towards the large urban centers for the purposes of education. Higher education has taken all these years about 0.4% - 0.6% of GDP.¹⁰¹ The fund for scientific research has never been more than 0.18% of the general GDP and the entire process of doctoral studies is afforded by the students themselves. Even the expenses for the second cycle studies (Master program) are covered by the students themselves. The State partially covers only the first cycle of studies (Bachelor program) for some specific vulnerable groups. The state isn't able to cover the basic salary of the permanent academic staff of the faculties, the remaining uncovered part of salaries is collected from the student's tuition fees. The state currently offers some scholarships for several vulnerable social strata especially for those that can't afford study expenses, however these scholarships are insufficient to meet the minimum cost of study expenses and insufficient for the number of students who meet the criteria to benefit from the

¹⁰⁰ Draft reform of higher education, 2014-2015.

¹⁰¹ *Supra*.

scholarships. In these conditions, the majority of students prefer to work in part-time jobs, which naturally threatens the quality of their academic performance.

Each year after 2009 tuition fees have been increasing and this academic year (2014-2015) they reached the highest level of increasing: 20%. This shows that the state has taken austerity measures to fund education, by charging the student's pockets. On the other hand, some social reforms related to decisions of the Council of Ministers to avoid some certain social categories from paying the tuition fees, are not subsidized from the state, but from paid fees by other students. Increased tuition fees have forced a considerable number of students to drop out of school temporarily or permanently. This means that *prima facie*, the state has fulfilled its obligation established by the European Social Charter to guarantee education, training and youth assistance, but its concrete engagement for financial resources and its institutions do not fulfill the obligation to respect these rights in substance. There is a huge discrepancy between the commitment of *de jure* engagement and the accomplishment of *de facto* engagement. Regarding the positive state obligation, it should guarantee the appropriate conditions for an education that meets the European standards by its own means.

Please see table 5 on percentage of expenditures for primary education versus total expenditures for education in years. Comments on table 5:

As seen, in 2007, in absolute numbers the GDP for primary education has increased. This parallels the OECD reports and the EU, recalling that the cost of university education should be 3-4 times higher than the cost of university education in general. Primary education lasts nine years and is compulsory by law. Structured according to the new law, primary education has changed to 6 + 3 approved by law. In our region there is no practice with this structure. The crisis of recent years has made our legislation more rigid and inflexible by not providing facilities for educational institutions, which otherwise would bring improvement of its condition. Schools should be encouraged to find alternative funding sources to increase public charitable contribution all alternative funding should be excluded from taxes, so that every penny donated will be used for improving and supporting the quality of education. Also NGOs, teachers and students who buy teaching materials such as computers, laptop, etc should be excluded from taxation. It is necessary to simplify the rules for such exceptions in order to fund more donators

in this area. So far there is no initiative for the exclusion of this categories from taxes, although this is written in the strategies of the government for the improvement of the educational system. No pupil/student/or teacher is excluded from taxes when they buy these expensive devices. This is a simple example to show how the crisis has affected our legislation. Faced with the above strategies and objectives remain the numbers and facts which show a certain realitie different from which should be.

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue

Albanian legal framework is complete with respect to employment right. Albanian Constitution provides for the right of employment as one of the fundamental human rights.

Article 16:

1. The rights and freedoms underlying hour and obligations provided in the Constitution for Albanian citizens are also valid for foreigners and stateless persons in the Republic of Albania, except when the Constitution binds so Albanian special citizenship in exercise of the rights and freedoms set.¹⁰²

Article 49:

1. Everyone has the right to earn the means of living by lawful work that he has chosen or accepted himself. He is free to choose his profession, place of work, and its system of vocational qualifications.
2. Employees have the right to social protection of labour.¹⁰³

Article 59:

Social Objectives

The state, within its constitutional powers and means, to supplement of private initiative and responsibility, aims to:

- a) Employment under suitable conditions for all persons able to work.¹⁰⁴

¹⁰² Constitution of the Republic of Albania, article 16.

¹⁰³ *Supra*, article 49.

¹⁰⁴ Constitution of the Republic of Albania, article 59.

5.2.4.1. Law n. 7995 (*Employment Promotion*) amended 1995 [*Nxijtja e punësimit*]

The purpose of the law in relation to employment, vocational training and professional qualification, the National Employment Service and Employment Fund is actively pursuing general policy to support full, productive and freely chosen.

Young people in the entire country are a major source of human development and also one of the key agents for social change, economic and technological.¹⁰⁵ Youth employment is one of the biggest problems of our country. Unemployment is higher among young Albanians. We reach this bitter conclusion if we refer LFS (Labour Force Survey) of INSTAT, Institute of Statistics of the Republic of Albania. (Please see table 6 for details on youth unemployment rate).

The unemployment rate is one of the most important labour market indicators and gives the proportion of unemployed people to economically active population. The youth unemployment rate for 2007 is 20.1 per cent and for 2008 is 27.2 per cent.¹⁰⁶ These figures show that young people encounter more difficulties to find a job in labour market. In the Albanian labour market there is a low job creation rate for young people. Youth unemployment rate in 2009 was 21.9 per cent, 5.3 percentage points lower compared to the previous year¹⁰⁷ For 2010, youth unemployment rate was 22.5 per cent, 0.6 per cent higher compared to 2009.¹⁰⁸ An increase by 4 per cent is noted from 2011 to 2012.¹⁰⁹ For 2013 the unemployment rate for the youth was 30.2%, (32.5% for male and 26.1% for females). The youth unemployment rate increased by 2.3 percentage points compared to the previous year.¹¹⁰ For 2014 the unemployment rate is 32.4 per cent, 2.2 per cent higher than 2013.¹¹¹

All tests and perception of the Public Opinion during transition has ranked unemployment as the number one problem of the Albanians. To answer this social emergency, the focus of the Albanian government program has been the employment and qualitative development of the labour force, in accordance with the vision and directives of the European Union, the European Employment Strategy in 2020 as well as requirements for Albania's European integration.

¹⁰⁵ Albanian Youth 2011, Friedrich Ebert Stiftung; IDRA Research & Consulting.

¹⁰⁶ Labour Market 2008 INSTAT.

¹⁰⁷ Labour Market 2009 INSTAT.

¹⁰⁸ INSTAT Labour Force Survey (LFS) 2010.

¹⁰⁹ Labour Market 2011-2012 INSTAT.

¹¹⁰ Labour Market 2013 INSTAT.

¹¹¹ INSTAT Labour Force Survey (LFS) 2014.

Through the National Strategy for Employment and Skills 2014-2020 is intended to increase the level of employment, enabling a gradual shift from passive policies to proactive unemployment stimulating employment. The main objective of this strategy is identifying and designing appropriate and incentive policies to employment in place and vocational training of the workforce in order to create jobs and opportunities for skill quality throughout the life cycle. The strategy aims to significantly improve the system of services for job seekers and the system of education and vocational training. A lot of work remains to be done with regard to improving the capacity of the National Employment Service (NES) in order to perform all the functions of a modern public service across the country, including rural areas, which are in dire need for these services.¹¹²

In support of young Albanians, on 1 October 2014, the United States Agency for International Development (USAID) and Assist Impact organization have signed seven agreements for grants/ projects aimed at increasing employment opportunities and empowerment of active youth in society. These projects aim to create real job opportunities for 205 youth and also provide vocational training for 420 other until July 2015. Agreements signed between USAID and Impact Assist with 7 Non Governmental Organizations from all over Albania: Creative Business Solutions (CBS), (LEEA), Albania Rafting Group (ARG), Association for Integration and Community Development (AICD) and Albanian Students Alumni Network (ASAN) are focused mainly on work with young people who live outside of Tirana and in rural areas.¹¹³

It is very important that young people rely on grants policy. This is an excellent example to be multiplied. On 25 November 2014 Albania and Austria, through the Minister of Social Welfare and Youth and Minister of Education, Arts and Culture, Ms. Gabriele HEINISCH-Hosek signed a memorandum in support of our professional schools.¹¹⁴ For vocational training on 19 January 2015 the Albanian Ministry of Social Welfare and Youth in cooperation with the Operator of Electricity Distribution have signed a cooperation agreement for the employment of young people attending vocational education: the development of practices and courses for students of vocational schools with technical – electric profile.¹¹⁵

¹¹² National Strategy for Employment and Skills 2014-2020, Ministry of Social Welfare and Youth (MSWY).

¹¹³ www.sociale.gov.al.

¹¹⁴ *Supra*.

¹¹⁵ *Supra*.

On 26 January 2015 Ministry of Social Welfare and Youth, in cooperation with the Hamburg Institute for Vocational Education and with the support of Vocational Education Program of GIZ, introduced the opening of Erasmus Plus 'Schemes of Apprenticeships for Youth Employment in Albania' which aims at integrating dual education scheme in vocational education system in our country.¹¹⁶

On 26 March 2015 Ministry of Social Welfare and Youth and the Ministry of Defense signed an agreement which enables cooperation with the Armed Forces to conduct professional practices of these branches, during the period of study at military bases.¹¹⁷

One of the measures for reduction of the high level of youth unemployment is the guide for Erasmus PLUS, the New European Union EUR 14.7 billion, offers by the EU for education, vocational training, youth and sport.¹¹⁸

Another measure that MSWY has taken for youth employment is the agreement to finance the program for youth employment, which fund amounting to EUR 3.3 million. This deal brings into force a program called "New Albania", which aims to increase opportunities for employment and income for young women and men aged 15-29.¹¹⁹

In the end, I will list the DCM of Albanian State for youth employment:

- DCM No. 199 'The Encouraging Employment of Unemployed and Young Program';¹²⁰
- DCM No. 873 'Professional Practice Program for graduates';¹²¹
- DCM No. 47 'Employment Promotion Program through job training';¹²²
- DCM No. 27 'Employment Promotion Program of unemployed women'.¹²³

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

¹¹⁶ *Supra.*

¹¹⁷ *Supra.*

¹¹⁸ www.integrimi.gov.al.

¹¹⁹ www.sociale.gov.al.

¹²⁰ www.shkp.gov.al.

¹²¹ *Supra.*

¹²² *Supra.*

¹²³ *Supra.*

The impact of the measures taken by our state due to the global crises is very notable. With regards to education, the infrastructure quality of schools and universities has been strongly affected by the current crisis, and most of these institutions do not meet basic standards established by international organizations and agencies. The economic crisis and transition in Albania, has created a very large demographic movement of population concentrating towards the coastal and metropolis cities. This phenomenon has created less favorable conditions to meet the basic standards mentioned above. High trends of migration and immigration have brought changing school population map and creating difficulties for teaching. As a result many rural schools are empty and classes are combined and the standard equilibrium teacher-student in classroom is damaged. Such situation has envisaged the inequality of opportunities and effectiveness for all students and especially for marginalized groups such as Roma and Egyptians children or families in need to respect the rights, equality of minority children (contrary to the provisions of Article 7 of the Charter). In many schools is applied the dual shift teaching process and is distinguished the growth of the number of pupils per class, and as a result the reduction of space per individual pupil/student. A new phenomenon that has emerged is the repatriation of migrant families. According to the Ministry of Education and Sport there are around 5,000 children returned in our country, creating difficulties in terms of infrastructure.¹²⁴

The abandonment of school is a present phenomenon as well, which is increasing everyday. More and more children or young persons, for economic conditions, and due to the lack of the commitment of the parental and state obligations abandon education and try to find a job in “black-market”, often with very bad salaries and bad working conditions. With the support of the World Bank and other donors as well as the state funds, basic positive steps are being made in improving the infrastructure. There have also been some enhancements in vocational education, which nowadays remains a real challenge even for the current government. Statistics says that the report between education in general and vocational education is (80% / 20%). However, despite these efforts the attention in the area of education remains very low in relation to the needs that such crucial area actually has. It is directly connected to the very low economic growth during the recent years in Albania.

¹²⁴ Census, 2012.

With regards to effects of austerity measures concerning children and young persons temporarily or definitively deprived of their family's support, are taken concrete steps, for:

- Consolidation and improvement of social care system for children in need (Article 7 of ESC);
- Providing services in public and private institutions to care for children, respecting the standards of physical environments and sustainability of employment relations for staff specialist (Article 17/1/c of ESC);
- Strengthening the quality and access to other services of residential institutions to ensure the needs of children. This is a very important aspect if we consider that this group of children has special psychosocial needs, sometimes are traumatized, or have mental health problems (Article 17/1/c of ESC);
- Deinstitutionalization of children in residential centers through their transformation in the form house- Family, increasing daily and community services within these centers.
- Promotion of support services for children and alternative services that mitigate the institutionalization of children in family foster care services, adoption and return to biological families (Article 17/1/c of ESC).
- Strengthening the capacity at the central and regional structures that work with children, constant training of social services staff. Trainings are offered from time to time by various organizations and Ministry of Social Welfare and Youth of Albania (Article 17/1/c of ESC).

6. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

As already stated in the Introduction section in the very beginning Albania has not yet signed the Additional Protocol providing for a system of collective complaints.

Unfortunately, there isn't available any statement from the Albanian government if Albania will ratify the Additional Protocol in the near future or not. However, the general approach towards the ESC is positive, therefore the ratification is possible even though we can not make concrete predictions in this regard.

7. CONCLUSIONS

Since 2008, Albania has seen an increase in the national poverty level and remains one of the poorest countries in Europe. The Statistics Institute of Albania (INSTAT) recently reported that this increase has largely been due to the global economic crisis, especially now since that Albania is no longer the centralized, state-run economy it once was. Due to relatively low rates of growth from 2008, Albania has found itself struggling economically, with many people blaming the global economic crisis.

Despite the economic growth Albania, a country with a population of only 3 million, has undergone under its free market economy, nearly one-fourth of the population still lives in poverty.

Overall, Albania seems to have made very positive steps to fulfill the requirements and standards established by different international organizations. Such attitude comes as a result of the aims that Albania has for its future, more specifically the European Integration. However, we must admit that the global economic crisis had its grave impact in Albania as well and the austerity measures resulted to be productive in terms of 'surviving' the economic crisis but its implications in the life of the citizens must be subject of discussions as well.

That said, below we will bring some of the conclusions that were evident from the deep analysis of the effects of austerity measures undertaken as a response to the economic crisis. Austerity measures seem to have affected labour rights in Albania, however, because of the problematic amount of informality that occupies our labour market, it is quite challenging to discover whether social and collective bargaining rights have been significantly affected.

With regards to Social Rights, Albania results to have made very positive steps to fulfill the international standards. The laws and decisions quoted in the previous paragraphs show that there have been no major impacts in the social services in Albania. Moreover, as far as social

exclusion is concerned, although the poverty level in Albania and the number of families covered with social assistance raised after 2008, there is no evidence that such increase in poverty happened because of any austerity measure taken by Albanian state. More than consequence of Albanian social policies, it was part of a general economic recession which struck European countries more specifically.

The effect of the economic crisis on the labour market unfolded through a decrease in the number of jobs available and employment losses, especially among young people (15 to 24 years old). The composition of public expenditures had to be shifted to accommodate higher capital spending and increasing social insurance outlays (the first item increased by roughly 65 per cent, while social outlays increased by 52 per cent in the period 2008-2010).

As far as education is concerned, the abandonment of school is a present phenomenon as well, which is increasing everyday. More and more children or young persons, for economic conditions, and due to the lack of the commitment of the parental and state obligations abandon education and try to find a job in “black-market”, often with very bad salaries and bad working conditions. With the support of the World Bank and other donors as well as the state funds, basic positive steps are being made in improving the infrastructure. There have also been some enhancements in vocational education, which nowadays remains a real challenge even for the current government.

8. TABLES

	2007	2008	2009	2010	2011	2012	2013	2014
Real growth of GDP	5.9	7.5	3.3	3.8	3.1	1.2	0.7	2.1
Inflation (% change, end of period)	2.9	3.4	2.3	3.6	3.5	2.0	1.9	2.7
Gross fixed capital formation*	5.5	9.5	0.9	-6.2	2.6	-2.3	--	--
Total income	26.0	26.7	26.0	26.6	25.8	24.9	24.0	25.7
Total expenses	29.5	32.3	33.1	29.7	29.3	28.4	30.1	32.2

The overall fiscal balance*	-3.5	-5.5	-7.0	-3.1	-3.6	-3.5	-6.1	-6.5
Total debt*	53.4	54.7	59.4	58.5	59.5	61.5	64.6	68.3*
Exports*	10.0	10.3	8.6	13.2	15.4	16.0	17.8	19.1
Imports*	38.9	37.7	35.0	36.7	40.0	36.9	34.8	35.9
Foreign direct investment, net*	5.8	9.6	11.1	9.2	10.6	5.8	--	--
The current balance of current accounts*	-10.6	-15.6	-15.2	-11.5	-12.4	-10.9	--	--
Deliveries of workers	12.2	9.4	9.0	7.8	7.4	4.9	--	--

Table 1.¹²⁵

Variables	Urban	Rural
Individual characteristics		
Monthly Salary	368,728	267,053
The right to social security	72.20%	60.06%
Work Experience	23.48	26.33
Education	12.27	9.88
The composition of the family		
Family size	4.69	5:03
The average number of working-age males in the family	1:39	1:54
The average number of working-age women in the family	1:32	1:30
Number of children from 0 to 5 years	12:34	12:39
Regions		
Coastal	33.27%	30.35%
Central	25.42%	61.32%
Mountain	3.35%	8.33%

Table 2.¹²⁶

¹²⁵ The * symbol means the data are expressed as a percentage of the GDP (% GDP).

¹²⁶ INSTAT accessed on April 2015 at: <http://www.instat.gov.al/media/252139/tab3shqip.xlsx>.

	2009	2010	2011	2012	2013
Number of Families Covered with Social Assistance	96,894	97,540	99,494	98,810	104,398
Total Fund (in ALL)	3,975,432	3,474,653	3,634,258	3,609,200	4,655,834

Table 3. Social Assistance Payment in Albania.

Year	Budgetary expenditures (in million)	GDP in %
2009	38.606.930,000	3,8%
2010	37.469.970,000	2,99%
2011	38.182.345.000	3%
2012	38.272.950,000	3,17%
2013	38.429.369,000	3,11%
2014	40.111.450,000	2,8%
2015	39.049.980,000	3% ¹²⁷

Table 4.¹²⁸

2006	2007	2008	2009	2010	2011	2012	2013
83%	85%	86%	81%	81%	83%	81%	83%

Table 5.

¹²⁷ Vocational Education Budget has passed to the Ministry of Labour and Social Affairs, whereas the budget for sports is included in budget of the Ministries of Education.

¹²⁸ Statistics accessed on March 2015, Ministry of Finance and Ministry of Education and Sport www.financa.gov.al and www.arsimi.gov.al.

Youth unemployment rate	2007	2008	2009	2010	2011	2012	2013	2014
Totally	20.1	27.2	21.9	22.5	23.9	27.9	30.2	32.4
Male	22.8	27.1	21.6	23.8	25.5	31.4	32.5	35.7
Female	16.6	27.2	22.2	20.7	21.4	22.0	26.1	26.9

Table 6.¹²⁹

9. BIBLIOGRAPHY AND ONLINE RESOURCES

9.1. Legislation

- Albanian Constitution.
- Albanian Labour Code.
- Albanian Family Code.
- Albanian Penal Code.
- Albanian Civil Code.
- DCM n. 27 (Employment Promotion Program of unemployed women).
- DCM n. 47 (Employment Promotion Program through job training).
- DCM n. 199 (The Encouraging Employment of Unemployed and Young Program).
- DCM n. 209 (The criteria for the placement in residential institutions of social care and the necessary documentation for acceptance) 2006.
- DCM n. 307, 1994 (For the Services of the Social Care) 1994 [Për shërbimet e kujdesit social] has been drafted and approved according to law n.7710.
- DCM 658, 659 (For the standards of social care services for children in the residential institutions) 2005.
- DCM n. 873 (Professional Practice Program for graduates).
- European Social Charter (revised) 1996.

¹²⁹ Shows data as a percentage (%).

- Law n. 6921 (For Undergraduate Education System in the Republic of Albania) 2012 [Për sistemin arsimor universitar në Republikën e Shqipërisë].
- Law n. 7889 (On the Status Work invalids) (Ligji 'Për statusin e invalidëve të punës) 1994
- Law n. 7995 (Employment Promotion, amended) 1995 [Nxitja e punësimit].
- Law n. 7650 (For the Adoption of Minors by Foreign Citizens and Several Amendments to the Family Code) 1992 [Për adoptimin e të miturve nga shtetasit e huaj dhe disa ndryshime në Kodin e Familjes].
- Law n. 8098 (On the Status of the Blind) 1996 [Ligji 'Për statusin e të verbrit].
- Law No. 8153 (For the Status of the Orphan) 1996 [Për statusin e jetimëve].
- Law n. 8626 (On the Status of Paraplegic and Quadriplegic Persons) 2000 [Ligji 'Për statusin e invalidit paraplegjik dhe tetraplegjik].
- Law No. 9355 (On the Economic Support and Social Services) 2005.
- Law n. 9382 on Social Housing of 2004.

9.2. Other Relevant Documents

- Case laws from Albanian Constitutional Court.
- Draft reform of higher education 2014-2015.
- Ministry of Education and Sports (National Strategy for the Education) 2009-2013.
- Ministry of Labour, Social Affairs and Equal Opportunities (Manual for the Implementation of social standards on People with Disabilities) 2010.
- Ministry of Social Wellness and Youth (National Strategy on employment) 2014-2020.
- Ministry of Social Welfare and Youth (National Strategy for Employment and Skills) 2014-2020.

9.3. Reports

- Bank of Albania, Statistics of the foreign sector.

- Communication from the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2013-2014.
- EU Commission (Albania Progress Report Albania) 2008.
- Friedrich Ebert Stiftung, IDRA Research & Consulting (Albanian Youth) 2011.
- IMF Country Report No. 14/78 2014.
- INSTAT (Labour Force Survey) 2013.
- INSTAT (Labour Market) 2014.
- Republic of Albania People's Advocate (Annual Report on the activity of the People's Advocate) 2014.
- Republic of Albania People's Advocate (Special Report For Rights of Orphans, including Systematic Children in Residential Institutions for Social Care and Children who used to work) 2013.
- SOS Children`s Village Albania (Albanian legislation On Orphan Status, Needs Analysis of Changes) 2012.
- SOS Children`s Village Albania (Young People Leaving Care In Albania: Practices, Legislation and Rights) 2009.
- SOS Children`s Village Albania (Rights of Children in Alternative Care: Filling the Gap through Peer Research: Albania's National Report) 2012.
- USAID (Reports for Albania) 2011, 2012, 2013.
- World Bank Report (Evaluation on the government regarding education) 2012.

9.4. Online Resources

- www.arsimi.gov.al.
- www.bankofalbania.org.
- www.coe.int.
- www.financa.gov.al.
- www.integrimi.gov.al.

- www.sherbimisocial.gov.al.
- www.shkp.gov.al.
- www.shssh.org.
- www.sociale.gov.al.
- www.qbz.gov.al.
- www.worldbank.org.

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

Armenia having been constituent in the USSR like other post-soviet republics around 70 years did not manifest itself as an autonomous subject of international relations but the situation had altered after Armenia fell out with the USSR. Hence, on 23 August 1990 the Supreme Council of the Republic of Armenia adopted Armenia's Declaration of Independence through which it launched Armenia's Independence Process. On 21 September 1991 a referendum was held in all of Armenia on falling out with the USSR and becoming independent. The overwhelming majority of the population i.e. 2,043,000 (94.39 % of those eligible to vote) said "yes" to independence. Thus, Armenia became an independent state after the referendum and could integrate into international relations as an autonomous subject.

In particular, on 2 March 1992 the Republic of Armenia (hereinafter RA) became a full member of the UN, afterwards it became member to a number of international organizations.

On 5 July 1995 RA Constitution was adopted through the referendum due to which the Republic of Armenia was proclaimed a sovereign, democratic, social and legal state. Thereto, the Republic of Armenia took up the process of international integration as a result of which RA legal system was to conform with the requirements of principles of international law and international legal norms.

By becoming a European Council member on 25 January 2001, the Republic of Armenia committed itself to adopt the principle of law supremacy, in accordance with which each one being under its jurisdiction must resort to the use of human rights and fundamental freedoms. In order to guarantee the compliance of the mentioned liability the Republic of Armenia committed itself before the European Council to sign and ratify a number of significant documents during a couple of years. Particularly, on 20 March 2002 RA joined the convention from 1950 "**About Human Rights Protection and Fundamental Freedoms**" and protocols attached to it. Despite the significance of the Convention, nevertheless, the exercise of that paper was restricted to the protection of civil and political rights only. In order to fulfill the

mentioned gap the member states of the Council of Europe have signed the European Social Charter on 18 October 1961, which came into force on 26 February 1965. Armenia constituent of the USSR has not ratified the European Social Charter that came into force in 1965. The Charter made the framework of protection of physical persons' rights and fundamental freedoms even more complete in the European region. Afterwards, by seeking to modernize the Charter's basic content, in order to make possible to consider in it fundamental social changes, which have occurred in domestic and international life since the Charter's text was adopted, the member states of the Council of Europe adopted Revised European Social Charter on 3 May 1996 and came into force on 1 July 1999. The Republic of Armenia signed Revised European Social Charter on 18 October 2001. For the Republic of Armenia the Charter came into force on 1 March 2004.

When signing the Charter, the Republic of Armenia made an announcement in accordance with which, and based on provisions of the Revised European Social Charter's Article A paragraph 1 b) and g) subparagraphs, consider itself bound by Articles 1, 5, 6, 7, 8, 17, 18, 19, 20, 22, 24, 27, 28 as well as:

- Article 2 paragraphs 1, 2, 3,4, 5, 6;
- Article 3 paragraph 1;
- Article 4 paragraphs 2, 3, 4, 5;
- Article 12 paragraphs 1,3;
- Article 13 paragraphs 1, 2;
- Article 14 paragraph 2;
- Article 15 paragraphs 2, 3.

The Republic of Armenia, having ratified the Revised Charter, runs an purposeful policy to create conditions to promote an effective exercise of the rights mentioned in it. In order to achieve those goals, all possible national and international measures are being taken, as well as for the implementation of the requirements of the Article "I", Part V of the Charter, and according to this laws and sub-legislative acts are being adopted, changes and supplements are being made in the existing laws.

The essential feature in the Revised Charter lies in the fact that stipulated social-economic rights are guaranteed not only for citizens and foreigners residing legally in their territory under the jurisdiction of the States Parties but also for each person under their jurisdiction among them refugees residing legally and people with no citizenship in that country. Rights of free choice of labour, decent standard of living such as housing, social security, education and other rights are formulated as rights to citizens in Articles 29, 31, 33, 35 of RA former Constitution (edition of 1995-07-05). However, an alteration was made in RA Constitution on November 27 2015 after ratifying Revised European Social Charter. It resulted in that other rights relating to labour, social security, education, place of residence and other social-economic rights were defined for each one. Nonetheless, the necessity of a number of established social rights, which has to be taken up exists in the Revised Charter of the RA that is apparent in the section of such articles which the Republic of Armenia is not committed to. In particular, intra-state constitutional stipulation of rights to just working conditions, fair remuneration, vocational orientation, vocational training, health security and elderly people's security is likely to have an essential impact on the protection of human's social interests and that of the society. It is worth mentioning that RA Constitutional Court decides on the conformity of obligations stipulated in it to RA Constitution according to Article 100 clause 2 before the ratification of the international treaty. The Constitutional Court of the RA has confirmed the conformity of obligations stipulated in the Revised European Social Charter to the RA Constitution that was signed in Strasbourg on 3 May 1996 by its 2003-12-22 DCC-460 decision on 22 December 2003.¹

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

The global financial and economic crisis broke out in 2008. Its nature was unprecedented and its influence is visible both in the global and Armenian economy and social protection as well. Although the economic crisis caused considerable damages to economy, however, the RA

¹ Decision of Constitutional Court, 'On the Case Concerning the Determination of the Issue Regarding the Conformity of the Obligations Stipulated by the European Social Charter (revised) (with attached declaration) Signed on 3 may 1996 in Strasbourg with the Constitution of the Republic of Armenia', (2003-12-22, number DCC-460) <<http://www.concourt.am/armenian/decisions/common/2003/sdv-460.htm>> accessed 20 April 2015 [Armenian].

attempted by all means not to tighten up its economic policy. In particular, inflation and high levels of poverty emerged, unemployment became even more, state-supported subsidies meant for educational and social-cultural events were reduced and things like this. However, drastic social-economic changes have not occurred as far as legislation sector is concerned and the RA social nature has not changed or abolished. Nevertheless, a vivid sample of negative influence of economic crisis on social rights can be worth mentioning when free of charge education in the framework of tuition free system was abolished in the faculties of law and international relations, Yerevan State University by RA Government's 2012-04-26 N 564 decision and only tuition fee system was set up instead. Apart from rigid and refraining steps that were taken during the 2008 global economic crisis, social-economic progress took place at the very same time such as the minimum wage rise. In particular, annual changes are made in the RA law "About minimum wage" with the initiative of the RA Government aiming at overcoming the reported inflation and poverty threshold and the RA current minimum wage amounts to AMD 30,000 (nearly EUR 58) compared with AMD 25,000 (nearly EUR 48) set in 2008.²

In the circumstances of economic crisis a positive step can be viewed as the RA Government-implemented state, purposeful project named "Affordable housing to the young family" that has been functioning since 2010 through which public assistance is displayed to young families who need improvement of housing facilities.

The implementation of pension reforms was suspended in the Republic of Armenia that was due to be carried out by 2011 because of the global economic crisis.

The social burden has become heavy for workers. If in soviet years the average of every third worker was 1 pensioner now it is 1.3 on average.

Moreover, due to the changes made in the RA law on December 1 2014 "About benefits of temporal unemployment", average monthly salary amounts meant for benefits were restricted and it was correlated to work experience. Hence, according to the change made, if work experience duration is less than a calendar year, then calculations are made from 40% from average monthly wages and if it is 1-3 calendar years then calculations are made from 60% on

² The Law on Changes and Amendments in the RA Law on Minimum Wage 2008 [«Նվազագույն ամսական աշխատավարձի մասին Հայաստանի Հանրապետության օրենքում փոփոխություններ և լրացում կատարելու մասին» ՀՀ օրենք].

and if it is more than 3 years, calculations are made from 80% on. Unemployed women are issued a benefit with minimum wage amounts.

The Republic of Armenia adopted this attitude since like state bodies claim, international experience has proved that there is not a single country in the world where disability benefit can amount to 100%.

Thus, the 2008 global economic crisis did not disrupt and alter the RA nature as a social and legal state with regard to legislation. Individual's social rights did not undergo any restrictions despite the fact that the sums of money allocated for economic and social programs had been cut down then.

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

The 5th article of the Revised European Social Charter defines the right of employers' and employees' to create and join trade and employer unions. The Republic of Armenia by validating the above mentioned article assumed a range of obligations. The 28th article of the Constitution of RA is a primary guarantee for the execution of this legal norm, according to which everyone has the right to form unions with others, as well as the right to form trade unions and to join them.

The present Labour Code of RA, which entered into force on 21 June 2005, for ensuring the fulfilment of the 5th article of the ESC defines the right of employers' and employees' to form employer and trade unions. Thus, according to the 21st article of Labour Code of RA "To protect and represent their rights and interests the employers and employees are free to form trade and employer unions with their own will in accordance with the law". To execute the obligations foreseen by the 5th article of the Revised ESC, two separate laws were passed in RA, namely the law Trade unions (January 15 2001) and the law on Employer unions (April 14 2007). Both laws define the order of founding the unions, the principles of their activity, the relationship with state bodies, local self-government bodies, legal entities and individuals.

Separate provisions of the RA legislation about trade unions define both the order of formation of norm of foundation of the union of labour union, as well as trade organizations unions. According to the 4th article of the law about trade unions, a trade union is formed according to the decision made by the founding assembly (conference, congress) initiated by its founders (at least three employees). The founding assembly confirms the charter of the organization, chooses a manager and supervisory bodies. For becoming a full subject of legal relations a trade union should be endowed with juridical competence, which originates from the moment of its state registration and stops at the moment legal entities write about their liquidation in the state register. The registration and the refusal for registration of a trade union is carried out in accordance with the law. This provision is stated in the 10th article of the RA law about trade unions. The 12th article of the RA law about trade unions ensures the legal grounds of a trade union activity, which are the legislation of RA and the memorandum of a trade union. The Law determines strong guarantees for the activity of a trade union by forbidding the employer to stop the activity of a union with the employer's will. The same article determines in the imperative "The activity of a trade union can be held up or banned only in some cases foreseen by the law according to a judicial procedure". Giving importance to the role of trade unions in labour relations, the 13th article of the RA law about trade unions determines "A trade union is independent from state bodies, local self- government bodies, employers, other organizations and political parties, it is not accountable to them and is not subject to their control except for cases foreseen by the law". According to the 6th article of the RA law about trade unions:

Trade Union participants (members) can be those having signed a labour contract with the employer and working in or outside RA, as well as foreign citizens and people without citizenship. An employer is allowed to be a participant (member) in more than one organization, if it does not contradict their memoranda.

At the same time the same article bans a special group of employees (employees of the Armed Forces of RA, the Police, the National Security Service of RA, the bodies of the Prosecutor's Office, as well as judges and members of the Constitutional Court) to be a member of trade unions.

The Revised European Social Charter requires to set such limits according to the national legislation only for armed forces and police officers. However, equivalent services considers the legislation of RA the services of the National Security Service, Courts and the bodies of the

Prosecutor's Office, and the above mentioned limitations are actual for them, too. It is worthwhile mentioning that in the Republic of Armenia functions "The Armenian Confederation of Trade Unions", which is a republican union of 703 trade organizations having almost 208,236 members according to the data of 2014³.

Since the European Social Charter provides not only workers', but also employers' right to form and join organizations, the legislation of RA contains provisions that guarantee the rights of employers. It has already been mentioned that Article 21 of the Labour Code, gives equal opportunities to employees and employers to get united and form organizations. Yet we should state that although employers and employees in this sphere have equal rights, the law about employers' unions was adopted a little later (27 February 2007), than that about trade unions (5 December 2000). According to the 11th article of the RA law about employers' unions, an employers' union may be created in two ways:

- It can be founded;
- It can be created through reorganization (division, separation, acquisition, merger) the existing employers' association (unions).

In any case an employers' union is considered to be created starting from the point it is registered in the state register. According to the 4th article of the RA law about employers' unions, the activities of the unions take place on three levels:

- Republic level;
- Branch level;
- Regional Level.

In the base of activities of trade unions and employers' unions lie the principle of independence and cooperation. On the base of the RA law about employers' union and the Labour Code of RA, the Republican Union of Employers of Armenia (RUEA) was founded on November 15

³ Հայաստանի Հանրապետության արհմիությունների կոնֆեդերացիա (Confederation of Trade Unions of Armenia) <http://www.hamk.am/post_view.php?lang=arm&id=21> accessed 25 March 2015 [Armenian].

2007. Its members are about 13,000. The union is a member of International Organization of Employers (IOE).⁴

The Labour Code of RA, especially the 23rd article, referring to the legal condition of the representatives of employees, defines that the right to introduce and defend employees' rights and interests in labour relations belongs to employees' representatives, namely trade unions, representatives elected through an employee meeting (convention). According to the above mentioned norm, when an organization has no trade union (unions) the employee meeting (convention) may transfer the functions of employee representation and interest protection to the corresponding branch or regional trade union. In this case the employee meeting (convention) will elect a representative (representatives) to participate in the collective bargaining with the given employer in the delegation of branch or regional trade union.. So, the Code clearly defines that trade unions and representatives elected through a convention are employee representatives and they introduce and protect their rights and interests in labour relations. Representatives' other rights and authorizations arise from these basic jurisdiction. The 25th article of the Labour Code defines the fundamental rights of the representatives of employees. However the range of their authorizations is not limited. The article states at the same time that collective agreements may foresee other non-contradictory authorizations foreseen by the legislation. We find it worthwhile highlighting the following basic rights of representatives of employees. Representatives of employees have the right:

- To conduct collective bargaining, conclude collective agreements, supervise their implementation;
- To submit to the employer proposals on the condition of work, remuneration, etc.;
- To organize and manage strikes and other lawful measures, which the employees have the right to undertake;
- To submit proposals to state and local self-governance bodies;
- To exercise non-governmental supervision over the implementation of the labour legislation and other normative legal acts containing norms of the labour law;

⁴ Հայաստանի գործատուների հանրապետական միություն (Republican Union of Employers of Armenia) <<http://employers.am/AboutUs.aspx?lang=eng>> accessed 25 March 2015 [Armenian].

- To get information from employers in a procedure defined by this Code;
- To appeal to court against the decisions and actions of the employer or persons authorized by him, if they do not comply with the legislation of the Republic of Armenia, with the collective agreements and labour contracts.

Thus, representatives of employees are also authorized to carry out other lawful actions for representation of employee rights. A representative of employees in a collective contract may have additional authorizations, which comply with the legislation. So, the Labour Code of RA authorizes representatives of employees, as well as trade unions to conduct collective bargaining, to conclude collective agreements, and supervise their implementation. This ensures the realization of the requirements of article 6 of ESC.

The 2nd Chapter of the Labour Code is devoted to collective labour relations, article 39 of which defines the concept of social partnership and principles. The reference to social partnership should be considered as one of the outstanding innovations of the Labour Code, because the previous Code did not contain any reference to it. The 2nd part of the Labour Code devoted to collective labour relations and article 39 of the Labour Code defines the social partnership concept. The second part of the same article defines the main principles of Social Partnership, among which are the freedom of collective bargaining, the mandatory performance of collective agreements, the supervision and control over the implementation of collective agreements, the responsibility for failing to perform the collective agreement because of the parties or their representatives. The 42nd article of the Labour Code of RA defines the types of Social Partnership, mentioning that it is implemented in the following ways:

- Collective bargaining – connected with the development and conclusion of collective agreements;
- Mutual consultations and information exchange

So, the first type of social partnership is collective bargaining – connected with the development and conclusion of collective agreements. According to paragraphs 4, 7, 8 of the 45th article of the Labour Code of RA, collective bargaining:

- Should be conducted reasonably and without delays.

- Is considered completed starting the point when a collective agreement is concluded, a protocol on disagreements is written, a written notification from a party is sent to the other party on their own withdrawal from the negotiations, if the parties have not foreseen something else.
- Is considered unsettled, according to the 2nd clause of the given article, the party having received the notification refuses to participate in collective bargaining.

The 46th article of the Labour Code defines three levels of collective agreements. Collective agreements may be of the following levels:

- Collective agreements concluded at republic level;
- Collective agreements concluded at branch or regional level;
- Collective agreements concluded at the level of organization or its separate (structural) subdivision.

Taking into account the fact that from all the three levels the most applicable level is the 3rd one – the collective agreements of organizations, Chapter 10 of the Labour Code is devoted to the settlement of this type of contract. According to the 55th article of the Code a collective contract of the organization is a written agreement between the employer and the representatives of employees of the given organization. The 49th article of the Labour Code defines the conditions around which the parties can sign an agreement. These terms refer to job security, hygiene, labour remuneration, working hours including the provision of holidays, the procedure of discussing collective dispute, etc. Moreover, the conditions defined in Article 49 are not exhaustive and the parties may suggest other questions. Referring to the legal nature of the organizations' collective agreement we may notice, that the Labour Code of RA considers those contracts to be legal acts regulating labour relations. In particular, Article 4 of the Labour Code of RA sets out the hierarchy of the norms by which labour relations are regulated. Especially they are the Constitution, the Labour Code, laws, other regulations, legal acts and collective agreements. Thus, the provisions set by a collective agreement are compulsory for the parties and the violation of conditions will bring about unfavourable legal consequences, that is legal responsibility.

Taking into consideration the variety of legal acts regulating labour relations, Article 6 of the Labour Code of RA also regulates the correlation of collective labour contracts, the Labour Code of RA and other legal acts. Thus, according to Article 6 of the Labour Code of RA, collective agreements and labour contracts cannot contain such conditions which, according to labour legislation, according to other normative legal acts containing norms of labour right, deteriorate the employee's condition. If the terms, defined by collective agreement or labour contracts contradict the present code, laws, other normative legal acts, these conditions have no legal force.

The enforcement and validity period of a collective contract of an organization are determined in Article 59 of the Labour Code of RA, according to which

- A collective agreement of an organization becomes effective from the moment it is signed, if the contract does not foresee something else.
- The validity period of a collective contract of an organization is defined by the parties, but not longer, than for three years. The parties have the right to extend the validity period of the contract but for not longer, than three years.
- Within the last two months of the validity period of a collective contract of an organization the parties can start collective bargaining to conclude a new collective contract or to extend the validity period of the existing collective contract according to a defined procedure.
- A collective contract of an organization remains valid in case change the name organization, the founder or the leader (representative of the employer having signed the contract) of it.
- In case of company reorganization as well as a result of restructuring collective agreement remains in force for the rest of the validity period.

Thus, we can state that the maximum period of a collective contract is 3 years, which may be extended by the parties of the contract for 3 more years. However, the legislation has not settled the question how many times the parties are allowed to extend the period of a collective agreement. This may bring about different interpretations. Article 55 of the Code clearly defines the sphere of activity of a collective agreement. In particular, a collective agreement concluded in

an organization applies to all employees of the organization. As for the control over the execution of the collective agreement, it is realized by the parties or their representatives authorized for that purpose. The representatives of the parties are accountable to the employee's meeting (convention) about the realization of their responsibilities defined by the collective agreements of the organization. Supervision and control over the implementation of a collective agreement can be done by a state authorized body, if the party of the collective agreements is unable to exercise control by themselves and has filed a respective request to the authorized state body. After the adoption of the Code the body used to be the State Labour Inspection Authority, but since January 01 2015 the law about the State Labour Inspection has been detained⁵. Now the Code does not define clearly the expression "authorized state authority", yet a bill is being prepared, which aims to create a new body, which will be competent to exercise control over the area. Article 61 of the Labour Code of RA set up the termination of a collective agreement of an organization:

- A collective agreement of an organization may be terminated by any of the parties, according to the procedure specified in it, at least three months after notifying the other party of it. The collective agreements of the organization cannot be terminated within the first six month's period, except for the cases foreseen by the 2nd and 3rd clauses of this Article.
- If the organization is privatized (denationalized), the collective agreements of an organization is considered to be unilaterally terminated by the former employer irrespective of its validity period.
- The collective agreements of an organization is considered terminated from the moment of legal enforcement of the court's decision on the bankruptcy of the organization.

Collective contractual relations are volitional relations, therefore, their prior negotiations should also have free and volitional nature. Freedom of voluntary collective bargaining first of all is a basic principle of the labour right enshrined in the 3rd point of the 1st clause of Article 3 of the Labour Code of RA. Freedom of collective bargaining means recognizing each party's right to start such negotiations, regardless of a number of circumstances, including the type of the

⁵ Gevorg Petrosyan, *Հայաստանի Հանրապետության Աշխատանքային Իրավունք* (Yerevan, 2015) 49 [Armenian].

employer organization, the nature of activity, the period of existence, the kind of activity. The principle of freedom of collective bargaining also includes initiating such negotiations, without a third party's (a government body or official) prior consent. The parties of collective labour relations and the parties' representatives reconcile their interests, conclude collective agreements, perform some amendments and supplements to them, as well as solve the disagreements (disputes) between them through collective bargaining. As it was mentioned above, the questions around which the parties may come to terms when concluding a collective agreements, are not defined by the law (Article 49) exhaustively, thus, during collective bargaining parties are constrained to suggest, demand or provide arguments. The party willing to start collective bargaining must notify the other party of their intention in written form. According to the present labour legislation, the parties are free not only to make changes and supplements, but also to determine the order of their execution. Article 60 of the Labour Code of RA states that the order of making changes and supplements in a collective agreements is defined by the collective agreements of the organization. Collective bargaining is considered completed starting from the point when a collective agreements is concluded, a protocol on disagreements is written, a written notification from a party is sent to the other party on their own withdrawal from the negotiations, if the parties have not foreseen something else. For initiating further new negotiations parties should turn to the above-mentioned procedure. Negotiations are considered unsettled, if the party having received the notification refuses to participate in the collective bargaining.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

The financial crisis caused significant damage to the economy, yet the economic measures exercised by the state had no impact on the rights to conclude a collective agreement or join trade unions. Moreover, during the economic crisis RA took some steps to expand the social rights of employees. In particular, an amendment made on 20 May 2009 expanded the employees' right to strike, as a result of which, trade unions, too, were granted such a right. On 24 June 2010 extensive changes were made in the Labour Code of RA, most of which aimed at

ensuring effective conditions defined by Articles 5-6 of the Charter. Particularly, prior to changes in case there were no labour unions in the organisation, the branch or regional labour union was considered to be employees' representative, then as a result of changes under the lack of the labour union within the company the elected representatives were considered employees' representatives by the meeting (convention). This can as well be observed as a positive change since the representative elected through the general meeting will introduce the interests of company's employees more effectively than the branch or regional labour union. As a result of changes, the rights of employees' representatives expanded, which entitled them to submit proposals to the employer on the improvement of working and respite conditions, the introduction of new technology, the facilitation of manual labour, the revision of production norms, the amount and rate of salary, as well as on design and fulfilment of participation in company's production programs. Moreover, if prior to the above mentioned changes the Labour Code considered the protection of employees' interests only the function of labour unions, then after the amendments the law started to apply the term of employees' representative along with the term labour union, as a result of which the employees are no longer obliged to create labour unions to protect their rights and can elect representatives during the meeting (convention) to carry out the protection of their rights. Hence, the aforementioned data affirm that during the economic crisis the Articles of the Charter are not exposed to limitations. We should at the same time state that a negative change has also taken place in the field of labour rights after the economic crisis, namely, after the adoption of RA Labour Code, the Labour State Inspectorate was the entitled state supervisory body of collective bargaining, however, the law Labour State Inspectorate RA Labour Code lost legal power on 9th January 2015. It is predisposed to transfer the activities fulfilled by Labour State Inspectorate to a newly formed inspectorate body, but this law has not yet been adopted. There is currently no entitled body to control the fulfilment of the company's collective bargaining. That is to say, the supervision of the above mentioned field is not implemented properly because of the absence of state body, which will have a negative impact on the protection of labour rights. Therefore we can state that the Republic of Armenia, because of economic crisis, did not take up any austerity measures, which would restrict the rights defined by Articles 5-6 of the Charter.

However according to Conclusions 2014 of European Committee of Social Rights the situation in Armenia is not in conformity with Article 5 of the Charter on the grounds that: it has not been established whether there is adequate protection against discrimination for employees who are trade union members or participate in trade union activities, it has not been established that trade union representatives have access to workplaces to carry out their responsibilities, the minimum membership requirements set for forming trade unions and employers' organisations are too high, the following categories of workers cannot form or join trade unions of their own choosing: employees of the Prosecutor's Office, civilians employed by the police and security service, self-employed workers, those working in liberal professions and the informal sector workers, police officers are prohibited from joining trade unions.⁶ Besides Article 5 of the Charter European Committee in its above mentioned conclusions concludes that the situation in Armenia is not in conformity with Article 6§4 of the Charter on the grounds that:⁷

- The required majority of workers to call a strike is too high;
- It has not been established that the restrictions on the right to strike in the energy supply services comply with the conditions established by Article G;
- It has not been established that striking workers are protected from dismissal after the strike.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

The measures taken up because of the economic crisis had no impact on the rights defined by Article 4 of the Charter, either. Moreover, many amendments made to the Labour Code of RA since 2008 have been aimed at ensuring additional guarantees for the fulfilment of the rights defined by Article 4. Particularly, during the economic crisis the minimum wage was raised. The law about the minimum monthly wage (adopted in 2003) defined AMD 25,000 (nearly EUR 48) minimum monthly wage but due to the amendment made in 2008 the minimum monthly wage

⁶ *European Social Charter (Revised), European Committee of Social Rights, Conclusions 2014* <http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/Prep/Armenia2014_en.pdf> accessed 28 June 2015.

⁷ *Ibid.*

became AMD 30,000 (nearly EUR 58)⁸. Besides, as a result of amendments in the Labour Code in 2010, the payment for overtime work increased. At the same time, referring to the provisions of Article 4 of the Charter we would like to state that when ratifying the Charter the Republic of Armenia made a reservation and did not accept the 1st part of Article 4 which recognizes employees' right to remuneration which will ensure a decent standard of living for them and their families. So far discussions have been taking place in public and private sectors on the adoption of the above-mentioned provision, but RA has not accepted it yet. However, we think that this is a serious omission, taking into account the fact that RA is on its way to become a social state and the above mentioned provision essential for ensuring the socio-economic rights of a person. Referring to the guarantees ensured by the parts of Article 4 of the Charter we would like to inform that all of them are foreseen by the Labour Code. Especially

Article 184 of the Labour Code defines that in addition to the hourly rate, for each hour of overtime work a supplement is paid, not less than 50% of the hourly rate and for every hour of nightshift work, not less than 30% of the hourly rate. However, the changes made in 2010 proved to be amendments to this article. Before that the settlement was too abstract and foresaw a very low payment.

The 2nd paragraph of Article 178 of the same Code defines that men and women get equal payment for the same or equivalent work. The wage of an employee depends upon the employee's qualification, working conditions, the quality, the quantity and the level of complexity of work, as well as the results of the activities of the organization and the labour demand in the labour market. This is a provision, which reaffirms the legislative principle according to which every employee has got the right for a fair and timely payment, according to the quantity and quality of work.

According to the first point of Article 115 of the Labour Code when terminating an employment contract on bases envisaged by the law, the employer is obliged to send the employee a written notification not less than two months before. The written notification on the termination of the employment contract should contain the bases and the reason of the dismissal.

As for the order and cases of retentions from salary, they are defined by the law. According to Article 214 of the Labour Code the total amount of retention from wages must be calculated

⁸ Nowadays the minimum monthly wage in RA is AMD 50,000AMD (nearly EUR 95).

according to an order established by the law, which can't exceed the fifty per cent of the monthly wage of the employee.

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for:

By ratifying the Revised European Social Charter the Republic of Armenia took over obligations, including the ones under 13(1) and 13(2), that refer to the right of medical and social aid.

Guarantees of the implementation of the right set by Article 13 of the Revised European Social Charter, are primarily set by Article 1 of the Constitution of RA which states that the Republic of Armenia is a social country. Moreover, according to Article 37 of the Constitution of RA every person has the right of social security in case of old age, disability, illness, losing the provider, unemployment and other cases provided by the law. The extent and types of social security are defined by the law. One of the main legal acts regulating the sphere of social protection and assistance in the Republic of Armenia is the Law of RA on “The Social Assistance” accepted on 17 December 2014, which sets out the main types of social services, the basic principles of providing social services and social assistance, the rights and obligations of people receiving social assistance, the funding sources of social support etc. According to Article 4 of the RA Law on “Social Assistance” the measures implemented in sphere of social services refer to:

- Satisfaction of socio-economic, socio-medical, social labouring and socio-legal needs of individuals (family or other social group) and (or);
- Insurance of normal and regular vital activity of an individual (family or other social group) and (or);
- Prevention of emergence of difficult life circumstances and (or) withdrawal of an individual (family or other social group) from that circumstances.

According to Article 18 of the RA Law on “Social Assistance” each individual has a right to social assistance regardless of citizenship. In the Republic of Armenia social assistance is carried out by three levels: republican, regional and local. On the regional level it is implemented by the government, especially by the Ministry of Labour and Social Affairs of RA.

In the republican level it is implemented by the Government particularly by the Ministry of Labour and Social Affairs. The authorized state body in this area is the Social support department of the Ministry of Labour and Social Affairs of RA, which devises and implements the state policy in the sphere of social assistance. According to Article 34 of the RA Law on “Social Assistance” the social support is financed by the state budget., the community budget and funds allocated by individuals and legal entities.

3.1.1. Persons who are unable to secure adequate resources either by their own efforts or from other sources?

The law about Social Assistance of RA, which was adopted on 17 December 2014 determines that the Republic of Armenia and/or the community provide social services to those who are in dire conditions. The types of social assistance is consulting, rehabilitation assistance, in-kind assistance, housing, health care, legal aid, defined pensions, appointing and paying benefits and other cash payments, employment services defined by the law and services in the sphere of medical and social expertise. RA and community provide people with social assistance through regional agencies, state and local self-government bodies. Social services can also be provided by physical persons and organizations given special allowance. While providing the state policy of social assistance the authorized state body, regional government state bodies, self-government bodies and regional bodies cooperate with organizations that provide social services. All the above-mentioned bodies and organizations cooperate within the framework of social cooperation agreement.

The law on Social Assistance of RA (December 17 2014) enlarged the bases of providing social support. Under the law on Social Assistance of RA, adopted in 24 October 2005, a person or a group of people could get social assistance only if they sent an application to the social assistance centre. Currently social assistance can also be granted, based on information given by state or self-government bodies, legal entities or other individuals, according to written or verbal applications, calls, mass media publications. The most common type of social assistance in RA is a payment of benefits and pensions.

The article 5 of the law of RA on “State Benefits” specifies the following types of benefits:

- Family benefits;

- Social benefits;
- Emergency aid;
- Lump sum benefit for a child's birth;
- Benefit for child care until two years of age;
- Benefit of temporary disability;
- Retirement benefit;
- Disability benefits;
- The benefit for the loss of a breadwinner loss;
- Funeral allowance.

The benefits defined by the law are granted if the poverty score of the person (family) is at least 30. Those people whose poverty score is 30 get the basic part of social assistance, which consists AMD 17,000 (nearly EUR 36). Depending on the number of family members, the location and the conditions the family lives in, the existence of a personal car, real estate related recent transactions and other criteria supplements to the basic part of social assistance can be defined. The amount of benefits is defined by the decisions of the government. Under the provisions of the RA Government decision 1489-N, made on December 26 2013, the amount of social benefits for old-age was set at AMD 14,0000 (nearly EUR 27), the social benefits for people with disabilities of the first, second and third classes were set at AMD 19,600 (nearly EUR 37), AMD 16,800 (nearly EUR 32) and AMD 14,000 (nearly EUR 27) respectively. Under the provisions of the Government decision 65- N, made on January 30 2014, the sizes of urgent aid were set. They are AMD 50,000 (nearly EUR 96) as baby bonus, AMD 25,000 (nearly EUR 48) bonus for children first going to school, AMD 50,000 (nearly EUR 96) in case of family member death, and AMD 17,000 (nearly EUR 32) is the monthly amount of the quarterly urgent aid. Another type of social aid defined by RA legislation is state pensions. According to Article 8 of the Law of RA on "State Pensions" the types of state pensions are the following:

- Labour:
 - (i) Old age pension;
 - (ii) On preferential terms;

- (iii) For long-term service;
- (iv) For disability, for the loss of breadwinner;
- (v) Database.
- Military:
 - (i) For long-term service;
 - (ii) For disability;
 - (iii) For the loss of survivor.
- Social:
 - (i) For retirement;
 - (ii) For disability;
 - (iii) For the loss of survivor.

The size of the basic pension is determined by the decisions of the RA government. Currently, the pension is paid by the state budget. Although the amount of pensions and benefits are systematically rising in RA, European Committee of Social Rights in its conclusions on year 2013 mentioned that the level of social assistance paid to a single person without resources is manifestly inadequate and it has not been established that elderly people without resources receive adequate social assistance.⁹

3.1.2. Persons who are unable to secure adequate resources either by their own efforts or from other sources due to illness?

Under the RA law about “Temporary unemployment and maternity benefits” defines the order of receiving reimbursement of the wages lost as a result of unemployment because of disease, prosthetics, resort treatment, care for a sick family member. Temporary disability benefit is given to hired employees, self-employed persons. According to the previous law of RA on “Social assistance” adopted on 24 October 2005 the employee was entitled to get benefits during probation but the new law does not define the right of benefit to such employee during the probation. However, such a differentiated approach contradicts the requirements of Article 91 of

⁹ *European Social Charter (Revised), European Committee of Social Rights, Conclusions 2014* <http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/Prep/Armenia2014_en.pdf> accessed 28 June 2015.

the RA Labour Code, according which the employee has all the rights and responsibilities set by Labour Code and other laws and regulations, collective agreements and employment contracts during the probation. According to Article 4 of the RA law about “Temporary unemployment and maternity benefits” the person is entitled to the benefit only if he satisfies the determined conditions and has paid social security costs in measure and order prescribed by law. The benefits funding sources include RA’s state budget and the means of the employer stipulated by the law. The benefit is given for temporary unemployment days certified as sick leave days. If a person has obtained rights for more than one type of benefit for the same period of time, they are appointed and paid only one benefit according to their own choice. Temporary disability benefit is not paid to a hired employee for the first business day of the temporary unemployment, for the next five business days it is paid at the employer’s expense which is not reimbursed, and the remaining part of the benefit is paid from the state budget of RA. Temporary disability benefits, as well as maternity benefits to self-employed persons are paid from the state budget of RA. Self-employed persons are paid sickness benefit only for the period of inpatient hospital care. The period may include not more than 60 calendar days within one calendar year. The temporary disability benefit for a hired employee and a self-employed person is calculated according to the order defined by the present law from the eighty per cent of the average monthly salary (income). Article 3 of the law on “Temporary unemployment and maternity benefits” defines the types of the temporary disability benefits, which are the following:

- A **sickness benefit**, which is given for the temporary disability caused (damage) by the disease;
- A **prosthetics benefit**, which is appointed in case of temporary disability caused by prosthetics;
- A **resort-treatment benefit**, which is given in case of temporary disability due to necessary health treatment;
- A **pregnancy and childbirth benefit**, which is appointed in case of temporary disability resulting from pregnancy and childbirth;

- **The benefit for care of a sick family member**, which is given because of the need of care to their family member in case of disease (damage).

Meanwhile, referring to pregnancy and childbirth benefit we would like to mention that Article 11 of the RA law about “Temporary unemployment and maternity benefits” set pr a possibility to pay maternity benefits to a surrogate mother.

Touching a person's right to medical care we would like to state that the Constitution does not set a person's right to medical care but at the same time defines the state's obligation to maintain the health of the population. Particularly, according to article 34 of the Constitution of RA the State implements health care programs. This means that although the Constitution does not specify the person's right to medical care but it is included in the right of health care. In addition to the Constitution of RA, Article 4 of the Law on “Medical Aid and Service” states that everyone has the right to receive free medical aid and service within state target programs on health guaranteed by the state. The Government of RA under its decision 318-N, adopted on 4 March 2004 set the list of people who reduced rate and are entitled to medical care and services. Among other categories there are also those who are included in social assistance scheme with the poverty score of 30 and above to family benefit.

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

The financial crisis of 2008 impacted the economy all over the world, as well as that in the Republic of Armenia. There was a significant increase in prices. Despite this the social support means by the state were not increased, or the added part for a person was insignificant. Although the economic crisis had a significant impact on the economy, but we can state that the applicant did not have any negative impact on economic measures set out in Article 13 of the Charter of Rights.

During the crisis realizing the importance of social protection for the disadvantaged persons the RA refrained from applying austerity measures in social assistance sector. However, we should state that because of the lack of public funds the state did not have sufficient opportunity to increase the volume of social support in order to mitigate the effects of the crisis. Particularly, according to data published by the National Statistical Service in year 2009 the value of the

minimum consumer basket amounted to AMD 46,566.4 AMD (nearly EUR 90), while the basic pension was AMD 8,000 (nearly EUR 15) and the social pension was AMD 10,100 during that period.¹⁰ So, during the economic crisis the size of social support was not decreased but that support was not sufficient for providing effective protection against the impact of the economic crisis. It is also vital to mention that some negative changes were made in the field of temporary disability benefits during the economic crisis. Particularly, before the economic crisis the employee was granted a pregnancy and childbirth allowance for the whole period of maternity leave but the situation was changed after the adoption of the new law on temporary disability and maternity benefits on 27 October 2010. Article 11 of the new law on temporary disability and maternity benefits on 27 October 2010 established that the benefits were given for the period of maternity leave only for all working days. It means that the weekends was not intended to benefit calculation, which reduced the amount of benefit. The above-mentioned changes were maintained up till 1 January 2015 01.01.2015 when the new amendments of the law on temporary disability and maternity benefits came into force and as a result the pregnancy and childbirth allowance is currently granted for all calendar days of maternity leave.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

According to Article A of Part 3 of the Charter the Republic of Armenia made a reservation about Article 13 (3) of the Charter. That means Article 13(3) is not valid for the Republic of Armenia but the RA Law on “Social assistance” presumes several events aiming to ensure the natural activity of a person and a family, to prevent from appearing in a difficult life situation and (or) to help a person (a family, another social group) out of a difficult life situation. Types of social support provided by the RA are counselling, rehabilitation aid, legal aid, employment services defined by the law and services in the domain of socio-medical examination.

¹⁰ Աղբյուրային պատկեր[ը] և աշխատանքի բուկայի գաղղգուունե[ը] Հայաստանում 2008-2011pp <http://www.armstat.am/file/article/poverty_2012a_2.pdf> accessed 1 July 2015 [Armenian].

According to Article 5 of the RA Law on “Social assistance” social services, according to their nature, are classified into:

- Social-economic, which aims at providing sufficient living conditions for a person, at forming an appropriate level of living conditions and at improving the level of living, including provision with any kind of property;
- Social-psychological, which aims at providing people with psychological help, as well as at psychological restoration through social inclusion;
- Social-pedagogical, which aims at preventing straying in people's behaviour and development, at forming healthy life-style, at organizing leisure and rest, at developing creativity, at providing a family with aid for children's upbringing;
- Social-medical, which aims at preventing people's health deteriorations, the development and sharpening of illnesses, at restoring and maintaining health, at carrying out and supporting health-favourable and restoration activities, carrying out permanent control for finding out illnesses;
- Social-legal, which aims at providing counselling and legal aid to protect people's rights and legal interests;

Social services, according to the duration and continuity of their provision, are classified into:

- Permanent, this is when the given social service (services) is (are) provided to a person (a certain group of people) continuously;
- Periodical, this is when the given social service (services) is (are) provided to a person (a certain group of people) with certain periodicity;
- One-time, this is when the given social service (services) is (are) provided to a person (a certain group of people) only once.

The Republic of Armenia and the community provide social services through the organizations subduing to the regional bodies, state and local self-government bodies. Private organizations and physical persons can provide certain social services only in case the given social service provision has been certified in an authorized body. In accordance with clause 4 of Article 6 of the RA Law on “Social Assistance” the provision of Social services:

- Cannot be accompanied by political or religious preaching;
- Cannot expect other services or getting any other compensation instead of the social services provided;
- Cannot do any harm to the health, life and property of the recipient of the social support.

Thus, taking into consideration the above mentioned we can state that though the Republic of Armenia did not accept Article 13 (3) of the Charter, has taken up measures on the legislative level to the least satisfy the requirements of the Article.

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

The Republic of Armenia when ratifying the Revised European Social Charter pledged not all the articles. Especially, the Republic of Armenia did not adopt Article 30 of the Charter, hence the obligations under this article are not binding. Although RA did not assume the obligations under Article 30 of the Charter but as a social state certain steps are being taken to protect the population from poverty and social injustice.

The realization of the state policy, aiming to reduce the level of poverty in RA, plays an important role in the improvement of social and economic conditions, raising the living standards of the society of a transitional country. The constitutional rights of people will be groundless, if human's minimum requirements are not provided.

According to the legislation, RA has assumed some obligations to reduce poverty and support to vulnerable groups. Moreover the process is carried out not only by the public authorities, namely the Ministry of Labour and Social Affairs, but also through active participation of NGOs. Particularly, mentioning the involvement of civil society it is especially important to mention the

role of "Mission Armenia" NGO, which has adopted a systematic approach to the assistance provided to vulnerable groups. This organization also gets state support within government programs. So, the state encourages and supports the activities of non-governmental organizations and in this sector.¹¹

As even before the economic crisis, the poverty level in RA was significant, the government initiated the process of handling the Strategic Program on Poverty Reduction. Non-governmental organizations, private sector organizations were involved in the process and as a result, the Government adopted No. 994-N decision about approving the Poverty Reduction Strategy on 8 August 2003. One of the main features of that program was the opportunity of civil society to participate in open discussions.

Non-governmental organizations, as one of the most advanced groups of civil society, have been involved actively in developing the curriculum and have presented their observations and recommendations on the draft program at all stages of project development. Within the above mentioned program as means of poverty reduction have been mentioned the increasing of the value of family benefits, pensions and the increasing access to health care. Besides the development and implementation of strategic plans on poverty reduction, RA has implemented the policy of eliminating social injustice and poverty also in separate areas, whose main aim is to protect the population from poverty and social injustice. The government's activities, including its annual programs are always addressed to the issue of poverty reduction. Particularly, on 28 April 2008 the Government adopted No. 380-A decision, according to which the country's poverty rate is high and one of the main goals of government's activities should be the substantial reduction of poverty. Afterwards the RA government in its action plan, approved by N 515-A decision on 16 May 2013 highlighted the necessity to take measures to eliminate the causes of poverty and inequality.¹² Moreover, as implementing mechanisms for the above-mentioned purpose, the Government, within its action program of 2013 was planning to carry out housing projects for supplying accommodations to socially disadvantaged persons (families), ensuring the availability of medical services for socially

¹¹ «Առաքելություն Հայաստանի ԲՀԿ» Համառոտ տեղեկություններ <http://www.mission.am/am/background/> accessed 2 July 2015 [Armenian].

¹² Հայաստանի Հանրապետության կառավարության 2013 թվականի ստրատեգիական ծրագիրը (The program of the RA Government for 2013 Yerevan, 2013) <http://www.gov.am/files/library/95.pdf> accessed 26 March 2015 [Armenian].

more vulnerable groups, providing newly formed families with state assistance in case of the birth of their first baby.

We would like to state that the RA has adopted a number of legal acts also on the legislative level whose aim is poverty reduction and protection of the fundamental rights of persons in poverty. Referring to the existing legislation in this area, first of all we would like to mention the RA law on “State benefits”.¹³ According to Article 3 of the law about “State Benefits” the aim of giving state benefits is to improve the living standards of poor families or to prevent the aggravation of them. Article 5 of the law about State benefits defines the types of state benefits, including:

- Family allowance;
- Social benefit;
- Urgent aid.

The RA legislation foresees family allowances and monthly cash payments to socially the most disadvantaged families to realize an addressed social support policy. In order to have a single benefit system and to implement a policy of social support for the most vulnerable families instead of various benefits and compensation systems, a family allowance system was accepted by No. 727 decision of the Government on 19 November 1998. In the sphere of state benefits the government has worked in two main directions, namely, to raise the targeting of the family allowance program involving the system the most socially disadvantaged families, and secondly due to the rise of targeting increase the amount of all the types of allowances.

Family benefits are granted to the following families:

- The families that are accounted in assessment system of families vulnerability called "Paros" and their point of vulnerability degree is higher than the marginal point of vulnerability;
- The families which have been involved in the lists approved by the community in the limits of the quotas allocated to communities for the most vulnerable families.

Family allowance is paid from the next month of application day. The families that are registered in the assessment system of families vulnerability but do not have a right for a family

¹³ The law was adopted on 12 December 2013 and was entered into force on 1 January 2014.

benefit can apply for the emergency assistance. The emergency assistance is appointed by social services of the local authority by the recommendation of the council of social assistance. The amount of urgent aid is AMD 16,000 (nearly EUR 30) in RA and it is appointed for a term of 3 months and reviewed in each trimester.

Studying this field's legislation in general we can say that the legislation regulating the sector does not stand out with its versatility. In particular, in the RA in the poverty reduction programs the greatest emphasis is put on the provision of social benefits, ignoring the necessity of extensive programs of social aid. That is to say, social allowance is sufficient only for personal survival and the most essential rights' provision in the fields of employment, housing, education, culture, social and medical care is not sufficient.

Besides the providing material support it is essential for the people in poverty the provision of medical care charge-free or at affordable prices. Considering this fact, the Government adopted No. 318-N decision on March 4 2004 which defines the list of people who have the right of free medical care and the vulnerable and special groups are included. According to No 318-N decision of the Government accepted 4 May 2004 the people who are involved in the poverty (family) support systems and have vulnerability score of 36.00 and higher has a right of free medical care. These groups have the right to obtain free and concessional medical assistance and health services guaranteed by the state.

Meanwhile the RA has also taken some steps in the sphere of provision housing and product assistance to the disadvantaged people. Particularly, Article 11 of the Law about Social Assistance defines the procedure of granting aid in-kind aid. The in-kind aid is provided by food, clothes, shoes, hygiene products, child care products and other essential goods, especially special vehicles and other forms not prohibited by the legislation of the Republic of Armenia. The in-kind aid is provided by social service agencies.

Meanwhile Article 12 of the Law about Social Assistance defines the procedure of ensuring housing, according to which a person with no living space is provided a temporary accommodation

The No. 894-N decision of the RA Government accepted on 1 August 2013 regulates the procedure for granting a temporary shelter in details. Particularly, according to that decision the

people who are involved the vulnerability assessment system have a right to a temporary shelter.

The Government of RA pays special attention to the problem of the access of socially vulnerable people to education realizing that it is one of the most effective mechanisms for overcoming poverty. Particularly, the legislation is intended to ensure the accessibility of higher education in the form of tuition reimbursement benefits. According to paragraph 4 of Article 6 of the RA Law on “Higher and Post Graduate Specialized Education” the base for the reimbursement of tuition fees in higher education institutions is the fact that the student is involved in a vulnerable group. For the implementation of the above mentioned law the Government accepted 1183-N decision on 27 July 2006 which defines the provisions of getting a student allowance for a partial reimbursement of tuition. Moreover, the 2.1 of that decision defines that students who are registered in the assessment system of families vulnerability are eligible to get a student allowance for a partial reimbursement of tuition. The precondition for getting the student benefit of social insecurity is that the student should overcome the average minimum qualitative assessment. As a implementation of above-mentioned legal acts all universities of the RA were supplied charge-free places for each year prior to the economic crisis. However, on 26 April 2012 the Government adopted the 554-N decision, according which charge-free places for students are not provided in some universities for some professions, including "Law" and "International Relations" faculties of the Yerevan State University. In connection with this decision the Ombudsman of the RA claimed to the Constitutional Court. Although Constitutional Court reaffirmed the importance of the citizens' right to free education on competitive basis in its decision, however, did not cancel the absence of unpaid places in educational institutions.¹⁴

Thus, we can conclude that students of low-income families meet the essential obstacle going up to the above mentioned faculties because the tuition fee is high and the students from low-income families simply do not have the opportunity to get education in this faculties in the

¹⁴ Decision of Constitutional Court, ‘On the case concerning the determination of the issue regarding the conformity of the decision no 554-n of the government of the Republic of Armenia dated 26 April 2012 with the constitution of the Republic of Armenia on the basis of the application of the human rights defender of the Republic of Armenia’, (2013-02-12, number SDO-1075)
<<http://www.concourt.am/armenian/decisions/common/2013/pdf/sdv-1075.pdf>> accessed 20 April 2015 [Armenian].

current conditions. It is hard to argue that this limitation has been accepted only due to the economic crisis, however, it proves that the government takes steps to reduce the budget expenditures, and as a result the disadvantaged people's right of education in some state educational institutions is restricted. Thus, we can state that though Armenia did not undertake obligations of Article 30 of the Charter, however, implement some state programs for the protection of persons in poverty. At the same time reviewing the existing legislation, as a general policy, we can state that the Armenian legislation regulating this sector is not notable for its versatility. Particularly, the government's poverty reduction programs continue to put the emphasis on the provision of social benefits ignoring the need of large inclusive support projects.

Touching the influence of the economic crisis on this sector we would indicate that 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. As a response to the economic crisis the Government fixed the marginal points of family benefit "30.00" on 1 January 2008, which enabled to keep families with the pensioners in the system in the case of raising the value of pensions. Thus the reduction of marginal point allowed more vulnerable families to receive benefits.

The economic impact of the crisis on government programs is visible from the fact that it was not possible to finalize and implement all measures of state program on reduction of poverty. The global economic crisis has seriously threatened the economic growth achieved in recent years and poverty reduction. The data of 2010 shows that the crisis has had a serious impact on poverty. In 2010, the rate of poverty continued to grow reaching 35.8%.

And although the economic crisis contributed to the increasing of poverty in the country, the RA has taken measures not to limit minimum basic rights of disadvantaged people.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

The Republic of Armenia, by ratifying the Revised European Social Charter took over commitments, including the ones under article 15 and for implementing it, adopted a number of laws and regulations.

The Realization of the right to education of persons with disabilities is regulated in details in the RA law on “Social security of persons with disabilities” adopted on 14 April 1993. According to Article 12 of the law on “Social security of persons with disabilities”, the state ensures the right to education and vocational trainings, as well as provide with the required pedagogical staff. Also, authorized state governance bodies, together with the social security and health authorities, in accordance with the “Disabled Individuals’ Rehabilitation Plan”, ensure the preschool education of children with disabilities, as well as the proper conditions for persons with disabilities to obtain general, vocational and higher education. According to Article 13 of the same law, in order to provide proper education and the required rehabilitation assistance to children with disabilities, special conditions are rendered in public social protection institutions. For those children with disabilities, whose health status makes it impossible to fulfil their education in public social protection institutions, special social protection institutions shall be created.

In case of parents’ permission, children, who obtain their education in public or special social protection institutions, may receive the same services at home. In such cases, in accordance with the legislation of RA, one of the parents or his/her successor is provided with material protection and privileges in accordance with the legislation of the Republic of Armenia. Corresponding schools and institutions provide parents or their successors with assistance in educating their children with disabilities. The aid funding is allocated from the state budget, in terms and conditions established by the RA Government. Moreover, according to Article 14 of the same law, persons with disabilities obtain general, vocational and higher education in public, and, if need, be in special social protection institutions. Persons with disabilities are provided with conditions on an equal basis with others during entrance examinations, in accordance with the procedure defined by the Government of the Republic of Armenia. All other things being

equal, persons with disabilities passing the unified examinations are given a priority right to admission to state and accredited private institutions of higher or secondary technical education. Persons with a disability category 1 or 2 and persons granted “a child with disability” status passing unified examinations are admitted to state higher or secondary technical institutions and granted a tuition fee exemption when having a minimum score qualifying for paid education. There are two exceptions to this rule, defined in Article 14. First, the education of persons admitted to and studying at such educational institutions, in conformity with the above-mentioned conditions, are paid in full by the state through student allowances. Second, persons with a disability category 1 or 2 and persons granted “a child with disability” status studying at secondary technical or higher education institutions on free basis, in conformity with the same conditions, shall be transferred to paid education within the same institutions when the expert medical and social re-examination carried out during the period of study does not declare them persons with disabilities. The persons studying at state higher or secondary technical education institutions on paid basis are transferred to free education within the same educational institution when granted the status of a person with a disability category of 1 or 2 or the status of “a child with disability”. At the beginning of each academic year, students with disabilities must submit a document, confirming their disability to the administration of the educational institution. The tuition fees of persons with a disability category 1 or 2 or persons granted “a child with disability” status are paid from the state budget in state higher or secondary specialized educational institutions. The mentioned persons who study in full-time system and pass regular examinations and tests with positive assessments are paid scholarships regardless of benefits or pensions. Training courses are also organized for the disabled children, who are undergoing a treatment course in preventive or rehabilitative organizations. The funding of these programs is done from the state budget in accordance with the procedure defined by the Government of the Republic of Armenia. Besides, according to Article 15 of the same law, professional training, requalification and raising the qualification of disabled persons are realized according to individual rehabilitation programs in specialized or general educational institutions, enterprises (including educational-production ones). The funding of the training courses is done from the state budget according to a procedure defined by the Government of the Republic of Armenia.

On 28 February 2008 the National Commission of disabled persons was founded by the decision 98-N of the prime minister of RA. The main directions of its activity are supporting the provision of equal rights and equal opportunities of disabled persons, making suggestions for solving problems arising during the actualization of disabled persons' rights. As one of the most important aims of the commission we can mention the complex activity which aims at making equal conditions for disabled persons, engaging them in public life, supporting the cooperation between public administration and local self-government bodies protecting the rights of disabled persons and NGOs, scientific and other organizations of the sphere.

The Minister of education and science of RA on August 6 2010 made 1281-N decision about "The Confirmation of the Procedure of Realizing Inclusive Education " according to the appendix of which inclusive education is provided for persons with special educational needs in secondary educational institutions:

- To ensure the social inclusion and adaptation of their development in the community;
- To ensure equal opportunities for fulfilling their rights equal to other students'.

For ensuring equal opportunities, the decision (1640-N, adopted on 24 November 2010) of Minister of education and science of RA defines, that the school admission of children with special educational needs is done on the general ground. During the Government session on 25 September 2014 the annual program of 2015 on social protection of disabled persons was adopted, according to which the Government of RA should do some activities for protecting disabled persons' rights, for promoting their social inclusion and improvement of the quality of their life. The measures aim at the social protection of disabled persons and the measures are included in the annual program of 2015 originating from the necessity of protection of the rights and interests of disabled persons, from the necessity of integration into society, realizing medical, social and vocational training procedures more productively, solving problems of disabled children and disabled persons in the area of inclusive education and employment issues. Therefore, the studies reveal, that there are still some problems in the area of disabled persons' education.¹⁵We can single out some of them:

¹⁵ Նեյտոսկան կրթության գեներալնր Հայաստանի Հանրապետությունում (The Estimation of Inclusive Education in RA, 2013) <http://www.osf.am/wp-content/uploads/2013/11/Inclusive-education-report_ARM-without-tools.pdf> accessed 13 March 2015 [Armenian].

- The model of integrative education is operated in Armenia instead of inclusive education. Thus, a disabled child is being integrated into school, to study with other students in the same conditions, but differentiated approach is applied for them;
- The insufficient number of specialists working with disabled persons;
- General and special educational institutions are not adapted to the requirements of disabled persons;
- Not all the children having disability since childhood are included in general and special educational institutions.

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

As of 1 July 2014 195,925 persons with disabilities have been registered in Armenia, which is 6 per cent of all the population of RA. Among disabled persons those capable of work (aged 18-63) form 65.2%, young persons (aged 18-40) form 13.9%, persons aged 40-63 form 51.3 %, persons of retirement age form 30.6%. The employment of disabled persons capable of work forms 9%, which is a very low indicator.¹⁶

However, a new Labour Code of RA, adopted in 2004 and the Law of the Republic of Armenia on “Social security of persons with disabilities” adopted on 14 April 1993 provide real guarantees for recruiting disabled persons, for their social integration and for ensuring effective implementation of the participation right in labour relations. Those guarantees are the following:

- According to Article 144 of the Labour Code of RA, disabled persons can be involved in overtime work, if it is not forbidden for them by a medical conclusion. A similar norm is defined in Article 19 of the Law of RA on “Social security of persons with disabilities”

¹⁶ Վիճակագրություն <<http://disabilityarmenia.am/am/10/free.html>> accessed 13 March 2015 [Armenian].

adopted on 14 April 1993. According to that law, the involvement of a disabled person in overtime work is permitted only in accordance with and on condition such activities are not banned by a medical conclusion;

- According to Article 259 of the Labour Code of RA, disabled employees' security and health protection are guaranteed by the Law;
- Article 17 of the Law of RA on "Social security of persons with disabilities" defines the right of disabled persons to work in organizations with ordinary conditions. According to this article, it is impermissible to refuse job promotion or signing a contract because of disability. Moreover it is forbidden to dismiss from job or move to another job on the initiative of the administration except for cases, when by a medical conclusion their health condition obstructs performing their professional duties or it threatens other people's health and the safety of work. The administration is not allowed to dismiss the person who is getting medical, vocational and social rehabilitation aid in appropriate institutions;
- According to Article 18 of the Law of RA on "Social security of persons with disabilities" the guarantees for the employment rights are ensured by state bodies and local self-government bodies in the following ways:
 - (i) The implementation of favoured financial-economic policy towards organizations that use disabled workforce;
 - (ii) The implementation of events set by the law for defining quotas for the organizations which hire disabled persons;
 - (iii) Reservation of jobs appropriate to disabled persons;
 - (iv) Encouragement to create additional jobs for disabled persons;
 - (v) Partial compensation to the employer in case they hire a disabled person;
- According to Article 19 of the law of RA on "Social security of persons with disabilities" the necessary conditions are created according to the individual rehabilitation plan for the disabled workers;

- The stipulated provisions of a collective or individual employment contract, including remuneration, work and leisure time regime, additional and annual vacation, cannot affect or restrict the rights of the disabled person's condition as compared with other workers. The involvement of disabled persons in overtime work is allowed only by their consent, if such jobs are not forbidden by a medical conclusion. Working time for disabled persons is no more than 36 hours a week;
- By the claim of disabled persons and according to the individual rehabilitation plan the employer should not set a full working day or a full working week for them. In such cases, the remuneration of persons with disabilities is done on the basis of manufactured product's quantity or the number of actually worked hours. Probation for hiring people with disabilities is not defined. During the reduction of positions or employees numbers persons with disabilities benefit from the advantage of staying in work;
- According to Article 20 of the law of RA on "Social security of persons with disabilities" for organizing business activity for disabled persons state bodies and local self-government bodies create the necessary conditions, namely give non-residential spaces, help to get raw materials or to sell products. Disabled employees have privileges for the income tax.

Meanwhile, the Labour Code of RA has some shortcomings in this area. They are the following:

- According to Article 118 of the Labour Code of RA, the employer can terminate the employment contract if the employee's working capacity is not recovered because of occupational injury or occupational disease. So, there are no differentiated base or guarantees for terminating an employment contract with disabled persons leaving on the arbitrary discretion of the employer. Thus, the Labour Code of RA does not set out sufficient efficient guarantees for article 15(2) of the Charter in this area;
- According to Article 141 of the Labour Code of RA no full working day or no full working week is defined by the claim of the disabled person on the basis of a medical conclusion. Meanwhile, this article does not have a mandatory nature, as the duration of the working time is defined on the consent of the parties and can be included in the employment contract. But what can happen if the disabled person applies to the

employer for that issue and gets rejection from the employer. The Labour Code of RA does not regulate that issue, which is also an essential shortcoming;

- Article 3 of the Labour Code of RA setting the principle of equality does not remark “disability” as the circumstance of non-discrimination in labour relations. Whereas under Article 14 (1) of the Constitution of RA everyone is equal before the law. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or other personal or social circumstances are prohibited.

A project of law on "Protection of the Rights of Persons with Disabilities and Social Inclusion" is currently being drafted. The acceptance of the new law arises from the necessity of transition from the medical model of disability to the social model and social protection of disabled persons.

The issue of employment among disabled persons remains one of the toughest problems in the Republic of Armenia. Though Article 22 of the law on “ Employment”¹⁷ set disabled persons as an incompetent group in labour market, moreover, Article 23 of the same law set additional guarantees for ensuring employment for them. Besides Article 20 of that law set employers’ participation in the state policy on employment, according to which for the organization, regardless of the form of ownership, quotas of ensuring working places for the persons with disability are set.

So though our country fulfils many projects for ensuring employment for disabled persons, there are some issues in this area, which are the following:¹⁸

- The low indicator of employment among disabled persons;
- Employers insufficient level of awareness of the guarantee-setting according to the employment legislation;
- The working places are not adapted to the needs of disabled persons;

¹⁷ The law was adopted on 11December 2013

¹⁸ Ներդաստիկան կրթության գնահատումը Հայաստանի Հանրապետությունում (The Estimation of Inclusive Education in RA, 2013) <http://www.osf.am/wp-content/uploads/2013/11/Inclusive-education-report_ARM-without-tools.pdf> accessed 13 March 2015 [Armenian].

- The process of disabled persons' vocational training and ensuring job is not sufficient.

In the light of Article 15 (3) of the Charter the government decision¹⁹ on “Establishment of strategy for disabled persons' social protection period 2006-2015” should be assessed as a positive thing. The aim of that strategy is the integration of disabled persons in society ensuring disabled persons' full participation in all areas of social life. However, we think that, though the time of the strategy is coming to an end, the issues set by the strategy are not solved efficiently.

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

The applied austerity measures did not have vital influence on the rights set by Article 15 of the Charter during the economic crisis, particularly those rights were not restricted because of the crisis but we should state that though the funding of disability programs was not reduced but it did not grow, either, which had its negative influence on the programs being fulfilled.

5.2. Children and Young Persons (Article 17 ESC)

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

The realization of guarantees provided for children's education and of young people by the Article 17 of the reviewed European social charter are defined in Article 39 of the Constitution of the Republic of Armenia (RA) according to which everybody has the right on education and that the general education is obligatory except for the cases provided by law. So the RA Constitution defines the educational right of each person regardless of their citizenship highlighting that secondary education in state education institutions is free which is a quite sufficient guarantee for the support of the Article 17 of charter. Principles of state policy and organizing-legal and financial bases in the spheres of education are defined in a separate law called “Law on Education”.²⁰

¹⁹ It was adopted on 3 November 2005.

²⁰ Law on Education was adopted on April 14 1999.

The Articles 36, 37, 38, 39 of the “Law on Education”²¹ of the Republic of Armenia define in detail the role of the authorities of the RA Government, the role of the Ministry of Education and Science, as well as the *մարզպետ* (regional governor) and communities in the sphere of education, management and control. It should be noted, that the state inspection created in 2005 has a great role in this sphere the main purpose of which is to fulfil the education development state project, the use of the state education standards, as well as the organization and realization of state control concerning quality of education, teaching and assessment.

5.2.1.2. Education Programs

To know more about education model of the Republic of Armenia the RA education programs must be examined.²² According to Article 10 of Law on Education the main purposes of general programs are the comprehensive development of a person, the formation of his or her worldview, the creation of the choice and mastering of the bases for hobbies, inclination and abilities.

The general programs are pre-school, elementary, basic and secondary. These education programs are held by education institutions which according to the Article 8 of RA Constitution are classified into:

- Elementary school (1-4 classes);
- Middle school (5-9 classes);
- Basic school (1-9 classes);
- Senior school (1-9 classes);
- College (5-12 classes);
- Secondary school (1-12 classes).

Besides the general programs, professional programs are carried out which are aimed to create qualified specialists by general and professional level succession, to form abilities and skills, to enlarge the volume of knowledge and to increase the qualification.

²¹ Law on Education 1999 [«Կրթության մասին» ՀՀ օրենքը].

²² According to Article 10 of the Law on Education the education program establishes certain level and content oriented education, the value of knowledge and skills.

The professional programs may be the following:

- Primary vocational (handicraft);
- Middle level vocational;
- Higher professional;
- Post-graduate professional.

5.2.1.3. Asylum Seekers, Refugees and Convicted Children

The Republic of Armenia is a participant country in UN refugee convention so the public education bases are illustrated in Article 22 in the RA Constitution. Article 25 of the “Law on refugee and asylum seekers” defines:

- “Asylum seekers and refugees shall have the right to basic general education equal to citizens of the Republic of Armenia”;
- Refugees granted asylum in the Republic of Armenia shall be treated as favourable as other foreign citizens with regard to the access to studies, recognition of foreign school certificates, diplomas and degrees, the exemption of fees and charges and the award of scholarships.

Article 39 defines:

The Ministry of Education and Science shall take measures towards enjoying the right to education of asylum seekers in the Republic of Armenia and refugees granted asylum in the Republic of Armenia. Upon the request of the Guardianship Bodies organizes the admittance of unaccompanied and/or separated minor asylum seekers and refugees to educational institution.

Article 6 of the “Law on education” points stipulates that: “The Republic of Armenia shall ensure the right to education, irrespective of national origin, race, gender, language, religion, political or other views, social origin, property status or other circumstances”.

However, there are no detailed regulations in the sphere of education referring to refugees. “Law on general education” of RA together with the “Law on education” doesn’t refer to refugee children’s state anymore but the “Law on education” points that it's forbidden to define higher payments for refugees and asylum received Armenian citizens as well as foreign citizens

who have Armenian origin living abroad, the lives or health are health threatened. So we can conclude that regulations referring to refugees and asylum seekers are quite restricted.

What concerns the education of convicted children, this fact is regulated by the Penitentiary Code of RA. Article 89 defines:

The administration of the correctional institution shall take measures to organize the secondary education of the convict and his or her higher and post-graduate professional education by distance learning. The education to the convict shall be provided as prescribed by the internal regulations of correctional institutions.

At the same time Article 90 refers to condemned children's and condemned teenagers' professional education:

Primary vocational education (handicraft education) to convicts may be provided in the correctional institution and in this case professional education of condemned teenagers is implemented within the frameworks of working day.

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

One of the foremost problems in RA is the social safety of children deprived of parental care and young people.²³ The 37 Article of RA Constitution confirms that everyone shall have the right to social security during old age, disability, loss of bread-winner, unemployment and other cases prescribed by the law. The thesis about the children who are temporarily or definitely deprived of parental care and social safety of young people are included in the Civil Code of RA, in "Law on child's Rights", "Law on Lawyers", "Law on Education", "Law on Higher and Post-graduate Education", "Law on Social Support", and other Constitutions and Subconstitutional Acts. The Law on the Social Protection of the children deprived of parental care indicates that the RA defines state social minimum standards for car and upbringing of children without parental care. These include:

- General, middle vocational higher education on competitive bases;

²³ According to Article 2 of the "Law on the social protection of the children without parental care" a child without parental care is considered to be a child under 18 whose parents died, were deprived of parental right, were recognized as incapacitated, which are not interested in children's upbringing, as well as were recognized as dead or are not known.

- Free medical services, support of catering for children without parental care due to minimum standards of nutrition;
- Children's health care of organization of holidays;
- Professional orientation for 16 year old children without parental care, choice of activities employment and job protection according to RA legislation;
- Social support, psycho- social rehabilitation and social measures as required by law;
- House protection according to the legislation of RA;
- Free legal aid.

Besides, according to the Law on the Child's Rights the authorized state body of the RA Government exercises control the placement of children in orphanages (regardless of the organizational- legal form) as well as for minimum social standards for their education and care. In execution of the law adopted on August 5, 2004 the body which fulfils control in orphanages is the Ministry of job and social problems.

It should be noted that according to the regulations of Ministry it not only controls the activities of orphanages but also fulfils regulations for child adoption, adoption candidates, adoptive parents and adopted children, arranges care for children in orphanages and families, performs many other functions. It should be noted that the decision was made by RA government in 2014 concerning care and protection of children cared for in institution organizing their return to families which will significantly boost children's return to families. Its noteworthy that another program existed before this one in 2006 and about 295 children returned home from one orphanage in RA and the entrance of 105 children to orphanages were disabled.²⁴ In addition a range of other activities are implemented to arrange the children's return. As a result 2 orphanages were reduced: "Fridtjof Nansen orphanage" which is considered to be a non trade state institution in Gyumri²⁵ has changed into a boarding school for children's care and protection. It is planned to introduce special community services which will deal with the problems of children in difficult circumstances which will also foreclose the entrance of children

²⁴ RA Government decision No-743-N 17 July 2014.

²⁵ Gyumri is the one of the biggest cities in RA.

to orphanages. Its planned to implement a number of activities to enforce the child's return home.

N 962 decision made by the RA Government on 22 May 2006 is of great importance which defines the centralized registration procedure belonging to children without parental care and people belonging to them. This system is determined to give them to families (adoption or guardianship) or guardian family in case of the absence of this fact to place them in institutions for children without parental care and protection. This system is determined also to draw up their psycho-social rehabilitation programs as well as to provide law guarantees defined by Law on social support in RA. It's necessary to refer to the use of the characteristics of a foster family but the institution of foster family was adopted only by the decision N 459 on 8 May 2008 by RA. This decision regulates the procedure of placing the child in foster family and so on. The institute of foster family exists 8 years, but there are many problems in this sphere. When investing the institutes in 2008, about 23 children were placed in foster families for experience and it was successful, even after they became adults they kept contact with the foster family. Despite the recorded successes the placement of children in foster families is not widespread. That's why it is planned to implement a new program for the development of this institution. It's calculated that children's placement in foster families will approximately unload 50-60 per cent the orphanages and special schools. While there exist reports about foster families in press from 2014 there is no foster family report program on the official website of the Ministry of Labour and Social problems.

Article 25 defines that with the purpose of comprehensive growth and development of the child's physical, mental and spiritual abilities, and to prepare it to an independent life, the orphanages and the boarding schools are to create conditions close to those of in a family. As strategic priority the fulfilment of social minimum standards about children without parental care and protection is mentioned in strategic plan in 2013-2016. The event pretended to implement appropriate measures of social minimum standards for child's day care. It should be noted that the standards for children in orphanages are introduced in detail in the decision N 1324 on 5 August 2004 by the RA Government number of theses are determined to create family conditions for children and to be guided by a personal approach. Integration of a child in orphanages provide taking into account individual circumstances of adapting to their new social

environment, activities for making them independent and self-directed. Children's care and psycho- social rehabilitation work performed in orphanages is done according to individual programs. Children's individual psychosocial rehabilitation program is elaborated, implemented and periodically reviewed by workers of the orphanage (educator, psychologist, social worker, doctor). Children are allowed to bring pets and not dangerous things with them to create a family atmosphere if allowed by the condition of the orphanage. To endow the child with individual features the orphanage gives money to them to do some expenses efficiently. It should be noted that decision was made for child's care, food, clothing, education, safety of the territory of orphanages and other questions. What concerns child's physical health, it is defined that the institution of child's care and protection must be equipped with first-aid medical services and medical equipment. Institutions dealing with children with physical and mental deviations must be provided with psychological, preventive medical rehabilitation services. Institutions dealing with child's care and protections provide necessary conditions for child's health (nutrition, physical education and sport, personal hygiene, free time). The institution provides children with advice about sexual maturation, self sex life as well as alcoholism, drug addiction. Each child is exposed to an appropriate medical facility by multidisciplinary medical examinations according to individual instruction. It should be noted that certain standards are defined for nutrition, clothing, soft estate, special for each child by another decision N 815 made by the RA Government on May 31 2007. This decision requires detailed regulations, however, it does not define the number of children living in one room. Information on the number of children exist only in one case, that is child's care in family type orphanages is done by no more than 8 children by the decision N 381 made on March 24 2005 by the Government²⁶. The information about other types of orphanages is not defined on constitutional and subconstitutional levels.

**5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance?
Has your MS taken any measures to provide free, or at least access to, tertiary education?**

²⁶ According to this decision there are three types of orphanage: general, professional and family. General orphanages are classified according to 3 age groups (till 6 years old children, 6-18 years old children and after 18). The professional orphanages take care of children with special difficulties.

According to the Article 39 of the RA Constitution secondary education is free. At the same time Article 6 of “The Law on Education ” and Article 9 of the “Law on General Education” define that secondary education in RA is free. The Government of the Republic of Armenia shall establish a state-funded scholarship program for each year according to professions, educational institutions, border region and highland settlements. A higher education institution may, within the framework of total number of admission places allocated to it by the Government of the Republic of Armenia, specify amounts of free and fee-paid places for total composition of students, by providing — to the extent of at least ten per cent — free places for instruction for each profession. So according to financial formula of the number of learners in 2015, AMD 124,000 is paid for each person.²⁷

Together with the existing regulations the state elaborates means not only for free general education but also for middle professional education. The RA Parliament has already received projects about the changes in Law on Education and Law on General Education which define that secondary general and primary or middle education is free and is obligatory until 18 if that right hasn't realized earlier.

Article 39 defines that every person has the right to get free higher education on the basis of competence. Article 6 of the Law on Education defines that the State shall ensure for the citizens of the Republic of Armenia free general secondary education, as well as competition-based free primary vocational (handitrade), middle level vocational, higher and post-graduate professional education in state education institutions. It is important to note that Article 28 defines that higher education institutions shall, on the basis of performance of students, refund annual tuition fees for at least ten per cent of total composition of students studying within the framework of amounts of fee-paid places. This fact is illustrated also in Article 6 the Law on Higher and Post Graduate education of RA that is the learners who study in free-paid system have partial compensation. Students who are socially not supported have 30% , students from 18-23 who are without parental care 50%, students under 23 who are parentless at least 50%, students who have 1 year old child 50%, students who have at least 3 or more teenagers or 3 or more students at least 30% and etc.

²⁷ According to the official website of the RA Central Bank the exchange rate of AMD is as follow 1 Euro = AMD 514.73 (6 April 2015).

Article 6 defines that the RA Government defines national order for each year according to profession, education institutes, boarder region as well as high highland settlements. It should be noted that in 2014-2015 tuition discount for law enforcement training program for the reception of places established on April 30 by the Government provides 2,123 free paid places and for partial discount 19,000. According to this decision there are no free places for some faculties which is a great obstacle for the education.

It should be noted that the legislative amendments made on 19 May 2014 had an important role, which define that tuition upper threshold is of government business. Pursuant to the Act, N 163 decision of the Government was adopted on 19 February 2015, which fixed the maximum amount of tuition. This decision is of great importance as higher education institutions fixed the amount the tuition before the adoption of the law and maximum tuition fee determined by institutions is not regulated by any legal document so the decision is an important guarantee for the protection of rights and interests of students.

According to Law on Education, the students of 1-4 classes are provided free textbooks by elementary general education programs from state budget. Free books are provided only for pupils of 1-4 classes only, pupils from higher grades should obtain books with their own recourses, which is in many cases quite a difficult task for parents. Therefore, the «Textbook Circulation Fund» is created and a continuous supply of textbooks is introduced. Due to implemented measures the solution of providing each student with textbooks is found, the content and quality of printing of the textbooks and teacher's manuals are improved, due to this fund a continuous mechanism of printing books is involved, purchase costs of textbooks are reduced and to the most vulnerable group of students textbook are given for free. To provide free food for children «sustainable food» program was adopted on 22 august 2013 with the fulfilment strategy and plans of action by the decision No. 33 of the Protocol Decision of government, the aim of which is to supply children with milk and biscuits. The program functions in many regions, but this planned to expand the geography of the program.

According to RA constitution general education is obligatory article 18 of Law on Education defines that the basic general education shall be mandatory. The requirement of being compulsory for basic general education shall be retained until the learner attains the age of sixteen, if it has not been met at an earlier age. A learner may, after attaining the age of sixteen,

leave the school upon consent of the parents (adopters or curator). The requirement of compulsory basic general education shall not extend to certain categories of children with special educational needs, which are defined by the Government of the Republic of Armenia. It should be noted, that it has already accepted and put in circulation the project concerning the changes in law on education by Parliament, which offers to edit Article 18 and confirm that secondary general and primary (handicraft) or middle professional education is free and is obligatory till 18 years. So, according to this project, the thesis, which establishes that a person after 16 with certain requirements may leave school was abolished. In addition the age threshold raises from 16 to 18. It is noteworthy that the changes of age threshold obtained a wide public resonance, that's why it was decided to postpone the adoption of law till the public acquisition of agreement. The RA law on confirming the education development state program for 2011-2015 was adopted in 2011. The enclosure of that law refers to the problem of access to education. Analysing the involvement of students in the sphere of education it is noted that there is not a significant problem in general education involvement. According to enclosure, gross involvement in secondary education is quite high. In recent years the average was about 90%. At the same time, the involvement rate in high school is significantly lower, but this is explained by the fact that about 10% of learners continue their education in primary or middle professional spheres after general education. The low rate of the involvement in high school does not mean that a significant number of students are ousted from general school. Another problem is that children of what social group continue their education in high school, that is which social group of children pretend higher level of education. The involvement of poor and non-poor population in high school is quite unequal as compared with primary education. The gross involvement of the richest group in high school is 1.3 times higher than that of the poorest one. Thus, most of those who are left out from education system after general education are poor. It is very important to support the involvement of poor pupils in high school. As a means of achieving the strategic goals of education development in the program there are the following destinations for 2015: to take the gross involvement in elementary and middle school to 99% in high school 95%. It is not possible to estimate the achievements in program as it includes 2015 also. So, the reports and obtained results will be available after 2015.

According to the enclosure of the RA Law on confirming the education development state program for 2011-2015 the involvement rate of students in professional education program has steadily increased since 2001, but they are still low as compared with Central and Eastern Europe and the Commonwealth of Independent States Countries. Gross involvement in vocational programs in 2006 amounted to about 38%, of which about 28% in higher and post-graduate education levels as compared with the results in 2003 (21.3%) (according to data in 2004, in the Central and Eastern Europe and former Soviet Union countries 43%). The problem is particularly obvious in supporting the involvement of poor and extreme poor people in higher professional education systems. The involvement rate of poor is 5.4 and of extremely poor almost 8 times lower than non-poor population. The involvement of poor and extremely poor population in higher education system has not also regional proportionality with the benefit to the capital. Among the poor population in regions is 2.1 and 4.3 times less than in rural areas. In the Law on confirming the education development state program for 2011-2015 among its purposes it is mentioned the increase of the involvement of students by 10% in vocational education programs. For the implementation of the program the enclosure of the protocol decision of the Government of RA (N25, June 30, 2011) “The financial strategy of higher education in RA” has an important role. The enclosure aims to increase enrolment in higher education and ensure equal access to education for different social groups, to modernize and invest financial mechanisms in higher education. In this case it should be emphasized that legislative amendments were made on May 4, 2014, which clearly define the scope of the students who have a right in educational discounts, the size of the discounts and other guarantees for the students.

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue

One of the main urgent issues in RA is the youth employment problem.²⁸ According to age qualification, 16-29 years old people make up 24% among unemployed. According to officially

²⁸ According to the 798 decision on December 14 1998 the subjects of the State Youth Policy are the citizens, foreign citizens and the people who haven't citizenship of 16-30 age. So the young people in RA are considered to be 16-30 age.

recorded data only 29% of young people are busy.²⁹ High unemployment among young people is explained by the fact that this period of life is for getting professional education, and not always these two can be combined together. In addition, as a reason of high level of unemployment the hypothesis can be noted the hypothesis according to which the level of shadow employment among young people is higher. However, the level of unemployment of young people is so alarming, that long development strategy program of 2014-2025 of RA defines, the level of unemployment of young people is extremely high.³⁰

According to the concept of State Youth made in the decision of RA Government (N 798) adopted in 14 December 1998 one of the main direction of the youth policies is youth business and the support of the guarantees in the field of work, as well as the fulfilment of state youth employment and job.³¹ Long-term development strategy program adopted by RA in 2014-2015 gives great importance to youth employment issues and points that when elaborating active policies in labour market in the future a particular attention should be paid on the problems of youth unemployment. Indeed, the long-term development program emphasizes the problem of youth unemployment, the “Employment 2013-2025 strategy of the Republic of Armenia” adopted on 8 November 2012 in the N 45 decision of RA does not separate youth unemployment from total unemployment problem. The problem is not separated in the Law on Employment of RA also. Although, it should be noted that the issue of youth employment is included in the enclosure of “Employment regulation state program for 2013” adopted by RA Government in it’s N 40 protocol decision (on 25 September 2014). In particular the enclosure defines that to facilitate the involvement of young people to labour market the following programs will be made:

- To support unemployment to get job experience according to the profession which they have gained;
- To organize professional studies for unemployment and the people who are looking for a job having a risk to be released;

²⁹ Հայաստանի Ազգային Վիճակագրական ծառայության կայք National Statistical Service of the Republic of Armenia <<http://armstat.am/file/doc/99471438.pdf>> accessed April 08 2014 [Armenian].

³⁰ Decision of RA Government n. 442 27.03.2014.

³¹ Decision of RA Government n. 442 27.03.2014.

- Compensation of the costs made for visiting employers to get a job for the uncompetitive person in the job market;
- To help the young people who have the skill to make business “To support the activities to uncompetitive people in job market to make small business.”

In addition, for solving some problems of young people online grant system was put since July 1, 2010 by the Ministry of Sport and Youth (www.cragrer.am). With the help of this program youth organizations register in the system and after that they can present applications for the grant program. On the www.cragrer.am website as a priority for the grant youth socioeconomic and employment issues are mentioned. However it should be mentioned that although the great importance is given to the problem of employment, on the website there are only two programs, namely (“Not formal education for the organization of youth employment” and “To stimulate the business activities in the cross border rural regions”).

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

Within the meaning of the Academic Framework Legal Research Group on Social Rights the Austerity measures are not implemented in the RA, so the impact of these measures cannot be discussed.

6. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

The Revised European Social Charter was signed in Strasbourg on 3 May 1996, part 4 of the Charter, dedicated to the supervision towards the implementation of the obligations of the Charter and the collective complaints, is not mandatory for RA, as RA, when signing the Charter, made a reservation of this article too, but never grounded this reservation. Moreover, there is also no grounding either in official documents or in literature, why RA did not join the complaint system. However, the research makes it clear that the Revised European Social Charter rules on the complaint system, as well as the Additional Charter Protocols of 1995 were

not ratified by any of the former Soviet Union member states. This fact suggests that the former Soviet Union countries, including the Republic of Armenia, did not consider the designed complaint system as an effective dispute resolution mechanism. However, the fact that RA did not join the complaint system, does not mean RA does not provide effective national mechanisms for the protection of the rights established by this Charter, especially the Constitutional Court of RA in its No. DCC-460 decision (22 December 2003) determined the compliance of the Revised European Social Charter obligations to the Constitution of the Republic of Armenia, and mentioned that each Party, according to the Revised Charter and in accordance with national conditions, must have a working control system, and the fulfilment of legal obligations provided in the Charter must be subject to the same supervision as the European Social Charter.³² Though, the Charter complaint system is not in force in RA, but for the protection of the rights and for the obligations provided in the Charter there are corresponding internal control measures that are more affordable and easier to use than the complaint system could be. Particularly, in RA administrative and judicial procedures are applicable for the protection of the rights provided in the Revised European Social Charter and each of them is regulated by separate legal acts. Furthermore, referring to the Charter complaint system, we want to emphasize that the mechanisms of seeking international protection of the rights are often inaccessible to vulnerable groups and the organizations operating at the local level. These groups are mainly forced to rely solely on the judicial remedies and institutions existing in their country to protect their rights.³³ Hence, considering the low quality of life and the lack of information about the international regulations and procedures, we believe that even if RA accepted the complaint system, however, it could not be considered an effective guarantee for the protection of rights under the Charter. Referring to the administrative procedure of the protection of rights we would like to emphasize that in this case citizens, trade organizations,

³² Decision of Constitutional Court, 'On the Case Concerning the Determination of the Issue Regarding the Conformity of the Obligations Stipulated by the European Social Charter (revised) (with attached declaration) Signed on 3 may 1996 in Strasbourg with the Constitution of the Republic of Armenia', (2003-12-22, number DCC-460) <<http://www.concourt.am/armenian/decisions/common/2003/sdv-460.htm>> accessed 20 April 2015 [Armenian].

³³ A. Eide, C. Krause, A. Rosas. *Տնտեսական, սոցիալական և մշակութային իրավունքներ* (A textbook, Tigran Mets, Yerevan, 2009) 79 [Armenian].

non-governmental organizations³⁴ are competent to lodge an administrative complaint to the appropriate state agency or local government body for their illegal actions, or inactions of unlawful administrative acts.

Moreover, referring to the existence of the control under areas of the labour security and employment law, we would like to state that the State Health Inspectorate of the Staff of the Ministry of Health of the Republic of Armenia execute supervisory functions given by the law and impose sanctions in the areas of the health, labour security and labour law enforcement acting on behalf of the Republic of Armenia.³⁵ In RA the other measure of protection of the rights established by the Charter is the judicial protection, which is provided by courts of general jurisdiction and administrative court. In private relations, in case of social and economic rights violations a person has the opportunity to claim to court of general jurisdiction to remedy the violations of the right. A person has also the right to claim to administrative court if social and economic rights are not implemented effectively or are not implemented at all by state and local government bodies.

Thus, we can state that although RA has not assumed the obligations established in Article D of Part 4 of the Revised European Social Charter, anyway, RA has created the all possible mechanisms for the protection of the rights established by the Charter.

7. CONCLUSIONS

The Republic of Armenia signed Revised European Social Charter on October 18 2001 but the Charter came into force for the Republic of Armenia on March 1 2004. The Republic of Armenia by ratifying the Charter has undertaken a number of obligations and taken the appropriate measures for fulfilment of those obligations. Particularly the Republic of Armenia has adopted new Labour Code after the ratification of the Charter, which articles comply with the requirements of the Charter. Moreover the RA made amendments in existing laws and adopted new laws for fulfilment of obligations set by the Charter. The research made by us shows that the Republic of Armenia as a member of the Charter implements its liabilities

³⁴ In the RA the non-governmental organizations are given the opportunity to perform for the protection of the rights and interests of others.

³⁵ RA Government decision n. 857-N 25.07.2013.

conscientiously. Nowadays there is not any legal act in the legislation of the RA which will be contrary to the articles discussed in this report. Furthermore, although the Republic of Armenia has not undertaken obligations set by some articles or provisions of the Charter our country has applied some measures for ensuring the rights set by those articles. Estimating the level of fulfilment of obligations set by the Charter in the Republic of Armenia we can state that although the legislation of the RA corresponds to the obligations set by the Charter the appropriate projects are less funded because of the financial opportunities of the RA and as a result it harms the effectiveness of the projects. In addition there is a great issue connected with the lack of awareness among the population. The majority of population, especially the people living in a situation of poverty do not know even that they have certain rights in the labour relations, in the social sphere and other areas and consequently they do not implement their rights because of their unawareness.

Taking into consideration the fact that one of the main aims of this report is to find out the influence of financial crisis and austerity measures on the rights set by the Charter we would like to mention that our research lasted some months shows that during financial crisis the rights discussed in this report has not been restricted. Moreover the amount of minimal wage was increased in 2008 for mitigating the effects of the economic crisis. But meanwhile we should state that though legislative amendments for restricting the rights set by the Charter was not done during economic crisis but the funding part of the RA for social area was not increased too. So people's rights which set by the RA legislation before economic crisis were remained in the same volume during economic crisis too but at the same time the funding of the projects were not increased too though the prices were increased in the Republic of Armenia.

Summing up we can state that the Republic of Armenia as a member of Revised European Social Charter adheres to the Charter's article accepted by them and does measures for fulfilling the undertaken obligations. Referring to the austerity measures taken during economic crisis we can state that they did not have any negative impact on the rights set by the Charter in the Republic of Armenia.

8. TABLES OF CASE LAW AND LEGISLATION

8.1. The Constitution of RA

8.2. Laws of RA

- Labour Code of RA.
- Penitentiary Code of RA.
- Civil Code of RA.
- "About minimum wage".
- The Law on Amendments in the RA Labour Code 2009.
- “About Trade Unions”.
- “About employers’ unions”.
- Social Assistance of RA.
- Law about State Benefits.
- Law on “Social security of persons with disabilities” 1993.
- “Law on Education” April 14 1999.
- “Law on general education”.
- “Law on child’s Rights”.
- “Law on Higher and Post- graduate Education”.

8.3. Decisions

- RA Government decision n. 564 26.04.2012.
- RA Government decision n. 962 22.05.2006.
- RA Government decision n.727 19.12. 1998.
- RA Government decision n.1697 27.12.2012.
- RA Government decision n.111 11.01.2011.

- RA Government decision n.1694 27.12.2012.
- RA Government decision n.743N 17.07 .2014.
- RA Government decision n.962 22.05.2006.
- RA Government decision n.456 08.05 .2008
- RA Government decision n. 815 31.05.2007.
- RA Government decision n. 798 14.12 1998.
- “Employment regulation state program for 2015” (on September 25.09.2014).
- The Decision of Minister of Education and Science of RA n.1281 (The Confirmation of the Procedure of Realizing Inclusive Education) 06. 09.2010 [Ներուական կրթութան իրականացման կարգ].
- The annual program of 2015 on social protection of disabled persons 25.09.2014.

8.4. Cases

- Decision of Constitutional Court, ‘On the Case Concerning the Determination of the Issue Regarding the Conformity of the Obligations Stipulated by the European Social Charter’ (2003-12-22, number DCC-460).
- Decision of Constitutional Court, ‘On the case concerning the determination of the issue regarding the conformity of the decision no 554-n of the government of the Republic of Armenia dated 26 April 2012 with the constitution of the Republic of Armenia on the basis of the application of the human rights defender of the Republic of Armenia’, (2013-02-12, number SDO-1075)
<<http://www.concourt.am/armenian/decisions/common/2013/pdf/sdv-1075.pdf>>
accessed 20 April 2015 [Armenian].

9. BIBLIOGRAPHY AND ONLINE RESOURCES

9.1 Books

9.1.1 English titles

- Carole B., The European Social Charter (Council of Europe, 2013).
- Council of Europe. European Committee of Social Rights, European Social Charter (revised) Conclusions 2011, Volume 1 (Council of Europe, 2013).
- David J. H, John D., The European Social Charter (Second Edition, Transnational Publishers, 2001).
- Tamara K. H., Jeff K., Economic and Social Rights Under the EU Charter of Fundamental Rights: A Legal Perspective (Hart Publishing, 2003).

9.1.2. Armenian Titles

- Gevorg Petrosyan, Հայաստանի Հանրապետության Աշխատանքային իրավունք (Yerevan, 2015).
- Հայաստանի Հանրապետության Կառավարության 2013 թվականի ծրագիր (The program of the RA Government for 2013, Yerevan, 2013).
- Eide, C. Krause, A. Rosas. Տնտեսական, սոցիալական և մշակութային իրավունքներ (A textbook, Tigran Mets, Yerevan, 2009) [Armenian].

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

The Republic of Austria ratified the European Social Charter on 29 October 1969 and the Revised European Social Charter on 20 March 2011, accepting 76 of the Revised Charter's 98 paragraphs. Unlike the European Convention of Human Rights, Austria has not integrated the ESC into its constitution. Rather, the European Social Charter was ratified in accordance with Article 50(2) of the Federal Constitution.¹

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

Austria has weathered the 2008 financial crisis very well and was one of the best performing EU countries when it came to managing the crisis, according to a study of the Austrian Economic Research Institute *Wifo*.

The main actions of the Austrian Government referred to the recapitalisation and nationalisation of major financial institutions. There might be some temporary actions in the labour market as a direct consequence of the financial crisis, like allowing the introductions of short-time working arrangements to buffer economic disturbances and to keep employees in the company.

There were no official austerity measures taken in the area of social and medical assistance/care. Only an indirect effect due to the generally tighter budgets can be noticed: the negotiations on the new minimum income scheme were influenced by the crisis in a negative way and some *Bundesländer* (states) abolished additional benefits in the course of the conversion. In general, however, the situation improved. Regarding social rights of persons with disabilities, children and young persons, there have not been austerity measures, which might affect or restrict their rights noticeably. There have been some budget cuts, but at the same time, the services and

¹ Lando Kirchmair, 'Soziale Rechte als Beitrag zur subjektiven Sicherheit' [2010] .siak-Journal 73 [German].

support are improving and expanding. With respect to private/public services in this field, it can be said that some pilot projects were shortened or have not been transformed into permanent services due to the reluctance of putting further strains on the *Länder* budgets.

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

Already in 1969 Austria declared itself, in accordance with Article 20(2), bound by Article 5 and Article 6(1), (2) and (3) ESC. Austria has not accepted Article 6(4) ESC.² Comments in the materials regarding this non-acceptance of Article 6(4) ESC state that, contrary to other states, the right to collective actions -including the right to strike- is not systematically regulated in the Austrian legal system, neither through an act nor through collective agreements. There are only isolated regulations to very specific legal problems concerning these disputes.³ Primarily, the employee representatives wanted to ratify Article 6(4) ESC, however, the employer representatives could not come to an agreement. The Ministry of Labour, Social Affairs and Consumer Protection proposed to establish a working group, with the aim to ratify further provisions, particularly all 'hard core' provisions.⁴ In Austria, the legal framework concerning *Arbeitskampf* (collective bargaining actions) is only punctually legalised. The central legal questions about labour disputes are currently not all legally regulated.⁵ However, one can find some isolated rules, which will be covered below.

2.1.1. Constitutional Rights

Article 11 ECHR (the right to assemble and to organise) covers the right to assemble and the right of coalition, meaning the freedom to found, to enter and also to not become a member of a trade union. Article 11(1) ECHR guarantees the typical activities of a trade union, particularly the

² See 'Acceptance of Provisions of the Revised European Social Charter'
<http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ProvisionTableRevMarch2013Rev_en.pdf
> accessed 3 February 2015.

³ Explanatory Note to ESC 1068 der Beilagen XXIV.GP – Staatsvertrag – Materialien 6 [German].

⁴ *ibid* 7.

⁵ Peter Jabornegg, *Arbeitsrecht* (5th edition, Manz Wien 2014) 243 [German].

right of trade unions to defend and fight for the professional interests of their members through collective measures. States have to allow and enable these measures. But which concrete measures are permitted, is basically in the estimation of every state itself.⁶ Thus there is no constitutional security for the right to collective bargaining (such as striking) under Article 11 ECHR.⁷ According to the ECHR's interpretation as 'living instrument' a change in the perception of rights which come along with Article 11 is noticeable up to the extent where latest jurisprudence accepts a right to strike to give teeth one's interests.

Article 12 StGG also covers the right to assemble and to organise and it is seen as a 'citizen's right' since only Austrian citizens and Member State citizens are covered by that right. However, the doctrine argues that Article 12 StGG does not include a special constitutional right to collective bargaining nor a subjective right to strike.⁸

Other European treaties, which are binding for Austria, do not provide a special constitutional right to collective bargaining nor a subjective right to strike.⁹

Summarising the before-mentioned constitutional legal sources, it can be said that there is a legal basis which governs the rights for collective bargaining, but it is under the reservation that the concrete arrangement either lies in the state's own discretion, or there are no subjective rights deducible, or the principle of proportionality rules the right to collective bargaining.

2.1.2. Sub-constitutional, national Rights

There are few regulations in Austria which govern certain consequences of collective bargaining actions or certain professional groups.

Section 9 AÜG (*Arbeitskräfteüberlassungsgesetz* - Temporary Employment Act) prohibits posting temporary workers in a company affected by collective bargaining actions such as strikes or

⁶ Christoph Grabenwarter and Katharina Pabel, *Europäische Menschenrechtskonvention* (5th edition, CH Beck 2012) 360 [German].

⁷ Jabornegg, *Arbeitsrecht* 247.

⁸ Grabenwarter and Pabel, *Europäische Menschenrechtskonvention* 360.

⁹ E.g. Article 28 Charter of Fundamental Rights of the European Union (CFREU), which governs the right to collective bargaining and actions such as striking, is legally binding (Compare Berka, *Verfassungsrecht* (4th edition, Springer Vienna 2012) 392 (recital 1185)). However, the European Court of Justice (ECJ) stated in its leading cases in this matter that Article 28 CFREU underlies the principle of proportionality (See Case C-438/05ITF/*Viking* [2007]; Case C-341/05 *Laval* [2007]). Therefore it can be said that, as well as the before-mentioned rights, Article 28 CFREU does not provide a proceeding constitutional security for the right to collective bargaining (Compare Jabornegg, *Arbeitsrecht* (5th edition, Manz Vienna 2014) 247 (1035a)).

lockouts. Furthermore, Section 3 no. 10 AMFG (*Arbeitsmarktförderungsgesetz* - Labour Market Promotion Act) forbids on the one hand the sending or placing of employees to a company, affected by collective bargaining actions such as strikes or lockouts, and on the other hand, the sending or placing of striking employees.

Section 13 AIVG regulates that employees lose their right to receive unemployment benefits when the unemployment is in a causal context with collective bargaining. On the contrary, Section 9 para 2 AIVG (*Arbeitslosenversicherungsgesetz* - Unemployment Insurance Act) states that an unemployed person does not lose the entitlement to unemployment benefits when he/she is refusing to work in a company affected by collective bargaining actions.

According to Section 10 AuslBG (*Ausländerbeschäftigungsgesetz* - Employment of Foreigners Act), a foreigner will not receive an employment permit for a company affected by collective bargaining actions.

In accordance with Section 8 para 5 ZDG (*Zivildienstgesetz* - Civilian Service Act), a company affected by strikes or lockouts will not receive a civilian service worker; and Section 18 no. 4 ZDG the Civilian Service Agency must find placement elsewhere for a civilian service worker in the event of the company being affected by strikes or lockouts.

In conclusion, these regulations express the principle of neutrality of the Austrian state in dealing with confrontations in the professional life.¹⁰ The doctrine speaks of a “system of natural freedom of dispute”, in which the right to set industrial disputes is neither expressis verbis allowed nor explicitly forbidden.¹¹ In the legal judgement, it is important to distinguish legally between the complete action and the individual participation of an employee.

This principle of neutrality is also expressed in the work of the *Bundeseinigungsamt* (Federal Conciliation Board). It has an intermediary function and can help to find for instance strike stopping agreements. Moreover under Section 153 ArbVG, it can help in the negotiation process for a collective agreement if one of the parties asks for the help of the Federal Conciliation Board; as well as under Section 154 ArbVG, it can initiate the negotiation process if one of the

¹⁰ Jabornegg, *Arbeitsrecht* 248.

¹¹ *ibid* 249.

discussing parties request so. However, it is important to note that in Austria there is no forced conciliation, since this would be contrary to the principle of neutrality.¹²

This Federal Conciliation Board can also be seen as a department for dialogue. Its arbitral verdicts or decisions are generally binding for the parties. Under Section 155 ArbVG, the Federal Conciliation Board can also decide with an arbitral verdict which automatically becomes a collective bargaining agreement, if the parties decided on that before the negotiation. Collective bargaining agreements are pursuant to Section 3 ArbVG mandatory rules. More favourable rules for employees may only apply if the collective agreement does not set standards itself or preclude certain agreements. Rules that then provide differing, negative provisions are ineffective and invalid, so called '*Günstigkeitsprinzip*' (favorability principle).¹³ Section 17 ArbVB states that if a collective bargaining agreement does not include a provision concerning the validity, it can be resigned by both parties after one year with a minimum of 3 months to the last day of the month.

Collective agreements are terminated between statutory corporations of the employer and the employee. In this field the social partnership is very important. But not only in the before mentioned, since the social partnership is of great importance for the whole political system. It facilitated an institutional cooperation of the major employers' and employees' interest-groups, namely the Trade Union Federation (ÖGB), the Federal Economic Chamber (WKÖ), the Federal Chamber of Labour (AK) and the Chambers of Agriculture (LWK).¹⁴ In Austria the interest-groups of employers and employees predominantly form collective agreements.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

Many European countries have tried to complicate the social dialogue and collective contracts bargaining in order to impair and stem the configuration options of trade unions. These

¹² Franz Marhold and Michael Friedrich, *Österreichisches Arbeitsrecht* (2nd edition, Springer 2012) 511 [German].

¹³ *ibid* 471.

¹⁴ Franz Marhold and others, '*Autriche*' in Marie-Cécile Escande Varniol and others, *Quel Droit Social dans une Europe en Crise?* (Larcier 2012) 92 [French].

developments can be noticed:¹⁵ The decentralisation of wage bargaining; tightening of the rules, when trade unions are represented in collective contracts negotiations, and in many countries proven institutions for the social dialogue have been substantially weakened and in some regulations, now non-binding institutions are competent, instead of binding courts.¹⁶

In Austria not all of these typical consequences of the crisis can be identified directly. One concrete example of decentralisation of wage bargaining happened in 2012. In the metal industry collective agreements were usually negotiated through a centralised negotiation group, which consisted of all different unions. In spring 2012, the FMMI (biggest group of these unions, trade union for mechanical engineering and construction) decided to leave this negotiation group, so that it was necessary to negotiate six different collective agreements. The FMMI argued that with that step it would be easier to find better and more adequate rules for its concrete working group in the mechanical engineering and construction section. Finally, the other groups (PRO-GE and GPA-djp) could come to an agreement with the FMMI, so that the six different collective agreements are, in regards to content, completely the same.¹⁷ Therefore it did not make a huge difference in practice. Furthermore, it was not a breach to Article 5 or Article 6 ESC.

But in general it can be said that Austria overcame the crisis quite well. Also, according to a study of *Wifo* (Economic Research Institute), Austria was one of the four best performing EU countries when it came to handling and managing the crisis.¹⁸

The social partners and the implementation of new regulations during the economic crisis helped manage the crisis. In Austria, social partners play an important role for the social dialogue. Social partners, as herein mentioned, also played a key role in the implementation of the measures, unlike in other countries. For example, pursuant to Section 37b para 1 lit 3 AMSG, a mandatory

¹⁵ Wolfgang Greif and Oliver Röpke, 'Herausforderungen & Handlungsoptionen der Gewerkschaften in Europa vor dem Hintergrund der sozialen und politischen Folgen der Krise' [2014] WISO 100 [German].

¹⁶ *ibid* 101.

¹⁷ Martin Panholzer, 'Metallindustrie: Einheitslicher Leit-Kollektivvertrag' (KOMPETENZ - Das Magazin für den organisierten Erfolg, 19 November 2012) <<http://www.kompetenz-online.at/2012/11/19/metallindustrie-einheitslicher-leit-kollektivvertrag/>> accessed 29 March 2015 [German]; Martin Panzolzer, 'Metallindustrie: Kampf um gemeinsamen Kollektivvertrag' (KOMPETENZ - Das Magazin für den organisierten Erfolg, 8 Oktober 2012) <<http://www.kompetenz-online.at/2012/10/08/metallindustrie-kampf-um-gemeinsamen-kollektivvertrag/>> accessed 29 March 2015 [German].

¹⁸ WZ Online, 'Österreich hat Krise gut bewältigt' (Wiener Zeitung, 9 February 2011) <http://www.wienerzeitung.at/nachrichten/archiv/55296_Oesterreich-hatKrise-gut-bewaeltigt.html> accessed 29 March 2015 [German].

agreement of the social partners was necessary to receive a short-time work arrangement for a company.¹⁹ This is an example for the strengthening of the social dialogue with the social partners during the crisis.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

As mentioned above, the social partners played a very important role to implement new regulations with the goal to overcome the crisis. New regulations created the Labour Market Package I. (February 2009), II. (in June 2009) and III. (2010), 'Law on Employment Market Service' (AMSG), 'Law on Working Time' (AZG), 'Employment Contract Law Amendment Act' (AVRAG) and the 'Unemployment Insurance Act' (AIVG). There were improvements in short-time working, partial retirement and educational leave and also in the education and improvement of qualifications of permanently unemployed persons. The purpose of these new regulations was to protect jobs and to minimise the impact of the economic crisis on the employees.²⁰ All these measures were in compliance with the ESC.

Furthermore, it can be noted that there were further positive measures taken by the Austrian government which aimed at protecting jobs. For example 'Aktion 4000', which was a federal aid to help around 4,000 permanently unemployed persons finding a job in the local government sector.²¹ Other consequences or austerity measures cannot be recognised in that area.

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for:

¹⁹ *ibid* 93.

²⁰ Marhold and others, *Autriche* 94.

²¹ Rudolf Hundsdorfer, "Aktion 4000 für Österreich" - 4.000 Jobs im Kommunalbereich <http://www.sozialministerium.at//cms/site/index_presseaussendung.html?doc=CMS1247216039850> accessed 16 April 2015 [German]; Sozialbericht 2010 <http://www.sozialministerium.at//cms/site/attachments/3/2/3/CH2171/CMS1289832560842/sozialbericht_2010_web_01.pdf> accessed 16 April 2015 (2010) 22 [German].

3.1.1. Persons who are unable to secure adequate resources either by their own efforts or from other sources?

The Austrian social security scheme provides assistance and care, as defined in Article 13(1) ESC under the concept of the means-tested minimum income.²² On 1 December 2010, the Agreement between the Federal and State Governments according to Article 15a B-VG²³ on Means-tested Minimum Income in Austria, entered into force.²⁴ With its introduction, the significantly varying regulations on ‘open’ social assistance (social assistance provided to private households) of the *Länder* were harmonised.²⁵ Its aim is to set minimum standards on the benefits that anyone should be legally entitled to receive if he/she is not able to secure adequate resources either by his/her own efforts or from other sources. The means-tested minimum income is regarded as a last resort, which is expressed as a certain amount of money, determined each year. In 2015 this is EUR 827.82 for single persons/parents and EUR 1,241.73 for couples per month.²⁶ It has to be noted that the *Länder* are not allowed to provide less, they can, however, provide higher or additional benefits.²⁷ The funding of the minimum income benefits is distributed between the Federal and the state governments according to their areas of competence.²⁸ Correspondingly, legal pension recipients are granted minimum protection by the

²² For general information on the means-tested minimum income scheme see also: European Social Charter, 1st National Report on the implementation of the European Social Charter submitted by the Government of Austria 2012, 97; Federal Ministry of Labour, Social Affairs and Consumer Protection, *Bedarfsorientierte Mindestsicherung: Fragen und Antworten Fakten statt Mythen* [German].

²³ According to Article 2 Federal Constitutional Law 1945 [Bundes-Verfassungsgesetz, B-VG] Austria is a Federal State, consisting of 9 independent *Länder* (Vienna, Lower Austria, Upper Austria, Burgenland, Salzburg, Styria, Carinthia, Tyrol and Vorarlberg). Within the framework of the Federal Constitution each Land (provincial government) enacts its own constitution and its own legislation. Article 10-15 B-VG constitute which areas have to be regulated by the Federal State and which areas fall within the competences of the *Länder*. According to Article 15a B-VG the Federal and *Länder* governments can enter into agreements with each other regarding subjects within their respective competences.

²⁴ Agreement between the Federal and *Länder* Governments according to Article 15a B-VG on Means-tested Minimum Income in Austria 2010 [Vereinbarung zwischen dem Bund und den Ländern gemäß Art. 15a B-VG über eine bundesweite Bedarfsorientierte Mindestsicherung].

²⁵ European Social Charter, 1st National Report on the implementation of the European Social Charter submitted by the Government of Austria (2012) 97.

²⁶ Federal Ministry of Labour, Social Affairs and Consumer Protection, *Mindestsicherung im Überblick* <http://www.sozialministerium.at/site/Soziales/Bedarfsorientierte_Mindestsicherung/Mindestsicherung_im_UebeUeberb/> accessed 26 February 2015 [German].

²⁷ Article 2 of the Agreement on Means-tested Minimum Income.

²⁸ *ibid* Article 20.

Federal State in the form of an equalisation supplement.²⁹ The expenditures in respect to the remaining benefits are basically covered by the *Länder*.³⁰

75% of the minimum income should suffice to cover the monthly costs for food, clothing, personal hygiene, heating, electricity, household goods and personal needs, such as reasonable participation in social and cultural life. The remaining 25% should cover the expenses for accommodation, including rent, operating costs and taxes. In case the actual living costs are not covered by this amount, the *Länder* can provide additional benefits which can either be supplied within the means-tested minimum income scheme or as housing assistance within the framework of housing subsidy.³¹

The award of the means-tested benefits is linked to several conditions: firstly, it is only granted to persons who are not able to secure adequate resources through their own efforts (meaning work, use of own income, assets and property), social insurance or other benefits. Some assets are exempt from this rule (e.g. items needed to perform work or to meet adequate intellectual and cultural needs). Moreover, savings up to five times the minimum income amount for single persons (EUR 4,139.1 in 2015) are not taken into consideration.³² Special rules apply to properties meeting housing requirements. If accommodation needs are being satisfied by houses or condominiums, they do not have to be realised. After six months of receiving means-tested benefits, however, the District Administration Authority is entitled to add a note in the land register for securing a substitute claim. As long as the property serves to satisfy the accommodation needs of a person (also an heir or heiress) the authorities need not assert the claim.³³

The second condition is that claimants of the means-tested benefit should be able and willing to work. This rule, however, does not apply to persons who have reached the statutory retirement age³⁴, persons who have care duties for children under the age of 3 and are not able to engage in the job market due to a lack of suitable care options, persons who give care to relatives claiming

²⁹ *ibid* Article 5.

³⁰ *ibid* Article 9.

³¹ *ibid* Articles 3, 10, 11; Federal Ministry of Labour, Social Affairs and Consumer Protection, *Social Protection in Austria* (2014) 81.

³² Article 13 of the Agreement on Means-tested Minimum Income.

³³ *ibid* Article 13(5).

³⁴ According to Section 253 of the General Social Insurance Act 2004 [Allgemeines Sozialversicherungsgesetz, ASVG] the current statutory retirement age for women is 60 and for men 65.

long-term care benefits of category 3 and up, persons who nurse dying family members or seriously ill children, and persons who are enrolled in a training (this does not include tertiary education) which they began prior to reaching the age of 18.³⁵ In this context it also has to be mentioned that the means-tested minimum income scheme should encourage the recipients' permanent (re-)integration into labour force by providing counselling and assistance.³⁶ Therefore services provided by the Public Employment Service (AMS) are accessible to all minimum income recipients, the AMS provides information about the means-tested minimum income, accepts applications for minimum income, and forwards it to the competent authority.³⁷

Furthermore, the minimum income benefits are only granted to persons with a right to permanent residence in Austria to avoid 'social tourism'. Accordingly, persons who are foreign nationals of states, other than EU and EEA members, are only allowed to benefit from the means-tested minimum income scheme if they have been legally residing in Austria for more than five years.³⁸ This provision, however, might not be in conformity with Article 13(1) ESC. In its conclusions of 2013, the European Committee of Social Rights stated that under Article 13(1) ESC an equal access to social assistance for both, nationals and foreign nationals with legal residence in the state, has to be guaranteed.³⁹ 'This implies that entitlement to assistance benefits, including income guarantees, is not confined by 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 imposed on them.'⁴⁰ For this reason, the European Committee of Social Rights concluded that 'the situation in Austria is not in conformity with Article 13(1) on grounds that the granting of social assistance benefits to foreign nationals of other States Parties, other than EU and EEA nationals, legally residing in Austria, is subject to an excessive length of residence condition.'⁴¹ There has not been any reaction by Austria to this conclusion so far. The applications for minimum income benefits can be submitted to the responsible District Administration Authorities, which are obliged to decide

³⁵ Article 14 Agreement on Means-tested Minimum Income.

³⁶ *ibid* Article 1.

³⁷ *ibid* Article 7.

³⁸ *ibid* Article 4.

³⁹ European Committee of Social Rights, *Conclusions 2013 (Autriche) Articles 3, 11, 12, 13 and 14 of the 1961 Charter* (2014) 33.

⁴⁰ *ibid* 33.

⁴¹ *ibid* 33.

upon the request within three months. In case of a denial, which has to be in written form, claimants have the possibility to appeal against the decision.⁴² The entitlement to the minimum-income benefits exists for as long as the recipient is unable to secure adequate resources by his/her own efforts or from other sources. Moreover, a certain exemption amount for persons who recently re-entered the job market or who entered the job market for the first time serves as an incentive to find employment. This amount is not taken into account when determining the income of an applicant.⁴³

Finally, it has to be noted that the means-tested minimum income scheme improved the provisions on recourse/repayment. Generally, former recipients do not have to pay back the monetary benefits they received once they have income on their own (exceptions: Carinthia, Styria). This can be seen as a major advantage in comparison to the old systems, since the assistance claimants finally have a better chance to escape the poverty spiral.⁴⁴

3.1.2. Persons who are unable to secure adequate resources either by their own efforts or from other sources due to illness?

The introduction of the means-tested minimum income scheme also brought improvements regarding medical assistance. Recipients of social assistance are automatically members of the statutory health insurance.⁴⁵ They receive an e-card, which permits access to all medical services. Additionally, they are entitled to the same benefits as recipients of the equalisation supplement: exemption from prescription charge, exemption from service charge for the e-card, exemption from additional charges for rehabilitation and measures for health prevention. The regulations on deductibles (e.g. for glasses or braces), however, do also apply to minimum income beneficiaries.⁴⁶ Generally, the health insurance contributions are covered by the *Länder*. If the services, which are actually needed, exceed these amounts, the difference is funded by the State.⁴⁷

⁴² Federal Ministry of Labour, Social Affairs and Consumer Protection, *Social Protection in Austria* (2014) 80.

⁴³ Article 14(5) Agreement on Means-tested Minimum Income.

⁴⁴ European Social Charter, *1st National Report on the implementation of the European Social Charter* submitted by the Government of Austria (2012) 98.

⁴⁵ Article 8 Agreement on Means-tested Minimum Income.

⁴⁶ Federal Ministry of Labour, Social Affairs and Consumer Protection, *1. Bericht des Arbeitskreises Bedarforientierte Mindestsicherung* (2012) 60 [German].

⁴⁷ Article 18 of the Agreement on Means-tested Minimum Income.

Furthermore, persons who require long-term care due to physical, mental or psychological disabilities or sensory impairment are legally entitled to long-term care benefits which are regulated in the Federal Long-Term Care Benefit Act.⁴⁸ These benefits, however, are not supposed to cover the actual amount of the additional care-related expenses. Instead, they are designed as lump-sums which only contribute to the extra costs. They have been introduced to enable the persons in need to maintain their independence to the most possible extent as well as to stay in their familiar environment.⁴⁹ Factors such as the cause of the care needs, income, property or age do not constitute criteria for the award of long-term care benefits. The only condition applicants have to fulfil is the need for care for at least six consecutive months, on average 60 hours per month. The benefits are granted 12 times per year and their amount depends on the care category, starting from EUR 154.20 (care category 1, between 60 and 85 hours of care per month needed) up to EUR 1,655.80 (care category 7, more than 180 hours of care per month and a special quality of care needed). Minimum income recipients can require long-term care benefits from their pension insurance institution.⁵⁰ Mainly the elderly claim their right to these benefits.⁵¹

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

As mentioned above, the social security scheme was harmonised in 2010. For this reason, it is difficult to directly compare the figures on the expenditures for social protection from the years before the economic crisis (under the old scheme) and the figures from 2010 onwards. It has to be mentioned, however, that the Agreement on Means-tested Minimum Income contains a 'no deterioration' provision, which means that the *Länder* are not allowed to reduce the amount of the minimum benefits they provided before the introduction of the harmonised standards.⁵² Hence, in this regard the *Länder* did not have the possibility to take any austerity measures in the course of implementing the new system. Notwithstanding the 'no deterioration' principle, one

⁴⁸ Federal Long-Term Care Benefit Act 1993 [*Bundespflegegeldgesetz*, BPGG].

⁴⁹ Section 1 Federal Long-Term Care Benefit Act.

⁵⁰ Sections 4 and 5 Federal Long-Term Care Benefit Act.

⁵¹ Federal Ministry of Labour, Social Affairs and Consumer Protection, *Social Protection in Austria* (2014) 72.

⁵² Article 2(4) Agreement on Means-tested Minimum Income.

state (Carinthia) decreased the amount of its benefits shortly before the conversion. Therefore it was able to establish financial restrictions without violating the provision.⁵³

Before, under the differing open social assistance regimes, each Land provided special bonuses four or two times per year. With the introduction of the minimum income, four states (Lower Austria, Upper Austria, Burgenland and Vorarlberg) abolished these benefits. The remaining five states lowered the amount of the bonuses or made it more difficult to access the additional benefits. In the long run these changes do not necessarily result in an inferior service level, they do, however, make it harder to save money for special needs.⁵⁴

Some private social service providers claim that the reductions which accompanied the harmonisation of the social assistance scheme can be traced back to the impact of austerity measures taken in Austria.⁵⁵ Certain is that the fiscal circumstances during the negotiations on the agreement between the Federal and *Länder* governments contributed to the decision on providing the minimum-income benefits only 12 times, instead of 14 times, per year. As a reaction to the financial and economic crisis, Austria decided to fund the state deficit under the 3% Maastricht-threshold by 2012. Therefore, an increase of the budget for social benefits was subject to unfavourable conditions.⁵⁶

Another proposition, which could not be agreed on during the negotiations in 2008, was the 'one-stop-shop'. The idea was to create one single contact point, the AMS, where persons would be able to file their applications for the means-tested minimum income benefits as well as for the unemployment benefits.⁵⁷ One of the advantages would have been the shift of the financial autonomy from the District Authorities of the *Länder* to the AMS in response to the criticism on the arbitrariness of the Authorities. The *Länder*, however, feared that giving away this power would place additional strains on their budget.⁵⁸

⁵³ E-Mail from Norman Wagner, Arbeiterkammer Wien, to author (2 March 2015).

⁵⁴ Die Armutskonferenz, Monitoring "Bedarfsorientierte Mindestsicherung" *Analyse und Vergleich der Länderbestimmungen zur Bedarfsorientierten Mindestsicherung 2011* (2nd edition, 2012) 66 [German].

⁵⁵ ORF Online, 'Sparmaßnahmen führen zu Ansturm bei Caritas' (23 December 2012) <<http://steiermark.orf.at/news/stories/2514378/>> accessed 26 February 2015 [German].

⁵⁶ Norman Wagner and Christa Schlager, 'Kosten der Bedarfsorientierten Mindestsicherung' in Walter Pfeil and Josef Wöss, *Handbuch Bedarfsorientierte Mindestsicherung* (ÖGB Verlag 2014) 257 [German].

⁵⁷ Nikolaus Dimmel, 'Bedarfsorientierte Mindestsicherung – ein Meilenstein?' (WISO 2008) 30 [German].

⁵⁸ Ursula Filipic and Norman Wagner, 'Bedarfsorientierte Mindestsicherung: Armutsvermeidung für Menschen mit Behinderung?' (Wirtschaft und Gesellschaft 2009) 391 [German].

It can be argued that the above mentioned drawbacks resulted from Austria's economic situation since 2008. Apart from that, no official austerity measures have been taken which directly influenced the conditions of social assistance. On the contrary, the introduction of the means-tested minimum income scheme led to an overall improvement of the social protection in Austria. The expenditures on minimum benefits have increased⁵⁹ and in comparison to the rest of Europe, Austria's way of facing social hardships during and after the crisis has proved to be quite successful.⁶⁰

However, as set out above, in its conclusion of 2013, the European Committee of Social Rights stated that the situation in Austria is not in conformity with Article 13(1) ESC due to the excessive requirements for foreign nationals of other States Parties, other than EU and EEA for receiving minimum income benefits. Moreover, it requested more detailed information on additional benefits to be in a position to determine whether these, combined with the basic benefits, reach the poverty threshold (defined as 50% of median equivalised income and calculated on the basis of the Eurostat at-risk-of-poverty threshold value). The level of basic benefit separately falls between 40% and 50% of the Eurostat median equivalised income. Otherwise, the situation in Austria is in line with Article 13(1).⁶¹ According to *Die Armutskonferenz* (The Poverty Conference), a network of NGOs working in the social service sector, the amounts of the means-tested minimum income benefits were fixed arbitrarily, and do not cover the actual subsistence needs. Only Tyrol and Upper Austria provide additional benefits for housing, which refer to the real expenses. However, they do have an upper limit.⁶² Moreover, only Tyrol and Upper Austria provide additional benefits for special demands or transgressions of the standard rate to which there exists a legal entitlement. Two *Länder*, Styria and Burgenland, do not provide

⁵⁹ Martina Kargl, *Das letzte Netz: Die Mindestsicherung im Test* <<http://diepresse.com/home/meinung/gastkommentar/764546/Das-letzte-Netz-Die-Mindestsicherung-im-Test>> accessed 29 March 2015 [German]; Kurt Pratscher, *Sozialhilfe, Behindertenhilfe und Pflegegeld der Bundesländer im Jahr 2008 und in der Entwicklung seit 1998* (Statistische Nachrichten 2010) 6 [German]; Kurt Pratscher, *Bedarfsorientierte Mindestsicherung der Bundesländer im Jahr 2013* (Statistische Nachrichten 2014) [German].

⁶⁰ Christa Schlager, *Wie ist Österreich bisher durch die Krise gekommen?* in Ursula Filipic and Elisabeth Beer, *Sozialer Aderlass in Europa: Arbeit und soziale Sicherung unter Druck* (AK, 2013) 21 ff [German].

⁶¹ European Committee of Social Rights, *Conclusions 2013 (Autriche) Articles 3, 11, 12, 13 and 14 of the 1961 Charter* (2014) 31 f.

⁶² Die Armutskonferenz, *Monitoring "Bedarfsorientierte Mindestsicherung" Analyse und Vergleich der Länderbestimmungen zur Bedarfsorientierten Mindestsicherung. Zusammenfassung der zentralen Ergebnisse der Matrix 2011* (2nd edition, 2012) 34 [German].

any of these additional benefits at all.⁶³ It remains to be seen whether the European Committee of Social Rights still concludes that Austria is not in breach of Article 13(1).

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

One of the main principles of the means-tested minimum income scheme is to ensure the necessary counselling and support to avoid and overcome social hardship and to sustainably stabilise the social situation.⁶⁴ Hence, the *Länder* are obliged to provide decentralised, low-threshold and needs-oriented counselling and assistance services in an economically justifiable manner in order to achieve a holistic identification of the beneficiaries' problems.⁶⁵

The AMS, which is a public sector company, mainly funded by contributions to the unemployment system,⁶⁶ plays an important role in (re-)integrating recipients into the labour market. In this regard, the concept of 'case management' has been developed. This means that each person taking part in the programme is given advice and assistance designed according to their individual needs. The AMS refers minimum income beneficiaries to cooperating NGOs, which then evaluate the specific problems and obstacles to overcome. In this regard, their first step is to prepare a social anamnesis and a competence balance. Subsequently, they develop a perspective plan together with the unemployed person. They then offer personal assistance and advice regarding job search, professional orientation, vocational training, further education, language competence, securing subsistence, debts, health, housing, relationships, childcare, and finally, aftercare at the new workplace. In order to guarantee comprehensive advice and care, the NGOs cooperate in turn with other institutions, specialising in these areas, as well as with the District Authorities and the AMS.⁶⁷

⁶³ *ibid* 29 et seq.

⁶⁴ Article 2(3) Agreement on Means-tested Minimum Income.

⁶⁵ *ibid* Article 16 (3).

⁶⁶ Public Employment Service Act 1994 [Arbeitsmarktservicegesetz, AMSG].

⁶⁷ See for example 'Case Management' <<http://www.hilfswerk.at/oberoesterreich/jugend-familie/case-management>> accessed 10 April 2015 [German].

With the introduction of the means-tested minimum income scheme, a lot of pilot projects, many of them establishing counselling and care institutions and realising the concept of case management, were started in the *Länder*.⁶⁸ Their aim was/is to integrate vulnerable groups into the labour market, meaning persons with psychological and physiological disabilities, persons with migration background, people older than 40 years, single parents, families with several children and young adults.⁶⁹ The funding was/is provided by the AMS, the European Social Fund Austria and the respective state governments. Some of these projects were subsequently installed permanently, while others were not continued due to budget cuts. This approach has been heavily criticised as counterproductive, since too short support periods are less successful and patterns of failure may manifest in the person's mind.⁷⁰

Apart from these projects specifically introduced for minimum income beneficiaries, a variety of additional services which differ from one state to another are provided publicly by authorities as well as privately by NGOs, associations or other private providers, covering the fields labour market, non-school child care, homes for the elderly and nursing homes, day-structuring and extramural services, housing and/or employment schemes for people confronted with special problems.⁷¹

In respect to information provided on social assistance, it is argued that the services of the AMS, NGOs and the social security offices and public authorities of the *Länder* have proved to be efficient. Compared to 2008, the number of social assistance and minimum income beneficiaries in 2011 has increased by 37%. One of the causes for this development might be a higher take-up-rate due to increased information activities.⁷² *Die Armutskonferenz*, however, is of the opinion

⁶⁸ See 'Territoriale Beschäftigungspakte in Österreich. Projekte' <http://www.pakte.at/projekte/2932/list?land=0&project_status=0&projektzielgruppe=2923&save=Suchen&sort=title> accessed 10 April 2015 [German].

⁶⁹ Andreas Riesenfelder, Nadja Bergmann and others, '3 Jahre Bedarfsorientierte Mindestsicherung (BMS) - Auswirkungen auf die Wiedereingliederung der Bezieher/innen ins Erwerbsleben. Kurzfassung der Studienergebnisse' (L&R Sozialforschung 2014) 8 [German].

⁷⁰ Stephan Pühringer and Christine Stelzer-Orthofer, *Begleitende Bewertung der Interventionen des Europäischen Sozialfonds Österreich 2007-2013* (2012) 65 et seq. [German].

⁷¹ European Social Charter: Addendum to the 1st National Report on the implementation of the European Social Charter submitted by the Government of Austria (2013) 4 et seq.

⁷² Federal Ministry of Labour, Social Affairs and Consumer Protection, *Krisenmonitoring - 10. Bericht* (2013) 7 [German].

that the affected persons do not receive sufficient information.⁷³ Nevertheless, the European Committee of Social Rights came to the conclusion that the situation in Austria regarding Article 13(3) ESC is in conformity with the Charter.⁷⁴

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

Article 30 of the European Social Charter regarding the prevention of social exclusion has not been accepted by Austria.⁷⁵ Therefore, this report will only provide a brief overview of the measures taken.

As one of the flagship initiatives of the Europe 2020 strategy, the 'European Platform against Poverty and Social Exclusion' was established in order to support the EU countries in achieving one of the key objectives of the strategy, namely to liberate 20 million people from poverty and social exclusion.⁷⁶ In order to realise the national implementation the *Österreichische Plattform gegen Armut und soziale Ausgrenzung* (Austrian Platform against Poverty and Social Exclusion) was established by the Austrian Ministry of Labour, Social Affairs and Consumer Protection that involves all stakeholders in the development and implementation of poverty reduction and integration and seeks to provide a high degree of participation.⁷⁷ Represented in the Austrian

⁷³ Die Armutskonferenz, *Mindestsicherung. Österreichweiter Aktionstag "1 Jahr Mindestsicherung" am 15. September* <http://www.armutskonferenz.at/index.php?option=com_content&task=view&id=304> accessed 10 April 2015 [German].

⁷⁴ European Committee of Social Rights, *Conclusions 2013 (Austrie) Articles 3, 11, 12, 13 and 14 of the 1961 Charter* (2014) 35.

⁷⁵ See 'Acceptance of Provisions of the Revised European Social Charter' <http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ProvisionTableRevMarch2013Rev_en.pdf> accessed 3 February 2015.

⁷⁶ European Commission, *European platform against poverty and social exclusion* <<http://ec.europa.eu/social/main.jsp?catId=961&langId=en>> accessed 15 April 2015.

⁷⁷ Federal Ministry of Labour, Social Affairs and Consumer Protection, *National Social Report 2014* (May 2015) 4.

platform are, among others: social partners, ministries, provinces, municipalities, cities, the Senior Citizens' Union, the Senior Council, the National Youth Council, NGOs and representatives of civil society, individuals affected by poverty and exclusion, Statistik Austria, as well as representatives of Roma organisations.⁷⁸ In dialogue with these governmental and nongovernmental stakeholders, the Ministry of Social Affairs has developed national social inclusion indicators in the context of *Die Armutsplattform* (the Poverty Platform)(see 3.2).⁷⁹

4.1. Employment

Measures by the Austrian government in order to combat or prevent poverty and social exclusion in Austria are traditionally focusing on (re-)integration into the labour market and aim at combating in-work poverty through active labour market policies.⁸⁰

The Austrian labour market policy programmes are focusing on better employment and training opportunities and to facilitate consequently social stabilisation. The *Arbeitsmarktservice* (AMS) (Public Employment Service), in cooperation with external support agencies, are providing targeted advisory services in order to support risk groups for poverty and social exclusion. These measures benefit mainly women, youth, migrants and people with health problems. To support the re-integration of disadvantaged groups into the labour market and to empower individual qualification measures are carried out. In many cases, specific professional knowledge and skills are taught, but these trainings can also lead to a nationally recognised educational or vocational degree. In 2012, a qualification bonus as a financial support was installed and paid to individuals who participate in longer training and education of the AMS. In addition to the training stimulus, this measure also has a positive on the social coverage. This bonus system was replaced in 2013 by the *Schulungsarbeitslosengeld* (training unemployment benefits).⁸¹

⁷⁸ Federal Ministry of Labour, *Austrian Platform against Poverty and Social Exclusion* [Österreichische Plattform gegen Armut und soziale Ausgrenzung] <http://www.sozialministerium.at/site/Soziales/EU_Internationales/Die_gemeinsame_Strategie_fuer_Sozialschutz_und_Soziale_Eingliederung/Oesterreichische_Plattform_gegen_Armut_und_soziale_Ausgrenzung> accessed 16 April 2015 [German].

⁷⁹ Federal Ministry of Labour, Social Affairs and Consumer Protection, *National Social Report 2014* (May 2015) 6.

⁸⁰ European Commission, *Social Europe - Current challenges and the way forward. Annual Report of the Social Protection Committee 2012* (2013) 333.

⁸¹ Federal Ministry of Labour, Social Affairs and Consumer Protection, *National Social Report 2012* (August 2012) 10-11.

Although the female employment rate in Austria is relatively high compared to the EU average, the situation of women in the labour market is largely determined by a high concentration of low-wage jobs and part-time employment.⁸² In order to foster female labour market participation and to lower labour market segregation, Austria has set several measures including the extension of child care facilities (the Federal Government has made available EUR 55 million of funding (plus EUR 15 million) for the years 2011 to 2014, particularly for the development of care facilities for under-3-year-olds, for the promotion of childminders services and for the extension of the opening times of public child care facilities), the implementation of a national action plan for gender equality in the labour market and has imposed the obligation for companies to draw staff income reports.⁸³ Furthermore, in order to attract more girls' and young women's interest to start careers in non-traditional occupations and to break down career barriers in these sectors, Austria has set specific measures such as the 'Girls's Day' in the federal public service and the campaigns *Frauen in Handwerk und Technik* (Women in Technology) and *Finde deinen Weg* (Find your Way).⁸⁴

To increase the labour market participation and (re-)integration of older workers Austria has further implemented specific measures, in particular 'fit2work'⁸⁵ and 'Health Road', two public consultation and information services regarding health at work, as well as the enforcement of the rehabilitation rather than pension principle.⁸⁶

4.2. Housing

The latest available data from 2012 show that Austria has invested EUR 1.5 billion in the risk area housing and social exclusion. These are mostly investments in socially subsidised housing.⁸⁷ To make housing for low-income individuals affordable, the existing instrument of incentives are used extensively and improved. In the area of homelessness, a broad network of assistance was developed in close co-operation between authorities and debt counselling service providers. This

⁸² Federal Ministry of Labour, Social Affairs and Consumer Protection, *Strategic Social Reporting Austria* (2013) 8.

⁸³ Austrian Institute of Economic Research, *Monitoring of Austria's Efforts Within the Europe 2020 Strategy - Update 2013-14* (June 2014) 39.

⁸⁴ Federal Ministry of Labour, Social Affairs and Consumer Protection, *National Social Report 2014* (May 2015) 10.

⁸⁵ Fit2Work <<http://www.fit2work.at/home/>> accessed 23 April 2015 [German].

⁸⁶ Austrian Institute of Economic Research, *Monitoring of Austria's Efforts Within the Europe 2020 Strategy - Update 2013-14* (June 2014) 37-38.

⁸⁷ Federal Ministry of Labour, Social Affairs and Consumer Protection, *National Social Report 2014* (May 2015) 8.

form of prevention of eviction has been continuously expanded in recent years and is a key factor in the sharp decline in completed evictions.⁸⁸ A major player on the national and EU level as well as a special interest group of local associations is the *Bundesarbeitsgemeinschaft Wohnungslosenhilfe* (Federal Working Committee of the Assistance to the Homeless). The purpose of this Working Committee is to ensure a permanent dialogue between local associations, government institutions, European and international initiatives on the topic of housing and social exclusion.⁸⁹

In 2010 and 2011, Austria set measures against energy poverty by amending the *Elektrizitätswirtschafts- und –organisationsgesetz 2010* (Electricity Industry and Organisation Act 2010) and the *Gaswirtschaftsgesetz 2011* (Natural Gas Act of 2011) (in force since 2013). Under the new provision, the energy providers are obliged to provide consumers with basic services until the time a specific amount of outstanding payments has been reached. Further amendments regulate that in order to assert its claims in court energy providers are bound to remind consumers of their payment obligations twice.⁹⁰

4.3. Training

Young persons, as well as persons with migration background and low skills, are more sensitive to economic developments than other groups. During economic downturns less new jobs become available which in turn makes it more difficult to enter the labour market or to find new employment when unemployed. Therefore, Austria reacted by introducing an *Ausbildungsgarantie* (Training Guarantee) for young people and supra-company apprenticeship training.⁹¹ Further improvements are the implementations of ‘youth coaching’⁹² (see 5.1.1.2.) and measures that allow for temporary reductions in working time for educational purposes (*Bildungsteilzeit*). These measures increase the attractiveness to participate in education activities, because they allow workers to keep their employment during their education.⁹³

⁸⁸ Federal Ministry of Labour, Social Affairs and Consumer Protection, *Strategic Social Reporting Austria* (2013) 10.

⁸⁹ Bundesarbeitsgemeinschaft Wohnungslosenhilfe <<http://www.bawo.at/>> accessed 20 April 2015 [German].

⁹⁰ Federal Ministry of Labour, Social Affairs and Consumer Protection, *National Social Report 2014* (May 2015) 9-10.

⁹¹ *ibid* 21.

⁹² Federal Ministry of Labour, Social Affairs and Consumer Protection, *Strategic Social Reporting Austria* (2013) 10.

⁹³ Austrian Institute of Economic Research, *Monitoring of Austria's Efforts Within the Europe 2020 Strategy- Update 2013-14* (June 2014) 39-41.

4.4. Education

Mastering a country's language is a precondition for rapid integration, better educational achievements and greater opportunities in the labour market. Austria has set two measures for children who do not speak the instruction language German: As a first measure the 'early language training' (*Frühe Sprachförderung*) has been introduced in kindergarten. The 'early language training' initiative is jointly implemented by the cooperation of the federal government (Ministry of Education, Ministry of Interior, Ministry of Social Affairs), provinces, municipalities and private institutions. Students enrolling are brought forward so that the head teachers can carry out a language proficiency assessment of the children a year before starting school.⁹⁴ Thus, an early intervention is ensured in kindergarten. And secondly, a specific language training has been enforced that targets extraordinary as well as ordinary pupils whose first language is not German (up to six years in schooling in Austria), regardless of their citizenship.⁹⁵

4.5. Social Assistance

Austria is providing an effective social assistance in the context of implementing of the means-tested guaranteed minimum income (BMS) (see 3.1) that supports those people who can no longer pay for their livelihoods on their own. The means-tested minimum income is paid out twelve times a year and is in 2015 for single people or single parents EUR 827.82 and for couples EUR 1,241.74.⁹⁶

4.6. Medical Assistance

The Austrian system has an organised, compulsory health insurance. Since 2010, recipients of means-tested minimum income (see 3.1.1.) without health insurance coverage are now involved in the statutory health insurance. The people involved obtain the same access to health insurance benefits as the other compulsorily insured. Discriminatory social welfare bills are a thing of the

⁹⁴ Federal Ministry of Labour, Social Affairs and Consumer Protection, *National Social Report 2014* (May 2015) 11.

⁹⁵ Republic of Austria, *Ergänzungsbericht 2007 zum Österreichischen Bericht über Strategien für Sozialschutz und soziale Eingliederung 2006-2008* (September 2007) 5 [German].

⁹⁶ „Allgemeines zur bedarfsorientierten Mindestsicherung“ <<https://www.help.gv.at/Portal.Node/hlpd/public/content/169/Seite.1693914.html>> accessed 12 April 2015 [German].

past.⁹⁷ Thus about 99% of the Austrian population are covered by statutory health insurance. A sickness insurance fund package was adopted in 2011 to ensure stable finances. Measures of containing drug costs have shown first positive results.⁹⁸ Despite the current financial crisis, Austria has managed to maintain the high level of the health care, to avoid restrictions and to receive the low-threshold access to the population.⁹⁹

While the development in the EU in general has no tendency in the desired direction, the Austrian Europe 2020 goal to reduce the number of poverty or exclusion vulnerable by 235,000¹⁰⁰ people has been half achieved. 1,572,000 people in Austria are at risk of poverty or exclusion in 2013, about 127,000 persons less than of 2008. This ratio has decreased in Austria from 20.6% (in 2008) to 18.8% (in 2013).¹⁰¹

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

5.1.1.1. Education

In Austria, compulsory schooling starts on the first of September following the child's sixth birthday, and lasts nine school years.¹⁰² Attending state schools is free of charge.¹⁰³ Since 1993, it

⁹⁷ Federal Ministry of Labour, Social Affairs and Consumer Protection, *National Social Report 2012* (August 2012) 19.

⁹⁸ European Commission, *Social Europe - Current challenges and the way forward. Annual Report of the Social Protection Committee 2012* (2013) 334.

⁹⁹ Federal Ministry of Labour, Social Affairs and Consumer Protection, *National Social Report 2012* (August 2012) 19.

¹⁰⁰ Austrian Institute of Economic Research, *Monitoring of Austria's Efforts Within the Europe 2020 Strategy - Update 2013-14* (June 2014) 45.

¹⁰¹ Statistik Austria, 'Zahl der Armut- oder Ausgrenzungsgefährdeten in Österreich seit 2008 gesunken' <http://www.statistik.at/web_de/presse/079201> accessed 12 April 2015 [German].

¹⁰² Sections 1 to 3 of the Compulsory Schooling Act 1985 [Schulpflichtgesetz].

¹⁰³ School Organisation Act Section 4 [Schulorganisationsgesetz].

is law that primary schools have the task of encouraging the inclusion of children with disabilities.¹⁰⁴ Three years later, in 1996, inclusion was made legally binding for all lower secondary schools as well, which cover the 5th to the 8th school level.¹⁰⁵ Since 2002, children with disabilities have the possibility to complete compulsory schooling, i.e. the 9th school level, in a pre-vocational school.¹⁰⁶ Thus, children with disabilities have the right to be taught in the same class as children without disabilities throughout all nine compulsory school levels.

As soon as it is noticed that a child is unable, as a result of physical or psychological disabilities, to follow instructions without special pedagogical needs assistance at a primary or lower secondary school, a request for determining special pedagogical needs can be brought to the *Landesschulrat* (Country School Council). This request can be made by the parents, the legal guardian, the school or ex officio.¹⁰⁷ After the special pedagogical needs of a child have been ascertained, the child's parents have to decide on the type of school to be attended. They can choose independently from the type and scale of the disability of their child between inclusive education or a special needs school.¹⁰⁸ However, inclusive education is not possible at every school, i.e., primary schools, lower secondary schools and pre-vocational schools. Children with disabilities can only attend schools which fulfil special pedagogical needs and are adequately near to their homes (or if the children can be sheltered in a dormitory for pupils nearby).¹⁰⁹ The School Organising Act, which is a federal act, provides for a second teacher, who is appropriately qualified to teach children with disabilities, in class. Also, the maximum number of pupils in one school class can be reduced if a class includes disabled children. As the legislative powers in the field of compulsory schooling are split between the *Bund* and the *Länder*, the School Organising Act is the framework legislation whereas the *Länder* are responsible for the enacting legislation, which results to small regional differences.¹¹⁰

As mentioned before, children with disabilities can only attend an ordinary school if the distance to the school is reasonable. However, if there is no appropriate school nearby, the Country

¹⁰⁴ School Organisation Act Section 9(2) (15th amendment) [Schulorganisationsgesetz].

¹⁰⁵ *ibid* 17th amendment.

¹⁰⁶ *ibid* Section 28 para 4.

¹⁰⁷ Section 8 Compulsory Schooling Act 1986 [Schulpflichtgesetz].

¹⁰⁸ *ibid* Section 8a.

¹⁰⁹ *ibid*.

¹¹⁰ Article 14(3)(b) of the Federal Constitutional Law [Bundesverfassungsgesetz].

School Council is obliged to take measures to enable the child to attend the desired school type.¹¹¹

Although it is seen as a violation of the UN Convention on the Rights of Persons with Disabilities, there are still special needs school in Austria.¹¹² They are either separate educational institutions, or organised as a special school class in a mainstream school.¹¹³ In 2014, of 4,576 general compulsory schools in total, there were 307 special needs school throughout Austria.¹¹⁴

In the 2012/2013 school year, 39% of all children with special education needs attended a special needs school. However, there are big regional differences. While in Tyrol the quota was 53%, in Styria only 15% attended a special needs school. The Federal Ministry of Education argues that, as already mentioned, every child has the right to be taught in mainstream schools but has announced that they are trying to abolish special needs school until 2020.¹¹⁵

There are nine different branches of special needs schools. Each one focuses on a different type of special needs, e.g. on blind or deaf children.¹¹⁶ In special needs schools, the number of pupils in one class is lower than in mainstream schools. Depending on the severity of the disabilities, the maximum number lies between eight and fifteen children per class.¹¹⁷ The aim of special needs schools is to provide children with an education corresponding to primary schools and lower secondary schools. Special schools usually have their own curricula – they are adapted versions from mainstream schools – but if a child can follow the curriculum of a mainstream school in one or more subjects, the original curriculum has to be applied.¹¹⁸ Special needs schools cover nine school years, whereof the last year covers a pre-vocational education.¹¹⁹

¹¹¹ Section 8a para 3 of the Compulsory Schooling Act 1985 [Schulpflichtgesetz].

¹¹² Article 24 of the Convention on the Rights of Persons with Disabilities .

¹¹³ Section 25 para 1 of the School Organising Act [Schulorganisationsgesetz].

¹¹⁴ Statistik Austria, *Schulen im Schuljahr 2013/14 nach Schultypen* (9 December 2014) [German].

¹¹⁵ 'Sonderschule soll bis 2020 zur Ausnahme werden' (Der Standard, 7 August 2014) <<http://derstandard.at/2000004102169/Sonderschule-soll-bis-2020-zur-Ausnahme-werden>> accessed 24 February 2015 [German].

¹¹⁶ Section 25 para 2 of the School Organising Act [Schulorganisationsgesetz].

¹¹⁷ *ibid* Section 27.

¹¹⁸ *ibid* Section 23.

¹¹⁹ *ibid* Section 24 para 1.

5.1.1.2. *Guidance*

Since 2013, there has been a free *Jugendcoaching* (Youth Coaching Program) which supports youth who are about to complete compulsory schooling. This programme is aimed particularly at youth from difficult backgrounds as well as youth with disabilities. The intention is to help them decide what goal to pursue after completing compulsory schooling and in this way improve their education and vocational opportunities through personal guidance.¹²⁰

For youth who have already completed compulsory schooling but are not yet ready to start vocational training or a higher education due to a backlog demand regarding their social and professional competencies, there is a free service called *Produktionsschule* (Production School). The aim of this service is to prepare youth for a vocational training or higher education corresponding to their limited opportunities due to their disabilities.¹²¹

5.1.1.3. *Vocational training*

Youth with disabilities who cannot complete a regular vocational training have the opportunity to complete an integrated vocational training (*integrative Berufsausbildung*). There are two ways of integrated vocational training. Either a regular vocational training can be completed with an extension of the training period – usually by one year and only in certain cases by two years,¹²² or the vocational training is limited to certain parts of a regular vocational training. This way it is possible to obtain a labour-market relevant partial qualification.¹²³ Youth who complete an apprenticeship with prolonged training period have to attend a vocational school – usually one or two days per week - during their apprenticeship, like every apprentice in Austria is obliged to do.¹²⁴ Regarding the partial qualification, the obligatory attendance of a vocational school is restricted to the individual training goal.¹²⁵ Either way, youth who are involved in an integrated vocational training, receive personal assistance throughout the whole training (*Berufsausbildungsassistenz*).¹²⁶ Furthermore, they are paid in accordance with the collective

¹²⁰ Jugendcoaching <<http://www.neba.at/jugendcoaching/>> accessed 3 March 2015 [German].

¹²¹ Regulation on NEBA – offers [Richtlinie NEBA Angebote].

¹²² Section 8b para 1 of the Vocational Training Act [Berufsausbildungsgesetz].

¹²³ *ibid* Section 8b para 2.

¹²⁴ Section 20 para 1 no 2 of the Compulsory Schooling Act 1985 [Schulpflichtgesetz].

¹²⁵ *ibid* Section 20 para 2.

¹²⁶ *ibid* Section 8b para 6.

bargaining agreement if they complete the training in a company. If it is not possible to find an apprenticeship in a company, youth can complete the training in the educational institution of the AMS where they receive a monthly training compensation.¹²⁷

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

Austria has not accepted the provisions of Article 15(2) of the Revised European Social Charter.¹²⁸ Yet, it has indeed taken such measures.

In Austria, employers are obliged to hire 'preferred' people with disabilities, i.e. persons with a degree of disability of at least 50%, if their company has twenty-five or more workplaces.¹²⁹ In 2013, only around 21.56%¹³⁰ of those companies employed people with disabilities as they can pay a compensation, which amounts to a maximum of EUR 336 per person who should have been employed per month, instead.¹³¹ However, in total, the employment obligation was fulfilled to 64% in 2013.¹³² The compensation payments are earmarked for subsidies for persons with disabilities and their employers.¹³³ In 2013, the total amount of compensation payments was EUR 138.44 million.¹³⁴ Another important principle regarding persons with disabilities, is the protection against discrimination, which is embedded in the constitution¹³⁵ and in the Disabled Employment Act.¹³⁶ While the former is formulated in a very general matter, the latter provides

¹²⁷ <http://www.ams.at/_docs/900_integrative_berufsausbildung.pdf> accessed 9 April 2015 [German].

¹²⁸ <http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ProvisionTableRevMarch2015_en.pdf> accessed 9 April 2015.

¹²⁹ Section 1 para 1 of the Disabled Employment Act [Behinderteneinstellungsgesetz].

¹³⁰ Federal Social Welfare Office, *annual report 2013* [German].

¹³¹ Section 9 para 1 and 2 of the Disabled Employment Act [Behinderteneinstellungsgesetz].

¹³² Federal Ministry of Social Affairs and Consumer Protection, *Sozialbericht 2013-2014* (1st edition, 2014) [German].

¹³³ Section 10a of the Disabled Employment Act.

¹³⁴ Federal Ministry of Social Affairs and Consumer Protection, *Sozialbericht 2013-2014* (1st edition, 2014) [German].

¹³⁵ Article 7 of the Federal Constitutional Law [Bundesverfassungsgesetz].

¹³⁶ Section 7b of the Disabled Employment Act [Behinderteneinstellungsgesetz].

that employees with disabilities must not be discriminated due to their disability, especially not regarding salary, training, termination etc.¹³⁷

Matters concerning disabled are a cross-sectional discipline in Austria, meaning that the legislative power is split between the *Bund* (the Federal State) and the *Länder*.¹³⁸ Therefore there are several authorities that grant subsidies to disabled or employers of disabled persons. The most important ones are the *Sozialministeriumservice* (Federal Social Welfare Office), which is a department of the Federal Ministry of Social Affairs and Consumer Protection, the Public Employment Service and the departments of the *Länder*.¹³⁹

Mainly financed through the compensation payments - in 2012, around two thirds of subsidies granted by the Federal Social Welfare Office – a lot of them in cooperation with the Public Employment Service and the *Länder* - were financed through the compensation payments.¹⁴⁰ The subsidies of the Federal Social Welfare Office are divided into individual funding and project funding. The individual funding consists of financial supports for various matters concerning the employment of disabled. Among them, there are some important subsidies for employers of disabled, which shall be further explained below.

As already mentioned, employees with disabilities must not be paid less due to their disability.¹⁴¹ Therefore, to hire and maintain in employment persons with disabilities, employers can receive wage subsidies, which consist of long-term subsidies and short-term subsidies.¹⁴² The long-term subsidies (*Entgeltbeihilfe*) are to compensate the decline in their working capacity due to disabled employees and are granted on a monthly basis with the maximum amount being EUR 700 per month.¹⁴³ The short-term subsidies (*Arbeitsplatzsicherungsbeihilfe*), are to maintain persons with disabilities in employment, if the workplace is in acute danger. It is granted for a maximum of three years with the maximum amount being EUR 700 per month.¹⁴⁴ To adjust the working

¹³⁷ *ibid.*

¹³⁸ Federal Ministry of Social Affairs and Consumer Protection, *Behindertenbericht 2008* (2009) 42 [German].

¹³⁹ Federal Ministry of Social Affairs and Consumer Protection, *BABE - Österreich 2014-2017* (2013) 1.3.4. [German].

¹⁴⁰ *ibid.* 4.1.

¹⁴¹ Disabled Employment Act Section 7 [Behinderteneinstellungsgesetz].

¹⁴² *ibid.* Section 6 para 2 lit c.

¹⁴³ Regulation on Individual Support for Professional Integration of Persons with Disabilities Section 7.2 [Richtlinie Individualförderungen zur Beruflichen Eingliederung von Menschen mit Behinderung].

¹⁴⁴ *ibid.* Section 7 para 3.

conditions to the needs of disabled and to create new working places for disabled persons, employers can receive subsidies or benefits in kind. Usually the subsidies cover 50% of the costs. If adjustments are in direct relationship to the professional activity of the disabled, it is possible that a full reimbursement of costs is granted.¹⁴⁵ When it comes to external further education and trainings of employees with disabilities, a full reimbursement of costs can be granted if the training is necessary due to the disability. Otherwise up to 50% of the costs can be granted.¹⁴⁶

The project funding consists of personal guidance and support programmes, which are all free of charge and optional. Some of them concern vocational training and youth coaching and have been explained under 5.1.1. An important service for disabled and employers is the *Arbeitsassistentz* (work assistance). This service focuses on helping disabled to find employment, on the retention of the workplaces of disabled and it is central contact for unemployed, employed and for employers of disabled as well.¹⁴⁷ For persons with disabilities who have already found employment, there is a job-coaching programme. This service supports the employees in their initial phase of their employment. Its main purpose is to help disabled to analyse the requirements of their specific work and to help them meeting those requirements. The job coaching programme supports the disabled from day one of their employment and can be made use of a maximum of six months. It also addresses employers of disabled and advises them.¹⁴⁸ Another important service is the personal assistance at the workplace (PAA; *persönliche Assistentz am Arbeitsplatz*). This service aims at enabling persons, who are professionally qualified for a job but would not be able to work because of their physical impairments, to work. The personal assistant supports the disabled in all matters concerning their work. Next to general assistance activities, this includes the way to work and body care during working hours as well. Despite the wording of this service, it is also available for disabled who complete vocational training or attend university.¹⁴⁹

¹⁴⁵ Disabled Employment Act Section 6 para 2 lit b [Behinderteneinstellungsgesetz]; Regulation on Individual Support for Professional Integration of Persons with Disabilities Section 6 [Richtlinie Individualförderungen zur Beruflichen Eingliederung von Menschen mit Behinderung].

¹⁴⁶ Disabled Employment Act Section 6 para 2 lit e [Behinderteneinstellungsgesetz]; Regulation on Individual Support for Professional Integration of Persons with Disabilities Section 8 [Richtlinie Individualförderungen zur Beruflichen Eingliederung von Menschen mit Behinderung].

¹⁴⁷ <<http://www.neba.at/berufsausbildungsassistentz/wie-laeuft-das-ab.html>> accessed 2 April 2015 [German].

¹⁴⁸ <<http://www.neba.at/jobcoaching/warum.html>> accessed 2 April 2015 [German].

¹⁴⁹ Regulation on Personal Assistance at the Workplace (2011) [Richtlinie Persönliche Assistentz am Arbeitsplatz].

The Public Employment Service, which takes a lot of actions to find employment for persons who have difficulties due to their age, lack of experience, etc., supports the integration of persons with disabilities with grants, which are paid to employers for a limited period of time to subsidise new employment relationships. The amount and time period of the grant are set individually with the employers.¹⁵⁰

Where it is not possible to employ disabled in the ordinary working environment due to the level of disablement, persons with disabilities can enter in sheltered employment.¹⁵¹ In Austria there are eight integrated companies - distributed over the whole country - who offer around 1,700 sheltered workplaces in total.¹⁵² Integrated companies are financed by the compensation fund, the Public Employment Service and the *Länder*.¹⁵³

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

5.1.3.1. Austerity measures concerning 5.1.1.

Regarding the budget for special needs schools and inclusive education, one has to refer to 5.2.5, as most of the statistics and data only refer to general compulsory schools, which includes special needs schools and inclusive education. It is noticeable, though, that there are fewer special needs schools today. Currently we have 307, while in 2010 there were 321 special needs schools in Austria.¹⁵⁴ This, however, is not due to austerity measures but the fact that the government wants to enforce inclusive education. In fact, the quota of children with disabilities who attend a regular school has risen from almost 54%¹⁵⁵ in the school year 2008/2009 to 61.3%¹⁵⁶ in the school year 2013/2014.

All in all, it can be said that the measures and services mentioned in 5.1.1. have not been subject to austerity measures, but have been steadily improved and the number of children and youth

¹⁵⁰ '29th National Report on the implementation of the European Social Charter of 1961 submitted by the Government of Austria' (2011) 111.

¹⁵¹ Section 11 para 1 Disabled Employment Act [Behinderteneinstellungsgesetz].

¹⁵² <<http://www.iboe.at>> accessed 5 March 2015 [German].

¹⁵³ Regulation on Integrated Companies 6 [Richtlinie Integrative Betriebe].

¹⁵⁴ Statistik Austria, *Schulstatistik, Öffentliche und private Schulen 1923/24 bis 2013/14* [German].

¹⁵⁵ Statistik Austria, *Bildung in Zahlen 2008/2009* (2010) [German].

¹⁵⁶ Statistik Austria, *Schulstatistik, Schülerinnen und Schüler mit sonderpädagogischem Förderbedarf 2013/14* [German].

who benefited from those services – especially youth coaching and integrated vocational training – has significantly risen since 2008.

Austria has accepted the provisions of Article 15(1) of the Revised European Social Charter and the current legal framework is in conformity with it. It provides for obligatory and free education and the choice of school type to be attended. Regarding guidance, Austria offers a lot of programmes and services to ensure that youth with disabilities can explore their personal potential. Furthermore, the training guarantee, which is further explained under 5.2.3, is also applicable to youth with disabilities. Due to a longer training period or a partial qualification, they have the possibility to complete vocational training despite their impairments.

5.1.3.2. Austerity measures concerning 5.1.2.

As mentioned above, almost two thirds of the subsidies granted by the Federal Social Welfare Office are financed by the compensation fund. This scheme is often criticised, as it would not work if every company would fulfil their obligation to hire disabled persons.¹⁵⁷ On the other hand it ensures that there are adequate financial resources to finance those subsidies. The other third is financed through the European Social Fund and the federal budget funds.¹⁵⁸ Between 2003 and 2010 the funds rose steadily from around EUR 106 million¹⁵⁹ to around EUR 175 million.¹⁶⁰ Although the resources of the compensation fund rose steadily as well, in 2011, the budget for the employment campaign was only around EUR 150 million and in 2012, around EUR 160 million.¹⁶¹ This is especially alarming if one considers the unemployment figures of disabled persons. They rose from around 30,000 unemployed persons with disabilities in 2006 to almost 58,000 in 2014.¹⁶² Nevertheless, the Federal Social Welfare Office is expanding and improving its services steadily. Moreover, between 2008 and 2013 the number of people who made use of those services and benefited from them, grew from 57,000 to 61,075, but especially

¹⁵⁷ Erwin Kargl, *Die Zukunft der Arbeit* (2014) [German].

¹⁵⁸ Federal Ministry of Social Affairs and Consumer Protection, *BABE - Österreich 2014-2017* (2013) 4.1. [German].

¹⁵⁹ Federal Ministry of Social Affairs and Consumer Protection, *Behindertenbericht 2008* (2009) 181 [German].

¹⁶⁰ 29th National Report on the implementation of the European Social Charter of 1961 submitted by the Government of Austria (2011).

¹⁶¹ Federal Ministry of Social Affairs and Consumer Protection, *BABE - Österreich 2014-2017* (2013) 4.1. [German].

¹⁶² <<http://www.arbeitundbehinderung.at/de/arbeitsmarkt/arbeitsmarktdaten/gesamtarbeitslosigkeit.php>> accessed 31 March 2015 [German].

compared to the growth between 2007 and 2008, which was more than 5,000 people in one year, it is not a lot.¹⁶³

Regarding the measures of the Public Employment Service, one has to refer to 5.2.5, as there is no separate data about the budget for services for disabled for the years before the crisis. In 2013, however, the budget for services for disabled was EUR 184 million¹⁶⁴ and therefore higher by EUR 28 million¹⁶⁵ compared to 2012. Generally, it can be said that the number of persons with disabilities who received support from the Public Employment Service has risen in the past years.

5.2. Children and Young Persons (Article 17 ESC)

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

Article 17 of the Basic Law on the General Rights of Citizens guarantees Austrian citizens a right to education on constitutional level. Furthermore, Articles 14 and 14a of the Federal Constitutional law regulate the competence distribution between the federal state and the states (*Länder*) in the education sector. According to these provisions, the Federal State has a general legislative and executive competence, especially regarding the school establishment and maintenance, compulsory school attendance, classes, and supervision of schools. The competences of *Länder* are more focused on issues of public service law and are mainly executive.¹⁶⁶

The education path begins with four years of primary school, starting at the age of six. Kindergarten is not part of the school system in Austria, but children aged three and above can attend a nursery school. In 2009, the Federal State and the *Länder* reached an agreement on the basis of Article 15a of the Federal Constitution Law regarding the introduction of part-time free

¹⁶³ Federal Social Welfare Office, Annual Report 2008; Federal Social Welfare Office annual report 2013.

¹⁶⁴ Public Employment Service, *Annual report* (2013) 27 [German].

¹⁶⁵ Public Employment Service, *Annual report* (2012) 25 [German].

¹⁶⁶ Michael Fresner, *Schulrecht – eine Einführung in die wichtigsten Gesetzen und deren Regelungsinhalt* (2008) 6 [German].

and compulsory early State's support in public kindergarten institution (so-called 15a Agreement). This provides for the Federal State's co-financing of the public kindergartens in the amount of EUR 70 million per year.¹⁶⁷ The *Länder* retained their executive competence and autonomy in the organisation of kindergarten institutions. As a consequence of the new agreement, all *Länder* were obliged to introduce a compulsory kindergarten year, from the child's fifth birthday in the amount of at least 18 hours a week, starting from the school year 2010/2011. For children who have reached the compulsory school age, but are not yet mature enough for school, pre-primary education is provided. Similarly, children with special educational needs can either attend a special needs school or primary school classes run in an integrative scheme.¹⁶⁸

The lower secondary level entails the first differentiation of the school system. Schoolchildren have a choice between the lower secondary school and the lower cycle of secondary academic school (AHS), both of them lasting for the next four years each. In 2008/2009, the project New Secondary School was introduced and is set to become a permanent school form as of 2016.¹⁶⁹

At the upper secondary level there is another a differentiation between a vocational (VET) and a general education pathway. VET programmes are provided within a framework of apprenticeship training in the so-called 'dual education system', at VET schools [BMSs] and VET colleges [BHSs]. Apprenticeship training is provided both at the training enterprise and at the part-time vocational school. VET school generally lasts between three and four years.¹⁷⁰ The model of such a dual education system is considered to be one of the crucial factors for relatively low youth unemployment rate in Austria and it will be set out in details under 5.2.4. General education is provided to students at the upper cycle of secondary academic school.

At the tertiary level it is possible to enrol in a three-year bachelor and then at least a two-year master or diploma studies programme at universities of applied sciences or colleges, or universities, after a successful completion of AHS or BHS as well as fulfilment of the entrance

¹⁶⁷ Article 6 of the 15a Agreement between Federal State and Länder concerning the introduction of a part-time free and compulsory early State's support in public kindergarten institutions.

¹⁶⁸ Institut für Bildungsforschung der Wirtschaft, *The Austrian Education System* (2011) 2.

¹⁶⁹ *ibid* 2.

¹⁷⁰ Arthur Schneeberger and Sabine Nowak, '*Lehrlingsausbildung im Überblick. Strukturdaten, Trends und Perspektiven*' (Institut für Bildungsforschung der Wirtschaft 2010) 57 [German].

qualifications.¹⁷¹ For more details on the Austrian education system in connection with the European Social Charter, consult also Government's 29th report on the implementation of Article 10 of the ESC.

The number of students in classes is regulated in the School Organisation Act and may vary, depending on the school type, on average between 20 to 25 students. At AHS and vocational colleges the upper limit lies at 30.¹⁷² However, the statistic data shows a clear and constant decrease of the number of children in classes, especially in compulsory schools' sector. Since the school year 2006/2007 the number of children in classes with more than 25 pupils at the primary school has dropped from 16.1% to just 1.0%. The average class size dropped from 19.9 to 18.3 children within this period.¹⁷³

Nevertheless, there have been notices that this decreasing trend may change, although no formal legal measures had been taken so far.¹⁷⁴

Further data related to teaching staff and geographical distribution cannot be currently provided due to the fact that the data currently available are not adequately broken down by region in a way that allows an allocation according to the degree of urbanisation. In addition, the fact that teachers may be employed at two levels of education simultaneously (e.g. at lower and upper levels of academic secondary schools) makes the comparison with student numbers difficult. Thus, providing numbers on the ratio between students and teachers is not possible at present.¹⁷⁵

The supervision and monitoring of the school system is regulated in the Federal School Supervision Act and thus falls within the competence of the Federal State, with the exception of the religious education.¹⁷⁶ The responsible federal minister is obliged to set up a quality management system which covers all layers of school administration and all school forms.¹⁷⁷ The

¹⁷¹ Institut für Bildungsforschung der Wirtschaft, *The Austrian Education System* 3.

¹⁷² Articles 8a, 14, 21, 21a, 27, 33, 43, 51 of the School Organisation Act.

¹⁷³ Statistik Austria, *Durchschnittliche Klassengröße sank ab dem Schuljahr 2007/08 vor allem im Pflichtschulbereich*, <http://www.statistik.at/web_de/presse/070301> accessed 8 April 2015 [German].

¹⁷⁴ *Trendumkehr: Größere Gruppen an Schulen* (die Presse, 14 April 2014) <http://diepresse.com/home/bildung/schule/1594049/Trendumkehr_Grossere-Gruppen-an-Schulen> accessed 10 April 2015 [German].

¹⁷⁵ Federal Government of Austria, *Revised European Social Charter 3rd National Report in accordance with Article C of the Revised European Social Charter and Article 21 of the European Social Charter on measures taken to give effect to Articles 7, 8, 16, 17, 19 and 27 for the period 01/01/2010 – 31/12/2013* (October 2014) 89.

¹⁷⁶ Section 1 para 1 of the Federal School Supervision Act.

¹⁷⁷ Section 18 of the Federal School Supervision Act.

regional education boards carries out the quality management at the regional level through the civil servants in charge for school supervision and teachers, who are entrusted with such tasks. There are four types of school inspectors. In 2012, the Article 18 of the Federal School Supervision Act was amended, in order to provide for the legal basis in conjunction with the Article 56 of the School Education Act for the so-called SQA Initiative (School Quality – General Education). The core element of the quality management is the National Quality Framework, which provides for a number of measures and methods for development and securing of school quality, including *inter alia* target agreements, evaluations and reporting systems.¹⁷⁸

As one of the biggest changes within the educational model in Austria is the introduction of the new secondary school as of 2012, by gradually phasing out the secondary school.¹⁷⁹ By the school year 2015/2016, all secondary schools should turn into new secondary schools; this reform is set to be fully implemented by the school year 2018/2019,¹⁸⁰ and the Ministry of Finance (BMF) foresees significant additional means for this.¹⁸¹ One of the main goals with this reform is to avoid the premature separation of children on the educational path.¹⁸² If necessary, two teachers are provided for certain subjects in order to achieve better individual support for students.¹⁸³ However, it should be noted that there is a tendency towards deterioration of the general satisfaction with new secondary school among parents in the period 2010 – 2013,¹⁸⁴ as well as the general decrease of financial means invested in this project.

Since the school year 2006/07, due to the amendment of the School Organisation Act, general compulsory schools and lower grades of secondary academic schools are obliged to inform parents about day-care at schools and to set up an appropriate offer, if at least 15 legal guardians request this.¹⁸⁵ This amendment created a legal entitlement for parents to a day-care service at

¹⁷⁸ Tirol Regional Education Board, 'Änderungen des Bundes-Schulaufsichtsgesetz' <<http://www.lsr-t.at/de/content/%C3%A4nderung-des-bundes-schulaufsichtsgesetzes>> accessed 12 April 2015 [German].

¹⁷⁹ On the basis of the amendment of School Organisation Act by Sections 21a and 21b.

¹⁸⁰ Federal Ministry for Education and Women (BMBWF), *Education in Austria* (2014) 8.

¹⁸¹ Federal Ministry of Finances (BMF), *Strategiebericht zum Bundesfinanzgesetz 2015 - 2018* (April 2014) 24 [German].

¹⁸² Federal Ministry for Education and Women (BMBWF), *Education in Austria* (2014) 6.

¹⁸³ Section 19 para 1 and 1a of School Education Act; Federal Ministry for Education and Women (BMBWF), 'Basisinformation zur iee Mittelschule' <<http://www.neuemittelschule.at/grundlegende-informationen/qualitaet-im-lernen-und-lehren/>> accessed 1 March 2015 [German].

¹⁸⁴ *ibid* 8.

¹⁸⁵ Article 8d of the School Organisation Act.

schools. Statistic shows an expansion of full day-care school forms within all school models in the period between the school year 2007/08 and 2011/2012. Noteworthy is that 84% of grammar schools provide for day-care. This might be due to the fact that the Federal State is responsible for their maintenance and, therefore also responsible for expenses, whereas the local communities bear the costs for general compulsory schools.¹⁸⁶ Monthly costs for day-care school can vary from EUR 25 to EUR 400, depending on the school's principal, mostly due to different charging forms for lunch and duration and forms of day-care. According to the government's plans, every third child should have a place at day-care school until the school year 2018/19 and a further investment of approximately EUR 400 million has been earmarked for further expansion, thereby constituting one of the main educational expenditure of the Federal State.¹⁸⁷

The compulsory schooling in Austria covers all children from age of six, that are permanently (at least six for the duration of one school semester) residing on Austrian territory.¹⁸⁸ Accordingly, mandatory schooling is legally provided also for the asylum-seeking and refugee-children. This corresponds to the EU Directive 2003/9/EG, transposed into national law by the Agreement on Primary Care. This agreement, inter alia, provides for the coverage of school transport and school supply costs for asylum-seeking and refugee children.¹⁸⁹ Yet, many reports and studies show that the asylum-seeking and refugee children have difficulties accessing the education system in practice. In that context, following reasons can be highlighted: insufficient educational offers, lack of transparency, insufficient number of voluntary German courses, high social selectivity as one of the characteristics of the Austrian education system, and very limited possibilities for diploma nostrification.¹⁹⁰ Since the economic crisis, every 10th asylum application in Austria was made by an unaccompanied minor refugee (2014: 1,187).¹⁹¹ The majority of children are aged between 15 and 18 and are therefore no longer subject to

¹⁸⁶ Federal Ministry for Education, Art and Culture, *Nationaler Bildungsbericht Österreich 2012 Band 2 – fokussierte Analysen bildungspolitischer Schwerpunkten* [Bundesinstitut für Bildungsforschung, Innovation & Entwicklung des österreichischen Schulwesens] 283 [German].

¹⁸⁷ Federal Ministry for Education and Women, *Ganztägige Schulformen – Beste Bildung und Freizeit für unsere Kinder 2* [German].

¹⁸⁸ Section 1 para 1 of the Compulsory Schooling Act.

¹⁸⁹ 10th clause of Article 6 para 1 of the Agreement on Primary Care.

¹⁹⁰ Monika Mayrhofer, *Zugang zur Bildung für Asylsuchende und Flüchtlinge aus menschenrechtlicher Perspektive* (Ludwig Boltzmann Institut für Menschenrechte, Schriftenreihe Refugee Protest Camps) 3-4 [German].

¹⁹¹ Federal Ministry for Interior, *Asylstatistik* 13 [German].

compulsory education which (currently) ends with age of 15 in Austria.¹⁹² Generally, the education situation for the aforementioned group of children has not deteriorated significantly due to the economic crisis. However, the NGOs sector has drawn the attention to the lack of care and education offers as well as the lack of German courses, literacy measures or general pedagogical support.¹⁹³

According to the Para 5 of the Article 58 of the Juvenile Court Act, regular schooling and instruction has to be provided to young prisoners in special penal institutions. In other penitentiaries where juvenile offenders are detained due to the enforcement of the prison sentence, instruction and training has to be offered to young inmates as far as possible. In principle, there are different possibilities for education and training during the execution of penalty which vary according to the facilities of the penitentiary and the number of inmates.¹⁹⁴

With regards to Roma and Sinti children, there is no reliable statistical data on their actual number in Austria.¹⁹⁵ Generally, Article 4 of the School Organisation Act states that state schools are "open to all, irrespective of birth, gender, race, status, class, language or beliefs". For about 15 years now, given the importance of completing the education process for the socio-economic integration of Roma, a number of different Roma associations have been offering learning support programmes for Roma in Austria using the government's ethnic community's grants scheme.¹⁹⁶ The major problem that the Roma children are facing when it comes to access to education, is insufficient German language skills, since any pupil, who on account of an insufficient knowledge of German, is unable to fully access what he or she is being taught, is to be classified as having special needs.¹⁹⁷ However, there is an increasing number of the government's initiatives aiming to combat this, not least due to the EU Framework for National Roma Integration Strategies up to 2020.

¹⁹² Section 3 of the Compulsory Schooling Act.

¹⁹³ Mayrhofer, *Zugang zur Bildung für Asylsuchende und Flüchtlinge aus menschenrechtlicher Perspektive* 3 [German].

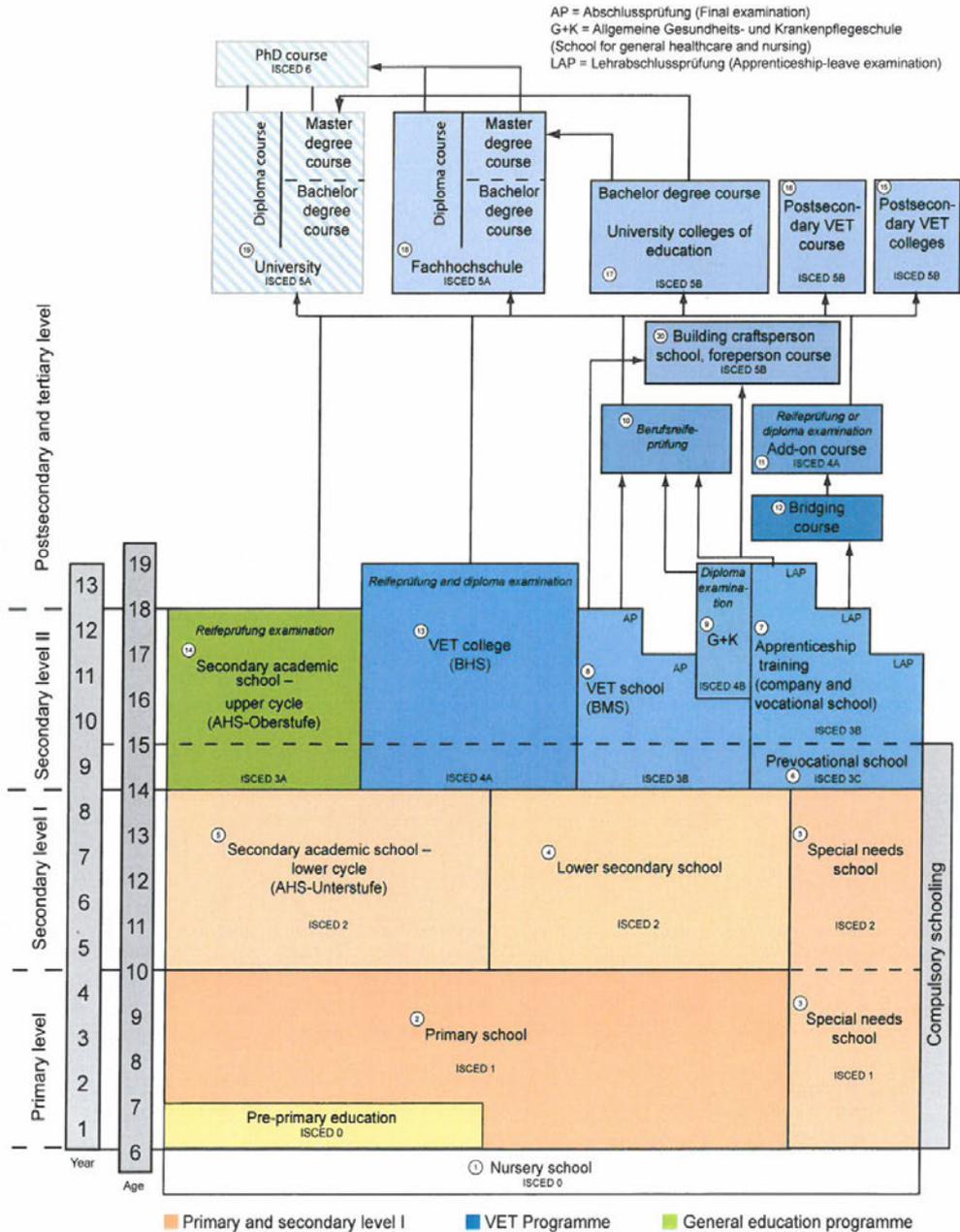
¹⁹⁴ Federal Ministry of Justice, *Strafvollzug in Österreich* 26 [German].

¹⁹⁵ Austrian Federal Chancellery, *Roma in Austria - An EU Framework for National Roma Integration Strategies up to 2020 Political and legal measures* (2011) 7.

¹⁹⁶ *ibid* 14.

¹⁹⁷ Section 4 para 1, 2 and 3 of the School Education Act.

The Austrian education system



Graphic 1. SEQ Graphic * ARABIC 1 - The Austrian Education System;
 Source: Institut für Bildungsforschung der Wirtschaft (IBW), *The Austrian Education System* 2011.

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

Essentially, if parents are not able to exercise their custody rights or if they put at risk their child's well-being, grandparents, foster families and third persons should primarily be taken into consideration as legal guardians.¹⁹⁸ As a last resort, child and youth assistance services may be entrusted with custodial rights and the child may be placed in a children's home. This is especially the case of a minor child found in Austrian national territory, whose parents are unidentified.¹⁹⁹ In 2012, 26,857 minors were provided with parenting support within the family; 4,507 minors were taken care of by foster parents and 6,542 minors were placed in child and youth assistance institutions.²⁰⁰ Public children and youth welfare services are responsible to assess whether foster parents are able to provide supportive care and education to their foster children. In this respect, the mental and physical health, parenting attitude, parenting skills, the age and reliability of foster parents as well as the resilience of the family system have to be taken into account. Foster parents are obliged to participate in special training. For the care and education of their foster children, they receive a lump-sum reimbursement, the amount of which is stipulated by the *Länder*. Both foster parents and socio-pedagogical institutions are subject to supervision by the child and youth assistance services.²⁰¹

In 2010/11, the Austrian government adopted parts of the UN's Convention on the Rights of Children in its constitutional law as Federal Act on Children's Rights. Thereby, children temporarily or definitively deprived of their family's support were granted a fundamental, constitutional right to special protection and State's assistance.²⁰² However, children's right to quality standards in care and housing as enshrined in the Article 3 of the UN's Convention on the Rights of Children was not included in this new constitutional act.

Article 12 (1) of the Austrian Federal Constitutional Act provides for the federal government's competence to pass fundamental laws in the field of child and youth welfare. The

¹⁹⁸ Section 204 of the Austrian Civil Code.

¹⁹⁹ Section 207 of the Austrian Civil Code.

²⁰⁰ Federal Government of Austria, *Revised European Social Charter 3rd National Report in accordance with Article C of the Revised European Social Charter and Article 21 of the European Social Charter on measures taken to give effect to Articles 7, 8, 16, 17, 19 and 27 for the period 01/01/2010 – 31/12/2013* (October 2014) 91.

²⁰¹ Sections 18 – 21 of the Federal Children's and Youth Assistance Act.

²⁰² Section 2 para 2 of the Austrian Act of Children's Rights.

implementation of the laws, therefore, lies within the competence of the *Länder*. In 2013, the Youth Welfare Act was repealed by the Federal Children's and Youth Assistance Act. The law was enacted after a relatively long negotiation process following the critic of the UN's Committee for Children's Rights on the situation in Austria. The Committee recommended especially the harmonisation of the *Länder's* acts and regulation of minimum standards for childcare in accordance with the UN's Convention on the Rights of Children. The Austrian Network for Children's Rights criticised in its expert opinion the government's reports on the implementation of this critics. The divergence between care and support offers in different *Länder*, deficient statistics and lack of financial means, especially for preventive initiatives, has been pointed out as some of the main problems.²⁰³ The main reforms made by the Federal Children's and Youth Assistance Act concern (1) the introduction of the "endangerment clarification"²⁰⁴ and assistance planning²⁰⁵ in accordance with the so-called "four-eyes-principle", (2) clarification of the regulation concerning the notification obligation in case of the assumed endangerment of the child's welfare²⁰⁶, (3) further professionalisation of the experts, (4) more detailed definition and standard regulation in the output range, (5) improvement of the data protection, information obligation and obligation to secrecy.

The Federal State participated financially in 2013 and 2014 with the amount of EUR 3.9 million each for the additional costs in *Länder's* budget caused by the new law. It remains to be seen to what extent will the new law help tackle the existing deficits.

Each *Land* is obliged to establish a Children and Young Persons' Representative (*Kinder- und Jugendanwaltschaft*).²⁰⁷ Their main tasks include support for children, youth and legal guardians in matters concerning children's and youth position and obligations of the legal guardian, assistance with disputes between children and youth and their legal guardians, providing information about children's rights and support institutions to the public, contribution to children's and youth's interests in legal proceedings and researches, cooperation with national and international networks. Furthermore, *Länder's* legislator is obliged to provide the Children and Young Persons'

²⁰³ Netzwerk Kinderrechte Österreich, *Ergänzender Bericht zum 3. und 4. Bericht der Republik Österreich an die Vereinten Nationen gemäß Art. 44 Abs 1b des Übereinkommens über die Rechte des Kindes* (2011) 26-27 [German].

²⁰⁴ Section 22 of the Federal Children's and Youth Assistance Act.

²⁰⁵ Section 23 of the Federal Children's and Youth Assistance Act.

²⁰⁶ Section 37 of the Federal Children's and Youth Assistance Act.

²⁰⁷ Article 35 of Federal Children's and Youth Assistance Act.

Representative with the necessary information, resources and independence, in order to make their help easy and free for children and youth. As the importance of an external person of trust in matters relating to children's and youth welfare have repeatedly been pointed out, the ombudsman for children's rights in Austria was established in Vienna in 2012. As an independent contact person, he is in charge of looking after children who live in socio-pedagogical living groups or City Vienna's subcontracted facilities. The ombudsman is in contact with children on-site and he should intervene in case of any grievances, so that the rights of child concerned can be heard and enforced.²⁰⁸

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

In 2012, the total sum of the public education expenditure in Austria amounted to EUR 17,180.8 million. More than half of the amount in 2012 originated from the Federal State, the rest came from the *Länder* and local communities. This also corresponds with the competence distribution as set of in the Article 14 of the Federal Constitutional Law according to which the Federal State is competent for maintenance of the secondary schools and tertiary sector, whereas the maintenance of institutions at nursery and compulsory schooling level falls under the *Länder's*, or respectively communities' responsibility. The highest share of the Federal State's education expenditure (EUR 3,798.5 million) was spent on the university sector, majority of it on the personnel expenses. The greatest increase in expenditures in the last few years is noted also for the kindergartens, as already depicted under 5.2.1. Likewise, generally the majority of Federal State's education expenditures was given to personnel expenses (61.5%), followed by material costs (23.5%). Material costs include, inter alia, expenditures for school books (EUR 107.1 million), free-of-charge rides for schoolchildren and trainees (EUR 390.9 million) and rental expenses for school buildings (EUR 485.9 million). Transfers to private households such as educational grants, scholarships, student and travel allowances amounted to 4.5% (EUR 773.2 million) of the Federal State's educational expenditures.²⁰⁹

²⁰⁸ Kinder und Jugendanwaltschaften Österreich, *Tagungsband 22-23 November 2012, Salzburger Parkhotel Brauner-Zentrum* (2012) 43 [German].

²⁰⁹ Statistik Austria, *Bildung in Zahlen 2012/2013 – Schlüsselindikatoren und Analysen* (2014) 82 [German].

The highest per capita public expenses (EUR 29,970) relate to special needs schools. In 2012, the private households' expenses for public education amounted to EUR 261.5 million. These expenses refer to payments to the State for certain education services. The highest share of these expenses covers fees for the kindergarten (EUR 120.4 million). Furthermore, private households spent EUR 12.2 million on study fees and EUR 80.5 on boarding school fees, supervision and care fees, most of it for the day-care schools.²¹⁰

According to the Sections 2 and 3 of this Act, compulsory schooling begins on 1 September for all children with permanent residence in Austria after the child's sixth birthday and lasts for nine school years. Local communities are obliged to keep a register of all children subject to compulsory schooling and resident in that area.²¹¹ Sections 24 of the Compulsory Schooling Act regulates the general responsibility for fulfilment of the compulsory schooling education and obliges parents and other legal guardians to ensure that their children complete the compulsory schooling and, in particular, that they attend school regularly, comply with the school's code of conduct and/or take exams at their school as required. Students of legal age, who are subject to compulsory schooling at the vocational schools, have to meet these duties themselves.²¹²

Parents or guardians of a child subject to a general compulsory education are obliged to provide the means for their child to be able to duly attend school, especially the required school books, learning and working materials, unless these means are provided for by entities established under public law. Furthermore, they are obliged to make notifications and provide information required for keeping the register of all children subject to compulsory schooling by the local communities.²¹³ Since 1972, the Austrian government provides free learning material as a social benefit in the context of the School Textbook Initiative. This benefit is financed by the *Familienlastenausgleichsfond* (Family Burden Equalisation Fund). According to the Section 31 of the Family Burden Equalisation Act all children attending lower or upper secondary public, or a private school with public status in Austria as orderly students, are entitled to free school books

²¹⁰ *ibid* 84.

²¹¹ Article 16 Compulsory Schooling Act.

²¹² Federal Government of Austria, *Revised European Social Charter 3rd National Report in accordance with Article C of the Revised European Social Charter and Article 21 of the European Social Charter on measures taken to give effect to Articles 7, 8, 16, 17, 19 and 27 for the period 01/01/2010 – 31/12/2013* (October 2014) 108.

²¹³ Section 2 of Article 24 of the Compulsory Schooling Act.

necessary for the classes to the extent of a certain maximum level regulated by the responsible Ministries.

In 2011/2012, the percentage of young persons who had not completed compulsory schooling was 3.9%.²¹⁴ On 1 September 2013, a five-step plan for preventing violations of compulsory education laws entered into force as part of the package of measures against truancy. The new Section 25 of Compulsory Schooling Act qualifies reaching the threshold of five days of absenteeism within one semester without providing excuses (a) and/or thirty hours of absenteeism within one semester without providing excuses (b) and/or three successive days of absenteeism without providing excuses (c) as 'violations of compulsory education laws'. Para 2 of this article sets forth measures to be introduced at all schools at the beginning of the school year such as an agreement on communication code and a code of conduct between teacher and the pupils of the class. In case of violations, a gradual implementation plan of different measures aimed at avoiding further violations is regulated in the subsequent paragraphs of the relevant Sections. The maximum penalty for guardians for violation of compulsory education doubled with the newest amendment of Compulsory Schooling Act and amounts to EUR 440.²¹⁵ Recently, the implementation of the compulsory education and training until the age of 18 (*Ausbildungspflicht 18*) has been incorporated in the government's programme. This is considered for an important youth employment measure (see more under 5.2.4) and should encourage an adequate supply of low-threshold offers, restriction of youth unskilled work, complemented by an administrative penalty as of school year 2016/17.²¹⁶

In a European comparison, Austria has a relatively low percentage of early school leavers (ESL) with a share of 7.9% (EU-27: 12.9%) of ESL in 2012.²¹⁷ Early school leavers are defined in the Europe2020 Strategy as those who exit the educational system without completing upper secondary education. Austria also fulfilled its goal formulated in the Europe2020 Strategy not to

²¹⁴ Mario Steiner, *Abbruch und Schulversagen im österreichischen Bildungssystem* (Institute for Advanced Studies Vienna on behalf of Chamber of Workers and Employees, February 2014) 8 [German].

²¹⁵ Federal Government of Austria, *Revised European Social Charter 3rd National Report in accordance with Article C of the Revised European Social Charter and Article 21 of the European Social Charter on measures taken to give effect to Articles 7, 8, 16, 17, 19 and 27 for the period 01/01/2010 – 31/12/2013* (October 2014) 109.

²¹⁶ Federal Ministry of Labour, Social Affairs and Consumer Protection, *Schwerpunkt Jugendbeschäftigung* <http://www.sozialministerium.at/site/Arbeit/Arbeitsmarkt/Arbeitsmarktpolitik_in_Oesterreich/Schwerpunkt_Jugendbeschaeftigung> accessed 12 April 2014 [German].

²¹⁷ Steiner, *Abbruch und Schulversagen im österreichischen Bildungssystem* 14 [German].

outstrip the 10%. However, one should not overlook the 'qualitative' aspects of these statistics. Accordingly, youth with immigration background, youth from families with underprivileged educational backgrounds or children whose parents are unemployed are affected far more than average by early school leaving.

Austrian labour market policy foresees several measures and programmes aiming in particular to empower young people to complete their education and training. These measures go in hand with the measures taken to combat the youth unemployment (see 5.2.4). In 2012, training guarantee was established in the course of which each 19-year-old who wants to undergo apprenticeship training, is offered an apprenticeship place either at a company or within the scope of apprenticeship training above company level provided by the Public Employment Service (AMS). In the new government programme, the introduction of mandatory education until 18 is also intended.²¹⁸ Furthermore, in 2013 youth coaching was introduced as an early intervention and re-integration measure. Students attending their ninth year of school as well as young persons with a NEET background are offered counselling regarding education and are encouraged to continue school or to undergo an apprenticeship training. Youth coaching is now cooperating increasingly with prisons to support and prepare young delinquents to re-enter the education system²¹⁹ Another important measure encompasses production schools for disadvantaged young people with learning and motivation problems who could not yet be reached by existing schemes. At the moment there are 24 production schools and approximately EUR 11 million has been earmarked for the pilot phase in 2014.

Sections 59-71 of the University Act 2002 regulate the admission procedure to universities in Austria. It should be noted that due to capacity restrictions and budgetary cuttings more and more faculties are introducing obligatory admissions exams. Since their introduction in 2000/01 study fees amount to EUR 363.63 per semester. In addition, there is a mandatory student union fee of EUR 18.70 per semester. Since 2004, the study fees are not part of the general State's budget anymore, but go directly to the respective university.²²⁰ The majority of regular students

²¹⁸ Federal Ministry for Labour, Social Affairs and Consumer Protection, *Youth Guarantee Implementation Plan Austria* 3.

²¹⁹ *ibid* 4.

²²⁰ 'Chronologie: Die Geschichte der Studiengebühren' (Die Presse, 14 December 2010), <http://diepresse.com/home/bildung/universitaet/618306/Chronologie_Die-Geschichte-der-Studiengebuehr> accessed 10 April 2015 [German].

coming from Austria or EU member states, which did not exceed their minimum study period, are exempted from paying this amount. There is also possibility to be exempted from the payment due to reasons such as pregnancy, long-term illness, employment, military service, studying abroad programs, and child care.²²¹ Hence, subject to the study fee are mainly students who have exceeded their minimum study period and third-country nationals. Certain third-country nationals are even subject to double study fees amount of EUR 726.72 per semester.²²² In 2012, several universities autonomously regulated the introduction of study fees in their statutes, which was however deemed unconstitutional on the basis of inconsistency with the principle of equal treatment. These universities were obliged to refund the already paid amounts to some 15% of the students affected by this.²²³

The Federal Student Grants Act (StudFG) provides for several possibilities of financial support for Austrian students as well as the EU students, refugees and stateless persons during their higher education. Third world citizens are included only if their parents are subject to income tax in Austria.²²⁴ Measures provided for in the Federal Student Grants Act include inter alia study grants, study and travel allowances, financial support for studies abroad, merit-based scholarships, etc.²²⁵ Study grants are given on the basis of conditions such as social need, favourable academic accomplishment, compliance with the duration of studies as envisaged in the relevant Act and age. These factors, as well as the parents' financial situation, are also considered for calculation of the supportive amount itself, so that the average study grant may vary from EUR 475 to EUR 679 per month, whereas the amount is reduced by parents' (or in case of marriage or civil partnership – by the partner's) reasonably acceptable maintenance payments. The amount also depends on the maximum contribution basis, which differs every year. In addition, family allowances and tax credits for children are reduced from the payable amount.²²⁶

²²¹ Section 91 and 92 of the University Act 2002.

²²² Students not subject to Section 91 of the University Act 2002 holding a residence permit in accordance with Section 64 of the Settlement and Residence Act.

²²³ *'Autonome Studiengebühren nicht verfassungskonform, Rückzahlung steht an'* (Der Standard, 26 July 2013) <<http://derstandard.at/1373513755673/Autonome-Studiengebuehren-nicht-verfassungskonform---Rueckzahlung-steht-bevor>> accessed 12 April 2015 [German].

²²⁴ Section 2 of the Federal Students Grants Act (StudFG).

²²⁵ Section 1 of the Federal Students Grants Act (StudFG).

²²⁶ Sections 26 to 32 of the Federal Students Grants Act (StudFG).

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue

In 2014, the general unemployment rate in Austria was 5.0% (244,900 unemployed persons), based on the international ILO unemployment concept.²²⁷ According to the ILO concept, a person is considered as employed if he or she works at least one hour within the reference week or did not work due to the vacation, sickness, etc., although he or she normally works. Furthermore, ILO concept includes within the category of employed persons, persons with a valid employment contract who obtain child benefits or parental leave allowances. Consequently, a person is considered as unemployed, if he/she is not employed, is actively seeking for employment, and can start working on short notice. The national concept used by Public Employment Service (AMS) differs slightly from this. The general unemployment rate published by Public Employment Service (AMS) is based on persons earmarked as unemployed at the unemployment bureau as well as the non-self-employed workers registered at main association of social insurance carriers (HV). In that way, Public Employment Service registered 393,674 unemployed persons, therefore more than the number calculated on the basis of the ILO concept.²²⁸ In comparison to the previous year, an increase of 1% can be noticed within the ILO framework. Furthermore, 400,600 non-working persons aged between 15 and 64 declared themselves as willing to work in principle, however they were not currently at disposal for taking up a job, i.e. were not currently looking for one.²²⁹

The following table depicts the static data in Austria concerning the general unemployment in the international, i.e. EU comparison. For the time period of 2000 – 2015 Austria has one of the lowest general unemployment rate of average 4.5% in the EU.

²²⁷ Austrian Chamber of Commerce, *Arbeitslosenquoten* (Februar 2015) 1 [German].

²²⁸ Nadine Grieger, *Die Arbeitsmarktlage Ende Dezember 2014* (Public Employment Service, AMS) 7 [German].

²²⁹ Statistik Austria, *Arbeitslose (internationale und nationale Definition), Nicht-Erwerbspersonen mit Arbeitswunsch* <http://www.statistik.at/web_de/statistiken/arbeitsmarkt/arbeitslose_arbeitssuchende/> accessed 8 April 2015 [German].

	Avg 00 -05	Avg 05 -10	2000	2005	2010	2011	2012	2013	2014	2015	2016
Austria	4.3	4.6	3.6	5.2	4.4	4.2	4.3	4.9	5.0	5.2	5.0
Euro zone (19)	8.8	8.7	8.8	9.1	10.2	10.1	11.3	11.9	11.6	11.1	10.6
EU (15)	7.9	8.1	7.8	8.2	9.5	9.6	10.6	11.0	10.0	10.0	9.5
EU (28)	9.0	8.3	8.9	8.9	9.6	9.6	10.5	10.8	10.2	9.8	9.3

Table 1. Unemployment rate (in %). Source: EU Commission (February 2015); provisional data used for 2014, 2015 and 2016.

In 2014, the youth unemployment rate in Austria was 10.3% which is more than double the general unemployment rate. Likewise, 7.7% of young adults (aged between 15 and 24 years) were neither employed nor in education or training (NEET).²³⁰ Also, there is a growth of 1.1% of the youth unemployment rate in comparison to previous year (2013). The statistic data for 2013 shows a considerable discrepancy between genders: 8.9% of male young adults were unemployment, whereas the rate lies at 9.4% by young women. However, this cannot be established as an ongoing trend. The disparities between male and female youth unemployment rate vary from year to year. In 2013, the unemployment rate was the highest in the category of people only with the compulsory schooling qualification (10.1%) and lowest in the category of people with tertiary education qualifications (3.6%). Also, the increase of the unemployment rate in 2013 affected primarily these categories (+0.8% for the first category and +1.2% for the second).²³¹

The following table depicts the static data in Austria concerning the youth unemployment in the international, i.e. EU comparison. For the time period of 2003-2013 Austria has one of the lowest youth unemployment rate in the EU.

²³⁰ Statistik Austria, *Arbeitslose (internationale und nationale Definition), Nicht-Erwerbspersonen mit Arbeitswunsch* <http://www.statistik.at/web_de/statistiken/arbeitsmarkt/arbeitslose_arbeitssuchende/> accessed 8 April 2015 [German].

²³¹ Statistik Austria, *Arbeitsmarktstatistiken – Ergebnisse der Mikrozensus-Arbeitskräfteerhebung und der Offenen-Stellen Erhebung* 40 [German].

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Austria	7.5	11.0	10.3	9.1	8.7	8.0	10.0	8.8	8.3	8.7	9.2
Euro zone (19)	17.1	18.0	17.9	16.6	15.0	15.5	20.0	20.9	21.0	23.2	24.0
EU (15)	15.4	16.0	16.6	15.9	14.6	15.4	19.6	20.2	20.7	22.4	22.9
EU (28)	18.3	18.7	18.7	17.4	15.5	15.6	19.9	21.0	21.5	23.0	23.5

Table 2. Youth unemployment rate (in %). Sources: EUROSTAT, OECD (March 2015).

The relatively low youth unemployment rate in Austria may be explained primarily by two factors – Austrian dual educational system, on the one hand and the relatively high allocation of national budget resources for these purposes, on the other. In 2014, the Austrian Federal Government allocated EUR 760 million for the youth labour market policy (2013: EUR 650 million), from which EUR 540 million was implemented through Public Employment Service's (AMS) financial sponsorships and loans, EUR 169 million were part of the company-based apprenticeship subsidisation and EUR 51 million were at disposal for the Ministry of Social Affairs Service's measures (former Federal Social Office).²³² An important focus for combating the youth unemployment is laid on the early vocational guidance and vocational counselling conducted by the Public Employment Office. Additionally there are vocational information centres at 67 locations in Austria at the moment, which yearly support some 200,000 persons under age of 20. Since 2009 attendance of the vocational information centre is mandatory for 7th and 8th school class. For youth that are missing basic qualifications or social skills or are confronted with severe personal problems after finishing the compulsory education, low-thresholds projects have been developed, such as Public Employment Office's production schools (see 5.2.3) and AusbildungsFit ('Fit for Education') programme. The latter started in 2014, encompassing 700 young people in seven Länder, with plans for expansion, especially in

²³² Federal Ministry of Labour, Social Affairs and Consumer Protection, *Schwerpunkt Jugendbeschäftigung* <http://www.sozialministerium.at/site/Arbeit/Arbeitsmarkt/Arbeitsmarktpolitik_in_Oesterreich/Schwerpunkt_Jugendbeschaeftigung> accessed 8 April 2015 [German].

the rural areas. Project 'Action Youth Future' is aimed at combating the transfer of youth to long-term unemployment (more than six months lasting unemployment) by individualising the qualification and occupation promotion. Additionally, projects outlined under 5.2.3 for combating early school drop-outs are also aimed at combating youth unemployment as a consequence of this.²³³

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

In general, the ministry of education announced financial savings in the amount of EUR 57 million for the year 2014 and even EUR 60 million for 2015. Mainly the administration costs, but also the individual school forms, are targeted by this.²³⁴ With regards to 5.2.1., there have been indicators that the number of children in the classes might rise, although no formal legal measures had been taken so far.²³⁵ With regards to 5.2.2. the relatively long negotiation process prior to the enactment of the Federal Children's and Youth Assistance Act can be explained by the lack of financial resources and political transparency.

With regards to 5.2.3., it can be seen that the State's education expenditures overall increased at the higher degree than the total State's expenditures. Despite the short-term trend reversal in 2009 due to the world economic crisis, the financing of the educational system in Austria seems quite stable.²³⁶ Although it can be said that in Austria, the educational sector was not the primary target of austerity measures, there are, however, several individual austerity measures that can be stressed out.

²³³ *ibid.*

²³⁴ 'Sparstift wird bei allen Schulen eingesetzt' (die Presse, 11 April 2014)
<<http://diepresse.com/home/bildung/schule/1591857/Sparstift-wird-bei-allen-Schulen-angesetzt>> accessed 10 April 2015 [German].

²³⁵ 'Trendumkehr: Größere Gruppen an Schulen' (die Presse, 14 April 2014)
<http://diepresse.com/home/bildung/schule/1594049/Trendumkehr_Grossere-Gruppen-an-Schulen> accessed 10 April 2015 [German].

²³⁶ Statistik Austria, *Bildung in Zahlen 2012/2013 – Schlüsselindikatoren und Analysen* (2014) 86 [German].

6. OTHER ISSUES

Are there any other relevant issues regarding the ESC, and not covered by the questions above, in your MS? Please describe the applicable legal framework and explain how it is not in compliance with the ESC

In the course of research, no issues of significant relevance to the topics dealt with in this study could be established. A closer examination of isolated minor subjects might lead to findings of Austria being in breach of the ESC. In respect to the object of this report these issues are, however, not of noteworthy importance.

7. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

Austria has signed, but not yet ratified, the Additional Protocol of 1995 providing for a system of collective complaints. Such signature is regarded as an indication that states are seriously considering ratification.²³⁷ Austria, however, had always been open about its doubts regarding the Collective Complaint System, submitted negative comments to Council of Ministers on this matter²³⁸ and rejected the proposal to allow NGOs to bring complaints at all, due to its opinion that a consultative status with the Council of Europe was not adequate to prevent an excessive number of complaints.²³⁹

Ever since, NGOs such as Amnesty International have recommended Austria to immediately authorize the European Committee on Social Rights to examine collective complaints about implementation of the treaty.²⁴⁰

²³⁷ Robin R. Churchill and Urfan Khaliq, *The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?* (EJIL 2004) 453.

²³⁸ Hilde Reidling, *The Netherlands and the Development of International Human Rights Instruments* (Inserentia 2007) 186.

²³⁹ *ibid* 211-212.

²⁴⁰ Amnesty International, *AUSTRIA - Submission to the UN Universal Periodic Review* (AI index: EUR 13/002/2010) 5.

8. CONCLUSIONS

In general, Austria has weathered the 2008 financial crisis very well and was one of the four best performing EU countries when it came to handling and managing the crisis, according to a study of the Austrian Economic Research Institute *Wifo*.

The social partnership played an important role for the implementation of new measures and regulations during the economic crisis, which helped managing the crisis. It can be recognised that in some areas the social dialogue with the social partners was even improving. In respect to the areas of social protection covered in this report, it can be said that they have not been influenced significantly by austerity measures. The Austrian social security scheme provides assistance and care with Means-tested Minimum Income that entered into force on 1 December 2010. The introduction of the minimum income scheme also brought improvements regarding medical assistance.

Measures by the Austrian government in order to combat or prevent poverty and social exclusion in Austria are traditionally focusing on (re-)integration into the labour market and aim at combating in-work poverty through active labour market policies. Furthermore, despite the financial crisis Austria has managed to maintain the high level of the health care, to avoid restrictions and to receive the low-threshold access to the population.

Although in Austria, the UN Convention on Rights of Persons with Disabilities has a greater influence on the situation of disabled than the ESC, national legislation is largely in conformity with the provisions mentioned in this report. Regarding education, children with disabilities have the free choice of attending a special needs school or an ordinary school. As a reaction to the crisis, Austria has improved services for persons with disabilities to find and maintain employment. Although there have been some budget cuts in this field, the services for disabled are improving and expanding.

Similarly, although there are few programmes or measures focusing directly on the implementation of Article 17 ESC, it can be said that the national legislation and its execution are consistent with it to the large extent. As evident from the statistics youth unemployment and early school leaving has quite successfully been combated through different programmes and significant means allocation. However, concern remains with regard to marginalised social

groups of children (asylum seekers, children deprived from their family support, youth offenders, etc.) and their full integration in educational system is somewhat questionable.

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

The Member State Azerbaijan has ratified only Revised European Social Charter. When getting independence, Azerbaijan faced with many problems, from which the most significant was a threat to the country's international isolation. Azerbaijan wished to join the Council to gain credibility with other European countries. Accession of Azerbaijan to the Council of Europe obliged the state to abide by the standards laid down in the Charter. Azerbaijan signed it, when European Social Charter celebrated its fortieth anniversary on 18th October 2001. President of Azerbaijan Republic accepted no 575 Law on Approval of ESC on 6th January 2004. According to that Law President announced that Azerbaijan has joined 18 articles of European Social Charter. When this Law came into force on 1st February 2004, Azerbaijan conducts some complex operations in order to incorporate European Social Charter into the domestic legal system. State made sure that legislation system was in conformity with the Charter, and if some of them were not, changed their legislation practices to bring them in compliance with requirements of Charter. After submission of the ratification order to European Council concerning joining Revised European Social Charter on 2nd September 2004, relevant international document become an inseparable integral part of legislation system. Azerbaijan ratified only the following articles:

Article 1- the right to work; Article 4- the right to a fair remuneration, Article 5- the right to organize, Article 6- the right to bargain collectively, Article 7- the right of children and young person to protection, Article 8- the right of employed women to protection of maternity, Article 9- the right to vocational guidance, Article 11- the right to protection of health, Article 14- the right to benefit from social welfare services, Article 16- the right of the family to social, legal and economic protection, Article 20- the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, Article 21- the right to information and consultation, Article 22- the right to take part in the determination and improvement of the working conditions and working environment, Article 24- the right to

protection in cases of termination of employment, Article 26- the right to dignity at work, Article 27- the right of workers with family responsibilities to equal opportunities and equal treatment, Article 28- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them, Article 29- the right to information and consultation in collective redundancy procedures.

After the ratification of the relevant provisions of the Charter, State took most important reforms towards the fulfilment of the country's obligations, improved national legislation in line with European standards, adopted new laws for the protection of social rights, as well as confirmed the number of state programs that were important in order to ensure more effective social and economic right.

Minister of labour and social protection of population made a statement in seminar which was organized together with Ombudsman Apparatus on 30th November 2011, stating that they were planning to hold discussions concerning possibility of ratifying two articles of Charter which are Article 15- The right of persons with disabilities to independence, social integration and participation in the life of the community; Article 19- The right of migrant workers and their families to protection and assistance.¹

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

As in most countries of the world the impact of the global financial crisis which began in 2008 was visible on the economy of the Republic of Azerbaijan. The President of Azerbaijan, Ilham Aliyev declared the impact of the crisis on the economy in the meeting which was devoted to socio-economic factors on January 16, 2008. The President noted that in 2009 our main goal would be to minimize the negative impact of the global financial and economic crisis.² The European Union, as well as the majority of the Commonwealth of Independent States (CIS) countries adopted anti-crisis programs trying to reduce the effects of the global financial crisis in 2008. The main goal of anti-crisis program in CIS countries included increasing the number of

¹ <http://news.az/articles/society/49846>.

² <http://www.cesd.az/documents/crisis.pdf>.

jobs, keeping the availability of credit lines and supporting private investment. The experience of CIS countries shows that anti-crisis measures doesn't comprise in itself only the reduction of the state costs, but also in some cases creation of new spending in order to establish a number of important projects which are incentives for entrepreneurship.

The macro-economic indicators of Azerbaijan went down in 2008 compared to previous years. Whereas economic growth had increased 34.5% in 2006 and 25% in 2007, but in 2008 this economic indicator was 10.8%. The decline of the percentage of Gross Domestic Product was due to the reduction in the costs of oil in world market which was the result of global economic crisis.³ Despite of the reductions of the growth of GDP, in 2008 the per capita GDP increased and calculated as AZN 4,440. Even though, the rapid growth of GDP is good news, the hegemony of the oil and gas sector in the formation of GDP remains as the main problem. If we pay attention to the GDP growth over the last 5 years (from 2003 to 2008) we may infer that the growth of per capita GDP is highly dependent on the incomes of oil and gas sector. The dependence of GDP on oil and gas sector was 60 per cent in Azerbaijan.⁴

1.2.1. State budget and oil fund

From 2003 to 2008 the state budget revenues increased by up to 10 times, the budget of AZN 10,763 million, respectively, while budget expenditures amounted to AZN 10,680 million. The profit of state budget in 2008 was AZN 83 million. The increase in state budget can be considered praiseworthy, but in Azerbaijan the income of state budget is highly dependent on oil incomes and oil fund. This process still doesn't change and is understood one of the main problems waiting to be solved.⁵

1.2.2. Situation in Banking Sector.

Since before the crisis bank regulation was triggered against excess overheat of the sector. Thus, there was set mandatory reserve norm on external borrowings of banks at 5% level. And capital adequacy (sufficiency) till the crisis (launch of 2008) constituted 19.6%, which considerably exceeded established minimum level (8%). Till the crisis aggravation, the Central Bank

³ <http://www.azstat.org/MESearch/details>.

⁴ <http://www.stat.gov.az/source/industry/>.

⁵ <http://www.maliyye.gov.az/node/942>.

thoroughly prepared banks for all possible shocks carrying out measures on additional 'financial immunization' of the system. Prudential limits were established so that to maintain sufficient liquidity and new provisioning was created to cover potentially problem loans. Toughened were conditions of assets classification, increased was the ratio of collateral value to loan amount. In order to regulate credit risks there were reviewed and toughened norms of risks per one borrower, terms of loans underwriting. Special attention was paid to minimization of currency risks assumed by banks. Simultaneously there were strengthened requirements on the level of data disclosure and overcome of informational asymmetry. At the height of the global crisis for the purpose of further capitalization of banks and insurance entities through internal resources a decision was taken to exempt a portion of income directed at capitalization from taxation. In order to protect interests of depositors and stimulate flow of deposits to the banking sector maximum volume of deposit liable to state insurance was increased by 5 times. Simultaneously softened were conditions restricting insurance of deposits. All these measures strengthened financial stability of the banking sector.⁶

Other resources, such as Islamic finance, could make a valuable contribution, the experts say. Islamic banks currently appear more resilient to the global crisis than do conventional banks since they are not engaged in interest-based operations and tend to avoid speculative instruments such as derivatives. At the time when the world is experiencing an unprecedented financial crisis, Islamic banks are being hailed as 'bastions of stability'.⁷ And to draw on their strength, Azerbaijan needs to consider changing the country's legal codes to all for broader operation of international Islamic financial institutions in Azerbaijan.⁸

The main document which was prepared by Centre for Economic and Social Development was anti-crisis conception of Azerbaijan Republic. This document was prepared by the prominent economists in 2009 and included proposed action plans on each economic sector. For the entrepreneurship they were: Increasing financial assistance (credits) to entrepreneurs through the National Fund on Support to Entrepreneurship. It would better to increase an amount of credit to entrepreneurs from AZN 130 million to AZN 250 million for 2009, to decrease credit percentage of banks to entrepreneurs from 7% to 4%, to increase the amount of credit to

⁶ http://en.cbar.az/assets/1450/E.Rustamov_article.pdf.

⁷ Quinn 2008, p. 1.

⁸ Quinn, Ben (2008) 'London warms to Islamic finance', Christian Science Monitor, 101(3), November 28, p. 6.

entrepreneurs from AZN 3 million to AZN 5 million, to involve NGOs and civil society to the process of giving credits to entrepreneurs, in order to ensure efficiency and transparency of the process, to strengthen combat against monopoly, to strengthen combat against 'artificial' increase of prices, to accelerate the process of establishing free economic zones in order to attract more international investment, to support private companies involved in construction sector, to remove bureaucracy in documentation procedure while starting construction, to stimulate export of national products, to accept 'Competition Code'.

For the banking sector the main plans which were shown in conception were: to replace a portion of state reserves in commercial banks of Azerbaijan. It is proposed to replace USD 4 billion to the local banks. To decrease the interest rate of the Central Bank to 1% by letting the commercial banks to increase their liquidity. To reconsider the monetary policy of Central Bank, in order to prevent risk of devaluation by decreasing AZN rate by 10% against USD. To use psychological methods in order to increase the trust of population to banks. To increase an amount rate of secured deposits of population. To re-introduce mortgage loans by the expense of the State Budget. Tax sector: to decrease tax rates: Profit tax from 22% to 20%; VAT from 18% to 16%; Simplified tax from 4% to 2% in Baku and from 2% to 1% in regions. To assist and encourage local enterprises by reducing tax rates.

Finance and budget sector: To make changes to the Budget for 2009 by decreasing settled oil price for one barrel from USD 70 to USD 50, to cut some budgetary expenses on the basis of changed oil price, to strengthen financial control, to conduct 'Expense-Income Analysis' on budget sponsored projects, to allocate approx. AZN 380 million from the State Budget for financing anti-crisis activities, to economize the spending of budgetary incomes.

The main plans for the agricultural sector were: To increase export potential of agricultural enterprises. Unfortunately, only 1% of the country's annual export falls in this sector, to provide access of farmers to information resources, to develop a report system regarding the how to use credits of National Fund on Support to Entrepreneurship, to increase the volume of subsidies to farmers, to remove some barriers in ensuring delivery of agricultural products to Baku markets, to build agricultural storages.⁹

⁹ <http://www.cesd.az/documents/crisis.pdf>.

As you see the recommendations of anti-crisis program were in a high level and some of them had been taken into the consideration by the government of Azerbaijan during the global crisis. The package of anti-crisis measures announced by the president largely encompasses the provisions below:

- Strengthening control over the consumer market in order to prevent an artificial increase in prices;
- Strengthening anti-monopoly activity and eradicating non-conscientious competition;
- Preventing illegal interference by the state;
- Placing some of the foreign exchange reserves kept abroad in the most reliable and strongest local banks and using these resources via the banks only in the real sector of the economy. Ensuring reliable state control over investment of these resources in the real sector of the economy;
- Drawing up a schedule of priorities for implementing the State Investment Program;
- Strictly observing economic principles when implementing the State Investment Program;
- Strengthening state control over the spending of budgetary funds;
- Increasing assistance to export enterprises;
- Increasing the volume of privileged loans for businessmen;
- Increasing state support of agriculture. (The speech of president of Azerbaijani Republic in the meeting of cabinet of ministers in 2008).

The Azerbaijani government and Central Bank have efficiently adopted measures within their anti-crisis program in order to reduce to the minimum the influence of the world financial crisis on the country's economy in order to prevent it from spreading in all directions and to create reliable foundations for restoring higher economic growth rates in the future. These measures made it possible to enter the crisis period with a well-balanced state budget, low level of external and internal debt, and large supply of foreign exchange assets. All of this testifies to the government's sufficiently correct anti-crisis policy. But the key to success in the government's anti-crisis activity will in all likelihood be an adequate assessment of and reaction to the risks of

the world crisis and timely, systemic, consistent, and effective implementation of the anti-crisis program, on the one hand, and skilful coordination of the actions of the government and private structures—banks, enterprises, etc.—and society, on the other. (Azerbaijan and financial crisis by Ali Masimli, deputy of Milli Majlis).

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

After gaining independence, Azerbaijan still has some problems on the sight of the social and collective bargaining rights. Today, Azerbaijan takes the obligation about the labour rights in its legislation because Council of Europe has found a few problems about the laws in the constitution. From the perspective of Azerbaijani people Social dialogue and Human Rights must take front place in the diary of future development.

Pursuant to Article 35 of the Constitution of the Republic of Azerbaijan labour is the basis of individual and public welfare. Every person has the right to freely choose an activity, profession, occupation and place of work on the basis of his skills and abilities. Principles and procedures ensuring the right to employment, rest and work under safe and healthy conditions and to other basic human rights and freedoms as stipulated in Section Two of the Constitution of the Republic of Azerbaijan.

Regulations governing the rights and obligations of employees and employers, including relevant national government bodies with respect to the execution, amendment, or termination of employment agreements and the protection of the rights of parties to these agreements, shall be defined pursuant to the principles of human rights and freedoms provided by the Labour Code of the Republic of Azerbaijan, the Constitution of the Republic of Azerbaijan and international treaties and agreements signed or supported by the Republic of Azerbaijan, conventions of the International Labour Organization and other international laws.

The Labour Code of the Azerbaijan republic has declared in 1999 on 1st February.

According to the Labour law system of the Republic of Azerbaijan shall consist of:

- This Code;
- The relevant laws of the Republic of Azerbaijan;
- The normative and legal acts adopted by relevant Executive Authorities within the scope of their authority;
- International treaties signed or supported by the Republic of Azerbaijan with respect to Labour and socioeconomic issues.

2.1.1. Basic Principles for Drafting, Signing, and Executing Collective Contracts and Agreements:

- Equality of the parties;
- The freedom and ability to choose and discuss the issues constituting the substance of collective contracts and employment agreements;
- The unacceptability of including in collective contracts and agreements terms that are not stipulated for objective reasons;
- Guaranteed fulfilment of obligations;
- Compliance with the law;
- Oversight of fulfilment of obligations and liability for default.¹⁰

Also according to the Chapter II Section 23 of Collective Contracts and Agreements Inadmissibility of Interfering with the Signing, Amendment, and Execution of Collective Contracts and Agreements:

No interference on the part of government authorities, other employers, political parties, voluntary associations, or religious societies which may restrict the legitimate rights of employees or their interests as protected by law or prevent the exercise of said rights in the process of signing, amending, or executing collective contracts and agreements shall be permitted.

2.1.2. Rights to Collective Bargaining:

¹⁰ <http://www.mlspp.gov.az/en/pages/4/125>.

Azerbaijan has its own strategy in collective bargaining rights. It is reflected in the legal system of Labour Code of the Republic of Azerbaijan:

- Labour collectives, employers, trade unions, relevant authorities and employers' representative bodies shall have the right within the scope of their authority to draft, enter into and amend collective contracts and agreements.
- The initiating party shall send a written notice of the commencement of bargaining to the other party. The notified party shall be obliged to commence bargaining within no more than ten days.
- If there is no trade union at an enterprise, the Labour collective shall establish a commission with special bargaining powers.
- If there are several trade unions (trade union associations) or other employee-authorized representative agencies at the national, industry, territorial and district level, a commission shall be created proportionate to employee membership in order to conduct the bargaining.
- It shall be unacceptable to refuse to bargain to draft the terms of collective contracts and agreements.

2.1.3. Procedures of Collective Bargaining

Labour Code of the Republic of Azerbaijan has determined procedures of Collective Bargaining:

- The parties shall create a commission consisting of an equal number of representatives from each party to bargain for the purpose of drafting a collective contract or agreement or amendment to it.
- The members of the commission, and the agenda, place and time of bargaining shall be decided jointly by the parties.
- The parties shall be free to choose and discuss the issues constituting the substance of a collective contract or agreement.
- Employers and authorities must submit the information necessary for bargaining within five days at the commission's request. Should said information constitute a state or trade

secret, the parties to the bargaining shall be liable under the law for disclosing any information they have received.

- The parties shall keep minutes in the event of disagreement during bargaining. The final proposals, as well as the date on which bargaining shall resume shall be indicated in the minutes.
- The participants in collective bargaining shall not be disciplined, reassigned to other work, or dismissed by their employers during the bargaining. Government tries to refuse austerity measures for developing free social dialogues in the country.

By that way, the parties make commissions under the management of the government, also spend surveys between people.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

Government as a democratic republic gives great rights in collective bargaining, by that way it is controlled by commissions. In Labour Code of Azerbaijan Republic in 25 section there are rights of collective bargaining (see 2.1.2). These rights progresses by some procedures which are determined by legislation (see 2.1.3.).

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

Sometimes, laws about labour rights don't show itself from the positive way. There is some emptiness in the legislation yet. Today in the country territory, majority of the establishments, offices enlist workers to work more than necessary. Workers show the same work in the legislation but the results wasn't equal by their expectations; they are involved to other circumstances considered necessary for the person which engages. On other hand, this situation makes contrasts with the basic information of Labour Code and the protection of labour rights.

Article 99 of Labour code states that the situation has to put in order by the Labour treaty which is signed between worker and the employer.

2.3.1. Overtime

- Overtime shall be considered time beyond the established workday during which an employee consensually performs his duties based on an order (instructions, decision) from his employer;
- An employee shall be permitted to perform overtime in order to prevent a natural disaster, industrial accident, or other emergency events, or to eliminate their consequences, as well as to prevent the loss of perishable goods, pursuant to this Code;
- Employees working under very difficult and hazardous, conditions and in other cases stipulated by this Code shall not be required to work overtime;
- Overtime must not exceed 2 hours per day (per shift) in areas where working conditions are difficult and the workplace hazardous;
- Employers must create industrial and social conditions in conformity with the standards foreseen in Section 'Protection of Labour' hereof and ensure the safety of Labour for employees involved in overtime work.

Article 101 states that worker will already be able to involve for:

- During the performance of work necessary for national defence or to prevent or immediately respond to a social or natural disaster or industrial accident;
- During the performance of work vital to the general public such as the supply of water, gas, heat, light, sewage, transportation, and communications, to clean up accidents or solve unanticipated problems which interfere with their proper functioning;
- If it is necessary to complete a job which has already begun and cannot be completed within normal working hours due to unanticipated or accidental delays caused by technical conditions and if failure to complete the work may entail inevitable commodity damage or loss;
- During temporary work to repair and restore mechanisms or structures when their failure to function shall idle a large number of employees;
- In cases when a break at work is impossible due to the absence of a substituting employee.

Naturally, this demand of the law is become clear from point of view period of daily work determined for workers by Labour Code. So, if employer compensates work of the labour for involving overtime job and get the consent of worker, law gives possibilities to employer. Employers shall be obliged to take all measures needed to substitute the absent employee with another employee and in a timely fashion to rectify the causes for the involvement of employees in overtime work in exceptional cases as stipulated.

Unfortunately, nowadays in Azerbaijan there is another problem in the area of Labour Rights. Employers prefer to dismiss employees due to not managing of the commissioned works. But originally, Labour Code intends holding attestation about the situation of workers. This is ensured by the article 65 of Labour Code:

2.3.2. Employee Certification, Procedures for Implementation and Terms and Conditions

- With the exception of those employees indicated in Section 66 of this Code, all employees may be certified in order to examine their professional standing expertise and to determine their compliance with their specialty, profession or position.
- Only those employees who have been employed at their places of work for at least one year may be certified. A given employee may be certified no more than once every three years.
- A Certification Commission consisting of experienced, objective and impartial persons with highly professional skills, as well as a representative from the trade union shall be established pursuant to the employer's order (instructions). Neither the employer nor the employee's supervisor at his workplace may be a member of the aforesaid Certification Commission.
- The Certification Commission shall consist of at least 5 persons and in all cases the number of its staff must be odd numbers. The term of authority of the Certification Commission shall be determined in the proper order (instructions) concerning its establishment.
- The members of the Certification Commission may question an employee regarding his position (occupation), function, specialty (profession), the jobs performed by him/her

and their results, as well as on issues concerning his rights and obligations under an employment contract in order to determine his compliance with his position (profession). The professional standing of an employee that is certified may not be evaluated according to his political outlook, spiritual or moral maturation, personality, faith and other personal qualities including his degree of discipline.

- The Certification Commission's activity shall be carried out openly, objectively, impartially and in compliance with the requirements of Legislation. The Certification Commission shall adopt its decision by a majority vote obtained during open or secret balloting. The desire of Labour collective representatives to participate as observers at the Certification Commission's meeting must be accommodated.
- The Certification Commission shall adopt only one decision: whether an employee complies with his position (profession). Moreover, the Certification Commission may submit recommendations to the employer on the expediency of utilizing said employee in another position (profession).
- Other procedures on the certification of employees as established in this Section shall be governed by a Normative Legal Act approved by the relevant Executive Authority.

2.3.3. Non-Certifiable Employees

In Azerbaijan a few groups of workers are Non-Certifiable Employees:

- Employees who have been wounded or disabled in military actions carried out for the defence, freedom and territorial integrity of the motherland;
- Employees who displayed courage and were awarded state medals and decorations and granted honorary titles during the protection of Azerbaijani independence and territorial integrity;
- Employees with refugee and displaced persons status who have been holding one position (profession) for less than 5 years;
- Pregnant women;
- Women on social leave until the child is three years old and who have worked for less than one year in a proper position (profession) after the aforesaid leave is over;

- Employees under 18;
- Employees who have worked in one position (profession) for less than a year;
- Employees who have been certified at least three times in his position (profession) and whose compliance with their position (profession) has been established;
- Employees who are not certifiable as stipulated in collective employment contracts (agreements).

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by their own efforts or from other sources?

In the law about social service of the Republic of Azerbaijan, at 1.0.6 it is written that: social receptionist is a person who serves social-welfare care. At 1.0.5 it is written that social worker is a person who evaluates the requirement to the social services and serves social care. The third chapter of the law is dedicated to the providing of assistance and care by social security scheme. The 15th item of the law is about the rights and duties of social workers. In 15.2.2 it is written that social workers must care for the families that have a poor welfare.¹¹ The findings of the papers demonstrate that social assistance program have mediocre effect on inequality. Empirical evidence presented in many papers shows that the unsatisfactory performance of social assistance programs can be attributed to four major factors: (1) the benefits transferred to the bottom of the distribution are too small to significantly decrease the existing inequality; (2) some programs do not have an explicit mandate to reduce inequality; (3) social assistance programs have minuscule ability to identify the most vulnerable at the bottom of distribution; and (4) the existing network of many programs with almost negligible benefits may be costly and administratively demanding. The first and the most important factor for the ineffectiveness is the lack of funds to finance social assistance programs. The benefits are too low to ‘correct’ inequality. As outlined, the reason for the low level of benefits is the overall low government

¹¹ The Law of Azerbaijan Republic on the Social Security.

spending per capita and as a percentage of GDP, which is caused by a weak economy and the comparatively small size of the total GDP. However, even if more resources were to be allocated to the existing programs, without taking into consideration the three other factors of inefficiency, the outcomes would still be insufficient. The second factor is that even these scarce resources are distributed inefficiently by allocating a significant share of funds to the programs with low inequality reduction performance. Current social assistance programs suffer from high Errors of Exclusion and Inclusion. Comparison between programs, however, should be made with care inasmuch as they have different objectives. Some programs evaluated in this study such as Karabakh and Chernobyl Benefits do not have the explicit objective to confining benefits to the bottom of distribution. Nevertheless, measuring poverty and the inequality-reduction effectiveness of these programs seems necessary under the current circumstances. Widespread poverty, inequality and general economic insecurity associated with transition in Azerbaijan have elevated the importance of social programs aimed to the bottom of distribution. There is also significant pressure to increase the impact of social assistance on inequality (and poverty). At the same time, budgetary pressure limits the government's ability to increase the amount of benefits. Confronted with tight fiscal constraint, the government may have no other option but to adopt a more narrow approach by allocating more resources to the programs for the poor.¹² Third, the current social assistance programs are not able to identify the most vulnerable and provide them with benefits. As shown, neither *income-test* nor *categorical* programs is sufficient to properly assess the income status of households in Azerbaijan during transition.¹³ Fourth, after an appropriate method of allocating benefits is selected, it is useful to create a single poverty and inequality reduction benefit instead of continuing the existing hodgepodge of programs. Consolidating several benefits into one allows for decreasing administrative costs and increasing the amount of the benefit to the level required to decrease poverty and inequality. Finally, however efficient and effective social assistance might be, it is not a panacea for combating inequality during transition. Social assistance is only one element of a broader system of social protection that should be gradually developed in Azerbaijan. Other elements of the system such as pensions, unemployment insurance, maternity leave and sickness benefits should also be developed concurrently with the reforms in social assistance. In addition, social assistance

¹² Social Assistance in Azerbaijan and Krygyzstan – Nazim Habibov, page 16.

¹³ Social Assistance in Azerbaijan and Krygyzstan – Nazim Habibov, page 17.

is a fairly passive mechanism: it applies when a person or a household has already fallen into poverty. Hence, more pro-active strategies such as investments in education and health care, and access to inexpensive credit resources should also be used to achieve poverty reduction.¹⁴

In total, all social assistance programs reach 11.47% of the total population and provide them with an average of AZN 92,366 benefits. Among them, Children Benefits is the only *income-tested* social assistance program in Azerbaijan and the only program with an explicit poverty-reduction mandate. The Children Benefits provides cash income for families with children assumed to be poor. The program covers about 0.09% of households and consumes 1.16% of total social assistance expenditures. Procedures of eligibility determination for the Children Benefits consist of a categorical test to determine how many children are in an applicant's family and an income-test to determine the salary of the applicant. Should the results of categorical and income-tests prove that the family's income per capita for the previous quarter is less than the eligibility level of AZN 16,500, the applicant is eligible for the benefit.

All the other social assistance programs in Azerbaijan are *categorical*, meaning that no income or consumption of claimants is assessed. Rather, eligibility for benefits is based on belonging to the designated categories assumed to be poor or low-income. Thus, Scholarships provide benefits to full-time students and redistributes 3.38% of total social assistance benefits. Social Pensions provide protection for the elderly who do not qualify for a social insurance pension because of the lack of contribution to the Pay-As-You-Go scheme. Social Pensions redistribute 35% of the total social assistance budget which makes this program the second largest program by expenditures after the Other Benefits. Scholarships and Social Pensions have a similar participation rate — 2.3% of the households — and are the second and the third largest programs by coverage after the Other Benefits.

Karabakh and Chernobyl benefits are aimed at households with disabled members during the Karabakh conflict with Armenia (1988-present) and disabled from the Chernobyl nuclear accident in Ukraine in 1986. These programs have the same participation rate: 0.04%, and redistribute a similar amount of total social protection expenditures: 0.46% and 0.31% respectively. Child Disability provides benefits for households with disabled children by redistributing 5.32% of the social assistance budget to 0.62% of the households.

¹⁴ Social Assistance in Azerbaijan and Krygyzstan – Nazim Habibov, page 19.

The Other Benefits is the largest program both by coverage and by expenditures among all social assistance programs: 5.1% of the households and 6.9% of total social protection expenditures. One category of the Other Benefits is the merit-based privileges for war and labour veterans, and citizens decorated with orders and medals. Another category is the occupational benefits for personnel of civil, security and military services, and some other government organizations. This category provides exemption from or discounts for rents, utility payments, electricity, telephone service, medicines, medical appliances, medical care and urban transportation as well as vouchers to spas and summer camps.¹⁵

3.1.2. Persons who are unable to secure adequate resources either by their own efforts or from other sources due to illness?

In 2 October, 2008 Azerbaijan joined the Optional Protocol of Declaration on Rights of the Disabled Persons approved by the General Assembly of the UN. In the first article of convention it is shown that the purpose of this convention is to encourage disabled persons that all people have the same rights and liberties, to protect and respect their rights. As Azerbaijan joined the convention, social security scheme strengthens the care for the disabled people.¹⁶ The Law of the Republic of Azerbaijan on Ratification of the UN Convention on the Rights of Persons with Disabilities, dated on October 2, 2008 # 686-IIIQ and the Law of the Republic of Azerbaijan on Ratification of Optional Protocol of the UN Convention on the Rights of Persons with Disabilities, dated on October 2, 2008 # 687-IIIQ define tasks for protection of the rights of persons with disabilities, non-discrimination towards them, equality before the law, rehabilitation, increasing their potential, social protection and integration to the society. As a member state, Azerbaijan also works on the protecting rights and duties of disabled people and does reforms on this issue. A Working Group for coordination of implementation of the provisions of the Convention has been established in the Ministry of Labour and Social Protection of the Population consisting from representatives of relevant state agencies and non-governmental organizations of the disabled persons. According to the Law of the Republic of Azerbaijan on 'On prevention of disabilities and impaired health of children and rehabilitation

¹⁵ Social Assistance in Azerbaijan and Krygyzstan – Nazim Habibov, page 7.

¹⁶ The Law of Azerbaijan Republic on joining the Optional Protocol of Declaration on Rights of the Disabled Persons.

and social protection of the disabled and children with impaired health' persons with disabilities and children with impaired health have all socio-economic, political, personal rights and freedom given in the Declaration on Rights of the Disabled Persons approved by the General Assembly of the UN, Constitution of the Republic of Azerbaijan, the Law and other legislation. Discrimination is prohibited and pursued by law. Protection of freedom and legal interests of the disabled persons and children with impaired health is ensured by the state in court or other manner defined by law. It should be noted that, constitutional norms establishing equality were further improved with additions and amendments to the Constitutions in March 18, 2009. Thus, with additions to the Article 25 (Right of Equality) no one may be granted allowances or privileges, or deprived from granting allowances and privileges on the basis of their gender or other status. Equal rights of everyone are guaranteed in relation with decision making agencies on rights and responsibilities, and state agencies in charge of government authorities.¹⁷ About disability labour pensions, the insured must have at least 5 years plus 4 months of covered employment for each full year of work. The pension is paid according to three assessed degrees of disability: a person with a total disability and incapacity for any work and requires constant attendance (Group I); a person with a disability and incapacity for any work but does not require constant attendance (Group II); and a person with an incapacity for usual work (Group III). Covered employment includes non-contributory periods of active military or alternative national service; periods providing care for a person with a Group I disability, a child younger than age 18 with a disability, and persons aged 70 or older; periods receiving unemployment allowance or professional retraining; periods receiving a Group I or II disability pension as a result of an occupational disease or a work injury; and periods receiving disability pensions from younger than age 18 until retirement age. Until certification of a permanent disability, a medical commission assesses and periodically reviews the degree of disability. Social allowance (disability): Paid to persons who are not eligible for a disability labour pension with a Group I, Group II, or Group III disability, and children younger than age 18 with disabilities. Disability pensions are payable abroad under bilateral agreement: Disability labour pension: 120% of the basic flat-rate benefit is paid for a Group I disability and for persons younger than age 18 with

¹⁷ Initial report of the Republic of Azerbaijan about the implementation of the UN Convention 'On the Rights of Persons with Disabilities' January, 2011.

disabilities; 200% for a Group I visual impairment; 100% for a Group II disability; and 55% for a Group III disability.

- The basic monthly flat-rate benefit is AZN 85 (September 2010);
- Dependent's supplement: 5% of basic flat-rate benefit is paid to persons younger than age 18 with disabilities and for each dependent of persons with a Group I or II disability;
- Care supplement: 10% of the basic flat-rate benefit is paid for a Group I disability and for persons younger than 18;
- Social allowance (disability): AZN 55 is paid for a Group I disability and for persons younger than age 18 with disabilities; AZN 40 for a Group II disability; and AZN 35 for a Group III disability (September 2010);
- Persons whose illnesses are the result of radiation accidents receive an annual lump-sum benefit of AZN 160 for medical treatment (September 2010);
- Benefit adjustment: The social allowance is adjusted annually according to changes in the consumer price index;
- Sickness benefit: 100% of the last month of earnings is paid for an employee with at least 8 years of employment; 80% with 5 to 7 years; 60% with less than 5 years.

150% of the last month of earnings is paid for an employed person with a disability, up to 2 months of salary. 100% of the last month of earnings is paid for certain groups, including persons wounded in certain conflicts; for the parents, wives, and children of soldiers killed in combat; for those who participated in the containment of the Chernobyl catastrophe. The benefit is paid from the first day of incapacity until recovery or certification of permanent incapacity for work. The employer pays benefits for the first 14 calendar days. The State Social Protection Fund covers the remaining period.

3.1.2.1. Temporary Disability Benefits

A percentage of the insured's average monthly wage is paid according to the assessed degree of disability. The benefit is paid from the day after the disability began until full recovery or certification of a permanent disability. Benefits are paid monthly. A medical commission assesses and periodically reviews the degree of disability.

3.1.2.2. *Permanent Disability Benefits*

Permanent disability pension: If the insured is assessed with a total disability, 100% of the insured's average monthly earnings in the 12 months before the disability began are paid. A medical commission assesses and periodically reviews the degree of disability. The benefit amount is not affected by other pensions or benefits the insured is entitled to receive as a result of the disability.

Partial disability pension: A percentage of the full disability benefit is paid according to the assessed degree of disability. If the insured is younger than age 18, the minimum benefit amount is 5 times the monthly minimum wage. The monthly minimum is AZN 85 (September 2010). A medical commission assesses and periodically reviews the degree of disability. Benefit adjustment: Benefits are adjusted according to earnings changes at the insured's place of work after the disability began.¹⁸

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

Starting from February 21st, 2015, the official exchange rate of the dollar to the manat, Azerbaijani national currency, has been set at AZN 1.05, which is 33.86% more than the exchange rate set before the beginning of the weakening process of the rate. Azerbaijani national currency has been depreciated against US dollar the first time since 2006.

Even though the Government of Azerbaijan promised gradual devaluation, but in effect slow depreciation would be a supportive tool to reach goals the government has listed out. Gradual depreciation would increase Central Bank's intervention cost in addition to would increase budget revenues in manat term so much. Devaluation percentage less than 30.0% would not be enough to cover the state budget's current CESD a potential deficits as long as the price of crude oil in the world market is low. Therefore, Central Bank has taken drastic step to have sharp and deep devaluation of the national currency.¹⁹

¹⁸ <http://www.ssa.gov/policy/docs/progdesc/ssptw/2010-2011/asia/azerbaijan.html>.

¹⁹ http://cesd.az/new/wp-content/uploads/2015/03/Azerbaijan_National_Currency_Devaluation2.pdf.

Deputy Minister of Labour and Social Protection of the Republic of Azerbaijan I. Isayev held a press conference on the results of the monitoring and evaluation taken by the ministry to determine the effects of changing in national currency to the social protection and social security system as well as to the labour market.

10 days after the devaluation of the manat the price increases for food and non-food products which is included in minimum consumption basket wasn't observed.

Due to the rapid integration into the world economy, the deputy minister said of a number of non-positive processes in the region, including economic crisis, tensions that occur in the CIS, as well as a sharp drop in global oil prices is inevitable negative impact on the country's economy: In such circumstances, the exchange rate taking into account the negative impact of the devaluation of maintaining stable economic growth has been decided. The decision to diversify the national economy by creating an added incentive, the country's export capacity, aims to strengthen the international competitiveness of the national economy.²⁰

Isayev emphasized that employment contract notice in electronic information system (ƏMEIS) real and reliable data are available on the labour market that allows for proper and objective analysis:

As of March 1, 2015, (except for the data on the Nakhchivan Autonomous Republic) the Ministry of Labour's 'labour contract registration and notification is to inform the employer about it,' 1,981,273 e-service electronic information system by means of a notice has been included in an employment contract. 75.8% of the labour contract, 14.8% of the labour contract amendment, 9.4% were related to termination of employment.

On March 1, 2015 compared to 1 October 2014 there is a positive rate in the number of active labour contracts.

During this period, most of the areas of termination of employment, construction, trade, manufacturing industry, tourist accommodation and catering areas and those areas rather than the term of employment contracts and employees, mainly due to the high frequency of movement. Compared to previous years, this trend construction, trade and tourist accommodation and catering areas (about 30%) is faster.

²⁰ <http://az.apa.az/news/375037>.

Deputy Minister of termination of employment by the employer on termination of the labour contract law principles arising from the termination of employment of the employees in the said provisions.²¹

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

Since April 1st, 2005 Azerbaijan chapter of the Transparency International, first among the CIS countries, is implementing a new project — ALAC (Advocacy and Legal Advice Centre), with head office in Baku and a regional centre in Ganja. As of July 1 regional centre in Lenkoran is available to citizens. Another centre in Guba is open as of August 1 with funding from OSCE. Sheki centre also serve the citizens since 1st of February.

The Project is being implemented under the grant extended by the American Bar Association Central Europe and Eurasia Law Initiative (ABA CEELI), United States Agency for International Development (USAID), Organization for Security and Cooperation in Europe (OSCE) office in Baku and Foreign and Commonwealth Office, UK. ALAC project is being successfully implemented in the several Central and Eastern European countries — candidates to EU membership, where it plays an active role and accelerates the combat against corruption of the states and ensures citizens' participation in this process. The goal of the ALAC project is 'To provide citizens with the means to become actively involved in the fight against corruption in their societies.' ALAC Project Mandate is to assist and give advice to the citizens — victims and witnesses of corruption. The project activities focus on the administrative and legal complaining procedures, as well as monitoring of the mechanisms of corruption from the point of view of the cases raised by citizens. However, we do not represent clients in courts.

The project has five main pillars:

²¹ <http://slis.mlsp.gov.az/en/news/134>.

- Legal Advice: From the perspective of a victim or a witness to an act of corruption, legal advice is the activity by which he/she is given help on how to use efficiently the legal procedures of complaint regarding corruption.
- Education and information: The anti-corruption education activity refers to the efforts through which the ALAC team in cooperation with media and educational partners educates population.
- Advocacy: Advocacy builds upon the results of both legal advice and education/information activities, in order to influence national policies, anti-corruption legislation and institutional practices towards a more efficient discouragement, prevention and punishment of acts of corruption.
- Capacity Building: Project team supports public authorities in their efforts to establish and operate anti-corruption hotlines, working groups and etc.
- Public outreach campaign through mobile trainings and seminars: Project team with the support of centre's volunteers runs anti-corruption mobile workshops for various targeted groups with a special focus on rural population and provides onsite free legal advice.²²

Education on Human Rights Public Association with support of OSCE Office in Baku, implements the project named 'Legal Advice Centres for Small and Medium Entrepreneurs'.

In the framework of this project Legal Advice Centres work in Baku and Shaki for small and medium entrepreneurs.

The centres established in the framework of project on Small and Medium Entrepreneurs which aimed to provide legal advice free-of-charge for small and medium entrepreneurs.

In the framework of current project, it is planned to organize different seminars and round-tables in order to increase entrepreneurs' knowledge regarding to business-oriented legislation and regulations, and to raise the authorities' awareness of challenges entrepreneurs are facing as well as improve the potential of small and middle entrepreneurs for independently operation of their business.

²² <http://transparency.az/eng/alac-project/>.

Legal advice is given by hotline to the entrepreneurs within days, meetings are organized with them and legal assistance was given them.²³

No austerity measures were identified that might have had an impact on Article 13 (3) of the ESC.

4. SOCIAL EXCLUSION

4.1. What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)?

4.1.1. How poverty is defined in the legislation of Azerbaijan Republic?

For deeper examination of the question, firstly, we would like to introduce short explanation of the term poverty as it is defined in the legislation of Azerbaijan Republic.

According to the 'Law of Azerbaijan Republic on Targeted Social Assistance', family with low income is the family whose monthly average income is less than the sum of the need criterion for each family member.²⁴ Need criterion is a limit which is approved annually on the basis of the state budget.²⁵ Family with low income means a family which risks living in a situation of poverty.

Poverty arises as a result of the inequality appeared in the process of the distribution of national income. The state carries out some regulatory measures for mitigating this inequality partly. There is the mixed form of the social and economic poverty in Azerbaijan.²⁶

The main concepts about the poverty are also defined in the 'Law of Azerbaijan Republic on Social Service' enacted in 2011. These concepts are following:

²³ <http://ehr-az.org/en/projects/legal-advice-centers-for-small-and-medium-entrepreneurs>.

²⁴ Law of Azerbaijan Republic on Targeted Social Assistance, Baku, 2005. Article 1, part 05.

²⁵ Ibid, article 1, part 01.

²⁶ <http://www.erc.az/files/USY.pdf>.

- *Hard living condition* – the situation which violates the living condition of a person or a family objectively and is difficult to be eliminated independently
- *The person or family taken to the social service* – the person or family taken to the social service on the basis of hard living condition.
- *Social de-adaptation* – loss of the ability of the person or the family to adapt to social environment
- *Social deprivation* – restriction or deprivation of the conditions of the person or the family to cover their vital needs independently.²⁷

In the methodical explanations given by State Statistical Committee of the Republic of Azerbaijan poverty is defined as the characteristic of the economic situation of a person or a social group who are not able to pay consumption of the minimum sum of the food, non-food and services necessary for living. Poverty is a relative concept and depends on the general standards of living situation of every society.²⁸ In 2004, ‘The law on the Living Wage’ has been enacted and on the basis of that law for each year annual living wage is determined. The people with the income less than this living wage are considered as in state of poverty. In 1.0.2 article of mentioned law, living wage is defined as a social norm including the cost of the minimum consumption basket and mandatory fees. For example, for 2015 living wage is in general AZN 131, for children and pensioners it is AZN 108, for the people with working ability that amount is determined as AZN 140.

4.1.2. Enactment and improvement of legislation in the sphere of social exclusion and poverty

As a first step to prevent social exclusion and poverty also provide effective access to the social rights, Azerbaijan Republic has enacted some legislative acts. We can enumerate the legislative acts enacted in the sphere of social exclusion and poverty as following:

- ‘Law of Azerbaijan Republic on Targeted Social Assistance’, 21 October 2005. This law regulates the purposes, principles and legal basis of targeted social assistance. Then its

²⁷ Law of Azerbaijan Republic on Social Service, Baku, 2011, art.1.

²⁸ <http://www.stat.gov.az/source/millennium/>.

implementation rules are prepared and adopted by the Cabinet of Ministers and Ministry of the Labour and Social Protection of Population

- (i) Decision of Cabinet of Ministers of Azerbaijan Republic on ‘The rules for application for, appointment, provision and refusal of provision of the Social Assistance’ and ‘The Order of calculation of the monthly average income of the family’, 2 February 2006, №-32.
 - (ii) Decision of Cabinet of Ministers ‘Approval of the need criterion for the purpose of the appointment of targeted social assistance’, 14 July 2006, №-145.
 - (iii) ‘Statute on the Commission appointing targeted social assistance’. This statute has been approved with the decision of the Ministry of Labour and Social protection of Population in 2006, 1 July, №-7.
- ‘State program for 2008-2015 on the reduction of poverty and sustainable development’.
 - ‘Law of Azerbaijan Republic on Social Service’, 30 December 2011.
 - President decree on ‘Measures on the improvement of the social protection of the population with low income’, 26 December 2012.
 - Furthermore, taking the state budget as basis, for each year, the limit of need criterion and cost of living are calculated.

4.1.3. Measures in the field of effective access of people living or risk to living in a situation of poverty to the education and training

In 2007, President of Azerbaijan Republic approved ‘State Program on the renewing of the preschool education for 2007-2010’. The program also includes the regulations on the accessibility of the preschool services for the population living or risk to living in a situation of poverty as well as establishing compulsory preschool education of 5 years old children.²⁹

In 2007, President approved another state program on the ‘Study of Azerbaijani youth in abroad for 2007-2015’. This document provides Azerbaijani youth with the equal opportunities to study abroad regardless of their material situation. On the basis of the above-mentioned state program,

²⁹ ‘State program for 2008-2015 on the reduction of poverty and sustainable development’ 6.1.

in 2007, 45 young people were sent to the leading universities of US, France, Great Britain, Russia, Sweden and other countries.³⁰

'State program for 2008-2015 on the reduction of poverty and sustainable development' establishes some priority aims in the sphere of education, and one of them is providing equal opportunities in education. In recent years Azerbaijan Republic has achieved to the provision of education institutions with free books and to the construction of new school buildings. On the basis of the program, the children of the poor and low income population should be sent to the summer schools. Preparation of mechanism for free meals to the pupils also to provide the children living in rural with the transportation services is among the purposes of the state program.³¹

The same state program also provides some provisions on the improvement of trainings and the seminars (6.1.2).

'Law on Education' in its article 5 defines the state guarantee on the effective access to the right to education:

5.2. The State secures the creation of **equal opportunities for each citizen** and doesn't tolerate for any discrimination, regardless of the individual's gender, race, language, religion, political views, nationality, **social status**, background, and state of health.

5.4. The state secures **the right to compulsory general secondary education for each citizen**. Every student enrolled in the public educational institutions **enjoys the right to free-of-charge general education**. The state sets forth the right to receive a one-time free-of-charge education at secondary vocational-professional education and each level of higher education in accordance with the legislation.

- 5.5. In accordance with labour market demands, the state makes a public requisition to the educational institutions for the training of professional specialists and **provides the graduates with employment opportunities**.

³⁰ Ibid.

³¹ 'State program for 2008-2015 on the reduction of poverty and sustainable development' 6.1.3.

- 5.6. The state guarantees for the continuation of education for talented people, regardless of their financial state, and **provides for necessary conditions for the people in need of social protection to receive education.**³²

In Azerbaijan Republic the opportunity of access to the higher education differs in a big amount for poor and rich population. The statistics show that in Azerbaijan the spending on the higher education is low with respect to the other levels of education and this lead to the unequal opportunities for the different classes of population. Azerbaijan is in the last place with respect to other European Central Asian countries on the correlation of educational expenses to the Gross Domestic Product.³³

4.1.4. Measures in the sphere of effective access to the employment

Chapter 5 of the ‘State program on the Reduction of Poverty and Sustainable development for 2008-2015’ is called the Employment Policy and Social Protection of Population. This chapter mostly focuses on the reducing unemployment and promoting employment for vulnerable groups of population and it defines that:

‘Maintaining macroeconomic stability and ensuring economic growth, development of the non-oil sector lead to an increase in monetary income of the population. But in order to achieve poverty reduction, macroeconomic stability and economic growth need to be accompanied by policies which improve access of the poor population to work income and production assets. From this prospective system measures aimed at supporting business and promoting employment create favourable conditions for increased income generation opportunities’.

In general, between 2003-2013, more than 1 million new jobs have been established in the country, the vast majority of them are permanent. Implementation of the measures assumed in the State programs related to the socio-economic development of the regions played noteworthy role in the elimination of the unemployment. For example, in 2005 the amount of unemployed in the country was 7.5% however this amount decreased to 5.4% in 2011. The total number of people with unemployment status declined from 56,343 (2005) to 38,330 people (2011). The number of people receiving unemployment benefits declined from 2,087 (2005) to 1,002 people

³² <http://edu.gov.az/view.php?lang=en&menu=72&id=5244>.

³³ http://www.kurikulum.az/images/Hesabatlar/dunyabank_hesabat.pdf.

(2011). At the end of 2011, the poverty rate decreased by 8%. In 2013, 110 thousand new jobs were established. Last year, the unemployment rate was 5%, while the poverty rate has fallen to 5.3%. It is no coincidence that President Ilham Aliyev in 2013 emphasized that important steps have been taken towards the resolution of social issues: 'Last year, the unemployment problems have been resolved. 110 thousand new jobs have been established, of which 80 thousand were permanent jobs. Our foreign debt is 8% of gross domestic product. It is a remarkable indicator in the world scope.'

As mentioned, the elimination of unemployment has a direct impact on poverty reduction and in the State Programme on the Elimination of unemployment it is presumed as one of the key issues. At the same time, covering the period 2009-2013, in the framework of the second State Program on socio-economic development of the country in 2012, 299 thousand new jobs were established. In recent years, thousands of new businesses have been established in the regions of the country as a whole. Most of the businesses (12%) accounted for Aran economic region. In addition, Absheron, Ganja-Gazakh, Lankaran, Shaki-Zagatala, Guba-Khachmaz economic regions' entities operating in those regions participated in a great amount in the elimination of unemployment.³⁴

4.1.5. Effective access to the housing

State Program on 'Demographic development and Population Occupancy for 2014-2025' enshrines state provision of the housing problem of the young, poor and low income families.

Article 7 of the Law on Social Service provides the conditions for being accepted as a person living in a hard situation and one of them is not having living place. Article 13 of the same law provides that persons in such situation can be situated in state service institutions.

4.1.6. Medical assistance

Article 1 of the Law on Medical Insurance indicates that in Azerbaijan Republic medical insurance is carried out in 2 ways: voluntary and compulsory. Compulsory medical insurance of people who live or risk to living in a situation of poverty is paid from the state budget.

³⁴ http://anl.az/down/meqale/yeni_az/2014/may/373296.htm.

Article 19.2.3 of the Law on Social Service indicates that to the person or family living in hard situation some assistance will be given for buying medicines also medical assistance and to be situated in a medical institution. Article 23 of the same law defines the medical assistance as one of types of the social services and provides it with social guarantee.

4.1.7. Social and cultural assistance

Second section of the chapter 5 of the Social program on 'Reduction of Poverty and Sustainable Development for 2008-2015' provides state guarantee for social assistance. According to that program:

In the wide sense there are 3 main elements of social protection.

- One is a social insurance element, which is designed to help citizens prepare for times in their lives when they will not be able to earn their own living, e.g. old age, sickness, and unemployment. Social insurance pensions or benefits are based on payments/contributions made by individual citizens during their working years, with some contribution from employers.
- The other element of the social protection is a social assistance system which consists of targeted state aid and social allowances and is material support paid from the state budget for those who have no insurance, other sources of income or their income is below the established rates.
- The third element of the social protection is a social assistance and special social measures system addressed to the especially (socially) vulnerable population groups, i.e. IDPs and refugees, children deprived of parental care, disabled and children with limited health, old and alone citizens, etc.

In 2005, 'Law on Targeted Social Assistance' was enacted. Targeted social assistance is a service provided by the government to households below the poverty line and an influential mechanism to eliminate risks of such households. However it has 20 a temporary nature and does not secure people from poverty. At current stage it implies providing social services to households living in abject poverty and also introducing mechanisms to find a way out of this situation. From this prospective in addition to the targeted social assistance vocational and specialized education as well as employment oriented social rehabilitation programs should be offered to and

implemented for the low income families (State program on Reduction of Poverty and Sustainable Development for 2008-2015).

Section 5 Chapter 6 of the State Program on Reduction of Poverty and Sustainable Development provides as following:

It is important to increase the physical and technical capacity of the cultural and art centres and to improve equal access to them. In this connection major repair to the State Philharmonic named after M. Magomayev, the National Library named after M. F. Akhundov and the Lankaran State Drama Theatre has been carried out recently. At the same time in order to strengthening the physical and technical capacity at Baku Choreographic School, the State Museum of Art, libraries for the blind, the school of music, art and painting for children improvements of these facilities has been continuing.

4.2. Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

We would like to share some statistics with you for answering to that question.

2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
49.0	46.7	44.7	40.2	29.3	20.8	15.8	13.2	10.9	9.1	7.6	6.0	5.3

Table 1. Population below national poverty line, per cent.³⁵ As the table indicates, poverty level has decreased in a big amount from 2001 to 2013.

Years	Total	Male	Female
2001	99.2	99.0	99.3
2002	99.2	99.0	99.3
2003	99.3	99.1	99.4
2004	99.3	99.1	99.4
2005	99.3	99.1	99.4

³⁵ MDP indicators of the Republic of Azerbaijan, table 1.

2006	99.4	99.2	99.5
2007	99.4	99.3	99.5
2008	99.5	99.3	99.6
2009	99.5	99.5	99.6
2010	99.7	99.6	99.7
2011	99.7	99.6	99.7
2012	99.8	99.7	99.8
2013	99.8	99.7	99.8

Table 2. Net enrolment ratio in primary education.

Years	Total	Male	Female
2001	93.9	93.8	94.0
2002	94.6	94.6	94.7
2003	95.8	95.7	95.9
2004	96.5	96.5	96.6
2005	97.7	97.6	97.8
2006	98.2	98.1	98.3
2007	99.8	99.7	99.8
2008	100.0	99.9	100.0
2009	100.0	99.9	100.0
2010	100.0	99.9	100.0
2011	100.0	99.9	100.0
2012	100.0	99.9	100.0
2013	100.0	99.9	100.0

Table 3. Primary completion rate, per cent.³⁶

³⁶ Ibid, table 7 and 8.

As it is stated in above-mentioned tables, as an impact of the measures taken in recent years net enrolment in primary education is 99.8% and 100% of them has completed their education.

Chairman of the State Statistical Committee Arif Valiev indicates in one of his statement that according to the methodology of the ILO there were 560,000 unemployed person 10 years ago, but at present this statistic is 260 000.³⁷

According to the information of the Ministry of Labour and Social Protection of Population:³⁸

	2007	2008	2009
The number of families appointed for targeted social assistance	48,705	78,092	163,409
The number family members taking targeted social assistance	218,673	364,059	749,965
Among them: Female	83,529	168,007	387,609
Children	92,291	165,064	357,620

Table 4.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

After joining UN Convention on the Rights of Persons with Disabilities reforms have been implemented in this sphere, new legislative acts have been adopted and amendments have been made to existing acts in Azerbaijan.

³⁷ <http://www.erc.az/files/USY.pdf>, p 13. Paragraph 5.

³⁸ Ibid, p 20, table 7.

At present, there are more than 57,000 children with disabilities in the country. 1,105 of them study at special educational schools, 2,664 at special boarding schools, 7,750 at home and 268 children have been involved in inclusive education. As we can see the others don't get education. According to the statistics, most of the children with disabilities are preschool children. In Azerbaijan, there are not special kindergartens for children with disabilities. But preschool education is vital for every child. Because, it helps them to comprehend reading and writing more easily. For children with disabilities, it is more difficult to start directly with school.

According to the 16th article of the Law on rehabilitation and social protection of disabled people and disabled children, the relevant executive authorities encourage establishing special groups in general school education establishments in order to create more favourable conditions for education and rehabilitation of disabled children of preschool age. Special preschool educational institutions must be organized for the children that can't go to general schools because of mental or physical deficiencies. Although these regulations have been identified in legislative act, they are not applied in practice. Thus, special preschool educational institutions don't function in Azerbaijan. Special groups for disabled children are very few in number.

Researches show that, the vast majority of disabled children involved in education are studying at home. According to the legislation, education of the disabled children who do not have the opportunity to study in general schools is provided at home at the request of children and their parents. The relevant executive bodies create favourable conditions and help to parents for getting access to education at home. But in modern times it is not an effective method to study at home. The main issue is to integrate them into society; therefore disabled children should receive training with peers and interact with them. One of the key issues for their integration into society is to raise the parental awareness. Experience shows that, the parents of disabled children play the great role in social integration, education and the establishment of a proper foundation for the future of them. Not getting education of children with disabilities creates great difficulties in their future life. If children don't study, they remain outside of the society and feel themselves useless for the society. Moreover, they are not engaged in labour activity mostly and remain as a financial burden on the family. But if they take vocational trainings, and getting involved in labour activity, they will feel themselves beneficial to the society.

The legislator provides an opportunity to get general, vocational and higher education to disabled persons and children with impaired health in the same conditions as healthy people. If necessary, their education is carried out in private educational institutions. In general schools and universities specialized faculties or departments are organized for children with disabilities and impaired health.

There is a special boarding school for the blind persons in Baku. At this educational institution there are necessary conditions for the education of disabled persons. Every year 15-17 people graduate from this school. But, it is not sufficient indicator, because there are nearly 8 thousand blind people, and more than half are young people. The universities do not have Braille alphabet and computer labs equipped with audio programs that are necessary for blind persons. For this reason, visually impaired students cannot use the Internet. In this regard, visually impaired people who want to get higher and secondary special education depends on the help of a second person.³⁹

Only 1-2 per cent of children with disabilities who finished school can get vocational or higher education. In 2001, new legislative act was adopted on 'The education (special education) of persons with disabilities'. The issues about organizing education of disabled persons at home, stationary institutions and special education institutions are regulated in this act. Vocational education indicated as a priority in this act. According to the 19th article, teaching certain professions to persons with disabilities is carried out by the educational institution which they enrolled.

So, we see that very good conditions have been indicated in legislative acts, but the problem is with implementation of these acts. There must be more effective realising methods in this sphere.

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible

³⁹ <http://www.sherg.az/pre.php?id=56576>.

by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

The restrictions standing before the entry of the disabled to the labour market are too much and from this point improvement of legislation is not enough. It is less likely that an entrepreneur operating under the market conditions will install special lift for disabled, provide ramps and lavatory at his own enterprise while none of the state-owned organizations provide such a condition for the disabled. An employer is not prepared to spend money on this just for some people. That is why the employers consider the disabled as 'unfit for employment'. None of the employers plans to employ such group of people and provide privileged job conditions for them. However, corresponding legislation exists in the country to facilitate the access of the disabled to labour market.

The Law on 'Prevention of Disability, Rehabilitation and Social Protection of Disabled' was adopted in 1992 year. Further this Law was amended and changed several times. The Law provisions stipulate to ensure access of the disabled to the labour market. Article 15 of the Law states that, 'vocational training of the disabled is carried out in various forms, including in-home training and individual curriculum'. The IV Section of the Law is called Employment of Disabled. According to Article 23 of the Law 'special measures in the field of employment of disabled include set of measures to assert the obligations through legislation on providing financial assistance and grant concessions to the enterprises, departments and organizations (irrespective of ownership type) which promote employment of the disabled and provide special jobs for the disabled and apply their work'. The Law also includes provisions, which stipulate increasing vocational training of the disabled, establishing specialized enterprises to use the work of the disabled and providing conditions for medical examinations of disabled by the enterprises. The disabled who pass treatment, medical, vocational and social rehabilitation cannot be dismissed except the case of liquidation of an enterprise.⁴⁰ The legislation puts responsibilities on the employers to provide the people who become disabled because of professional disease and because of professional accident with special jobs they can perform. At the same time, special tax concessions are defined for the enterprises, departments and organizations to provide incentives for employment of disabled.

⁴⁰ www.ses.gov.az/upload-files/news/old/file/eliller_qanunu.doc.

According to Article 25 of the Law 'besides the list developed by relevant body of executive power, quota for disabled shall be determined as specified by legislation at the enterprises, departments and organizations irrespective of their ownership type'. The employers who do not obey the quota shall have to make certain payments to State Social Insurance Fund. The enterprises which have 30% of the staff comprised of the disabled are exempted from 50% of the profit tax and those having 50% of the staff comprised of disabled are fully exempted from the profit tax.⁴¹

Labour Code also provides for significant privilege for the disabled. The disabled irrespective of their level of disability have the right to go on 42 calendar days of paid leave at any suitable time. However there are still problems related with application of the Law and in most cases the requirements of the Law are not observed.⁴²

Although the Law on 'Prevention of Disability, Rehabilitation and Social Protection of Disabled' considers providing specialized jobs for the disabled, neither governmental nor private organizations make efforts to create such jobs.

According to Article 26 of the Law the enterprises are obliged to secure jobs and generate new ones for the people who lost their ability to work because of professional accident or infected by professional disease and considered as disabled. The employers who do not follow these rules shall have to make payment in the amount of 120 times of minimum wage to the State Social Protection Fund. Unfortunately, this requirement is not followed in practice. The people who got infected with professional disease or became disabled because of an employer's fault had to lose their job later.⁴³

The disabled have specific weight among the unemployed in the country. Unemployment of such group of people leads to their de-integration, isolation and subjects them to discrimination. Despite of the fact that the legislation was adopted many years before still it is impossible for the disabled to get employed in accordance with the law.

But the improving of employment of disabled persons is also in agenda. In the State Program on the implementation of the Employment Strategy of the Republic of Azerbaijan for 2011-2015,

⁴¹ <http://www.mlspp.gov.az/az/pages/4/125>.

⁴² <http://www.mlspp.gov.az/az/pages/4/125>.

⁴³ <http://labourrights-az.org/en/wp-content/uploads/2013/09/Employment-policy-in-Azerbaijan.pdf>.

which was approved on 15 November 2011, involvement of people with disabilities in vocational courses, to be familiar with the labour market, the professional organization of orientation, and finding workplaces for them. There are a number of benefits for people with disabilities in the workplace. Persons with reduced mobility have more privilege as compared to other workers. For example, if 21-day vacation is considered for the workers in the enterprise, for workers with disabilities, it is 36 days. However many employees are not so happy with it, because they are not interested in additional funds to be spent. It is important to encourage the employer to take measures in this regard and it must be done by the state.⁴⁴

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

Austerity measures implemented because of the devaluation have not negatively influenced measures related to the disabled. It is not observed any changes in the amount of their stipends, concessions given to them in workplaces and education.

5.2. Children and Young Persons (Article 17 ESC)

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

General secondary school education in the Republic of Azerbaijan consists of three levels - primary, general secondary and full secondary education, and general secondary school education begins with six years of age. The general secondary school education in the country implemented in schools of general education, special purpose schools, gymnasiums, and lyceums, the primary and secondary vocational schools, as well as colleges and schools established under the auspices of higher educational institutions. These institutions are established mainly by the state.⁴⁵

By purpose to ensure study of Azerbaijani youth under relevant specialties in abroad and becoming important factor of country, "The State Program on study of Azerbaijani youth

⁴⁴ <http://ses.gov.az/az/menu-69.html>.

⁴⁵ http://www.azerbajians.com/content_873_en.html.

in abroad' has been prepared. Single system on direction of organization of study of talented Azerbaijani youth in abroad, has been created in '[State Program on study of Azerbaijani youth in abroad for 2007-2015](#)' approved. Main goals of program are formation of competitive economic system in the country, meeting the needs for personnel who meet modern requirements of country in order to ensure sustainable development, creation of favourable condition for Azerbaijan youth to obtain worthy higher education under worldwide values.⁴⁶

The state provides education and training for foreigners too. Foreigners whose education document, are appropriate to level of relevant education programs adopted in Azerbaijan Republic, are admitted in training courses by purpose to improve language knowledge. At the end of training period, the listeners pass final examinations and the foreigners who passed examinations successfully, are given state certificates about education in a single form. After obtaining these certificates, the foreigners can study on main education levels in the universities. Only a small portion of the foreigners study due to state account under relevant intergovernmental agreement, but most of them get education under paid principles under agreement signed by the universities.⁴⁷

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

The law on social protection of the children who lost their parents and deprived of parental care was adopted in 1999. According to the law, the relevant executive bodies prepare and implement programs on social protection of children lost their parents and deprived of parental care, create residences for them, as well as education, social services and other facilities for social cohesion and rehabilitation on the basis of state-owned enterprises.

Trustees (or guardians) are appointed for the children lost their parents and deprived of parental care and monthly allowances at the defined amount are given to them by the state. Their tuition fees are paid by the state if they study at secondary school or university. The amount of grants given to them is 2 times more than the usual grants. Furthermore, during the period of production experience they get salary entirely. In addition to usual grants, children lost their parents and deprived of parental care are given special grants for the purchase of textbooks and

⁴⁶ <http://xaricdetehsil.edu.gov.az/c-dphaqqinda/>.

⁴⁷ <http://www.edu.gov.az/view.php?lang=en&menu=134>.

school supplies by the relevant executive body within the framework of their education. While studying in institutions of higher and secondary vocational education, if they are given academic respite for medical reasons their all guarantees are kept and grants are given in this period. These institutions help to organize their treatment. They are free from transport expenses when going to educational institution and return home. It is very positive that the legislation identifies all of these benefits, but there are problems in the process of implementation, many of these provisions do not apply in practice.

According to the Convention on the Rights of the Child, which was also ratified in Azerbaijan in 1992, the placement of children in orphanages and boarding schools is permitted only at the last case after all possibilities are exhausted. But in our country this way is viewed as the first opportunity, not the last. The negative aspect of boarding schools is that they deprive children from the family environment, and separate them from the society. The state program named 'Giving children to families from state child care institutions (De-institutionalization) and alternative care' was adopted in 2006 in Azerbaijan. The key objective of the program covering the period of 2006-2015, giving children to families from boarding schools and orphanages for the full and harmonious development of children, provide their growth in a happy family environment and the creation of alternative care mechanisms. This program must be realised until 2015. But so far, mechanisms of this program have not been prepared with the coordination of the Ministry of Education.

Another interesting issue is about children in prison. There is only one special prison for children. There are more than 40 employee deals with the upbringing of children. There is one secondary school and one vocational school in this prison. Children are provided with all the school supplies. The children are approached in special manner. In practice there have been children who graduated from here and entered universities or high schools.⁴⁸

Last but not least, deserves attention the situation of children with the status of IDPs, Refugees and asylum seekers, a category of children particularly important in Azerbaijan. According to the orders of the Cabinet of Ministers a number of measures aimed at comprehensively improving the conditions for children refugees and internally displaced children who left their home because of the Nagorno-Karabakh conflict, have been implemented: the opening of the

⁴⁸ <http://www.azadliq.org/content/article/1363362.html>.

temporary schools and preschool institutions, mandatory compensation and scholarships, financial aid at the same time.⁴⁹

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

The right to education is identified in the Constitution of the Republic Azerbaijan. According to the 42th article of the Constitution, every citizen has the right to education. The State guarantees the right to free and compulsory secondary education. The state also warrants the continuation of education for talented individuals regardless of their financial situation. Regardless of sex, race, language, religion, political belief, nationality, social status, background, health care facilities every citizen the opportunity to study and discrimination are prohibited.

There are two types of education: free (at public expense) and fee paying education. If applicants pass the limit of points at the entrance examination they get the opportunity to study their higher education at public expense. In accordance with the requirements of the labour market, the state gives the orders for the training of professional specialists in higher education institutions and their all costs are paid by the state. In addition, the government grants the excellent students. In public secondary schools pupils are provided with textbooks that are required.

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue

2.7 million or 28.9% of the Azerbaijani population is the youth aged 14-29. The youth is actively engaged in social and labour activities. But there are many problems with youth employment.

Unemployment of youth male (% of male labour force ages 15-24) in Azerbaijan was last measured at 12.20 in 2012, according to the World Bank.⁵⁰ But, last year in Azerbaijan unemployment rate decrease to 5% and the average salary increase of close to 400. So, it is very favourable situation. However, unfortunately, this positive change has not affected the youth unemployment.

⁴⁹ <http://www.sherg.az/pre.php?id=47622>.

⁵⁰ <http://www.tradingeconomics.com/azerbaijan/unemployment-youth-male-percent-of-male-labor-force-ages-15-24-wb-data.html>.

According to the information of International Labour Organization, approximately 24% of the youth, it means one of 4 young people looking for work are unemployed according to the standards of the unemployed in Azerbaijan. According to the information given by the Ministry of Youth and Sports of Azerbaijan, in the country 57% of the unemployed people are young people. The number of unemployed young people is 123 thousand. In spite of an increase of about 10% of work places in non-oil sector (industry), young people are less likely to take place in this sector.

The unemployment rate is higher among young women in particular. Each year, nearly 100 thousand young graduates from secondary schools and 70 thousand of them enter the labour market without any qualifications acquired. The young people (especially, boys) who have completed secondary school and haven't involved higher education begin search for job. Mainly, they find job in the construction industry but work place is not permanent in this sector. When the workplace is closed, the young people remain unemployed.

One of the main reasons for the problem of youth unemployment, after graduating from high school, they do not have the experience that employers are reluctant to hire them. The way out of this situation is providing the voluntary jobs. Thus, young people can gather working experience by working as volunteer in university years, then it would be easier to find job in the future.

The government has done a lot of work to decrease the youth unemployment rate. 'Azerbaijani Youth 2011-2015' State Program is one of the good examples for it. In this program, many privileges are indicated. Example, placing young people in empty government positions, the use of their potential in the civil service. When two different persons apply for the same places in the civil service, there will be preferred the representation of youth. The creation of suitable and favourable conditions for the youth to engage in commercial and entrepreneurial activity, financing their individual programs, giving them various loans by the National Fund for Entrepreneurship Support for activity in private sector and other issues have also been involved in this program.

The system of evaluation indicators and their measurement mechanisms will be established in order to assess the effectiveness of 'Youth Development Strategy of Azerbaijan in 2015-2025'. According to the strategy document, these indicators should include the relationship

between the work done and the states of young people. The improved format of existing 'Azerbaijani youth' statistical collection and sociological researches will form the basis of this system. As a result of the implementation of the strategy, a number of achievements are expected to gain by the end of 2025.⁵¹

The expectations are increase of the level of education and the number of students with vocational education among young people, raising the level of providing young graduates with employment according to their qualifications, reducing the level of unemployment among young people, the provision of pupils and students of higher, secondary and vocational education institutions with places in hostels for improving living conditions during higher education period, the provision of graduates of higher and secondary specialized educational institutions with employment in their regions according to their qualifications, establishing necessary domestic and employed infrastructure in order to stimulate young people to go to regions lacking with employees, forming the potential competitive young staff that meets the requirements of the labour market.⁵²

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

Despite the devaluation, austerity measures have not been observed in the field of education. The amount of student stipends has remained unchanged. No changes are implemented in free secondary and higher education. Austerity measures have not harmed boarding schools. Azerbaijan stayed away from crisis in this sphere.

6. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

Existence of the system of the collective complaints has an essential role in the defence mechanism of the social rights. Creating of this system was even discussed in the UN ECOSOC.

⁵¹ <http://sia.az/az/news/social/410074-selim-muslumov-azerbaycanda-issizlik-seviyyesi-106-faizden-50-faizedek-azalib>.

⁵² <http://report.az/en/sosial-security/unemployment-rate-among-youth-to-be-reduced-in-azerbaijan/>.

That's why we can consider collective complaints system as a non-governmental provision institute of the social rights. According to the Protocol entered into force in 1998, complaints on the violation of the articles of the Charter could be appealed to the Committee of Social Rights.

Unfortunately, even if Azerbaijan has been a member state of Revised European Social Charter for 11 years it hasn't still signed Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, entered into force from November 9, 1995. In order to fulfil its obligations Azerbaijani government, in the person of the Ministry of Labour and Social Protection of Population, discussed the accessibility to the collective complaints system and Additional Protocol to the European Social Charter Providing for a System of Collective Complaints in July 2013.⁵³ There is still a hope that Azerbaijan will join to the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints in the nearest future.

7. CONCLUSIONS

Being one of the reflection forms of human rights social rights are included into the list of primary rights which every state has to defend. Hence, when making a research on the existing situation of social rights it's vital to consider both legislative and practical sides. It's important to mention protection of labour rights, social protection arrangements, provision of the decent standards of living, defence mechanisms of protection of human rights and actions made by government in this field when studying social rights, their implication and provision.

When evaluating the situation of social rights in Azerbaijan Republic along with considering it satisfying, we should mention that provision of social rights on high level by state gained its independence 24 years ago it's quite difficult. The main question is that what kind of actions has been made during this period and if they have been made at all. As the main executor of the provision of social rights in Azerbaijan Republic the Ministry of Labour and Social Protection of Population continues and expands cooperation with other international organisations. Following this, Azerbaijan state adopts the National Action Programme on the Protection of the Rights of

⁵³ http://azertag.az/xeber/Bakida_Avropa_Sosial_Xartiyasinin_kollektiv_sikayetler_sistemini_temin_eden_elave_protokolunun_ratifikasiyasi_meselesi_muzakire_edilmisdir-24891.

People with Disabilities, as the prolongation of the international cooperation in 2014. This Action Programme reflects the most important list of arrangements for protection of rights of people with disabilities.

Implementation of social rights is highly connected with the dynamism of economic relations and the level of GDP. To be more concrete the amount of average salary and its increase, increase of minimum level of pensions depend on the amount of profit of Azerbaijan Republic in the international economic relations. Being an oil country, the most part of the profits consist of capital come from oil. Consequently, decreasing the price of oil in the world market influence not only economic situation but also social rights and as result, social rights fall under violation.

It's obvious that world crisis do not pass by Azerbaijan Republic. In crisis, connecting with the decrease of the price of oil in the world market, which takes place in our country nowadays protection of social rights, is more difficult than in 2008. As an example of this we can show reduction of employees, increasing the level of unemployment, decreasing the pace of growth of the average salary, etc.

8. TABLES OF CASE LAW AND LEGISLATION. BIBLIOGRAPHY

8.1. English titles

8.1.1. Books

- Nazim Habibov. Social Assistance in Azerbaijan and Krygyzstan.

8.1.2. Legislation

- ‘Azerbaijani Youth 2011-2015’ State Program ‘Youth Development Strategy of Azerbaijan in 2015-2025’.
- The Constitution of the Republic of Azerbaijan.
- The Convention on the Rights of the Child.
- Decision of Cabinet of Ministers ‘Approval of the need criterion for the purpose of the appointment of targeted social assistance’, 14 July 2006, №-145.
- Decision of Cabinet of Ministers of Azerbaijan Republic on ‘The rules for application for, appointment, provision and refusal of provision of the Social Assistance’ and ‘The Order of calculation of the monthly average income of the family’, 2 February 2006, №-32.
- The Labour Code of Republic of Azerbaijan.
- The law of Azerbaijan Republic on Social Service.
- The Law of Azerbaijan Republic on the Social Security.
- Law of Azerbaijan Republic on Targeted Social Assistance.
- The Law of the Republic of Azerbaijan on Ratification of Optional Protocol of the UN Convention on the Rights of Persons with Disabilities.
- The Law of the Republic of Azerbaijan on Ratification of the UN Convention on the Rights of Persons with Disabilities.
- The law on education.
- The law on the Living Wage.

- The Law on Medical Insurance.
- The Law on 'Prevention of Disability, Rehabilitation and Social Protection of Disabled'.
- The law on social protection of the children who lost their parents and deprived of parental care.
- President decree on 'Measures on the improvement of the social protection of the population with low income', 26 December 2012.
- The 'State program for 2008-2015 on the reduction of poverty and sustainable development'.
- 'Statute on the Commission appointing targeted social assistance'. This statute has been approved with the decision of the Ministry of Labour and Social protection of Population in 2006, 1 July, №-7.
- The state program 'Giving children to families from state child care institutions (De-institutionalization) and alternative care'.
- The state Program on 'Demographic development and Population Occupancy for 2014-2025'.
- The state Program on the Elimination of unemployment;
- The State Program on the implementation of the Employment Strategy of the Republic of Azerbaijan for 2011-2015 State Program on study of Azerbaijani youth in abroad for 2007-2015.
- The state Program for 2008-2015 on the reduction of poverty and sustainable development;
- The state Program on the renewing of the preschool education for 2007-2010.

8.1.3. Websites

- <http://www.tradingeconomics.com/azerbaijan/unemployment-youth-male-percent-of-male-labor-force-ages-15-24-wb-data.html>.
- <http://report.az/en/sosial-security/unemployment-rate-among-youth-to-be-reduced-in-azerbaijan/>.

- <http://www.azadliq.org/content/article/1363362.html>.
- <http://labourrights-az.org/en/wp-content/uploads/2013/09/Employment-policy-in-Azerbaijan.pdf>.
- <http://www.erc.az/files/USY.pdf>.
- <http://transparency.az/eng/alac-project/>.
- <http://ehr-az.org/en/projects/legal-advice-centers-for-small-and-medium-entrepreneurs>.
- http://cesd.az/new/wp-content/uploads/2015/03/Azerbaijan_National_Currency_Devaluation2.pdf.

8.2. Azerbaijani titles

8.2.1. Websites

- http://azertag.az/xeber/Bakida_Avropa_Sosial_Xartiyasinin_kollektiv_sikayetler_sistem_ini_temin_eden_elave_protokolunun_ratifikasiyasi_meselesi_muzakire_edilmisdir-24891.
- <http://sia.az/az/news/social/410074-selim-muslumov-azerbaycanda-issizlik-seviyyesi-106-faizden-50-faizedek-azalib>.
- <http://www.sherg.az/pre.php?id=47622>.
- <http://ses.gov.az/az/menu-69.html>.
- http://www.azerbaijans.com/content_873_en.html.
- <http://xaricdetehsil.edu.gov.az/c-dphaqqinda/>.
- <http://www.edu.gov.az/view.php?lang=en&menu=134>.
- http://www.kurikulum.az/images/Hesabatlar/dunyabank_hesabat.pdf.
- http://anl.az/down/meqale/yeni_az/2014/may/373296.htm.

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1. INTRODUCTION

The legal framework of the Bosnia and Herzegovina lays on its Constitution that has entered into force on 14 December the 1995 as a part of the international peace agreement, precisely the Annex 4 of Dayton's General Framework Agreement for Peace in Bosnia and Herzegovina.

In the article II/2 of the Constitution BiH it is regulated that European Convention for the protection of human rights and fundamental freedoms (hereinafter ECHR) and its protocols¹ will be directly applied in Bosnia and Herzegovina and have priority above all other domestic laws.

Considering the fact that BiH has complex inter – constitutional structure², the legal system is divided on the legal norms on the national level, as an administrative and territorial unit, and the legal norms on the lower, entity level. It gets even more complicated because of the **Brčko District (BD)**, as a unique sub-system of local community in BiH, under sovereignty of the BiH and its institutions.³ There are two entities – Federation of Bosnia and Herzegovina and Republic of Srpska. National formal law is superior towards the entities' law systems, as 'entities and all of their administrative units have to follow the Constitution completely, [...] by which all of the law acts of BiH and constitutional and law acts of the entities that are not coherent to the Constitution of BiH, are therefore, put out of the force.'⁴ **Federation of Bosnia and Herzegovina (FBiH)** is divided into ten cantons, as a special administrative units of local self – government, each of them founded on their own constitutions. Cantons are again divided on the municipalities and cities. **Republic of Srpska (RS)** has unified state system, and is divided on municipalities and/or cities.⁵ The constitutive nationalities of Bosnia and Herzegovina are Bosniacs, Croats and Serbians on the territory of BiH, what means their equality, regardless of factual position of majority or minority. Following the constitutive nationalities, there are three official languages: Croatian, Bosnian and Serbian and two official letters – Latin and Cyrillic.

¹ „Official Gazette BiH” No: 6/99.

² Alija Izetbegović, [2000] Constitutional Court of BiH No: U 5/98.

³ Art. VI/4. Constitution of BiH.

⁴ Art. III/3.b Constitution of BiH.

⁵ N. Ademović, J. Marko, G. Marković 'Ustavno pravo Bosne i Hercegovine' 2012, Konrad Adenauer [Bosnian].

Jurisdictions of BiH, according to Constitution of BiH, specifically Art. III, are divided between central authority and entities. So, there is presumption of existence of competences of entities that cannot be changed by the central authority's decisions, with exceptions proscribed by Art. III/5 of Constitution of BiH. Furthermore, in certain segments there are joint competences, so called 'competitive competences'. In the frame of foreign affairs entities have a right to set a special parallel relationships with neighbouring countries, under condition of respecting the Constitution of BiH. Central level of authority and entities are obliged to realise certain cooperation in the field of Human rights, to create the unified market, to carry out international obligations and implement the Constitution of BiH.⁶

Bosnia and Herzegovina (BiH) has ratified core international and European treaties; nonetheless there remain serious gaps between those standards and the existing legislation and practice, which constitute the current social protection system in BiH.

System of social protection in BiH is under jurisdiction of entities, and in the Federation of Bosnia and Herzegovina, it is divided between cantons. Because of its segmentation, lack of harmonisation and inadequate financing of social security, system of social protection causes inequalities in-between citizens of BiH, while simultaneously, a lot of socially threatened categories stay out of the system. But, one of the fundamental obligations of this state, according to International Convent on economic, social and culture rights, as well as the European Social Charter, is guaranteeing the minimum of socio-economic rights to each individual that is not capable to provide for him/herself autonomously.⁷

As said above, social protection and social aid in BiH are strongly divided and are consisted out of 13 almost independent systems, with very low level of in-between interaction and cooperation. Even inside of 'one' sub – system, functions are overlapping and division of responsibilities is unclear.

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

⁶ Art. II/1, I/4. i III/3. b) Constitution of BiH, Art. III/4. And Art. I/1. Of Anex II on the Constitution of BiH.

⁷ Study: Nikolina Obradović, Protections of rights in snia and Herzegovina, 2010, MPDL for SEE.

BiH has ratified the European Charter on the social rights even in 1992 and the Revised European Social Charter which is the most important provisions ratified in 2008, as well as the Additional Protocol 1988 and Amending Protocol 1991.

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

Some of the proposed measures in our country, in response to the crisis of 2008, are:⁸

- To achieve political consensus in the construction of macroeconomic policies of Bosnia and Herzegovina in response to the impact of the global economic crisis on the economy of Bosnia and Herzegovina;
- To develop a deeper analysis and based on it to adopt a strategy to prevent and control the negative effects of the global economic crisis on the economy of Bosnia and Herzegovina;
- Accelerate reform in Bosnia and Herzegovina and create legislation, which will ensure the formation of key state institutions that are important for the economy. According to the General Collective Agreement for Peace in Bosnia and Herzegovina, established public companies in Bosnia and Herzegovina for roads, railways, ports, energy, postal and communication services, and others;
- Accelerate actions in fulfilment of the obligations of Bosnia and Herzegovina under the Stabilisation and approaching the EU and the candidate status for EU membership. Representatives of the business sector more intensively involved in negotiating activity with the EU;
- To intensify activities towards meeting the conditions for achieving visa-free regime;
- Activate free assets of the Central Bank of Bosnia and Herzegovina and to direct them to support the economy;

⁸ Chamber of Commerce of Sarajevo Canton No.74 December 2008.

- To improve cash flow management, to enable the smooth financing of business activities of the company and to take other measures relating to the management of credit and credit risks;
- Increase the guarantee of savings of citizens and adapt it to the amount given by the neighbouring and regional countries;
- Amend the law under the jurisdiction of Bosnia and Herzegovina in terms of their adaptation to the needs and interests of domestic production and exports, such as:
 - i. Law on VAT, the introduction of lower rates for food products, publishing and printing industry, orthopaedic devices, computer equipment used for educational purposes;
 - ii. The law in the field of foreign trade and customs, in terms of equalization of domestic and foreign investors, establishing mechanisms of temporary protection from excessive imports and exports, exemption from customs duties on imports of raw materials, equipment and spare parts, etc.

These measures are only attempted, but not yet implemented. Due to lack of transparency in the work of public institutions, it was not possible to gain any kind of feedback on official austerity measures taken to respond to crisis occurred. For the reasons of poor financial and economic situation and the very complex political structures, often some of the undertakings for mitigating the effects of the economic crisis are being disputed partially by the government that believe that these measures will act counterproductive. The current economic situation in BiH, which keeps us firmly on the scale of the poorest countries in Europe, is such that the economic crisis does not see the end.

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

The right to social and collective bargaining is governed by labour law and it is institutionalised as an authority that participates in the social and collective bargaining established by Council of

employees. Labour Act⁹ has constituted Optional establishment of these institutional forms, so employees can choose to organise it, but have no legal obligation to do so. Also, that option is restricted only on employees working for employers that count at least 15 employees. The employer shall not interfere with or affect the right of employees to establish a Council of employees/workers. The process of establishing a union initiated by a proposal, and in the establishment must attend at least 20% of the employees of an employer.

Current legislation of BiH has established the following obligations of the employer to the employee council or council workers:

- Obligation of informing;
- Obligation of consultation;
- Mandatory participation of employees in the decision making process (duty to co-decide).

Obligation of informing is out of great importance for the work of the Council of Employees/Workers because timely and accurate informing requirement is precondition for proper and productive work of the Council.

The obligation of consultation is linked to the obligation of the employer prior to submission of subject pleading to the Workers'/Employees' Council for the opinion. It is related to decisions with the interests of employees (regulation of work, mass layoffs, relocation etc.). Council can agree, disagree or ignore the pleading. Downside is that the employer is not legally bounded by the opinion of the Employees Council, but if that procedure is not followed, the final employer's decision is invalid. The deadline for declaration of the Council is seven days.

Duty to co-decide is related to:

- The employer's obligation to obtain prior approval of the employees in the event of termination of employment and to the categories of employees such as members of Council of employees and members with a changed working ability or with immediate danger of disability and/or male employee older than 55 years, and female employees older than 50 years;

⁹ Labour Law Art.108 paragraph 1 Official Gazette 43/99.

- Prior approval of the Employees Council is also required in situations where the employer collects, processes and uses the private data about employees for the third parties.¹⁰

In BiH, collective agreements are not regulated on the national level as entities FBiH and RS hold the competencies for that matters. Regarding the subject and content of collective agreements, there are three groups of provisions: provisions on extend and manner of exercising the rights, following provisions on the other rights out of interest for employees and employers, and finally, the provisions on manner and procedure for dispute resolutions.

Pursuant to ILO Collective Agreements Recommendation (No. 91) from the year 1951, the BiH has adopted the principle *in favorem laboratoris* that propagates that rights that are already proscribed by the Labour laws cannot be determined in lesser extent by collective agreements.

According to a positive labour legislation of FBiH collective agreement can be concluded: for the territory of FBiH, in the area of one or more cantons, for a certain activity and for the one or more legal entities, whereas the collective agreements on the FBiH are superior towards the cantonal collective agreements, that are again superior to collective agreements for a certain activity or the ones for the single/more legal entities. The conclusion of these agreements are optional.¹¹

In RS, collective agreement can be concluded: for the territory of RS, for the given activity and the collective agreement for the one or more employers.¹² The hierarchy applied here is the same as for the FBiH, excluding the cantonal level agreements, as there are no cantons in RS.

In BD, there is no general Collective agreement for its territory yet.

The hierarchy of laws in BiH in general sets the provisions on Labour law on the first place, then the collective agreement for the territory of FBiH/RS on the second, and finally, lower – level collective agreements on the third place.¹³ Next in the hierarchy are the Rules of procedure adopted by the employers that are closely regulating the employment relationships and that must be in compliance with the law and with all collective agreements.

¹⁰ Dedic, S., Gradašćevića-Sijerčić J., Labour Law – Radno pravo, Law Faculty of Sarajevo, Sarajevo 2005 [Croatian and Bosnian].

¹¹ Labour Law FBiH, art. 111., paragraph 1.

¹² Labour Law FBiH, art. 130., paragraph 1.

¹³ Labour Law Art 111-121.

The provisions on collective agreements are regulated by law, and there is no constitutional provisions on it, so procedure for making regulations in that area is being done in full respect for principle of legality, but with inability to establish and integrate the principle of constitutionality in that field.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

By amendments to the entity labour laws in the fall of 2000 new provisions have been introduced in order to establish a more flexible labour market. Employers in BiH are facing with less procedural constraints and bear a similar, even lower firing cost, in the sense of length of the notice period and severance pay.¹⁴ All this is done with the aim of creating a more favourable environment for private sector development, to the detriment of workers' rights on the one hand, and on the other hand, to hold high taxes and contributions that raise the price of labour costs, sustaining the situation in which many entrepreneurs are pushing into the grey economy.

Furthermore, amendments to the Labour Law FBiH changed the provisions on the applicability of the employment contract.¹⁵ So, according to the current provisions, employment contract can be concluded permanently and temporary, and this provision is being, perhaps, is being violated and abused by employers in big measures. The employment contracts for an indefinite period are the most common, especially in the private sector.¹⁶ Although the Labour Law stipulates that the employment contracts for a definite period that are being concluded consecutively with the same employer for a period exceeding 2 years is considered to be the contract of indefinite duration, in practice, the situation is quite different and employers, generally, violate that provision.¹⁷

Labour Law of the Federation of BiH does not recognise compulsory recruitment and admission staff, including advertising vacancies. Therefore, the employer has freedom to employ, without applying the institute of public notice or competition. An additional problem is that this

¹⁴ Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights from January 2004.

¹⁵ Originally designed art. 14 Paragraph 1 of the Law on Labour Official Gazette 43/99 then deleted pursuant to Article 11 paragraph 1 ZIDZOR's Official Gazette 17/2001.

¹⁶ Nikolina Obradović, "Protection of rights in Bosnia and Herzegovina".

¹⁷ Labour Law, Section 19, Paragraph 4 Official Gazette 43/99.

provision of the Labour Law applies mostly on public institutions, which are financed from the public funds, and aren't obliged on hiring new people through public tenders, and even when it's done, there is certainly the lack of transparency. The outcome of this provision is unequal access to employment.

In conclusion, the economic situation in BiH is at low level and legislation reforms are changing on the expense of workers, so regardless of the aforementioned provisions, there are however the problems in practicing the same and employees' basic rights are violated on an everyday basis. According to reports from association 'Initiative for development and cooperation' in period of 2008 and 2009, the greatest amount of association's beneficiaries are contacting them for the reasons of violations of labour rights, where the most common violations are unlawful terminations and disrespect of labour contracts, and unequal access to employment.¹⁸ Certainly, there are elements to conclude that there are violations of social rights guaranteed by the Social Charter.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

According to information of Agency for labour and employment BiH, survey unemployment rate (ILO methodology) in 2012 was 28 per cent, while the number of unemployed persons in registers of employment bureau and services was 545,881. The registered unemployment rate for October 2012 was 44.3 per cent, and comparing to September 2012 was higher for 0.1 per cent. Unemployment rate has increased in FBiH for 1,060 persons (0.28%), in RS for 642 persons (0.42%) and BD for 157 persons (1.30%). The average number of unemployed persons in 2011 was 529,690, and comparing to average in 2010, it has increased for 2.3 per cent.¹⁹

The main causes of the catastrophic economic and social situation in BiH in 2012/2013 are out of internal characters: unused international aid, privatisation supported by corruption and inability of the political parties to resolve any problem. One of the consequences of the high taxation in labour market is the large number of employees in the informal sector. The economic

¹⁸ Nikolina Obradović, Labour rights study in Bosnia and Herzegovina, March 2010.

¹⁹ Ž. Papić, S. Cenić, V. Hadžović, T. Dmitrović, 'Politička, ekonomska i socijalna kriza u BiH 2012/2013' (IBHI), Sarajevo, April 2013. [Serbian].

crisis in BiH has put workers into very difficult position, as they are forced to accept the bad conditions of the employer, as 22% of the working population employed in FBH (in RS the amount is 36%) and then they themselves can even be considered fortunate.²⁰ The source of that situation can be identified in the lack of monitoring mechanisms from the existing state bodies. According to the Reports of the Association 'Initiative for Development and Cooperation BaH', for the time period April 1st, 2008-August 20th, 2009, the greatest number of this association's benefit carriers are the people whose rights stemming from labour legislation have been violated: they are mostly illegal dismissals, disregard of labour contracts as well as unequal approach to employment.

Another consequence of the austerity measures undertaken in BiH is burdened economy. The load per employee in FBiH amounts 71 per cent and 60.3 per cent in RS. Furthermore, the certain problems presents the fact that employer has to invest a lot more in financial giving to satisfy administrative and legislative demands of the state than it is reimbursed back afterwards. Around 5 per cent of business expenses are consisting of para – fiscal charges, and the rest 15 per cent on the taxes and contributions. Moreover, according to some analyses in 2011, there were 20 per cent of self – financed employees who are covering their own contributions.²¹

So, we can identify the crucial factors for successful business in BiH impacting on the low level of the competition, such as access to funding, high taxation rates, inefficient administration and high level of corruption.

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for persons who are unable to secure adequate resources either by their own efforts or from other sources (due to illness or not)?

²⁰ BH Federal Statistics Institute, Agency for Statistics of Bosnia and Herzegovina, and Republic of Srpska's Statistics Institute.

²¹ Association of employers in BiH 'Analiza opterećenja privrede u BiH', December 2011 [Bosnian].

The State has no authority to regulate the field of social protection and social care. Social protection is the competence of the entities: RS²² and FBiH.

FBiH has parallel competence with the cantons in the area of social protection.²³ The cantons are particularly responsible for the implementation of social policy and the establishment of social welfare services.²⁴ FBiH Constitution, by Article 2 guarantees all individuals within its territory social protection.

One of the cornerstones of the RS Constitution is and social justice.²⁵ In Article 43 of the Constitution of RS, RS undertakes obligation to ensure assistance and social security to citizens who are unable to work and have no fund for maintenance. According to Statute of BD, BD is in charged for social protection.²⁶ Therefore, social welfare, or social protection, is regulated by the legislation of the Brčko District (BD)²⁷, the Republic of Srpska (RS)²⁸, the Federation of Bosnia and Herzegovina (FB&H)²⁹ and ten cantons in the Federation.

As consequence of legal order of B&H, the social protection system is extremely divided into 13 independent systems (Brcko District, entities: Federation of Bosnia and Herzegovina, Republic of Srpska and ten cantons in Federation), with almost negligible coordination. Activity of social protection is declared for the interest of the Federation of Bosnia and Herzegovina, Republic of Srpska and the Brčko District. Social protection is aimed at ensuring social security to citizens and their families in social need. Social need is considered to be permanent or temporary condition in which there is a person or family, caused by war, natural disasters, the general economic crisis, mental and physical condition of individuals or other reasons, which cannot be

²² RS Constitution, article 68, point 12.

²³ FBiH Constitution, article 2, point e.

²⁴ FBiH Constitution, article 4, point j.

²⁵ RS Constitution, article 5.

²⁶ BD Statute, article 8, point 1, line i.

²⁷ The Social Welfare Law ("Off. Gazette of BD B&H" no. 1/03), the Law on Amendments to the Social Welfare Law ("Off. Gazette of BD B&H" no. 4/04), the Law on Amendments to the Social Welfare Law ("Off. Gazette of BD" no. 4/04), the Law on Amendments to the Social Welfare Law ("Off. Gazette of BD" no. 19/07), Law on Amendments to the on Social Welfare Law ("Off. Gazette of BD B&H no. 2/08).

²⁸ Social Protection Law ("Off. Gazette of RS", no. 37/12).

²⁹ Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 36/99), Law on Amendments to the Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 54/04), Law on Amendments to the Law on Social Protection, Protection of Civilian war Victims and families with Children ("Off. Gazette of FB&H" no. 39/06), Law on Amendments and amendments to the Law on Social Protection, Protection of Civilian war Victims and Families with Children ("Off. Gazette of FB&H" no. 14 /09).

removed without the help of another person, or other social security systems.³⁰ The state of social need is defined and as a condition in which a person or a family needs assistance to overcome social difficulties and satisfy their basic needs.³¹ The social protection rights are to be exercised without discrimination and on an equal basis. These rights are personal, non-transferable and are not heritable.

Legislations provide that social protection cannot be granted to: (a) person who have been convicted by a final judgment of a court for crimes against the constitutional order of Bosnia and Herzegovina, the constitutional order of the Federation of Bosnia and Herzegovina and crimes against humanity and international law, (b) a person who exercises similar rights or may exercise it on other basis and according to other legislation (c) a person that is not citizen of Bosnia and Herzegovina, with the exception of social legislation in Republic of Srpska, which stipulates that foreign nationals and their family members, as well as an internationally protected persons, with a permit to stay in the entity, can achieve named rights. Legislation of RS make and another exception that refers to persons who are not citizens of Bosnia and Herzegovina or entity, are foreign nationals, and find themselves in the territory of the entity, giving them a possibility to seek for temporarily enforce of social protection, provided in case it is required due to especially difficult circumstances in which they face.

Legislations provide social care for two groups: children and adults. Child is every person younger than 18. In **the first group** that social care is provided there are following categories:

- Child without parental care – it is a child without parents, with unknown parents, left by parents, parents deprived of their parental rights and parents prevented from fulfilling their parental duties.³²
- Upbringing neglected child (Republic of Srpska does not recognize this category) – FB&H and BD define this category as a child which, due to lack of supervision and

³⁰ Social Protection Law ("Off. Gazette of RS", no. 37/12) article 2, point 1, Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 36/99), article 11, point 1, The Social Welfare Law ("Off. Gazette of BD B&H" no. 1/03), article 2, point 1.

³¹ Social Protection Law ("Off. Gazette of RS", no. 37/12) article 2, point 2, Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 36/99), article 11, point 2, The Social Welfare Law ("Off. Gazette of BD B&H" no. 1/03), article 2, point 2.

³² The Social Welfare Law ("Off. Gazette of BD B&H" no. 1/03), article 12, Social Protection Law ("Off. Gazette of RS", no. 37/12), article 18, point 1, line 1, Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 36/99), article 13, point 1.

parent's care, and the negative influence of the environment, violates socially accepted norms of behaviour.³³

- Child with disabilities and hindered in physical or mental development – child that is: blind, visually impaired, deaf, hearing impaired, with disturbance in speech and voice, with physical disability and permanent handicapped in physical rusty, with psychological disability and with combined handicaps.³⁴
- Upbringing uncared child – child that with its conduct, vagrancy and begging, violates socially accepted norms of behaviour and commits minor or criminal offenses.³⁵
- Child whose development is disturbed by family circumstances – child which parents due to death or illness of one parent, due to unsettled family relations, or due to material conditions and others, are not able to provide him/her with the normal conditions for the proper upbringing and physical and mental development.³⁶
- Victim of violence – FB&H and BD do not recognize this category. RS, child, victim of violence, considers a child to which physical, psychical, sexual suffering or emotional pain is inflicted as well as threat of such acts or neglect, carelessness and inability to meet basic needs, which seriously impede a child to enjoy its rights and freedoms.³⁷
- Victim of trafficking – FB&H and BD do not recognize this category. RS, child, victim of trafficking, defines as a child that is recruited, transported, hidden, forcibly transported or had accepted by the threat and use of force, deception, abduction, other

³³ The Social Welfare Law ("Off. Gazette of BD B&H" no. 1/03), article 12, point 1, Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 36/99), article 13, pt. 2.

³⁴ The Social Welfare Law ("Off. Gazette of BD B&H" no. 1/03), article 13, Social Protection Law ("Off. Gazette of RS", no. 37/12), article 18, point 1, line 2, Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 36/99), article 14.

³⁵ The Social Welfare Law ("Off. Gazette of BD B&H" no. 1/03), article 12, point 2, Social Protection Law ("Off. Gazette of RS", no. 37/12), article 18, point 1, line 6, Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 36/99), article 13, point 3.

³⁶ The Social Welfare Law ("Off. Gazette of BD B&H" no. 1/03), article 15, Social Protection Law ("Off. Gazette of RS", no. 37/12), article 18, point 1, line 3, Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 36/99), article 13, point 4.

³⁷ Social Protection Law ("Off. Gazette of RS", no. 37/12), article 18, point 1, line 4.

forms of coercion and fraud, abuse or office of excepting money, and which lead on consent of its own exploitation.³⁸

- Child which, due to special circumstances, requires a special social care – This category is found only in RS legislation. This is a child that is in state of social need as a consequence of force immigration, reparations, natural disasters, poverty, long term unemployment, death of one or more family members, return from medical treatment, being released from serving a sentence of imprisonment or execution upbringing measures, or released from the institution or others unforeseen circumstances.³⁹
- Child exposed to socially risked behaviour – FB&H and BD do not recognize this category. RS, defines this category as child that due to the use of psychoactive substances, negative social impact and emotional disorders, undermines and threatens its health and life.⁴⁰
- Abused child - FB&H and RS do not recognize this category. BD defines this category as child which suffered physical or mental pain of damage which caused endangerment of health, physical or mental integrity of person or disabled normal development of the person.⁴¹

Second group for which social care is provided are adults:

- Person with disabilities and hindered in physical or mental development - person that is: blind, visually impaired, deaf, hearing impaired, with disturbance in speech and voice, with physical disability and permanent handicapped in physical rusty, with psychological disability and with combined handicaps.⁴²

³⁸ Ibid, article 18, point 1, line 5.

³⁹ Ibid, article 18, point 1, line 8.

⁴⁰ Ibid, article 18, point 1, line 7.

⁴¹ The Social Welfare Law ("Off. Gazette of BD B&H" no. 1/03), article 16.

⁴² The Social Welfare Law ("Off. Gazette of BD B&H" no. 1/03), article 19, Social Protection Law ("Off. Gazette of RS", no. 37/12), article 18, point 2, line 2, Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 36/99), article 14.

- Materially uninsured and unable to work person – person that does not have the necessary needs for livelihood, unable to work and cannot ensure needs for life on other grounds.⁴³
- Old person without family care – man older than 65 and woman older than 60 years (in RS and BD for both man and woman age limit is 65) which have no family member or relatives who are legally bound to maintain them, or have them but there are not able to carry out their obligation, and the/she cannot meet their basic need due to permanent changes in psychosocial and health state.⁴⁴
- Person with negative social behaviour – person that does procrastinating, vagrancy, begging, prostitution, alcoholism, drugs and other forms of negative social behaviour.⁴⁵
- Person and family in state of social need, which due to circumstances require an appropriate form of special social protection – person and family that are in state of social need due to forced immigration, reparations, natural disasters, poverty, long term unemployment, death of one or more family members, return from medical treatment, which are released from serving a sentence of imprisonment or execution upbringing measures, or released from the institution or others unforeseen circumstances.⁴⁶
- Victim of domestic violence - this category is known only in RS. This is a person to which in family environment is inflicted physical, mental, economical, sexual suffering or emotional pain, as well as threat by such acts, and which because of these circumstances finds himself/herself in state of social need.⁴⁷

⁴³ The Social Welfare Law ("Off. Gazette of BD B&H" no. 1/03), article 17, Social Protection Law ("Off. Gazette of RS", no. 37/12), article 18, point 2, line 1, Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 36/99), article 15.

⁴⁴ The Social Welfare Law ("Off. Gazette of BD B&H" no. 1/03), article 18, Social Protection Law ("Off. Gazette of RS", no. 37/12), article 18, point 2, line 3, Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 36/99), article 16.

⁴⁵ The Social Welfare Law ("Off. Gazette of BD B&H" no. 1/03), article 20, Social Protection Law ("Off. Gazette of RS", no. 37/12), article 18, point 2, line 4, Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 36/99), article 17.

⁴⁶ The Social Welfare Law ("Off. Gazette of BD B&H" no. 1/03), article 21, Social Protection Law ("Off. Gazette of RS", no. 37/12), article 18, point 2, line 8, Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 36/99), article 18.

⁴⁷ Social Protection Law ("Off. Gazette of RS", no. 37/12), article 18, point 2, line 6.

- Victim of human trafficking - this category is only recognized in RS. Person that is recruited, transported, hidden, forcibly transported or had accepted by the threat and use of force, deception, abduction, other forms of coercion and fraud, abuse or office of excepting money, and which lead on consent of their own exploitation.⁴⁸
- Single parent – this category is only present in BD. Single parent is parent that takes care alone for child or children.⁴⁹
- Victim of psychoactive substance abuse – this category is not recognized in FBiH and BD. Person is in state of social need because of use of drugs, alcohol, for long time, and because they have problems in social and family relations, health and material existence.⁵⁰
- Abused person – this category is only recognised in BD. It is adult over which is committed an intentional act for purpose of inflicting pain, physical or mental damage of health, physical or mental integrity of persons.⁵¹

In accordance with provision of FB&H Law on Social Protection, Protection of Civilian War Victims and Families with Children, cantons can expand the circle of beneficiaries of social protection⁵². The cantons generally did not expand the range of users, as they are primarily driven by economic capabilities. Five cantons out of ten have additional groups which exercise rights of social protection and care. Following cantons have extended the circle of beneficiaries of social protection as follows:

- Canton Sarajevo:⁵³ (a) person and family that should achieve their social security by incomes states in the Canton Law, but these incomes are not sufficient to mere their basic needs, (b) Person exposed to abuse and domestic violence.
- Canton Unsko-sanski:⁵⁴ (a) dysfunctional family, (b) individual and family that do not have sufficient income to meet their basic needs.

⁴⁸ Ibid. article 18, point 2, line 7.

⁴⁹ The Law on Amendments to the Social Welfare Law ("Off. Gazette of BD B&H" no. 4/04), article 2.

⁵⁰ Social Protection Law ("Off. Gazette of RS", no. 37/12), article 18, point 2, line 5.

⁵¹ Social welfare Law ("Off. Gazette of BD B&H" no. 1/03), article 22.

⁵² Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 36/99), article 12, point 2.

⁵³ Law on Social Law, Protection of Civilian War Victims and Families with Children ("Off. Gazette of Canton Sarajevo" no. 38/14), article 14.

- Canton Tuzlanski:⁵⁵ person and family exposed to abuse and domestic violence.
- Canton Zeničko-dobojski:⁵⁶ (a) person dependent on psychoactive substances, (b) victim of domestic violence and violence in community.
- Canton Livanjski:⁵⁷ (a) person who is in trouble because of disturbed family relationships, addictions to alcohol, drugs or other narcotics or other forms of socially unacceptable behaviour and other causes.

Rights that are arising from social protection are:

- Training for life and work⁵⁸ (this right is not exercised in RS);
- Accommodation in another family or another institution;⁵⁹
- Social and professional services⁶⁰ (in RS this rights is known as counselling);⁶¹
- Home care and help in home;⁶²
- Support on equalization of children opportunities and youth with disabilities⁶³ (this right in only exercised in RS);
- Daily care⁶⁴ (this right is only exercised in RS);

⁵⁴ Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of Unsko-sanski" no. 5/00), article 14; Law on amendments to the Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of Canton Unsko-sanski" no. 7/01), article 11.

⁵⁵ Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of Canton Tuzlanski" no. 12/10), article 3.

⁵⁶ Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of Canton Zenicko-dobojski" no. 13/07), article 11.

⁵⁷ Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of Canton Livanjski" no. 5/98), article 14.

⁵⁸ Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 36/99), article 29, point 1; The Social Welfare Law ("Off. Gazette of BD B&H" no. 1/03), article 47, point 1.

⁵⁹ Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 36/99), article 31, article 41; The Social Welfare Law ("Off. Gazette of BD B&H" no. 1/03), article 52, article 54; Social Protection Law ("Off. Gazette of RS", no. 37/12), article 40.

⁶⁰ Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 36/99), article 46, The Social Welfare Law ("Off. Gazette of BD B&H" no. 1/03), article 29, point 1.

⁶¹ Social Protection Law ("Off. Gazette of RS", no. 37/12), article 55, point 1.

⁶² Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 36/99), article 47; The Social Welfare Law ("Off. Gazette of BD B&H" no. 1/03), article 60; Social Protection Law ("Off. Gazette of RS", no. 37/12), article 47, point 1.

⁶³ Social Protection Law ("Off. Gazette of RS", no. 37/12), article 36.

- Financial and other material assistance.

3.1.1. Financial and other material assistance

In FBiH, RS & BD it consists from a) Permanent financial aid, b) financial benefits for support and care by another person, c) and other material assistance (temporary, one-off and other financial assistance). In addition, in BD, other material assistance consists and from: family benefits, benefits for education and training for life.

FBiH Law states that cantons are those which by their legislation determine the amount financial and other material support. Due to that, amount of financial and other material support varies between 10 per cent to the 20 per cent of average payment. Different amount of aid in different cantons lead to discrimination of the users. According to available data, in 2014 in Canton Sarajevo permanent financial aid was BAM 120 (approx. EUR 62) for one family member, increased by 10 per cent (approx. EUR 6) for every another family member.

In Tuzlanski canton, one family member receives permanent financial aid of BAM 118 (approx. EUR 60), increased by BAM 36 (approx. EUR 18), for every another family member.

In other cantons, financial aid and other material assistance is achieved by similar principle, and amount that is given starts with BAM 80 in Hercegovinačko-neretvanski canton to bigger amount.⁶⁵

The amount of permanent financial aid in RS depends on number of family members.

Base for establishing amount of financial aid is average payment in RS in last year. In 2014, average payment was BAM 810 (approx. BAM 830).⁶⁶

Financial aid is determined as for (a) single person 15 per cent of basis (that is approx. BAM 124), (b) for family with two members 20 per cent of basis (that is approx. BAM 166), for (c) family with three members 24 per cent of basis (that is approx. BAM 198), (d) for family with four members 27 per cent of basis (that is approx. BAM 224), (e) for family with five and more members 30 per cent of basis (that is approx. BAM 248).

⁶⁴ Ibid. article 52.

⁶⁵ B.M.R. Zurnal.Info 'Socijalna Zaštita u BiH' <http://zurnal.ba/novost/18819/socijalna-zastita-u-bih-samo-17-procenata-dobijaju-siromasni-u-ostatku-uzivaju-bogatasi>, accessed on 25 March 2015.

⁶⁶ Available on: <http://webrzs.stat.gov.rs/WebSite/>, accessed on 1 April 2015 [Serbian].

Financial benefits for support and care by another person is 20 per cent (that is approx. BAM 166) in case that person totally depends on another person's help or 10 per cent (that is approx. BAM 82) if it partially depends on another person help.

One-off financial assistance, cannot be bigger than three-month amount of financial aid.

In BD financial and other material assistance depends on average payment in last three months in BD. According to available data, average payment in last three months of 2014 in BD is BAM 805.⁶⁷ Permanent financial aid is 21 per cent from average payment in last three months in BD. That is approx. BAM 172. Family benefit is at least 20 per cent per family member from corresponding permanent financial aid. That is approx. BAM 34. Benefit for education is at least 30 per cent of amount of permanent financial aid. That is approx. BAM 50. Benefit for care and support by another person is for every family member at least 70 per cent of corresponding amount of permanent financial aid. That is approx. BAM 120.

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

It is noticeable that state expenses on social deductions have significantly increased in period of crisis, and that afterwards, measures of restrictive fiscal policies have entered into force, but the part of total deductions in the budget of BiH suddenly increased from 32.3% in 2010 to 37.1% in 2011. This type of public consumption has done a little for improving the prosperity and development of the country and/or reduction of poverty of the citizens. Budget positions concerning the social protection are taking only small part, comparing to total deductions that are classified like social deductions but, even that part is pretty enhanced comparing to the other countries.⁶⁸ In 2011, all expenditures bound to social safety were 17.1% GDP, according to which BiH belongs to the group of countries with moderate consumption.⁶⁹

⁶⁷ Available on: <http://www.bhas.ba/>, accessed on 29 March 2015.

⁶⁸ Initiative for Better and Humane inclusion, 'Budžetske naknade za socijalnu zaštitu u BiH – šta funkcioniše, a šta ne', Maastricht Graduate School of Governance, June 2013. [Serbian].

⁶⁹ 'Strategija za izjednačavanje mogućnosti za osobe sa invalidetom u Federaciji Bosne i Hercegovine' | 2011-2015.

The total budget deficit was present in BiH even before the impact of the economic crisis, for example, in 2008 it amounted in 2% and it raised on amount of 4.4% GDP in 2009, as this country enter the recession.⁷⁰

On the basis of aforementioned data, we can conclude that public consumption in BiH is being financed by debts of all levels of country's governments and it reflects negatively on the security scheme described under 3.1. Budget financial benefits for the social welfare are constituting the significant part of that problem, as its participation in the budget consolidation is great. According to GFS classification of the budgets' items, this category has moved from 3.01 milliards BAM in 2007 till 4.33 milliards in 2011, or from 31.5% to 37.1% of the total consolidated budget of BiH. As the total public spending for the social welfare has been growing within that period, it's realistic to say that this form of expenditure had tendency of crowding out the other types of expenditures.⁷¹

Nonetheless, we could not identify any official austerity measures undertakes, except the above mentioned negative consequences on the state's budget deficit and increase of public debts.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

There are many organisations in BiH and social associations that provide help to orphans, disabled people and persons with no adequate resources. Such organisations are: UG "Zdravo da ste" Banjaluka, HUG "Naša djeca" Sarajevo, UG 'Budućnost' Modriča, UG 'Svjetionik' Prijedor, UG 'Sretni Romi' Tuzla, UG 'Zemlja djece' Tuzla, UG 'Udruženje za mentalno nedovoljno razvijena lica' Banjaluka, UG 'Budimo aktivni' Sarajevo, UG 'Centar za prava djeteta' Konjic, UG 'Fondacija lokalne demokratije' Sarajevo, UG „Naša djeca“ Zenica, UG 'Step by Step'

⁷⁰ Source: Agency for statistic BiH and Central Bank of BiH.

⁷¹ F, Gassmann, E. Schüring, S. Tomini and M. Bierbaum, The report on 'Budžetske novčane nakndae za socijalnu zaštitu u BiH – što funkcioniše, a što ne', Maastricht Graduate School of Governance, June 2013 [Serbian].

Sarajevo, UG 'Sunce nam je zajedničko' Trebinje and so on.⁷² But country itself has no many resources to provide to these categories as it has bad economic situation.⁷³

In FBiH, the Law⁷⁴ constitute the right to social welfare services and other expert assistance. It is determined that the right to benefit from social work and other professional services can be exercised by individuals, families and groups, independently of their means and their receiving some other forms of social protection, for the purpose of protection of their rights and interest and prevention and alleviation of needy situations. With a view to performing activities of direct social care, family protection and for performing other activities defined by the Law on Social Protection of BD⁷⁵ and other regulations, the Centre for Social Work is established for the territory of the District. The Centre for Social Work is a public institution founded by the Assembly. The Centre for Social Work operates within the Administration, specifically under the Department of Health and Other Services. It is not a public institution that has the status of legal person and is named 'Sub-department for Social Security of Brčko District of BiH'. Counselling services and activities on providing assistance and care as professional services can be provided independently by natural person, humanitarian organisations and associations.⁷⁶ A natural person can provide these services if:

- he/she has appropriate qualifications;
- he/she has legal capacity;
- he/she is mentally and physically fit for performing the activities;
- he/she has not another full-time job;
- he/she has appropriate premises and equipment.

⁷² NGO Network 'Snažnji glas za djecu' BiH 'Zaštimo djecu od nasilja' <<http://www.snaznijglaszadjecu.ba/>> accessed on 3 April 2015 [Bosnian].

⁷³ 'Politička, ekonomska i socijalna kriza u BiH 2012-2013. [Bosnian, Croatian and/or Serbian].

⁷⁴ The Law on Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children, Official Gazette of FBiH“ 36/99, 54/04, 39/06, 14/09); (Art. 19, par.1.

⁷⁵ Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 36/99), Law on Amendments to the Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 54/04), Law on Amendments to the Law on Social Protection, Protection of Civilian war Victims and families with Children ("Off. Gazette of FB&H" no. 39/06), Law on Amendments and amendments to the Law on Social Protection, Protection of Civilian war Victims and Families with Children ("Off. Gazette of FB&H" no. 14 /09).

⁷⁶ European Social Charter, 3rd National Report on the implementation of the Revised European Social Charters.

In addition, a natural person who provides counselling services and services of social care and assistance independently on a professional basis is obliged to inform Centre for Social Work, located in the territory of his/her activities, on the commencement, method and scope of activities. We could not find any official austerity measures undertaken, except bad economy.

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

Social marginalisation or exclusion is a term that means a condition wider than the defining poverty. It includes processes by which individuals, households, community, and even the whole social groups are pushed towards or kept on the margins of society.⁷⁷ It's not only a denial of the material basis, but much wider denial of opportunities to participate fully in social life. The war has caused significant damage to the social structure in BiH and many of the consequences remain today. More than 50% of the population experiences some form of social exclusion, discrimination or stigma, ranging across the social strata.⁷⁸ The root causes include structural barriers to inadequate services, limited civil society participation, discriminatory attitudes within communities and institutionalised political and administrative fragmentation along ethnic lines.

BiH is currently in undergoing transition towards the social inclusion framework adopted in the European Union. In this framework, a comprehensive profile of social exclusion is based on a multidimensional assessment of risk of poverty, attachment to the labour market and material deprivation measures.⁷⁹

⁷⁷ Teague, Wilson, 'Towards an inclusive society', Report No. 2.

⁷⁸ Friedrich Ebert Stiftung, Policy paper 'Socijalna marginalizacija u Bosni i Hercegovini' Banja Luka, 2009, pp 2 [Bosnian].

⁷⁹ Poverty and Exclusion in the Western Balkans, Economic Studies in Inequality, Social Exclusion and Well-Being Volume 8, 2013, pp 71-98.

According to the official report of BiH on the non-accepted provisions of the European Social Charter, Bosnia and Herzegovina adopted the Law on Social Exclusion in 2013.⁸⁰ Although the report noted the adoption of the Law on Social Exclusion, reviewing the agenda of the Government it is not possible to detect any kind of discussion about this law.⁸¹

Almost one third of the population of BiH, or 1.5 million people are at-risk-of-poverty, measured by an indicator that measures whether the household's income per equivalent adult is below 60 per cent of the median income in the country.⁸² This population is concentrated in rural areas, and the risk of poverty is highest among children and for larger households, although men and women in BiH face a similar risk of poverty.⁸³ Without political stability willingness to, regardless of the policy options, the executive and legislative organs of unique works to combat the crisis in Bosnia and Herzegovina, poverty and social exclusion will only increase. Additionally, without an efficient state with strong and professional government that is able to make a self-sustaining reforms in the economy and social sphere.

In the Federation of Bosnia and Herzegovina, disabled workers, civilian victims of war and mentally disabled person constitute 93 per cent of all persons with disabilities. In the Republic of Srpska such amount is 84 per cent, with the participation of disabled workers less than in the Federation, and greater participation of mentally disabled persons. Besides the already mentioned, some data suggest that people with disabilities are among the poorest population groups. and the Federation of Disabled adults that objectively will work for them just 1.5 per cent or 1,395 persons. The number of disabled people who are beneficiaries of social assistance is 4,422 persons, or 2.9 per cent of the total number of disabled persons (152,231 disabled persons). The total number of disabled persons who have some income is 5,817, or 3.8 percent

⁸⁰ European Committee of Social Rights, First report on the non-accepted provisions of the European Social Charter and on The European Code of Social Security, Bosnia and Herzegovina, Meeting in Sarajevo, 2013, pp 5

⁸¹ Reviews of archived Government's sessions from 10/01/2013 to 30/12/2013 – [http://www.fbihvlada.gov.ba/bosanski/sjednice_list.php] Accessed on 16 March 2015. [Bosnian, Croatian and Serbian].

⁸² World Bank, 'Social Exclusion in Bosnia and Herzegovina and global crisis', March 2012.

⁸³ Social Exclusion in Bosnia and Herzegovina and the global crisis, A Poverty Reduction and Economic Management Unit, Europe and Central Asia Region, The World Bank, March 2012, pp 4.

of the population. Viewed from the standpoint of sources of income, no income have 146,414 disabled persons, or 87.7 percent of the population.⁸⁴

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

In Bosnia and Herzegovina, there is no single definition of persons with disabilities. There are different concepts in different areas (social protection, health care, pension insurance, employment), but mostly are defined as disabled persons in context of various functional limitations. It is actually about people with physical disabilities, people with chronic diseases, persons with hearing and/or sight disabilities, people with learning disabilities, people with autism and multiple disabilities. Today, the most common term used is 'persons with special needs', as a result of increasingly present inclusion based on the respect for fundamental human rights that are implying equal participation in social life, and equal opportunities for all.

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

Rights of Persons with Disabilities are established in a series of international standards ratified by BiH and they have the constitutional power as they are an integral part of the Constitution.⁸⁵

In order to ensure the rights of persons with disabilities, BiH concluded the process of ratification of the Convention on the Rights of Persons with Disabilities and the Optional Protocol, which created the conditions for the development of policies and harmonisation of

⁸⁴ B. Brotek, *Studija, Socijalna isključenost u Bosni i Hercegovini iz pogleda zaposlenih i sindikata*, Sarajevo, 2009, pg. 28 [Bosnian].

⁸⁵ International Covenant on Civil and Political Rights (1966.) (ICCPR); International Covenant on Economic, Social and Cultural Rights (1966.) (ICESCR); Convention on the Rights of the Children (1989.) (CRC); Convention on the Elimination of All Forms of Discrimination against Women 1979. (CEDAW); Convention on Elimination of All Forms of Racial Discrimination (1966.) (CERD); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984.) (CAT) and etc.

laws with international standards governing this area, and ensured the establishment of mechanisms for monitoring rights of the persons with disabilities.⁸⁶

The first precondition for a quality social protection system is social security. In the RS, recently the new Law on Social Protection was adopted, as well as new regulations on the manner of exercising rights under the Act. The new Law increased amounts given for persons with disabilities who are beneficiaries of social services. Law on Social Protection RS determines the rights to social protection (financial assistance, a supplement for help and care of another person, support the equalisation of opportunities of children and youth with disabilities, placement in an institution, foster family care, help and care at home, day care, one-time financial assistance and counselling). Preferably, the mentioned rights in social protection were exercised by persons who were unable to work, and who are without their own income and/or family income as well as support of relatives, and persons who because of their physical and health condition are dependents on the help of another person, as well as those persons who for some specific reasons find themselves in need. In the Federation of Bosnia and Herzegovina it is expected a new law to pass, has been drafted and prepared but not yet adopted. Proposed laws still do not take into account the increased costs incurred as a result of disability.

Progress in this area has been made with the support of government training programs for skilled workers, especially training that prepared the organisation OSI (sign language training, training for work with physically disabled persons, training to the service of personal assistance).

Fragmentation of health insurance and health care in the FBiH, as well as the different economic power of the entities, as well as the cantons, have made that an insured person does not enjoy the same rights under the compulsory health insurance and do not have equal access to all levels of health protection and adequate health institutions.

The situation in the last five years has not changed significantly. Persons with disabilities have the same conditions as other citizens to exercise health insurance. The biggest problem remains a non-payment of salary workers and non-payment of health insurance so that if persons with disabilities are employed in such circumstances not only that they do not have the basic existence, but also no health insurance. Legislation in Bosnia and Herzegovina, which defines the

⁸⁶ Institution of the Ombudsman in BiH, *Special report on rights of the persons with disabilities*, November 2010.

area of education is changing in the direction of enhancing respect for the rights of persons with disabilities in educational process before the adoption of the Disability Policy.

Although the issue of disability is increasingly present on the agenda at all levels of governments, it seems like there is still no clear vision for the future action in the field of disability, and disability organisations don't have sufficient capacity to change the current state of society in relation to persons with disabilities. Financial prognoses show the necessary reduction of costs for financing the rights of persons with disabilities. Because of the difficult economic situation of persons with disabilities, organisations operate solely on lobbying for this type of law, and it seems that neither of them have a clear vision of development and other important models of support for persons with disabilities such as support services, professional services, training programs for life and work, independent living, education, social inclusion, public, cultural and political activities, etc.

One of the causes of the current situation of persons with disabilities lies in the shared competences in many areas between the different levels of government in the Federation of BiH (FBiH). At the same time adequate communication does not exist between the Federal and the cantonal government bodies. Furthermore, it is evident that the state of shared responsibilities often leads to situations that people with disabilities do not know where to, or where they should be able to exercise their right. Mainly to solve any problems indicated in the institutions of social protection, this shows that persons with disabilities are treated exclusively as a social category.⁸⁷

It is also very important to mention the existence of Assistance to Persons with Non-war Related Disabilities. A further type of social assistance benefit targets persons with non-war related disabilities (hereinafter PWDs). In the Federation, assistance to PWDs is regulated by the FBiH Law on Social Protection and is funded by the FBiH budget. Related benefits are categorized as disability pay, allowance for care and assistance by another person and orthopaedic pay. In the RS, the Law on Social Protection regulates the rights and benefits for persons with non-war related disabilities.⁸⁸

⁸⁷ Strategy for equal opportunities for persons with disabilities in FBiH, 2015.

⁸⁸ OSCE Mission to BiH, 'The Right to Social Protection in Bosnia and Herzegovina - Concerns on Adequacy and Equality', 2012.

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

With the adoption of the Disability Policy in BiH in May 2008, BiH opted for a new approach in the area of disability, based on human rights and social model, which is a comprehensive look at the issues of disability, design and implementation of solutions for persons with disabilities at the community level in a multi-sectorial approach and with the participation of all stakeholders. BiH has ratified the Convention on the Rights of Persons with Disabilities and the Optional Protocol on 12 March 2010 (without reservations or declarations). For BiH Convention entered into force on 11 April 2010. Moreover, in August 2009, Council of Ministers of Bosnia and Herzegovina adopted, on the proposal of the Ministry of Civil Affairs, **Council of Europe Action Plan** to promote the rights and full participation in society of people with disabilities: improving the quality of life of people with disabilities in Europe 2006 - 2015, which provides guidance for the activities of European countries in all aspects of protection of the rights of persons with disabilities.⁸⁹

On the initiative of the Association of the Deaf and Out of Hearing Persons of BiH Parliamentary Assembly of BiH adopted the Law on the use of sign language in BiH, which was adopted in 2009, but this Law, is still not implemented. Following the adoption of the Disability Policy, both entities made 'Strategy for improving the social status of persons with disabilities in the Republic of Srpska' 2010-2015 and 'A strategy for the equalization of opportunities for persons with disabilities in the Federation of Bosnia and Herzegovina 2011- 2015'. These are operational documents with specified obligations of the entity ministries in 22 areas defined by the UN Standard Rules for the Equalization of Opportunities for Persons with Disabilities and particularly in the issue of housing. The Federal government at its session on September 09 2011. adopted the official conclusion that 'all laws of the FBiH that treat the issue of disability and that are of importance to people with disabilities in future be adopted in accordance with the

⁸⁹ Institution of the Ombudsman in BiH, *Special report on rights of the persons with disabilities*, November 2010.

principles of the United Nations Convention on the Rights of Persons with Disabilities, Disability Policy in Bosnia and strategy for the equalization of opportunities for persons with disabilities in the FBiH (2011-2015).⁹⁰ Brčko District has not made a strategic document.⁹⁰

BiH Council of Ministers adopted a decision to establish a Council for Persons with Disabilities on its meeting 19 October 2010. Council has 20 members, one half of the representatives from all levels of government and other half of the representatives of organisations of persons with disabilities. The disability movement in BiH is characterized by the fragmentation of the entities and types of disabilities. Each entity has an overarching body and they are: Coordination Board of disability organisations of the Republic of Srpska, and Council of Disability Organisations FBiH.⁹¹

Work issues are defined at the entity level through the legal system in the areas of employment: Labour Law and the Law on Mediation in Employment and Unemployment Insurance and the Law on Professional Rehabilitation, Training and Employment and similar. According to Ar. 5 of the Labour Law, a person seeking employment, as well as a person who becomes employed, cannot be put in a disadvantage position because of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, membership in a political party, membership or non-membership in a trade union, physical or mental impairment in respect of recruitment, education, promotion, and conditions of employment, cancellation of the labour contract or other issues arising from the employment relationship.⁹²

Labour Law has a separate chapter that provides for the protection of employees temporarily or permanently unable to work. In accordance with Article 64 of the Labour Law an employee who has suffered an occupational injury or occupational disease, while temporarily unable to work, the employer may not terminate the employment contract.

The adoption of abovementioned Law created the preconditions for the establishment of the Fund for Vocational Rehabilitation and Employment of Persons with Disabilities (**FPRZOSI**) which was established in 2010. Activity FPRZOSI, among other things, worked on the

⁹⁰ Initial report of the BiH on the Implementation of the UN Convention on the Rights of Persons with Disabilities, Article 35, paragraph 1.

⁹¹ Study on the Disability Policy of the Council of Ministers BiH, Governments of FBiH and RS, 2007.

⁹² Initial report of the BiH on the Implementation of the UN Convention on the Rights of Persons with Disabilities, Article 35, paragraph 1.

implementation of policies to develop and improve vocational rehabilitation and employment of persons with disabilities; financed or co-financed institutions for vocational rehabilitation and work centres; worked on co-development of existing programs and on the introduction of new technologies and programs aimed at employing persons with disabilities. There is also a legal obligation of all employers in the private and public sector in the FBiH to employ persons with disabilities to a certain extent and under certain conditions, for what they can find absolutely clear and specific business interest.⁹³

Ministries also took some initiative in the field of promotion, including the Ministry of Labour and Veteran Disability Protection of RS, e.g. 'Promotion and information campaign on the implementation of the Law on Vocational Rehabilitation, Training and Employment of Disabled Persons, events Employer of the year employing persons with disabilities.'⁹⁴

Also it is important to mention that BiH is part of the Tempus project EQOPP. It is a project in the Framework of the TEMPUS Program, to improve access, fulfil needs and rights and enhance studying experience of students with special educational needs in all public Universities in BiH. This project aims to support BiH Universities in improving quality and modernizing higher education making it more open to all students. It is expected that it will result in increasingly enrol and complete university courses students with disabilities. The main objective of this project is to support BiH Universities in improving quality by creation of institutional capacities and development of policies and practices which will enable all students to study at BiH Universities.⁹⁵

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

By analysing the situation of the whole benefits in the social welfare system in 2011, particularly budgetary cash benefits, points can be made about basic budget targeting of benefits, and analysis of their impact on poverty reduction.

⁹³ <<http://www.fprzoi.ba/poslodavci/>> - accessed on 14 March 2015.

⁹⁴ Analysis of the application of the Disability Policy of BiH 2008-2013, Banja Luka, 2013.

⁹⁵ Equal Opportunities for Students With Special Needs in Higher Education http://www.sus.ba/eqopp/?page_id=95 – downloads : accessed on 12 March 2015.

In the FBiH, spending on permanent social welfare remains negligible, with 4.6 per cent of total spending on benefits provided through the Centres for Social Work, that are almost up to 7 times lower than the ones of the single social assistance and/or other forms of *ad hoc* social assistance. Spending on permanent social assistance has decreased substantially in the 2008th to 2010th, compared to the mid-2000s. The increase in consumption remains limited due to complicated eligibility criteria and the small amount of benefits. During the crisis, there was no increase in areas of social assistance and child allowance.

The work of the Fund for Vocational Rehabilitation and Employment of Persons with Disabilities in 2012 took place in a very unfavourable economic, political and social circumstances of the general crisis. This had negative effects on the collection of the Fund's resources. Some of the negative effects were: lack of the time and impairment of mandatory payments of funds by the Federal Employment Service and cantonal employment services, a significant decrease of grants from the federal budget, difficulties in collecting the funds of special contribution for professional rehabilitation and employment of persons with disabilities etc. An additional problem that has caused a political crisis in the Federation, is that the Fund does not yet have named the permanent managing and governing bodies.⁹⁶

Inevitably, the breach of the charter is present in this case as well.

5.2. Children and Young Persons (Article 17 ESC)

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

In regard to the this matter, there are several ministries established at entity levels: Ministry of Education and Culture of the Republic of Srpska (hereinafter: RS), Ministry of Education of the Federation of Bosnia and Herzegovina (hereinafter: FBiH) and Department of Education of Government of the Brčko District, as legal bodies empowered by the relevant Laws in area of education to secure establishment and maintenance of institutions and services sufficient for purpose of education and training of children and youth at the territory of Bosnia and

⁹⁶ 'Izveštaj o radu Fonda' <http://parlamentfbih.gov.ba> –, accessed on 15 March 2015 [Bosnian].

Herzegovina (hereinafter: BiH). These ministries secure the adequate numbers of primary and secondary schools on the territories of the entities. Each entity ministry adopts its own model of education for primary, secondary and tertiary level, according to the legal provisions. When it comes to primary and secondary education years of study, subjects and organisation are similar on both entity's level. In FBiH, there are two school curricula: Bosnian plan and programme and Croatian plan and program, with the exception of “two schools under the same roof” in FBiH where children of Croat and Bosniac ethnicity are separated and follow separate curriculum based on their ethnicity preferences.

Furthermore, elementary school is mandatory in FBiH, RS, as well as in BD, whereas secondary and tertiary education are not.

In RS unified curriculum is made on Serbian language. It can be said that sufficient institutions are established to cover needs of children in cantons of FBiH, which is not the case in RS. According to Law on Primary education of the RS, education curriculum is being established by the Government of RS, and it is in her legal power to bring Regulation on educational standards and norms. In Article 9 of the Law on Primary education of the Republic of Srpska it is stated that every child has equal access to primary education and equal opportunities without discrimination on any basis.⁹⁷

Ministry of RS fails to establish adequate institutions and school curriculum that will follow needs of children at the territory of RS. Also, there is certain amount of discrimination cases in FBiH but that these cases may seem not to be visible as abovementioned. What constitutes a lack in regard to section 5.2.1 is monitoring of the school system in BiH from ministries. Monitoring system is being established by Agency for primary and secondary education (APOS0) has been constructed as advisory body for relevant ministries on issues related to education quality in BiH. APOS0 works closely with relevant State actors and have regional unit in three main cities in BiH (Sarajevo, Banja Luka and Mostar).⁹⁸

There is very limited literature and statistics regarding participation of the children of Roma origins (hereinafter: Roma children) in education system of BiH. “According to the Report of European Commission from 2005 against Racism and Intolerance, only 15 per cent of Roma

⁹⁷ Law on primary education of Republic of Srpska, Article 9, Official Gazette of Republic of Srpska, no. 55/2013.

⁹⁸ Agency for primary and secondary education (APOS0), web page: <http://www.aposo.gov.ba/>.

children is being included in the educational process”.⁹⁹ Also, NGO “Let’s be active” has done a poll and found that 80 per cent of Roma children would like to go to school but lack of parental education and poverty are one of the reasons for their non-participation.¹⁰⁰ ‘Decade of Roma Inclusion 2005-2015’ is an initiative launched in twelve countries and aimed to be implemented by national governments, international organisations and private foundations in order to improve the situation of Roma across Europe, particularly in education, health, employment and housing. BiH joined this initiative in 2008.¹⁰¹ Apart from work of numerous NGO’s in country, still there are no official State policies for inclusion of Roma children into educational system as well as asylum seeker, internally displaced persons and refugees.

Law on Social protection of RS establishes institutions such as Centre for Social Work, Department for Social Welfare, Centre for education of children and youth and etc. which are aimed at securing protection and special aid for children and young person’s temporarily or definitely deprived of their family support. Also in FBiH there is a Law on basics of Social Protection, protection of civilian victims, and families with children which also established similar institutions. In order to monitor the quality of public institutions, since there are no private institutions where children without family care are placed, both Law primarily empower Centre for Social Work. And both Laws give measures to provide protection to children by: accommodation in special facilities such as State homes for children without family cares, and foster families. Foster families are given priorities in both Laws, as being more suitable way of children care, and more comprehensible having in way their emotional needs and physical wellbeing. Every city in BiH poses a Centre for Social Care, which according to State Laws, e.g. Law on Social Protection of RS makes a decision upon child placement either in foster families or in facility.¹⁰² ”Although some strategic documents promote consideration of alternative forms of accommodation before the decision on the placement of a child it is estimated that the state of BiH (State, Entity and cantonal level of government) insufficiently, and occasionally devote attention to deinstitutionalization, which is warned by Committee on the Rights of the Child in

⁹⁹ Publication Non-attendance and School leaving, program YERP: Employment and keeping the youth, 2011, page 18.

¹⁰⁰ *supra*.

¹⁰¹ Publication: The position of Roma children and families in BiH, UNICEF, Sarajevo, 2013, Notice of the Author, page 9.

¹⁰² Law on Social protection of Republic of Srpska, Official Gazette of Republic of Srpska, no. 37/12, Article 64.

2012, when it appeared that there is not sufficient or adequate facilities for family forms of alternative aging, so they are mainly addressed to the institutions. Also there are insufficient efforts taken to re-unite children with their parents.”¹⁰³

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

Law on Social protection of RS establishes institutions such as Centre for Social Work, Department for Social Welfare, Centre for education of children and youth and etc. which are aimed at securing protection and special aid for children and young person's temporarily or definitely deprived of their family support. Also in FBiH there is a Law on basics of Social Protection, protection of civilian victims, and families with children which also established similar institutions. In order to monitor the quality of public institutions, since there are no private institutions where children without family care are placed, both Law primarily empower Centre for Social Work. And both Laws give measures to provide protection to children by: accommodation in special facilities such as State homes for children without family cares, and foster families. Foster families are given priorities in both Laws, as being more suitable way of children care, and more comprehensible having in way their emotional needs and physical wellbeing. Every city in BiH poses a Centre for Social Care, which according to State Laws, e.g. Law on Social Protection of RS makes a decision upon child placement either in foster families or in facility.¹⁰⁴ “Although some strategic documents promote consideration of alternative forms of accommodation before the decision on the placement of a child it is estimated that the state of BiH (State, Entity and cantonal level of government) insufficiently, and occasionally devote attention to deinstitutionalization, which is warned by Committee on the Rights of the Child in 2012, when it appeared that there is not sufficient or adequate facilities for family forms of alternative aging, so they are mainly addressed to the institutions. Also there are insufficient efforts taken to re-unite children with their parents.”¹⁰⁵

¹⁰³ Analysis: The Child Right's on quality aging, Save the Children, 2014, page 54.

¹⁰⁴ Law on Social protection of Republic of Srpska, Official Gazette of Republic of Srpska, no. 37/12, Article 64.

¹⁰⁵ Analysis: The Child Right's on quality aging, Save the Children, 2014, page 54.

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

According to the data provided in the Final Report of the Multiple Indicators Cluster Survey (MICS) for Bosnia and Herzegovina from 2011 to 2012 conducted under fourth of the global cycle East sensitization Multiple Indicator Cluster Survey (MICS 4) estimated rate of school attendance for children ages 6-14 years is 97.6% for Bosnia and Herzegovina, with 98.9% for the RS and 97.2 per cent for the FBiH.¹⁰⁶ Primary education is free on the State level, whilst secondary and tertiary education is liable to payment, with an exception to certain categories of children and youth such as: children from killed combatants and war veterans. These benefits given by the relevant entity Ministries represent a policies aimed at lowering level of school non-attendance. According to Publication Non-attendance and School leaving, program YERP: Employment and keeping the youth from 2011 in primary and secondary education individual and collective communications with both children and parents, material and technical help and advanced work plan are offered from the school management. 'Only one third of the schools have cooperation with relevant ministries in this matter'.¹⁰⁷ Also the same publication observes current programs given by the relevant state factor. One of them are programs of professional orientation given by Institutes for Employment. Also Centre for Social care gives possibilities of part-time education, and accelerated program of mastering the curriculum for children who were out of schools, motivating children through counselling therapies, financial help in purchasing school books, transport subsidies, and Daily Centre, established within Centre for Social Care, where children can get help in learning, education and socializing.¹⁰⁸ On the other hand pedagogical institutes in both entities do not possess special programs of prevention non-attendance to schools.

¹⁰⁶ Analysis: Causes of non-attendance , abandonment and reducing the number of students in primary schools in the Federation of Bosnia and Herzegovina, Federal Ministry of Education, 203, page 3.

¹⁰⁷ Publication Non-attendance and School leaving, program YERP: Employment and keeping the youth, 2011, page 26.

¹⁰⁸ Publication Non-attendance and School leaving, program YERP: Employment and keeping the youth, 2011, page 29.

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue

BiH, according to official data, has an unemployment rate of youth higher than 54 per cent in 2012, or 57.9 per cent in the first half of 2013. Both entities have developed Strategies for Employment. Federal Government in 2008 has adopted Strategy for Employment of FBiH (2009-2013), stating one of the primary goals is to ensure active participation in the labour market of young people aged 15-24 years through increased integration capabilities to labour market. In the other hand RS with her Strategy for employment of RS stated that by the end of 2015, the employment rate among older people has to increase from 40.5 per cent recorded in the previous year to 48 per cent, while the employment rate for young people has to increase from 22 per cent recorded in 2010 to 30 per cent. The law in BiH provides for the possibility of concluding work agreements on part-time, who because of his flexibility, could be meaningful for gradual introduction of youth in the processes of work. But majority of employers do not use this statutory option, and in most cases require workers to work full-time. Due to this fact the labour market becomes unavailable for tens of thousands of students who are studying in higher education.¹⁰⁹

There is also a State Strategy for Employment in BiH (2010-2014). It supports work of entity Institutes for Employment. Some examples of concrete programs from Institutes for Employment for Roma children are: Institute for Employment of RS in 2009 has started realisation of the project giving support for employing Roma people in RS. So far funds have been given to finance employment of 75 persons in the amount of BAM 190.000, 00 out of which is 5 self-employment and 70 employments with employer.¹¹⁰

Federal Institute for Employment also realises Program of employment and self-employment in accordance with Memorandum of Understanding for the implementation of the Action Plan for Roma in employment for the year 2009.¹¹¹

¹⁰⁹ Unemployment of youth in BiH: current situation, risks and recommendations, Erol Mujanović, Fridrich Ebert Stiftung, Sarajevo, 2013, page 49. [Bosnian]

¹¹⁰ *supra*.

¹¹¹ *supra*.

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

In 2015, Government of RS has adopted Economic policy, but there is no mention of the austerity measures that may be taken in regard to measures described under 5.2.1, 5.2.2 and 5.2.3. Also in Economic policy of the FBiH adopted in 2014 for the future period, there is a slight movement in social inclusion and employment, but with no mention of the youth in that process. When it comes to non-conformity of the current legal provisions in BiH with European Social Charter with regard to 5.2.1, BiH lacks an educational system that will be freed from discrimination, and respectable to multicultural diversity in BiH. In respect to 5.2.2 BiH needs more efficient system of monitoring over foster families, and more space for overcrowded child care facilities. And finally, when it comes to section 5.2.4 comprehensive employment policies for youth should be enforced, as existing analysis and strategies proved to be inadequate.

To conclude, the lack of sufficient institutions and facilities that will encompass the needs of the children from both entities having in mind their ethnic background and culture in context under the point 5.2.1, entail a breach of the European Social Charter. By not being able to have access to proper education curriculum, children are deprived from their right on education that is also indirectly guaranteed by the European Social charter. Moreover, a breach of the Charter clearly exists in inadequate monitoring over social care system, which concludes that country has no comprehensive policy that will follow the provision of the Charter in this matter. Finally, problem of high youth unemployment is left to non-state actors such as civil society organizations, when it should be dealt by entity and state political institutions. This approach is in direct opposition to the Constitutions provisions, entailing a breach as well.

6. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

Bosnia and Herzegovina has not signed or ratified the Additional Protocol on the European Social Charter Providing for a System of Collective Complaints, so its positive legislation doesn't recognise that institute.

7. CONCLUSIONS

As seen in issues presented within report, there's a lot Bosnia and Herzegovina needs to improve when it comes about social rights, especially in a light of austerity measures. So far, the main problem of crisis of entire society is in unwillingness of political leaders to solve the issues. There's also a big problem of corruption and lack of transparency in work of public bodies, which directly reflects on access to relevant information regarding the work of the same bodies. Political will must be raised in this discussion as central problem are the different attitudes entity governments have adopted in amending legislation and in the general management of parallel systems of war and non-war related benefits. Attempts at meaningful reform must be coupled with a general change of thinking among the authorities and public in general. Otherwise, we will stay in this paralysed position where we are standing since the end of the War.

It is necessary to decrease the social exclusion, with special accent on the youths, as the most marginalised social category in this country, together with a national minorities. One of the possible solutions for that issue is creating the network of social security and social aid for unemployed persons at high risk of poverty. The emphasis should be put on the youths by making progressive and preventive policies in between period of finishing the education process and finding the job, systematically encouraging them on their active engagement (e.g. additional education, volunteer work and internships).

It's also important to mention some efforts by government to respond to the crises, such as a two-day 'Employment in times of economic crisis' conference, organised by the Federal Ministry of Labour and Social Policy in Čapljina on 21 May 2014, the Fund for Vocational Rehabilitation and Employment of Disabled Persons FBiH, Federal Employment Office attaché for Labour and Social Affairs of South-East Europe the Republic of Austria.

The conference resulted in a series of conclusions, some of which are the following:

- It is necessary to reform the mechanisms in educational system and the labour market, as an initial step to solve this problem;
- It is necessary to increase funds for development of analysis of the labour market and to find more efficient employment measures;
- Country needs to work on the development of cooperation and exchange of experiences, as well as the examples of good practice with neighbouring countries;
- In accordance with the EU Directive on employment, special attention needs to be given to the recruitment of marginalised and unemployed categories, as well as the promotion of social dialogue.
- It is necessary to adopt a single definition of persons with disabilities, in accordance with the UN Convention on the Rights of Persons with Disabilities.¹¹²

Besides the abovementioned conclusions, issues of crucial meaning are the housing policies of socially vulnerable groups, as current policies are directed in facilitating the process of housing of persons who are already in position to autonomously start the same process. That policy is expensive and inefficient as it can apply on very small number of beneficiaries, who are able to secure housing on their own, even without state intervention.

Furthermore, the efficiency of social aid services needs to be improved immediately throughout organisational reforms and simplifying the procedures in social work centres in accordance to needs of beneficiaries. The greater transparency and accessibility of social services are urgently required. There should be functional mechanism for selection of beneficiaries based on total assets, not on belonging to primary category.

Regarding the policies for stimulating the development of family, there should be definitely more concrete support to young married couples (e.g. precise financial aid for fresh married couples, ensure free elemental equipment for the new-born in the first year of its life, and significantly increase the maternity pay etc.) The special support needs to be provided to mothers in the fields of education, health care and finances.¹¹³

¹¹² Fund for Vocational Rehabilitation and Employment of Persons with Disabilities, <http://www.fprzoi.ba> - accessed on 14 March 2015. [Bosnian].

¹¹³ 'Program No 5', M1 The Right One for Youths, 2014, Institute for Development of Youths KULT, [Bosnian].

Despite the abovementioned findings, the most crucial process in entire Bosnian-Herzegovinian society is efficient combat against corruption. There are certain efforts that international organisations in Bosnia and Herzegovina are making in that field, like Transparency International, but yet, it's far from being on the right way. There should be functional monitoring mechanism implemented and system of personal sanctioning who are disobeying the rules. In that regard, the autonomous juridical system is also one of the fundamental precondition to ensure social and legal security in the state.

8. TABLES OF CASE LAW AND LEGISLATION. BIBLIOGRAPHY

- Teague, Wilson, Towards an inclusive society, Report No. 2.
- Friedrich Ebert Stiftung, Policy paper: Socijalna marginalizacija u Bosni i Hercegovini, Banja Luka, 2009, pp 2.
- Poverty and Exclusion in the Western Balkans, Economic Studies in Inequality, Social Exclusion and Well-Being Volume 8, 2013, pp 71-98.
- B. Brotek, Studija - Socijalna isključenost u Bosni i Hercegovini iz pogleda zaposlenih i sindikata, Sarajevo, 2009, pg. 23.
- European Committee of Social Rights, First report on the non-accepted provisions of the European Social Charter and on The European Code of Social Security, Bosnia and Herzegovina, Meeting in Sarajevo, 2013, pp 5.
- Reviews of archived Government's sessions from 10/01/2013 to 30/12/2013 – [http://www.fbihvlada.gov.ba/bosanski/sjednice_list.php].
- Social Exclusion in Bosnia and Herzegovina and the global crisis, A Poverty Reduction and Economic Management Unit, Europe and Central Asia Region, The World Bank, March 2012, pp 4.
- Association of employers in BiH 'Analiza opterećenja privrede u BiH', December 2011 [Bosnian].
- B. Brotek, Studija, Socijalna isključenost u Bosni i Hercegovini iz pogleda zaposlenih i sindikata, Sarajevo, 2009, pg. 28 [Bosnian].
- Dedić, S., Gradašćevića-Sijerčić J., 'Labour Law', Law Faculty Sarajevo, Sarajevo 2005. [Bosnian].
- Initiative for Better and Humane Inclusion-Ž.P., S.C., V.H., T.D., Sarajevo, April 2013.
- Analysis of changes in disability policy in Bosnia and Herzegovina-O.M., S.M., S.D.-Š., T.M.-Đ., Banja Luka, April 2014.
- Protection of rights in Bosnia and Herzegovina-N.O., March 2010.

- Social exclusion in Bosnia and Herzegovina from sight of employees and trade unions- B.B., Sarajevo, Maj 2009.
- Analysis defect in policy social protection and inclusion in Bosnia and Herzegovina- W.B., Sarajevo, November 2013.
- Law on primary education of Republic of Srpska, Official Gazette of Republic of Srpska, no. 55/2013.
- Law on Social protection of Republic of Srpska, Official Gazette of Republic of Srpska, no. 37/12.
- Law on basics of Social Protection, protection of civilian victims, and families with children, Official Gazette of Federation of BiH no. 36/99.
- Publication Non-attendance and School leaving, program YERP: Employment and keeping the youth, 2011.
- Publication: The position of Roma children and families in BiH, UNICEF, Sarajevo, 2013.
- Publication: Unemployment of youth in BiH: current situation, risks and recommendations, Erol Mujanović, Fridrich Ebert Stiftung, Sarajevo, 2013
- Analysis: The Child Right's on quality aging, Save the Children, 2014.
- Analysis: Causes of non-attendance , abandonment and reducing the number of students in primary schools in the Federation of Bosnia and Herzegovina, Federal Ministry of Education.
- Agency for primary and secondary education (APOSOS), web page: <http://www.aposo.gov.ba/>. [Bosnian, Serbian and Croatian].
- Social Welfare Law ("Off. Gazette of BD B&H" no. 1/03).
- Amendments to the Social Welfare Law ("Off. Gazette of BD B&H" no. 4/04).
- Amendments to the Social Welfare Law ("Off. Gazette of BD" no. 4/04).
- Amendments to the Social Welfare Law ("Off. Gazette of BD" no. 19/07).
- Amendments to the on Social Welfare Law ("Off. Gazette of BD B&H no. 2/08).

- Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 36/99).
- Law on Amendments to the Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of FB&H" no. 54/04).
- Law on Amendments to the Law on Social Protection, Protection of Civilian war Victims and families with Children ("Off. Gazette of FB&H" no. 39/06).
- Law on Amendments and amendments to the Law on Social Protection, Protection of Civilian war Victims and Families with Children ("Off. Gazette of FB&H" no. 14 /09).
- Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of Unsko-sanski" no. 5/00).
- Law on amendments to the Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of Canton Unsko-sanski" no. 7/01).
- Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of Canton Tuzlanski" no. 12/10).
- Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of Canton Zenicko-dobojski" no. 13/07).
- Law on Social Protection, Protection of Civilian War Victims and Families with Children ("Off. Gazette of Canton Livanjski" no. 5/98).
- B.M.R. Zurnal.Info 'Socijalna Zaštita u BiH' Available on: <http://zurnal.ba/novost/18819/socijalna-zastita-u-bih-samo-17-procenata-dobijaju-siromasni-u-ostatku-uzivaju-bogatasi> [Serbian].
- Statistical office of RS, available on: <http://webrzs.stat.gov.rs/WebSite>.
- Equal Opportunities for Students With Special Needs in Higher Education http://www.sus.ba/eqopp/?page_id=95 – downloads: accessed on 12 March 2015.
- 'Izvještaj o radu Fonda' <http://parlamentbih.gov.ba> –, accessed on 15 March 2015 [Bosnian].

- Initial report of the BiH on the Implementation of the UN Convention on the Rights of Persons with Disabilities, Article 35, paragraph 1.
- Study on the Disability Policy of the Council of Ministers BiH, Governments of FBiH and RS, 2007.
- Initial report of the BiH on the Implementation of the UN Convention on the Rights of Persons with Disabilities, Article 35, paragraph 1.
- <http://www.fprzoi.ba/poslodavci/> - accessed on 14 March 2015.
- Analysis of the application of the Disability Policy of BiH 2008-2013, Banja Luka, 2013.
- <https://www.osce.org/bih/107168?download=true> – accessed on 14 March, 2015.
- Institution of the Ombudsman in BiH, Special report on rights of the persons with disabilities, November 2010.
- OSCE Mission to BiH, 'The Right to Social Protection in Bosnia and Herzegovina - Concerns on Adequacy and Equality', 2012.
- Institution of the Ombudsman in BiH, Special report on rights of the persons with disabilities, November 2010.
- Strategy for equal opportunities for persons with disabilities in FBiH 2015
- 'Program No 5', M1 The Right One for Youths, 2014, Institute for Development of Youths KULT, [Bosnian].
- Fund for Vocational Rehabilitation and Employment of Persons with Disabilities, <http://www.fprzoi.ba> - accessed on 14 March 2015. [Bosnian].

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

“The Social Charter will illustrate the leap forward in the social dimension. It will show our political will to build a social Europe, in accordance with the essential subsidiarity and also with variety”.¹

The Council of Europe, formed in 1949, is one of the oldest organizations in Europe. Established after the Second World War, it stands for human rights, guarantees the democratic foundations of the society and ensures rule of law. At present, the Council of Europe has 47 member states that follow the same objectives and appreciate the same values.

After all changes occurred in the European social system, in 1992 Bulgaria also became a member state of the Council of Europe. Important principles and values of the states, members of the organization, are promotion of the civil society, free and transparent elections, freedom of speech, media, respect for human rights and in general, all characteristics of a constitutional state with laid foundations of a democratic society.

As an international organization the Council of Europe adopts a number of documents in the course of its activity having the status of international contracts and containing a number of obligations for the countries ratifying them. Some of the most important documents are the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), European Social Charter (1961), European Code of Social Fund (1964).

On June 7 2000 Bulgaria ratified the revised ESC dated 1996 and by virtue of the law on ratification of the Charter the country has committed to ratify the following clauses, of the so-called “hard core” of the Charter: art. 1, art. 5, art. 6, art. 7, art. 12, art. 13, art. 16 and art. 20. Partially ratified are also art. 12, (1) and (3) and art. 13, (1), (2) and (3). Each state ratifying the Charter is obliged to ratify clauses from the peripheral part of the Charter, too, and the overall number of ratified texts have to be 16 full articles or 63 paragraphs. Bulgaria has fully ratified 11 more clauses, part of the peripheral part, as follows: art. 3, art. 8, art. 11, art. 14, art. 21, art. 22,

¹ Declaration by President Delors on 8 December 1989 at the European Council of Strasbourg.

art.24, art.25, art.26, art.28, art.29 and the following paragraphs: (2), (4), (5), (6), (7) from art. 2; art. 4, (2), (3), (4), (5); art. 17, (2); art. 18, (4); art. 27, (2), (3). The ratification of all of the abovementioned texts makes Bulgaria one of the countries exceeding the minimum number of articles to be ratified on national level. This should be and it is, in fact a solid basis for a legislation that defends social rights and declares them as a supreme value.

Even that it was seen as “*complicated mixture of symbolic and idealistic declarations and proposals for Community legislation*” Mr. Wedderburn, 1990, the Social Charter nowadays has become one of the important documents that guarantees a democratic foundation of a society; it is one of the international instruments that further insures and protects basic human rights and it is exactly the much needed leap for a better social dimension.

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

The financial crisis in 2008 was a major factor which delayed planned reforms in the social sector by the Government and the Ministry of Labour and Social policy of Bulgaria.

Nevertheless, the plan for management at crisis prepared by the Government contained more supportive and positive rather than austerity measures. An important fact was that at the time of the beginning of the 2008 financial crisis it was only a year before the regular Parliamentary elections in 2009, and the measures of the Government that was still in power in 2008 soon after the election of the new Government 2009 were changed.

In the middle of December 2008 the Prime Minister presented the government's plan for economic stability and progress in 2009. The plan provides measures for development and protection from the negative effects of the global crisis and aims to achieve a positive effect for all Bulgarian citizens through a network of complementary measures of economic and social policy. Some of them are set out in the 2009's budget, as for a policy in a particular field there must be solid resourcing.

In brief, the main points in the plan could be described as follows: in the macroeconomic framework of the 2009's budget it was important the main priority - financial stability - to be implemented, and thus a budget surplus of 3% of GDP was planned. It was also provided that in

2009 there would be an increase in the capital investment of the government which complies with the so-called Keynesian principle when at times of economic crisis the public infrastructure spending stimulates the real economy. Government's policy aimed at strengthening social protection and solidarity by implementing the following measures: guaranteeing deposits of Bulgarian citizens, increasing unemployment benefits, more flexible guarantee schemes to reduced unemployment, but to preserve jobs. It was planned the funds for social security to be increased by up to 22 per cent. The means for social security, social assistance and social care were also envisaged, which is crucial for the sustainability of the society. An increase of pensions was also planned as of the beginning of 2009. Separately, policy to support families and childcare was provided too – paid maternity leave with a compensation during the whole period amounting to 90% of the salary of the employee would be for a period up to 1 year; child benefits would be increased by 40%; additional compensation for children of unemployed parents was discussed as well. Although in recent years there was a significant reduction in unemployment, which during the last quarter was 5%, a number of measures were envisaged against its potential growth - money for maintaining the employment levels amounted to BGN 190 million. According to the plans of the Council of Ministers by that time a sum of BGN 58 million would have been provided for new working places and another 20 thousand people would be paid for their retraining in order to be competitive in the dynamic labour market. There were incentives for both workers and employers. Another positive measure of the government's plan, which was to stimulate the small- and medium-size business was the capitalization of the Bulgarian Development Bank with more than BGN 500 million. The government also determined relatively large funds for future investments in road infrastructure. A public company was about to be set up for building of business parks to encourage businesses in a number of smaller settlements, not just in major cities. The budget of the Ministry of Education was also increased and an envisaged merger of fund "Innovation" and fund "Science research" was planned as the sum of BGN 120 million for research and innovation was scheduled. As an austerity measure, prescribed by Government, could have been determined only the intended cancellation of the 10% wage increase in the public sector from July 1, 2009.

As a precautionary anti-crisis measure, the 10% of budgeted expenditure for this year should have been blocked until the autumn and should have been spent after the review of the implementation of the budget.

After the regular parliamentary elections in 2009 the new government adopted in the autumn a revised package of anti-crisis measures. These measures were primarily adopted following a wide range discussion thereon in the National Council for Tripartite cooperation (which consists of representatives of trade unions, employers and government and is a way of collective bargaining) - about 60 measures were envisaged as a consequence of this counselling. The most important of them remain in the social sphere –a sufficient amount of funds for food banks has been provided, BGN 10 million was allocated additionally to subsidize employment in regions with high unemployment, some mechanisms have been found for dropping the limitation of unemployment benefits so they should become 60% of the income that people receive before being discharged, a way that was also provided to stabilize the labour market for which an amount of 14 million was provided. As austerity measures of the Bulgarian government in 2009 could be determined the non- acceptance of the increase of the pensions and cutting off the costs in administration with 10%.

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

As described in art. 5 ESC the social right to form organizations for protection of economic and social interests is one of the fundamental rights of workers. According to the Bulgarian Constitution, art. 12, art. 44, (1) and art.49, (1) guarantee exactly the same rights as stated in the ESC:

Art. 12

- (1) Citizens' associations shall serve to satisfy and protect the interests of the members thereof.
- (2) No citizens' association, including any trade union, may adopt any political purposes or engage in any political activities which are intrinsic only to political parties.

Art. 44 (1) Citizens shall have the right to freedom of association.

Art. 49 (1) Factory and office workers shall have the right to associate in trade union organizations and amalgamations for protection of the interests thereof in the sphere of labour and social security.

And as a workers' right it is also set forth in the Labour Code in art. 4, which reads:

(1) Employees are entitled, with no prior permission, to freely form, by their own choice, trade union organizations; to join and leave them on a voluntary basis, showing consideration for their statutes only.

(2) Trade union organizations shall represent and protect employees' interests before government agencies and employers as regards the issues of labour and social security relations and living standards through collective bargaining, participation in the tripartite cooperation, organization of strikes and other actions, pursuant to the law.

Based on the above mentioned texts, when in employment relationship, each worker has a statutory right to form and to join freely organizations that will secure their economic and social rights. To exercise this specific right a worker does not have to receive permission from a state or any other public authority.

The purpose of these organizations is to represent and protect the interests of its members. To represent their interests means to make them public as well as to introduce them to the employers and the respective state authorities. Regarding the protection of workers' interests these organizations are obliged to insist on the rights of their members to be respected and granted. Those mentioned interests are in connection with the employment relationship, social security relationship as well as to different questions regarding the living standards, for example all the interests in related to salary payments, retirement conditions, working conditions, etc. It is the function of this kind of organizations that makes them an important part of a democratic state orientated towards protection of the rights of its labour force.

The legislation also envisages the admissible means through which the achievement of the collective interests of the employees could be perused. Namely, among them are classic forms of representation and protection of the collective interests such as collective bargaining, participation in tripartite cooperation, organization of strikes, etc.

Employers, similarly to the workers, are also entitled to form organizations for protection of their rights as they are a major factor on the working market. Again this right is established in the first place in the Constitution under art. 49, (2), that reads “Employers shall have the right to associate for protection of the economic interests thereof”.

And art. 5 of the Labour Code is a continuation and further development of this provision. The necessity this right to be set in a statute is an expression of the recognition and the autonomy of the employers as one of the major parties in the collective bargaining, tripartite cooperation, etc. The idea of these organizations is the same one as of the ones of the workers. They are formed with the intention to seek a protection of the rights of the employers on the level that their economic interests and rights to be fairly executed and being taken into consideration in the event of a change of law, as well as when it comes to the effective usage of the labour force, the organization and management of the working process.

With respect to the collective bargaining, legal standards are also set in the Labour Code under art. 3, art.3a, art.3b, art. 3c, art. 3d, art. 3e, art.3f. ESC states that MS “undertake to promote joint consultations between workers and employers” which means that bilateral consultations are a must in the view of an effective exercise of the right to bargain. To be able to exercise this legal provision of the ESC concerning the bilateral consultations there should be a respective national law setting out the legislative basis for conduct of such bargaining. But even if there is no national legislation concerning the specific topic, such consultations are actually held and attended by state authorities, and thus the need for national legal framework as per the meaning of ESC is considered to have been fulfilled.

The tripartite consultations as a form of collective bargaining are also envisaged in the Labour Code (see above) and are being held on different organization levels. The State authorities are obliged to participate in consultations with the organizations of workers and employees, as well as with the organizations of the employers on questions regarding the labour, employment and insurance relationships and the living standards. In general, exactly through the tripartite consultations the State takes into consideration the opinion and the suggestions of the workers and the employers. At the same time, as regards the bilateral consultations which are not so widely used and are not even specifically envisaged and regulated in the current legislation in

force, the State also do encourage the conduct of such dialogue especially when the topics thereof are related to a specific state policy.

As one of the most important forms of a social dialogue, tripartite cooperation is carried out by an institutionalized nationally functional system of authorities. It is national, because institutions and activities extend throughout the country. The structure, organization and operation of this system are legally provided for in Art. 3a to 3f of the Labour Code and in the Rules of Organization and Procedure of the Tripartite Cooperation Councils /ROPTCC/ issued in the National Gazette, 37, 2001 by the National Council for Tripartite Cooperation, based on Article 3,(1) of the Labour Code,. It must be underlined once again, that neither the arrangement contained in the Labour Code nor that in ROPTCC establish any organizational, hierarchical or governmental dependence or submission between the councils for tripartite cooperation at different levels. Each of them works independently within its legally permitted competence.

The forms of tripartite cooperation under Article 3a-3b Labour Code and art.2-23 of ROPTCC are:

- The National Council for Tripartite Cooperation;
- Branch Councils for Tripartite Cooperation;
- Municipal councils for tripartite cooperation.

The organization of these forms of cooperation are as follows:

- They all have a tripartite composition - consisting of representatives of the executive of the trade union and employers' organizations and representatives of the State;
- They shall only include representatives of trade unions and employers' organizations recognized as representative in accordance of the established order and criteria contained in Article 34 and 35 of the Labour Code;
- The ratio between representatives of the participating three parties is governed by art.34 and 35 of the Labour Code and applies to any state or municipal body and to each recognized as a representative trade union or employers' organization. Therefore, the more unions and employers' organizations are recognized as representative, the more of their representatives are taking part in the tripartite cooperation. They form "one party"

- the trade union or employers' union in the tripartite cooperation together with third party composed of representatives of the executive power.

What is common for bodies of the tripartite cooperation is that they have the same scope of activity. Regardless of the level at which they have been set up, on which they discuss the labour issues, social security relations and issues of living standards.

The specifics of their activity mainly lies in the range of issues to be considered. So the National Council for Tripartite cooperation discusses and expresses opinions on matters that are of national importance. Branch councils discuss and express opinions on specific branch questions, and municipal councils discuss and reach conclusions on topics of local / municipal / importance.

Branch councils for tripartite cooperation consist of representatives of the relevant ministry, and representatives of representative trade unions and employers' organizations also from the specific branch.

Members of the branch councils are chosen for indefinite time. They have no mandate. Thus any external intervention or approval from other parties, apart from those who appointed them is inadmissible. The authority which appointed their representatives in the Branch Councils may at any time withdraw them or replace them, without the need to discuss this decision with other authorities.

A basic way of the councils for tripartite cooperation of carrying out their activities are their regular meetings. These meetings are considered valid if attended by representatives of the three parties involved, without any requirements as regards to the number of members present. It is believed that as soon as one group of representatives /state or municipal administration, representatives of employers and trade unions/ is being represented even from only one representative, he can expose and defend its position and interests of the group, which is without need the presence of the majority of the members who compose the respective group. This means in practice that the Council meetings are regular when less than half of the board members, as long as they are representatives of the three parties participating in the meeting. And vice versa - the meetings are irregular and therefore they may not adopt valid decisions, even though they are attended from more than half of the members, if these members do not represented all of the parties. A meeting will be counted as regular even without the presence of

some of the participants and their representative of the trade unions and employers' organizations if they have duly informed the other parties.

The decisions of the councils for tripartite cooperation shall be adopted by consensus. "General agreement/Consensus" means unanimity. It is counted to the quorum, i.e. of those present at the relevant meeting members. This means all present at this meeting voted "yes" for the adoption of a particular solution.

The decisions taken by the authorities of the tripartite cooperation are being brought to the attention of relevant state and municipal authorities who have the competence to take final decisions on the issues of labour and social security relations and living standards.

Subsidiary bodies have been created for the preparation and support of the bodies for tripartite cooperation. Thus, the subsidiary bodies of the National Council for Tripartite Cooperation are its Secretariat and 5 permanent committees.

In Branch Councils, assisting organs acting as specialized committees or working groups on equal terms with an equal number of representatives from the three parties involved in the consultations have been created.

Other bodies for tripartite cooperation created under special laws are:

- The Supervisory Board of the National Social Security Institute /art.35, (1) of the Social Security Code/;
- The National Council on working conditions /art.32 by the Health and Safety at Work Act/;
- The National Council for Promotion of Employment /art.8 by of the Law on Employment Promotion of the Law on Employment Promotion/;
- The National Advisory Council for Vocational Qualification of the Workforce /art.59 of the Law on Employment Promotion/;
- Assembly of Representatives of the National Health Insurance Fund /art.7 of the Health Insurance Act/;
- Council for social support /art.4 of the Social Assistance Act/.

As mentioned above in the text key issues that can be negotiated and included as better working conditions in collective agreements are wages, working hours, holidays, leave and re-payment the different types of benefits in connection with the implementation and termination of labour relations, the provision of safe and healthy working conditions, etc., pension categorization of labour retirement, social security contributions due, regular update of the minimum wage, pensions, minimum income wages.

The concluded collective agreements pursuant to art. 53 (3) and Art. 56 (2) of the Labour Code are entered in a special register of collective agreements to enterprises and additional agreements (annexes) to them. The entry shall be effected by filing a request with the original copy of the contract in the Directorate "Labour Inspectorate" for the respective area in the Republic of Bulgaria, the territory in which the registered office and address of the enterprise has his management. According to the register for the last year 2014 a total of 21 collective contracts on branch level have been signed and publicly announced.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

The social dialogue is the only instrument that will help in time of economic crisis. (As defined by the International Labour Organization, social dialogue includes all forms of exchange of information, consultation, collective bargaining and mechanisms for joint decision-making based on different procedures between governments, representatives of employers and workers on issues relating to economic and social policies of common interest.). The regulations of the National Council for Tripartite Cooperation (NCTC) provides regular meetings to be hold in accordance with quarterly schedule based on the operational working program of the Council of Ministers and the proposals of the members of the NCTC. To discuss issues outside of the approved schedule at the request of any member of the NCTC an extraordinary meeting could be organized. Currently the meetings are not regular and are convened by the Chairman of the NCTC, as the members shall be notified at least seven working days before the meeting. From the minutes of meetings uploaded on its official site it is clear that the meetings of the NCTC has been conducted fairly frequently over the past four years back from 2014. The large number

of meetings during those years reflects the political will of the government to consult with the social partners, especially during crisis.

The discussions mainly covered topics on the development of anti-crisis measures at the beginning of the crisis period and discussing the stabilization, as well as the reform of the pension system. In 2013, there have been six meetings held, the last one of which was at the end of April 2013. After this meeting the social dialogue was suspended for a certain period because of the refusal of the employers' organizations to participate in the NCTC due to disagreement with the adopted amendments to the Law on Publicity of property of persons occupying high state, public and other positions in the public and private sectors. In early August of 2013 the texts from the Act that oblige the members of management bodies, as well as the supervisory boards of national organizations of employers and employees to report their property, have been abolished.

After the promulgation of the decision for abolishment of these regulations in the Official Gazette employers' organizations have resumed their participation in the tripartite dialogue in the NCTC. However, thus became evident that the normal conduct of the dialogue has been subject to the delicate maintenance of the interests of the involved parties or certain members thereof, which have always created impediments before the effective agreement on and application of measures in the social sphere, influencing the conditions of the employees.

The lack of a schedule for the meetings, annual program or failure of previously adopted annual programs is a key feature of most advisory boards in Bulgaria, i.e., it is not only a sign of the NCTC. This shows the attitude of Bulgarian administration to these structures in general. They are still perceived more often as a necessary evil rather than a useful and effective mechanism for public consultation and formulation of public policies. The lack of regular meetings and schedule is among the reasons for the changes that came into force in February 2012 in the Administration Act. Some of them provide for the adoption of the annual work program and mandatory reporting of their activities.

During the International Conference held on November 15, 2012 - "Impact of economic crisis on industrial relations and the policies to deal with it," there were summaries and comments on the previously held meetings in the form of social dialogue. As problems in the social dialogue were indicated the decisions on several key issues. First, the adoption of the tax on interest on

deposits without prior discussion – that was a negative example of lack of social dialogue between institutions, businesses and trade unions. This kind of change in the tax policy is important, and its discussion is essential, and the decision for the adoption of such legislative measure must be done upon adequate discussion of the impact and consequences thereof, as a result of constructive social dialogue.

A problematic issue remained the question of the problem with bureaucracy and administrative burden on businesses. Businesses, trade unions and citizens are unanimous for a quick and efficient reduce, but according to the government's measures to curb it becomes clear that this is not fully achieved. Also, at that meeting it was noted that there were a lot of problems in a number of ministries, not only in terms of administration but also in relation to their policy and implementation of European programs.

The problem of unemployment and the need for measures to liberalize the labour market, showed that the opinions of the parties in the social dialogue, respectively of the government, trade unions and employers were not very different. Employers' organizations insisted on more flexible working hours and more liberal labour market and trade unions logically - for more security and protection of workers.

The social Minister pointed out as positive the introduction of more flexible working-hour system, which he said has reduced the pressure on the labour market. He pointed out that collective bargaining is crucial because it helps all workers to be protected, even if they are not members of trade unions and professional organizations. In his words, there was a positive effect on business because it helped to fight against unfair competition.

What still needs to be well discussed and considered by the Ministry of Labour and Social Policy is in connection with the dissemination of collective agreements. It must be carefully weighed in various sectors of the economy.

As a summary of the conference on industrial relations, one can say that the dialogue between the social partners occurred. The crisis certainly makes a compromise possible for either party. The problems were not few, and issues such as reducing the administrative burden on business and the improvement in the labour market should quickly find their solution.

In conjunction with Article 5 and 6 of the Social Charter and the right to organize and to bargain collectively are not affected in a negative sense. In the Bulgarian law no changes were made to restrict these rights, but also evident from the on-going meetings of social dialogue and tripartite cooperation, there are virtually no restrictions for their implementation. The conclusion of collective agreements as a means of better protection of the rights of workers is not limited, but rather perceived as one of the effective and appropriate means to guarantee the rights of the parties thereto, and to achieve a more liberal labour market.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

The right to a fair remuneration as set out in art. 4 ESC has been one of the main issues since the beginning of the 2008 financial crisis. As said in the answer of question 1.2., the increase in the minimum remuneration has been postponed due to insufficient funds in the national budget. This was one of the austerity measures undertaken by the Government which led to a lot of social tension and strikes. So for the next three years till the very end of 2011 its amount stayed unchanged.

In 2012 the Government started a balanced policy to increase the minimum remuneration every year. Nevertheless, it is still not enough and do not correspond to the increase of the prices overall. Thus it became one of the main topics during the meetings of the National Council for Tripartite Cooperation, as well as at every other meeting between representatives of the Government and the workers.

In 2014 the Government set in the next year's budget another increase of the minimum remuneration that should be in force as of the middle of 2015.

In reference to the other rights set in art. 4 ESC – the right to an increased rate of remuneration for overtime work, the right of men and women to equal pay for work of equal value and the right to a reasonable period of notice for termination of employment, they were not affected by the austerity measures that the Government undertook. They remained unchanged in the national legislation.

The thing that is concerning is the fact that yet even in the light of the planned increase the remuneration amount remains insufficient for the needs of a person. It definitely falls outside the meaning set out in the ESC where a remuneration should be of that amount that would give person a “decent standard of living”. The minimum remuneration, that is actually our starting point in this discussion, does not reflect the changed social reality after the economic crisis that led to growth in the prices of many goods and services. Instead of having a simultaneous increase in both wages and prices there is one but in favour of the later. From this point of view the situation with the minimum wage could be considered as a breach of art.4, para.1 ESC which makes it reasonable this to be brought to the attention of the parties at the meetings of the National Council for Tripartite cooperation.

Just a week ago, on May 19 2015 the Supreme Administrative Court rendered a judgment² for cancellation of a Government Decree №419/17.12.2014³ concerning the new amounts of the minimal wage for 2015. The time for appealing has not expired and the Ministry of Labour and Social policy has announced that the decision will be appealed. In the decision itself is stated the motive of the claimants, that are the nationally representative employers' organizations - the Association of Industrial Capital in Bulgaria (BICA), Bulgarian Industrial Association - Union of the Bulgarian Business (BIA) and the Bulgarian Chamber of Commerce and Industry (BCCI), is the fact that the above mentioned Government Decree is irregular on the grounds that the project of the Decree has not been discussed on the meeting of the National Council for Tripartite cooperation which according to art.3, i.1 from the Labour Code is compulsory and the mentioned article has a binding force. The decision of the Appeal court would, in case it confirms the first instance decision, mean that the planned growth of the minimum wage would fail and a new procedure including the obligatory discussion should be carried out in order to have legally binding document setting out the new amount of the wage. In the other case if this first instance decision would be disaffirmed the Government's Decree would be valid and the changes in it would have binding force.

² *BICA, BIA and BCCI v Government Decree 419/2014 of Council of Ministers [2277/2015] Supreme Administrative Court site of the Supreme Administrative court [Bulgarian]*

³ <http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=90802>. – the text of the Government Decree in Bulgarian.

3. SOCIAL PROTECTION

3.1. Has the social security scheme of your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by their own efforts or from other sources?

The right to social assistance is one of the basic and most important rights regulated by the Bulgarian Constitution. Under paragraph 1, Article 51 of the Constitution of the Republic of Bulgaria ‘Citizens shall have the right to social security and social assistance’. Paragraph 2 of this Article stipulates that ‘the state shall provide social security for the temporarily unemployment in accordance with conditions and procedures established by law.’

The right to social assistance is in detail guaranteed by the Social Assistance Act. It aims to legislatively ensure assistance to persons who are unable to secure by their own efforts adequate resources to meet their basic necessities of life.⁴ The social assistance is based on social work and assessment of the needs of individuals and their families.⁵

Article 2, paragraph 3 of the Social Assistance Act regulates who are the persons to whom the right to social assistance shall apply. It applies to Bulgarian citizens, families and cohabiters who, due to health, age, social and other reasons beyond their control, are unable to meet their basic necessities of life on their own, through their own work or from other sources. It also applies to foreign nationals who have a long term or permanent residence permit in the Republic of Bulgaria, foreign nationals who received asylum, refugee status or humanitarian status, and foreign nationals who were granted temporary protection, as well as individuals who are provided for in an international treaty that the Republic of Bulgaria is a signatory to.

This assistance shall be provided in cash, in kind or by delivering social services.⁶

The state policy in the sphere of social assistance is determined by the Council of Ministers and it is developed by the Minister of Labour and Social Policy, to provide social assistance benefits and social services, etc.⁷ The policy of the state in this sphere is further implemented by the

⁴ Social Assistance Act, Article 1, para, item 1.

⁵ Social Assistance Act, Article 1, para 3.

⁶ Social Assistance Act, Article 2, para 2.

⁷ Social Assistance Act, Article 4 and Article 6.

Social Assistance Agency and its territorial branches - regional social assistance directorates in the administrative regional centres and Social Assistance Directorates.⁸ Important decisions regarding labour rights, social policy and other policies which are tightly related to the living standard and income of households are envisaged to be discussed in the National Council for Tripartite Cooperation which includes the Minister of Labour and Social Policy, the Minister of Finance, labour union representatives and representatives of employers' organizations.⁹

According to Bulgarian legislation social assistance benefits shall be paid monthly, as a target or a lump sum.¹⁰ A person is entitled to social assistance benefits after their income, property, marital, health and employment status, education background, age and any other relevant circumstances have been considered.¹¹

The funding of the social assistance activities is obtained from the state budget, the municipal budgets, special programmes, donations, etc.¹² The Social Assistance Agency has its own budget and, apart from the funding received from the state, administrates the revenues from its own sources, e.g. imposed fines, donations, etc.

People who have regularly paid their social security contributions are entitled to pecuniary benefits for unemployment, temporal inability to work, reduced ability to work because of sickness, pregnancy and disabilities.¹³ Different pecuniary benefits depend on the age, working experience, the type of the insured risk. The size of the benefits for unemployment is calculated as a percentage of the approximate social insured income for the last 24 months.¹⁴

The Bulgarian Social Insurance Code also provides for a wide range of pensions for different categories of persons who cannot or are presumed to cannot cover their needs through own means. The pension scheme that applies to most of the cases is the pension due to old age and working experience, the right of which is obtained by meeting two separate criteria – certain age threshold (different for men and women) and threshold of years accrued as working experience, during which social security deductions have been made for the respective person.

⁸ Social Assistance Act, Article 5, para 5.

⁹ Labour code, Article 3a.

¹⁰ Social Assistance Act, Article 12, para 1.

¹¹ Social Assistance Act, Article 12, para 2.

¹² Social Assistance Act, Article 24, para 1.

¹³ Social Insurance Code, Article 13a.

¹⁴ Social Insurance Code, Article 54b.

Currently the age threshold for men is 64 years and 4 months, whereby the working experience threshold is 37 years. With respect to women the thresholds are age of 61 years and 4 months and 34 years of working experience.¹⁵ Each year the age threshold increases with 4 months until it reaches 65 years for men and 63 years for women. The decision to increase the age threshold which has been introduced in 2011 (effective from January 1 2012) was a controversial attempt of the government to cope with the lack of funding of the social insurance system. Labour unions, business organisations and the government are discussing the social security system and aim to present a new model by the middle of 2015. Subject to this reform may also be the age and social experience thresholds.

Pensions are given also to people with less working experience or under the respective age under certain circumstances. Bulgarian social security system grants also pensions for military veterans, police officers and other special categories. There are also the so-called 'social pensions for age' – for people who have not enough working experience or have never worked, but not due to illness, and are at the age of 70 years or more.¹⁶

3.1.2. Persons who are unable to secure adequate resources either by their own efforts or from other sources due to illness?

Under Article 52 of the Bulgarian Constitution 'Citizens shall have the right to medical insurance guaranteeing them affordable medical care, and to free medical care in accordance with conditions and procedures established by law.'

However, this is not always enough to ensure the due care of the state for its citizens. That is why there are several types of pecuniary benefits for people who have paid social contributions. People with temporal inability to work due to occupational accident or occupational disease are entitled to benefits for the period of their inability or until the establishing of disability.¹⁷

People who have lost their ability to work completely or partially forever or for a long period of time are entitled to 'disability pension'.¹⁸ Depending on the age and on the reason for losing the ability to work there is a different requirement for the length of the working experience. There

¹⁵ Social Insurance Code, Article 68.

¹⁶ Social Insurance Code, Article 89a.

¹⁷ Social Insurance Code, Article 49.

¹⁸ Social Insurance Code, Article 71.

are also a limited number of pensions which may be inherited by the other spouse or the children.

Apart from the pensions paid by the National Social Security Institute, there are social services developed by the Social Assistance Agency and funded by the operational programme 'Human resources development' 2007-2013. The most significant of them are the services 'personal assistant' and 'social assistant' under the National programme 'Assistants to people with disabilities'. More than 4,500 seriously ill and solitary people used one of the services in 2013.¹⁹ But the benefits from this programme are not limited to establishment of domestic environment and adequate care for people with disabilities. Most of the 'assistants' hired for provision of the services are relatives and members of the family of the disabled person who otherwise are very unlikely to manage to find a job. Due to the success of this programme it is continued with financing for the new programme period 2014-2020.

3.2. If applicable, what impact have the austerity measures taken had on the social security scheme under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

The government's measures in the sphere of social policy may be separated in two large groups – measures funded by EU structure funds and measures funded by the state budget. While the economic crisis had little or no effect at all on the measures funded by operational programmes, the state budget was more affected. The main austerity measure undertaken by the government was related to the minimal salary in Bulgaria. Most of the social payments in 2011 were calculated on the basis of the size of the minimal salary, i.e. every increase of the minimal salary meant additional social expenses for the state budget. That is why as of 1 January 2012 the connection between minimal salary and social payment was terminated. As a result the minimal salary was increased several times since then, but some social payments were not increased at all, while others were only indexed according to the inflation rate. Since the social payments from the state budget even before the economic crisis were highly insufficient and often on the edge of the poverty line the lack of increase had only limited negative effect in comparison to the situation before. Some measures and programmes were terminated or reconsidered due to lack of results, but austerity measures did not include suspension of any social payments. The

¹⁹ National social report of Republic of Bulgaria for 2013-2014, p. 13.

increasing unemployment rate urged the government to undertake new measures and seek more actively funding from the EU and other external sources which helped overcoming some of the negative effects of the crisis. After all the core minimum obligations of the Bulgarian state were not harmed with respect of the austerity measures undertaken. Even though some social payments and programmes remained at pre-crisis level they solely or in a combination with other social programmes ensured incomes on or over the poverty line. The instruments were slightly amended and adjusted but the net effect on the people entitled to social payments remained unchanged.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

There are numerous organizations in Bulgaria, both public and private, aiming to guarantee the effective exercise of the right to social and medical assistance. The main public authority which provides such services is the Employment Agency through its regional structures. There are also the trade union offices, as well as different NGOs.

The Employment Agency performs independently or jointly with other bodies or organizations projects and programmes in the field of employment, vocational guidance and training of adults, social integration and equal treatment. It seeks funding by the European Union, international sources and the state budget. The Agency implements the state policy on employment promotion and protection of the labour market, vocational guidance, adult education and provides agency services employment.

The Social Assistance Agency is responsible for the implementation of the state policy on social assistance. It is engaged in social benefits distribution and provision of social services and monitors compliance with established criteria and standards for provision of social services. The Social Assistance Agency is also the administrative body which authorizes the opening and closing of specialized institutions for social services.

Except for the governmental structures there are also non-governmental organizations. Labour unions have many tasks and they are not only related to protection of the rights of the working

people, but also to social assistance. The two largest labour unions – KT Podkrepa and KNSB have established a nationwide structure and provide legal advice for their members on labour and social problems.

An organization with very specific role is the National patient's organization. It unites 20 smaller patient's organizations and represents the interest of patients in the National Health Insurance Fund. Except for its various activities related to management in the health sector the organization provides advice in terms of social and medical assistance.

The Bulgarian Red Cross is part of the international Red Cross and Red Crescent movement. It is a humanitarian volunteer organization, working according to the principles of the International Red Cross Movement, committed to providing support to vulnerable people, victims of crisis and disasters in order to improve their life and dignity and relieve their suffering. It is also involved in many volunteer initiatives related to social and medical assistance services for the social groups at risk.

Caritas Bulgaria is a non-profit organization, association of public benefit and implements social activities in support of vulnerable people in society through their structures and collaborators in different places of the country. The organization focuses its work in three main areas: providing social, health and educational services; response in emergency situations; and advocacy.

The activities of the governmental structures were not significantly affected by the austerity measures taken because of several factors. Austerity measures for the administration were primarily related to reduction of the expenses of each administrative body with 10%. In most of the administrations there were already vacancies or positions which were not occupied and by deleting such positions the administrations achieved the goal for cutting costs.

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

Bulgaria aims to decrease the number of people living in poverty with 260,000 until 2020.²⁰ The social expenses related to the fulfilment of this aim equal to 11.6% of Bulgaria's GDP (2014) and have increased with more than 1% in the recent years.²¹ Measures are related to promotion of employment, securing housing needs and prevention of social exclusion.

One of the measures through which the Bulgarian state promotes the hiring of people who were registered as unemployed with the respective employment office is tax reductions for the employers.²² For that purpose the employer must hire a person who was registered as unemployed for more than 1 year. Upon expiry of the first 12 months of the employment relationship the employer is entitled to reduce its income for taxation purposes with the amounts paid as salary for the period as well as with the social contributions. Same tax concessions are applied to employers who hire unemployed persons aged over 50.

Other measures taken are related to EU programmes funding. They include various programmes for first job for youngsters, governmental internships for students as well as programmes for additional qualifications and gathering of new skills (i.e. language courses, courses for cooking, hairdressing, etc.).

The projects Students practices and School practices are financed under the Operational Programme 'Human Resources Development', financed by the European Social Fund.

The project Students practices aims to help improve the quality of education by providing opportunities to gain practical experience and improve the practical skills of students from universities in accordance with the needs of the labour market, to facilitate the transition from

²⁰ National programme for development: Bulgaria 2020.

²¹ National social report of Republic of Bulgaria for 2013-2014, Annex 4.

²² Article 177 of the Corporate Tax Act.

educational institutions to the workplace and to contribute to the successful realization of young people on the labour market, to stimulate growth in the number of students who find a job immediately after graduation, etc. The programme intends to provide 60,000 young people from schools and universities with the opportunity to improve their skills and to receive a chance to find their first job. The programme is still on-going and no official data has been published but the general perception by both young people and employers is positive.

All the students can apply for the practice if entered in the register of current and discontinued undergraduate and PhD, maintained by the Ministry. Applicants are being selected by the employer. The practical training takes place in a real working environment at the facility of the employer and continues 240 astronomical hours. After completion of the practice and filing of a report the applicant is being paid a remuneration amounting to BGN 480.

Each student is entitled to be included in the practical training project once during the course of their education for each degree.

School practices aims for improving the quality of vocational education and training and facilitate access to practical training through more and better opportunities for practice in a real work environment, active involvement of business in the development of programmes for practical training in professions facilitate communication between employers and applicants for employment and training institutions, etc. Students aged 16 to 21 are admitted to participate in such practice, if they are trained in any forms of vocational schools of general education classes with training in professions and vocational colleges and subject to not being in employment relationship during the practice. The length of the practice is 240 astronomical hours.

Opportunities for students to gain valuable experience are also provided by the project 'Student Scholarships'. The initiative is targeting to human capital investment through better and more accessible education. The project aims at ensuring fairness in terms of equal access to education for students and increase their motivation for better training, complementing the existing system in the Republic of Bulgaria to provide scholarships, awards and loans using funding from the European Social Fund, encouraging young people to develop their creative potential and innovation by creating an atmosphere of academic competition.

Providing the opportunity for employment of long-term unemployed persons is among the main priorities of the social policy of our country and it follows the recommendations of the

European Commission for addressing the most vulnerable groups, such as long-term unemployed. There is a legal definition for 'long-term unemployed persons' in the supplementary provisions of the Employment promotion act. It provides that: 'Long-term unemployed persons shall be any unemployed persons whereof the registration at a division of the National Employment Agency has been maintained without interruption, for not less than twelve months.'²³

In 2014 there were on average 138,473 monthly registered in the labour offices long term unemployed. This is 37.8% of all registered unemployed persons for this period of time. This means that in comparison to 2013 there is a trend to increase the number of people of this vulnerable group, since in 2014 this group has increased by 12.8% or 15,735 persons compared with figures for the same period of 2013.²⁴

Measures are taken to adapt these people in the labour market and also to prevent poverty and social exclusion. Such measure is the Programme for training and employment of the long-term unemployed. The main purpose of this programme is the successful participation of these people in the labour market by including them in training, which contributes to improving their knowledge and qualifications.

Subject of the programme are unemployed persons in working age, who are registered in the division of the National Employment Agency, but the priority for the programme are:

- Young people up to the age of 29;
- Persons who are subject to monthly social assistance;
- Persons over the age of 50.

Programme activities consist of informing and consulting unemployed for potential inclusion in the programme, provision of specialized mediation services, including activities for the preparation of individual action plan in which to determine the profile of each person to choose the appropriate form of support, providing services such as psychological support, career counselling, career guidance workshops for inclusion in search of work, mediation to resolve complex problems alienating long-term unemployed from the labour market, motivation training

²³ Employment promotion act, paragraph 1, item 2.

²⁴ Annex to Order № RD01-177 from 24 February 2015 of the Minister of Labour and Social Policy.

for acquiring knowledge and skills for job search and successful presentation to the employer, provision of subsidized employment on a full or part-time for up to 12 months in the private and public sectors, etc.

Another major issue in terms of unemployment are the people who have declined to seek work. Reintegration of long-term unemployed back to the labour market and the motivation of inactive persons to seek and engage in employment relationship is an important priority and is determined both by the need to increase the workforce to sustain economic growth and to foster the social inclusion. However, due to the complexity of the problem the measures for activation of this 'latent' working force are rarely effective if not diversified and entailed with individual approach to the different persons comprising this group.

Economically inactive persons of the age of 15 and older are 2,785.1 thousand in the third quarter of 2014. The largest number of persons outside the labour force is in the South-western region - 753.3 thousand, and the lowest is in North - 347.5 thousand.

A total of 256.3 thousand individuals in this group are willing to work, while 178.5 thousand refer to the group of 'discouraged workers', which is 6.41% of the economically inactive. The group of 'discouraged workers' includes 99.6 thousand men and 78.9 women. The main reasons for inactivity are the lack of jobs suitable for education and qualification level of discouraged workers, lack of qualifications, skills or work experience, etc.

Considering all of the above it is easy to see the need of the National programme 'Activation of the inactive persons' The main objective of the programme is to enable inclusion in the labour market of inactive, discouraged workers and young people under 29 who do not work, do not study and are not registered at the employment office, as well as registered unemployed, through individual and group administration tools and services to attract and motivate them to register at the employment office and promote their inclusion in training, return to education and / or employment.

The programme gives priority to disadvantaged groups in the labour market (young people up to 29 years, long-term unemployed, unemployed with low education and without qualification, etc.), registered unemployed persons identifying themselves as Roma (with a minimum of secondary education), appointed under the Programme as Roma mediators in the Labour office directorate, registered unemployed persons with higher education courses in the field of educational,

humanitarian, social, economic and legal sciences, appointed as Programme Managers case (Case managers) in the Labour office directorate, etc.

Apart from the young unemployed there were also programmes aimed towards people living in rural areas and areas with higher unemployment rate. Such a measure was the programme 'From social benefits towards employment' where the local authorities, funded by the state budget hired long-term unemployed persons who received social benefits. The measures however had little or no effect at all. Analyses of the Labour and social policy revealed that only 0.27% of the people hired under this programme found a permanent job. The costs from 2003 to December 31 2013 when the programme was cancelled amount to approximately BGN 85,000,000 yearly.

Bulgaria has also undertaken measures regarding the housing needs of people with limited financial means. Terms and conditions for public housing are regulated in the Ordinance on the conditions and procedures for determining housing needs, public housing and disposal with public housing in favour of people in need. Each municipality has an ordinance regulating the procedures for accommodation of households or families in public housing.

Eligible for rental accommodation in public housing are families or households. Applicants must meet all of the following conditions:

- At least one member of the family / household / Bulgarian citizen to be registered and domiciled in the territory of the municipality for more than ten years without interruption;
- Not to own a home, villa or indivisible interest (ideal parts) in such real estate properties suitable for permanent living or right to use them on the territory of the municipality and in areas of settlements from 0 to 3rd category including, as defined in the Unified classifier of administrative -territorial and territorial units in the Republic of Bulgaria;
- Not to have undeveloped land intended for house or villa construction, ideal parts of such property or the right to build on it in the territory of the municipality in the areas of settlements from 0 to 3rd category including, as well as not to have land or rights of construction over land in resort areas and resorts and villa zones; not to have land located at a distance of up to 10 km from the sea coast;

- Do not own factories, workshops, shops, warehouses and commercial business or shares of such properties in the areas of settlements from 0 to 3rd category including;
- Have not transferred said property on others over the past decade, with the exception of termination of ownership, transfer of shares to a third party or a donation in favour of Sofia Municipality;
- Not have assets totalling more than 1/2 of the average market price of housing geared to the needs of the family / household /;
- A quarter of the total annual income of persons and members of their families / households / cannot cover the cost of the average market rent for housing geared to the needs of the family / household /;
- Persons and members of their families / households / were not subject of a procedure of municipal housing, unless more than two years of their release have expired.

In order to commence the procedure, the families or households submit an application and declaration form before the district administration at their current address. The application should be accompanied by the following documents for the person and his family / household /: certificates from the address office of the Ministry of Internal Affairs, certificates from the Registry Agency for conducted property transactions in the municipality, and, if necessary, from other settlements, certificates from the Tax Office for declared annual income from employment or service relationship for the previous year, as well as for the existence of income from other sources – provable by presenting copies of submitted tax returns, copies of leases, where the person and his family / household / live on contractual basis, etc.; copy of the decision of the Territorial Expert Medical Commission, if any.

After submitting the documents to the mayor, they are considered by the permanent commission to the municipal administration within two months as of receiving them and decision for rejection or awarding of the request is issued.

Families who qualify are arranged in groups depending on their housing need. The placement in each category determines the order of the council housing accommodation.

Employment promotion and meeting the housing needs are very important measures in the fight against social exclusion. However sometimes they cannot take immediate effect. That is why

different measures have been adopted to promote social services and benefits for people living in risk of social exclusion. Such program in Bulgaria is the EU food distribution programme. In 2013 more than 330,000 people received packages with basic food products. Bulgaria also provides energy supply support for people in risk of social exclusion and people living under the national poverty line. Each year people who have incomes below the Guaranteed Minimum Income which is determined by the Council of Ministers are entitled to apply for targeted benefits in order to meet their heating supply needs.²⁵

Some of the most successful activities of administrative bodies in the social sphere are funded by EU funds. Other activities are funded each year by the state budget with the special Law on the state budget. Even though this funding was not reduced, it was not increased either.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

Article 15 – The right of persons with disabilities to independence, social integration and participation in the life of the community

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

- To take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;
- To promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating

²⁵ Ordinance on the conditions and procedures for granting allowances for heating.

sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;

- To promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.

According to Mariana Karkovska, Secretary General of the Agency for Persons with Disabilities, “Bulgaria does not keep statistics on the number of disabled people, but it has been applied by the European practice that on average 15-16 per cent of the population of a Member State of the EU consists of disabled persons, so, based on the Bulgarian population - the number of Bulgarians with registered diseases will be between 800,000 and 1 million.”²⁶

The disabled people in Bulgaria face many problems each day. There are not enough facilities, not enough educational and employment opportunities and, last but not least, the pension for disabled people barely covers the everyday needs of those people.

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

Integration is one of the key drivers of today's modern society. To feel complete, all individuals must participate on the basis of equal rights and opportunities in the society regardless of race, gender, religion or disability and reduced performance. These are basic principles that need to be addressed in any legislation to enable people with disabilities to have the opportunity to fully participate in the labour turnover and to grow as individuals in career plan.²⁷

Integration is a complex process that takes time and several steps are necessary to be fully implemented.

The first step of the policy for integration of the disabled people in Bulgaria by provision with the opportunity of obtaining guidance, education and/or vocational training was taken by the

²⁶ http://dariknews.bg/view_article.php?article_id=818364 – Interview with Mariana Karkovska in Darik Radio .

²⁷ Article 6 and Chapter 2 of the Bulgarian Constitution .

adoption of the **Act on integration of people with disabilities.**²⁸ Article 2 of this act outlines the main purposes to create conditions and guarantees for:

- Equality of people with disabilities;
- Social integration of people with disabilities and the exercise of their rights;
- Support for people with disabilities and their families;
- Integration of people with disabilities in the work environment.

Furthermore this act says that the integration must be performed by:

- Medical and social rehabilitation;
- Education and vocational training;
- Employment;
- Accessible living and architectural environment;
- Social services;
- Socio-economic protection;
- Accessible information.

But is the current legislation sufficient and does it protect all rights of the disabled people and allow the establishment of the conditions for the disabled people to live a normal life, as well as does it provide them with a guaranty for social integration? – The answer of this question is negative, yet there are many strategies and regulations taken by the Ministry of Labour and Social Policy. Yes, this legislation describes the general framework, but it does not work very sufficient in practice. There are still many gaps in the stages of the process of the integration of people with disabilities.

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible

²⁸ Article 2 of the Act on integration of people with disabilities.

by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

Specific labour rights of people with disabilities and methods for their integration in the workflow are defined primely in section three of chapter fifteen of the **Bulgarian Labour Code**.

According to Article 314:

An employee who due to illness or accident cannot perform assigned work, but without danger to his/her health can perform another job or the same work under favourable conditions, is adjusted to another job or the same job under appropriate conditions and in accordance with the prescription of the health authorities.²⁹

Furthermore, the Labour Code contains obligations of the employers mentioned, who must “determine annually jobs suitable for readjustment of 4 to 10 per cent of the total number of employees depending on the economic activity”³⁰ in case the number of their employees exceeds 50. Mandatory annual leave and pay are also regulated in the Bulgarian Labour Code.

In its Article 178 the **Act of Corporate Taxation** specifies the tax reliefs which will be received by employers who have provided people with disabilities or reduced performance with jobs. The tax incentives supplement and broaden the scope of the provisions of the Labour Code regulating the obligations and conditions for the appointment of people with disabilities, encouraging employers to find new jobs for the targeted groups:

Art. 178.³¹(1) Any legal person, which is a specialized enterprise or a cooperative within the meaning given by the Integration of Persons with Disabilities Act, which as at the 31st day of December of the relevant year, is affiliated to the nationally representative organizations of and for people with disabilities, shall be allowed to retain 100 per cent of the corporation tax due there from if:

- Not less than 20 per cent of the total number of employees are blind and visually impaired persons;
- Not less than 30 per cent of the total number of employees are hearing-impaired persons;

²⁹ Article 314 of the Bulgarian Labour Code.

³⁰ Article 315 of the Bulgarian Labour Code.

³¹ Article 178 of the Act of Corporate Taxation.

- Not less than 50 per cent of the total number of employees are people with other disabilities.

(2) The legal persons referred to in Paragraph (1) shall be allowed to retain the corporation tax due therefrom in proportion to the number of people with disabilities or occupational rehabilitees to the total of number of employees, where the conditions for the number of hired persons under Paragraph (1) are not fulfilled.

(3) Retention shall be admissible where the tax retained is spent entirely on integration of people with disabilities or on the maintenance and creation of jobs for occupational rehabilitees during the two years next succeeding the year for which the retention is enjoyed. The said resources shall be planned, spent and accounted for by ordinances of the national organizations of and for people with disabilities in consultation with the Minister of Finance.

In addition to the above cited legislative measures and guarantees, policy development for the integration of people with disabilities in the period 2013-2017 year is closely related to the implementation of an integrated approach to management. Due to the fact that the planned resources for socio-economic protection in the budget, in particular for monthly supplements for social integration and supplements for children with disabilities, are insufficient to meet real needs, because of the increase in the number of people with disabilities (an average of 5% each year), the Ministry was first of all forced to take a new policy to increase the resources allocated to aid people with disabilities, as well as to launch certain programs through the competent administrative bodies and utilizing the support of various NGOs.

The following programs are a project both of the government and different NGOs working in cooperation to make the integration of disabled people possible:

5.1.2.1. UN Convention on the Rights of Persons with Disabilities – Report of Bulgaria

As a first step to the implementation of the rights and the ideas established in the UN Convention on the Rights of Persons with Disabilities, ratified by Bulgaria, a report of Bulgaria about the application of the Convention was made. This report contains comprehensive information from all institutions, NGOs, social partners on policy in the field of disability, including specific results that have been achieved in this area.

5.1.2.2. Unified system for managing the implementation of the state policy

Furthermore, in 2013, the Agency for Persons with Disabilities – which is the main agency in Bulgaria which assists people with disabilities and contribute to their integration into society and work environment in particular - completed performance of a contract for grants under the Operational Program “Human Resources Development” – “Creation of a unified system for managing the entire process of implementation of the state policy for working with people with disabilities in Bulgaria”,³² by the completion of which Bulgaria has a unified information system for people with disabilities, which will support targeting and centralization of appropriate measures and activities for people with disabilities. This national centralized information system comprises, on the one hand, the socio-economic status of persons with disabilities and, on the other - the institutions involved in their care.

5.1.2.3. National Program “Employment and training for people with disabilities”

Another agency dedicated to the problems of peoples with disabilities in Bulgaria is the Employment Agency which has completed a National Program "Employment and training for people with disabilities".³³ The main purpose of this program is “increasing the employability and employment of registered at the Directorate "Labour" unemployed people with disabilities as a prerequisite for overcoming social isolation and their full integration into society; increasing the employability and the gross wages by providing training; raising public awareness of the problems and opportunities of persons from the target groups of the program, in order to change public attitudes and eliminate stereotypes; encouraging employers to hire disabled people; development of partnerships at all levels in the implementation of the program; creating conditions for a dignified and independent life for people targeted under the program”.³⁴ Most importantly, the program is widely implemented in all municipalities of the country.

5.1.2.4. National Program “Assistants for People with Disabilities”

³² http://ophrd.government.bg/view_doc.php/4921 .

³³ <http://www.bgonair.bg/bulgaria/2015-02-05/nova-natsionalna-programa-za-obuchenie-i-zaetost-na-prodalzhitelno-bezrobotni>.

³⁴ <http://www.mlsp.government.bg/bg/projects/> .

In this connection, there is also the National Program “Assistants for People with Disabilities”,³⁵ whose main purpose is providing quality care in a family environment for persons with disabilities and achieve social adaptability within the existing disability by hiring assistants. The program qualifies the term “assistant” in two main groups and outlines the difference between their main duties. The "Personal Assistant" aims to provide unemployed people with alleviation of the situation of families in which there is a person with disabilities in need of a constant care, while the "Social Assistant" aims to provide unemployed people with opportunity to meet their daily needs, organizing leisure of people with disabilities and carrying out activities for their social inclusion.

Apart from the basic programs for social inclusion and meeting of the everyday needs of the disabled so that they are able to have as normal life as possible, some of the launched programs also take into consideration the necessity for kindling the urge for professional development and entrepreneurship, which are, indisputably, important prerequisites for the integration of people with disabilities in the modern society. Thus, the program of the Employment Agency "Credit without interest of people with disabilities" targets acquisition of entrepreneurial mind-sets and supporting their socio-economic integration; creating conditions for development of own businesses by allowing access to credit through the project "Guarantee Fund for Micro Lending"; stimulating self-employment and creation of new permanent jobs.

5.1.2.5. Strategy for employment of people with disabilities 2011-2020

Last but not least, to promote the employment of people with disabilities a long-term Strategy for employment of people with disabilities 2011-2020³⁶ has also been accepted together with an implementation plan.

All these programs and projects show us the main steps that have to be made in order to fulfil the integration process regarding the people with disabilities. First of all those people should feel calm and complete by means of their family circle and in their homes. This can be made by providing them with assistant to help them meet their everyday needs and carry out social activities for their own social inclusion. Then they will feel self-confident and independent enough to search for a suitable job according to their skills. Finally, if they have accumulated

³⁵ <http://www.mlsp.government.bg/bg/projects/>.

³⁶ http://www.mindbank.info/collection/country/bulgaria/disability_strategies_and_plans.

enough capital and feel confident in their business ideas they could start their own business with the help of the Employment Agency.

On the other hand, to examine the success of all these programs and projects we have to review the concrete results achieved in the period 2010 – 2020. The main question is – Yes, there are many plans made, but to what extent are they productive?

According to Asen Angelov, Executive Director of the Employment Agency, “the subsidized employment programs are not distributed equally throughout the years and they depend on the available resources”.³⁷ He outlines that the planning is not quite effective since the investments are made principally in “moments of panic”. In his interview Mr. Angelov also mentions that although the Agency has organized many vocational training programs and plans for increased employment in the past years, the unemployment of the most vulnerable groups, among which is the group of the people with disabilities, has been systematically decreasing in this period. According to the statistics published by this article the number of people with disabilities who are not employed is 17,000.

Furthermore there have been several programs for sheltered employment in the main cities in Bulgaria. Positive results in that matter have been reported. For homeless every opportunity to start working is important. In that way they feel more beneficial to the society in general and more independent. For example such a project has been performed in the city of Burgas. A municipal shelter has been opened. Its employees are offering job opportunities to the people who live there. But according to the “for homeless every opportunity to start working is important, even if it is a civil contract or hourly, but before helping them to start working, however, we must be sure that the people we help, wish so”.³⁸

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1. and 5.1.2.?

Analysing the above facts and the point of view for the concrete problems of Mrs. Mariana Karkovska and Mr. Asen Angelov, it cannot be said that the austerity measures in Bulgaria have long-term impacts since they were highly underfunded. The significant problem with those

³⁷ <http://www.investor.bg/ikonomika-i-politika/332/a/angelov-programite-na-agenciata-po-zaetostta-ne-sa-planirani-efektivno-182169/> - Interview with Asen Angelov on the web-site of investor.bg .

³⁸ <http://www.burgas.bg/index.php/bg/news/details/1/20512> .

measures in Bulgaria is not the funding or the implementation process on its own, but the weak control over this implementation process by the respective authorities. Yes, there are indeed many strategies and programs as mentioned in the above paragraph, but the problem in Bulgaria is that there is a lack of significant changes in this sector. People with disabilities still are not completely integrated in the society; not all of them have found respective jobs and many of those individuals by these reasons are not considered as highly qualified experts and professionals. That's why the view that the measures taken by the Government of Bulgaria are barely in line with the measures provided by the European Social Charter should be stood for.

5.2. Children and Young Persons (Article 17 ESC)

Article 17 – The right of children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

- On the one hand:
 - (i) To ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
 - (ii) To protect children and young persons against negligence, violence or exploitation;
 - (iii) To provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;
- On the other: to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the

training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

Education from 1st to 8th grade in Bulgaria is mandatory and charge-free. The state must provide the facilities and everything else needed for children to get educated. This includes free transportation for students from the rural and remote areas, as well as a special program which provides breakfast for students from 1st to 4th grade. Parents who receive pensions or other social payments from the state must let their children go to school; otherwise the state shall suspend payments. The condition of the educational facilities is rapidly improving.

So, as it is envisaged in the Bulgarian legislation,³⁹ all parents are obliged to provide their children with the vocational and professional education they need to become highly qualified individuals. But the state must as well, through its bodies and especially through the Ministry of Education, ensure that the policies regarding the education system shall be fulfilled and strictly applied to the needs of Bulgarian society. To accomplish this task the Ministry of Education has established a system of education inspectorates in each region.⁴⁰ These regional inspectorates carry out their tasks through monitoring of the activities of the school managements. This includes control and audit of the actions planned by the school boards. In case of detection of fraud inspectors can approach the Ministry of Education.

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

Bulgarian state has a developed system of various types of institutions for children. By the beginning of 2008, these were governed by different ministries - the Ministry of Health, Ministry of Education and MLSP as the work in them has been governed by different regulations.

Today, the control over these institutions has been delegated by the state to the municipalities. The data for the period 2001-2015 suggests that the tendency is to reduce the number of children in institutions, but it is believed that their number is still large.

Children which are institutionalized are also required to go to school and it's the institution's responsibility to ensure that all children have access to education.

³⁹ Article 8 of the Act of Child Protection.

⁴⁰ Act on Education.

In most of these institutions basic physiological needs of children as of shelter, food, clothing, health care and education, are met to some extent - most often better than in their families who have disadvantaged social status. At the same time, meeting other basic needs is not guaranteed - the construction of personal identity, autonomy, individualization and emotional intimacy with an adult of real privacy and comfort. In other words, the whole process of socialization of children in institutions is very difficult and / or does not take place in a manner that is sufficient for building their integrity as autonomous and confident members of society.

The State Agency for Child Protection was established in connection to tackling the above mentioned deficiencies, which Agency provides a strategy for the implementation of policies related to deinstitutionalization of children and improvement of the living conditions in children's homes. Such is the National **"Vision for deinstitutionalization of children in Bulgaria"** which provides implementation of an effective policy for deinstitutionalization by change in the philosophy of caring for children with a focus on:

- Prevention of risks;
- Early intervention;
- Support to families;
- Provision of family or close to family environment.

“It is important and necessary to develop a policy that will not only offer proper care for children at risk in the short term, but will prevent similar problems in the future.”⁴¹ – says the text of the "Vision for deinstitutionalization of children in Bulgaria" dedicated to the mission of the project. This quotation can be used as a conclusion of what should be done in terms of Bulgaria's policy for children and young people temporarily or definitively deprived of their family's support.

Homeless children and children at risk cannot attend school and do not receive any care. Homeless or abandoned children come from an environment of instability, early deprivation and abuse (physical and mental). As a result, many of them do not trust any authority or institutions

⁴¹ <http://sacp.government.bg/detstvo-za-vsichki/viziya-za-deinstitucionalizaciya/> - National "Vision for deinstitutionalization of children in Bulgaria" .

(school, kindergarten places for temporary accommodation). They acquire destructive behaviour. Sabotaging of their own success and their first encounters with adults are typically hostile.

The State Agency for Child Protection is the institution directly dealing with homeless children and children at risk. In its structure are created shelters for children, dedicated to the care, education and personal development of each child. The Agency also supervises its structural units and monitors violations.

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

First of all, children's rights and the measures necessary for their protection are regulated by the **Act on Child Protection**. According to Article 1, paragraph 2:

The State shall protect and guarantee the fundamental rights of the child in all spheres of public life for all groups of children according to age, social status, physical health and mental condition, providing all relevant economic, social and cultural environment, education, freedom of expression and security.⁴²

Furthermore, this act describes the measures that must be taken to provide each child with relevant education, economic, social and cultural environment, education, freedom of expression and security:

Protection Measures:⁴³

Art. 4.

- (1) Child protection under this Act shall be effected by:
1. Assistance, support and services in a family environment;
 2. Accommodation in a family of relatives or friends;
 3. Adoption;
 4. Placement in a foster family;
 5. The provision of social services - residential;
 6. Accommodation in a specialized institution;

⁴² Article 1, Paragraph 2 of the Act of Child Protection.

⁴³ Article 4 of the Act of Child Protection.

7. Police protection;
 8. Specialized protection in public places;
 9. Information on the rights and obligations of children and parents;
 10. Providing preventive measures for security and protection of the child;
 11. Providing legal assistance from the state;
 12. Special care for children with disabilities;
 13. Interim measures of protection of children in the cases and under the conditions of Art. 12 of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, done at The Hague on October 19, 1996 (ratified by law - SG. 9, 2006) (SG. 15 of 2007), hereinafter "1996 Convention".
- (2) A child may be adopted under the terms and conditions of the Family Code.
- (3) Criteria and standards for social services for children in the implementation of the measures under par. 1 pt. 1, 2, 4-6 shall be determined by an ordinance adopted by the Cabinet of the Minister of Labour and Social Policy.

There are as well many programs and strategies taken by the **Ministry of Education**, to ensure that every child and every young person gets sufficient and appropriate education. The Ministry of Education in this regard performs direct control of all educational institutions and ensures the proper and timely implementation of these strategies and programs. In case of violations and unfulfilled obligations it may refer to the judicial authorities.

According to the **National strategy to promote and improve literacy skills (2014 - 2020)**⁴⁴ the number of the people who have never attended school in the country is 81,000 or 1.2% of the population at the age of 8 years and older, and the number of illiterate persons is 112,778.000. This shocking statistics is not something new in the society. In Bulgaria there are numerous problems in the educational system. Many children are not visiting school and according to another statistics 10% of the students who have enrolled quit only a few months later.

⁴⁴ <https://www.mon.bg/?go=page&pageId=74&subpageId=143>.

In this context, analysing these negative indicators, the Ministry of Education adopted **“Development Strategy of vocational education and training in the Republic of Bulgaria for the period 2015-2020”**.⁴⁵ The main objectives of improving the educational conditions, increasing the number of students and improving the learning environment are:

- Optimizing the school network on a regional basis based on an analysis of the specific needs and conditions and stated investment intentions in the municipalities, districts and regions and the needs of the labour market;
- Increase of the attractiveness of vocational education and training;
- Reducing early school leavers and young people with low or none educational and qualification level;
- Attracting students for vocational training with acquisition of first and second degree professional qualification and students with high school achievements;
- Training in high-tech professions;
- Broadening participation and responsibilities of line ministries in implementing the state policy in the field of vocational education and training;
- Broadening participation and responsibilities of social partners in vocational education and training;
- Participation in the European area of education and training, with transparent qualification systems to enable transfer and accumulation of learning outcomes, recognition of qualifications and competences and increasing transnational mobility;
- Providing easily accessible and high-quality professional information, guidance and counselling throughout life.

Another step in this direction was taken with the **National strategy for lifelong learning for the period 2014-2020**.⁴⁶

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures has your MS taken to address this issue

⁴⁵ <https://www.mon.bg/?go=page&pageId=74&subpageId=143>.

⁴⁶ <https://www.mon.bg/?go=page&pageId=74&subpageId=143>.

Youth unemployment is relatively high, with nearly 22% of the young people in Bulgaria being unemployed (Eurostat data for 11.2014). The general unemployment is 11.1% (same source). Over 3% of GDP or about BGN 1 million are the annual losses of Bulgaria of young people who neither study nor work or seek employment, according to business organizations. The most disturbing is the situation with young university graduates who cannot realize their specialty in our market and seek work abroad among unskilled occupations.

Of course, like any problem this one has two sides. On the one side stand the universities that do not provide any actual preparation for a future job search and do not offer a contact between students and potential employers, as well as the opportunity to work as a trainee during the courses in the respective specialty, on the other – employers who seek young professionals with experience, which is almost impossible due to inconsistent with the need to obtain practical knowledge classes. The most serious problem is that broken link between business and universities. If they work in cooperation and adapt the admission of students with the needs of the labour market, there will be much more opportunities for internships, on the first place, and future jobs, on the second, for those students who have finished their education successfully and meet the requirements of the employers.

Another problem for the huge number of unemployed young people is the culture of job search among youth - in the first place they turn to family and friends. Less popular remains the demand through advertisements, employers or labour offices, although there are real opportunities, according to the labour exchanges.

A key point in creating opportunities for young people to find their place in society, achieve economic independence and to develop, is finding a suitable job. Society should offer opportunities for the labour market of young people, to prevent long-term unemployment, marginalization and social exclusion. By implementing various opportunities for young people to access the labour market, it is contributing to the achievement of social cohesion. This in turn is a prerequisite for economic growth.

The Ministry of Labour and Social Policy in this regard adopted and is implementing a **National Plan for the implementation of the Youth Guarantee**⁴⁷ which stipulates that every young person aged 15 to 24 years will get a good job offer, a continuing of the education,

⁴⁷ <http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=883>.

apprenticeship or training within four months after his or her job ends or leave the formal education system. National Youth Guarantee of Bulgaria will be implemented in stages. For young people registered in labour offices, a proposal will be conveyed to the end of the fourth month of their registration. Young people who are neither working nor studying, and are not registered in the labour offices will be informed about possible services after registration at the labour offices within one month of receipt of their individual data and address correspondence in the institution or organization that will carry out their activation.

In this sense the Ministry of Education has also adopted programs for internships in the public administration and practical training by companies which allow young people to gain the initial experience which most of the employers require.

The **Program for internships in public administration**⁴⁸ provides opportunities for meaningful internships for talented Bulgarian students in the state administration at all levels and throughout the country. The internship program is focused on the acquisition of practical experience, new skills and getting familiar with the working process of the state administration. In 2014 the Program and the information internet Portal designed for this purpose were institutionalized through the adoption of relevant legislation. Amendments were made to the Act on Administration, which regulates the student internships in public administration. A specific regulation - Decree № 189 of the Council of Ministers from July 8 2014 was adopted for student internships in public administration. The purpose of the regulation is to ensure the conduct of the student experience in public administration and thus provides practical experience, knowledge and skills that complement the theoretical training of the student. The ordinance creates unified rules and effective mechanism for conducting internships, while regulating and using the Portal for student internships in public administration. Since its inception in 2012 over 1500 student internships were successfully completed thanks to this program.

The Employment Agency has also completed a Program by that means – **“Career Start”**.⁴⁹ The main objective of the program is to provide opportunities to acquire work experience for unemployed young people who have completed secondary or higher education in order to facilitate the transition between education and employment. Preventing the disqualification of

⁴⁸ <http://staj.government.bg/informatsiya-za-programata/>.

⁴⁹ <http://www.mlsp.government.bg/bg/projects/startkariera.htm>.

youth; prevention of "brain drain"; providing opportunities for the renewal of public administration; enabling subsequent appointment of a part of the youth of permanent employment; achieve a flexible combination of knowledge, skills and experience relevant to the requirements of the market economy – are only some of the immediate goals. The process of the admission of the students for the jobs included in the program and qualified in groups regarding the different specialties has a few steps. First, the administration shall make the students familiar with the conditions of the participation in the project. Then the candidates shall be selected on the basis of the requirements of the employees regarding the job position. The final step includes hiring in labour terms. In order not to be allowed abuses of this procedure the Ministry of Labour and Social Policy will monitor and control implementation and legality of the process.

European Commission has also allocated a budget of EUR 55 million to reduce youth unemployment in Bulgaria in the new operational program **"Human Resources Development" 2014-2020**.⁵⁰ The funds are intended to encourage young people between 15 and 24 years to enter the actual labour market or continue their education.

According to the web-site of the Ministry of Labour and Social Policy:⁵¹

Overall objective of the program is to improve the quality of life of people in Bulgaria through enhancement of human capital, achieving higher levels of employment, increasing productivity, access to quality education and lifelong learning and enhancing social inclusion

On the cited web site information regarding the documents, questions and answers in connection with the application of the operational program in action can also be found.

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

Actually the economic crisis was the main reason for the focus on the problem with the youth unemployment.

⁵⁰ http://ophrd.government.bg/view_doc.php/6016.

⁵¹ http://ophrd.government.bg/view_doc.php/1433.

6. OTHER ISSUES

Are there any other relevant issues regarding the ESC, and not covered by the questions above, in your MS? Please describe the applicable legal framework and explain how it is not in compliance with the ESC

In accordance with a 2014 report based on information sent from Bulgaria to the European Committee of Social rights, containing conclusions whether and to what extent does the provisions of the Charter have been implemented into the national legislation, Bulgaria has been in a violation of certain requirements of the Charter. For 2013 there were five conclusions of non-conformity: art.3, (3); art.3, (4); art. 11, (1); art. 11, (3); art. 12, (1); art. 14, (1) and 10, most of which are from the report concerning the implementation of the provisions of the Charter from 2014, which are as follows: art. 4, (3); art. 4, (4); art. 4, (5), art. 5; art. 6, (1); art. 6, (2); art. 6, (3); art. 6(4); art. 22; art. 28. Due to the fact that a new Conclusion of the Committee on this articles has not been made, the mentioned provisions are still reported to be of non-conformity.

As some of them are included in the previous sections of the present report, we shall discuss here solely the issues that were not covered by the questions above. The way the comment on the remarks and conclusions of the Committee would be made would be in terms of the notes taken by the Committee and the additional information on the basis of the provided one that was demanded from the State in accordance with the non-compliance with the respective article from the Charter,

In reference to art. 3, (3) which is about enforcement of safety and health regulations and the information given from Bulgaria on the issue, the Committee recall the State's duty to provide precise and accurate information on developments in respect of occupational accidents and when, assessing the enshrined right in art. 3, (3) of the Charter, the number and frequency of occupational accidents, as well as their trends, are of a crucial importance. In the light of the before mentioned, the State was asked to explain the disparity between the number of fatal accidents according to the information and statistics given as official information in the report from 2014 for 2013. It was also noted that the accident reporting system in Bulgaria which entrusts employers with the investigation of the occupational accidents did not meet the requirements of art. 3, (3) of the Charter. Because of the fact that the incident rate for

occupational accidents was low, in comparison to the other States - Party to the Charter, the Committee reiterated its request for information on the undertaken measures. In relation to the activities of the Labour Inspectorate the Committee asked for provision of information on the new labour inspection system that was set out in the Act of June 19 2008 and, in particular, how the General Labour Inspectorate and its 28 Regional Labour directorates have been affected by the reform. Also a comment on the employer's obligation under art.281 to art.284 of the Labour Code to provide instructions, training and examination when the sanctions are to be imposed on workers in case of an administrative dismissal under art.404 and art. 405, was demanded.

On the basis of the provided information in the report and the above-mentioned additional questions and notes from the Committee, it was concluded that the situation in Bulgaria is not in conformity with art. 3, (3) of the Charter on the ground that measures to reduce the excessive rate of fatal accidents were not adequate.

Regarding art. 3, (4) which is about occupational health services, the Committee pointed out that there was no sufficient information in terms of it being full and updated, on the charges that had taken place in the relevant legislation and regulations, as well as what is the situation after the adoption of the amendments to the Health and Safety at Work Act after 2009. In this aspect, the Committee defers its conclusion and alerted that in case of not providing the information in the next report the Government of Bulgaria would be notified that because of the lack of this information there would not be able to establish whether the situation in Bulgaria is in conformity with the stated article from the Charter.

The next article is 11, (1), about the removal of the causes of ill-health. Bulgaria's report mentioned some of the measures that had been taken for further decreasing infant and maternal mortality rates, as well as provided the needed information so to be concluded that there was a decrease in the mortality but still the number was high in comparison to the other countries Parties to the Charter. The Committee has asked the next report to include information about the measures taken to combat the causes of mortality, as well as information on the health reforms taken. Again, the final conclusion for lack of conformity has been delayed for the next report.

As regards Article 11, (3), which regulates the prevention of diseases and accidents, from the comment for Bulgaria was that a National Environment and Health Action Plan 2008-2013 was

created and actions aiming at reducing and preventing health risks, resulting from environmental factors, have been undertaken. The responsible Ministry for that plan was the Ministry of Environment and Water which said that a set of measures had been taken in the fields of air quality, noise, drinking waters, waste management and food safety. The Committee asked for an update on this with the next report.

Concerning smoking and the respective measures for its decrease in the report was indicated that there were no such a decrease although the very strict legal provisions in the national legislation – art. 56 from the Health Act, as well as some national programmes that were in place. According to the legislation, smoking was and still is forbidden in indoor public places, in workplaces and in a number of specified outdoor locations; persons under the age of 18 are also not allowed to buy cigarettes or cigars and have no entry to the places of sale of such items. Nevertheless smoking remains popular and the Committee asked if further measures were envisaged to improve the situation. The same was with the alcohol issues. In regards to the road accidents it was shown that a National Strategy for the improvement of road traffic safety for the period of 2011-2020 have been adopted in 2011. It was reported that there were a decrease, but not sufficient. Also the Committee stated that in the previous Conclusions from 2009, as well as in this new one, there was a lack of adequate measures that had been adopted to reduce domestic accidents. On the basis of this the Committee concluded that there was no conformity with art. 11, (3) of the Charter and insisted on receiving information showing that there were accepted and undertaken respective measures.

On art. 12, (1) of the Charter the Committee stated that for establishing that the situation in the State was in conformity with the provision more information regarding the percentage of persons insured out of the total population would be needed, whereas, as regards to the income-replacement benefits (old-age, sickness and unemployment) was required an update on the percentage of persons insured against each of these risks out of the total active population.

As on the promotion or provision of social services set out in art.14, (1) in the Charter, a non-conformity was found on the ground that the number of social services staff were not adequate to user's needs. In regard to this the Committee recalled that the recourse to social services should not interfere with people's right to privacy and the protection of personal information. An agreement between the Agency for social assistance and the Ministry of Regional

Development and Public Works have been signed on the provision of personal data by the National Database “Population” of the Agency of social assistance for the implementation of the functions on social benefits and social services.

Bulgaria has also been in non-compliant with Article 22 of the Charter providing the right of workers to take part in the determination and improvement of working conditions and working environment, as reported in the previous Conclusions, and in the one from 2010 there has been no adequate answer to the questions given by the State. It was commented on the rights related to the health and safety at work mentioning art. 29 and 30 from the Law on Health and Safety at Work. In the light of the above, the Committee stated that the national legislation is not in conformity with art. 22 from the Charter. In fact, in the Labour Code, pursuant to art. 7D (a provision that was amended in 2006) it could be stated that through their representatives workers have the right to consult with the employer and give their opinion on problems that concern issues on the activity of the company, its management etc., which implies that in case of disagreement with some decisions of the board of the company regarding these problems or the ones concerning working conditions, work organization and environment workers have the right to give their opinion and thus to participate in the process of their determination.

In reference to art. 28 of the Charter concerning the right of worker's representatives to protection in the undertaking and facilities to be accorded to them in the Conclusion of the committee based on information given from the State in 2010 was concluded that art. 225 of the Labour Code did not follow the meaning of the article of the Charter. Nowadays there is no change made on this provision and so national legislation is in non-conformity on this point. Regarding the facilities granted to worker's representatives, by virtue of a Decision No 776 of December 12 2013 of the Council of Ministers the national legislation was changed and now those facilities are granted to the representatives, so the Labour Code provision complies with the one from the Charter.

In brief, it could be said that after the Conclusions of the Committee, some of the provisions in the national legislation were changed and an effort to adhere to the European legislation was made, so better conditions regarding social rights to be ensured.

7. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

Bulgaria has adopted the Additional Protocol from 1995 that provides the system of collective complaints in 2000. Since its adoption against Bulgaria there have been 6 complaints regarding different articles of the Charter and their violations.

In respect to the question whether the complaint system contributed to alleviating the impact of the austerity measures, only two of the initiated complaints resulted in a decision from 2008 and 2010 after the beginning of the financial crisis, and might have taken into account this as a factor. In addition, the very violation of the provision have been caused namely because of problems with the public spending in the sphere of social assistance, so this appears to be the only two complaints that could be commented on in the light of the question.

7.1. Complaint No 46/2007 European Roma Rights Centre (ERRC) v. Bulgaria

The decision was on the merits of violation of art. 11, (1), (2) and (3) in conjunction with art. E and of art. 13, (1).

It was held that the State failed to provide sufficient medical services available for poor or socially vulnerable persons insofar as to people whose social assistance has been interrupted due to temporarily suspended right to social assistance or because not being qualified for social assistance and because of this they were left without health coverage. Bulgarian state did provide an information for a lot of initiatives that have been taken to ensure the equal access to medical care of all Bulgarian citizens including an Action Plan of Health Strategy for disadvantaged persons from ethnic minority 2000-2015 that helped a number of 109 health mediators to be appointed; in addition under some PHARE programmes more than 30,000 prophylactic examinations had been carried out and paediatric consulting offices had been set up giving health help. Nevertheless, the Committee noted that Bulgarian legislation did not provide medical assistance to people without resources with exception of emergency care and obstetrical care for women and that the Decree No 17 of January 31 2007 was limited to covering expenses for hospital treatment which did not include primary or specialized outpatient medical care that

might be in need. Therefore, Committee found that the national legislation did not ensure the right of granted medical treatment to poor or socially vulnerable persons who become sick thus amounting to a breach of the provision of art. 13, (1) of the Charter.

The decision implies that a legislation change was needed so to comply with the European provision. Having in mind the fact that free medical care means additional budget costs to the Government no further actions was taken in this direction during the financial crisis and in the beginning of it when the complaint was brought in the Committee.

7.2. Complaint No 48/2008 European Roma Rights Centre (ERRC) v. Bulgaria

The decision was on the merits of violation of art. 13, (1) in conjunction with art. E. The Committee found that art. 12, (c) of the Social Assistance Act with the followed amendments from 2006 and 2008 was in breach of the right to social assistance of unemployed persons with insufficient resources within the meaning of art. 13, (1) of the Charter on the grounds that: according to the Charter a State is required to guarantee a minimum income and social assistance for persons without adequate resources. It was considered that the amendments to the Social Assistance Act that has established interruption of social assistance for unemployed persons in active age after 18, 12 or 6 months has not been a permissible restriction on the right to receive social assistance under art. 13, (1) of the Charter. Nevertheless, all of the measures that the Government has taken to improve the education and training of unemployed persons, to reintegrate them into the labour market of persons that would be losing social assistance as a result of the contested provisions from the Act, the Committee agreed that it was probable that only a limited number of persons affected by the social assistance cuts would actually obtained employment.

On the account of the above mentioned and because fact that social assistance have to be provided as long as need persists the person concerned to continue to live in a manner compatible with his human dignity, it was held that the amendments of the Social Assistance Act that interrupted the minimum income for persons in need were in breach of the Charter.

In regards to the complaint's allegations that the amendments of the Act was in breach of art. E of the Charter because they would have an unjustified impact on Roma, the Committee stated that they could be regarded as subsumed in the circumstances of that complaint within the wider

question of whether the art. 13, (1) had been breached by the mentioned amendments. For that reason (the Committee decided that the amendments violated the right to social assistance of all those persons affected by them) the Committee did not consider it necessary to examine the allegations of a breach of art. E of the Charter in conjunction with art. 13, (1).

After this decision of the Committee the contested article was abolished by an amendment of the Social Assistance Act, adopted by the National Assembly of Bulgaria on February 10 2010 (promulgated in issue 15 of the State Gazette, February 23 2010) and entered into force on 1 January 2011.

In regards to the question the fact that the scope of the organizations and persons who can bring collective complain has been widen with this additional protocol this definitely guarantees a better protection of social rights that would be a good practice especially in the light of still going economic crisis.

8. TABLES OF CASES AND COMPLAINTS

No.	Name	Ruling
2277/2015	BICA, BIA and BCCI v Government Decree 419/2014 of Council of Ministers	Still pending.

Table 1. Cases before Bulgarian courts.

No.	Name	Ruling
46/2007	European Roma Rights Centre (ERRC) v. Bulgaria	Violation of art. 11, (1), (2) and (3) in conjunction with art. E and of art. 13, (1) of the 1961 Charter.
48/2008	European Roma Rights Centre (ERRC) v. Bulgaria	Violation of art. 13, (1) in conjunction with art. E of the 1961 Charter.

Table 2. Complaints before European Committee of Social Rights.

9. BIBLIOGRAPHY AND ONLINE RESOURCES

9.1. Primary Sources

9.1.1. National Legislation

9.1.1.1. *Laws and decrees in chronological order*

- Act of Child Protection.
- Act on integration of people with disabilities.
- Annex to Order № RD01-177 from 24 February 2015 of the Minister of Labour and Social Policy.
- Ordinance on the conditions and procedures for granting allowances for heating.
- Constitution 1991.
- Corporate Tax Act.
- Employment promotion act.
- Health and Safety at Work Act.
- Labour Code.
- Rules of Organization and Procedure of the Tripartite Cooperation Councils /ROPTCC/.
- Social Insurance Code.
- Government Decree №419/17.12.2014.

9.1.1.2. *Domestic Jurisprudence*

- BICA, BIA and BCCI v Government Decree 419/2014 of Council of Ministers [2277/2015] Supreme Administrative Court site of the Supreme Administrative court [Bulgarian].

9.1.2. International Law

9.1.2.1. International Treaties – Statutory instruments

- UN Convention on the Rights of Persons with Disabilities.
- Council of Europe, European Social Charter (Revised), 3 May 1996, ETS 163.

9.1.2.3. International Jurisprudence

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

9.2. Secondary Sources

9.2.1. Journal Articles

- Article regarding the help to the homeless people - citation of director of the shelter Mrs. Koleva.
- National "Vision for deinstitutionalization of children in Bulgaria".

9.2.2. Internet sources

- Interview with Asen Angelov on the web-site of investor.bg.
- Interview with Mariana Karkovska in Darik Radio.

9.2.3.Plans

- National Plan for the implementation of the Youth Guarantee.

9.2.4.Programmes

- National programme “Assistants for People with Disabilities”.
- National Programme “Career Start”.
- National programme for development: Bulgaria 2020.
- National programme Employment and training for people with disabilities.
- Operational programme "Human Resources Development" 2014-2020.

- The Program for internships in public administration.

9.2.5.Strategies

- Development Strategy of vocational education and training in the Republic of Bulgaria for the period 2015-2020.
- National strategy for lifelong learning for the period 2014-2020.
- National strategy to promote and improve literacy skills (2014 – 2020).
- Strategy for employment of people with disabilities 2011-2020.

9.2.6.Reports

- National social report of Republic of Bulgaria for 2013-2014, p. 13.
- National social report of Republic of Bulgaria for 2013-2014, Annex 4.

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

The 1961 European Social Charter (ESC; the Charter), the 1988 Additional Protocol to the Charter, the 1991 Amending Protocol to the Charter, and the 1995 Additional Protocol to the Charter providing for a system of collective complaints were ratified by Croatia on 26 February 2003. However, according to the 2013 country fact sheet, Croatia has not made a declaration enabling national non-governmental organizations (NGOs) to submit collective complaints.¹ Provisions of the Charter and the Protocols are automatically incorporated into Croatia's domestic law on the basis of Article 134 of the Constitution of the Republic of Croatia.²

Croatia has not accepted the following provisions of the 1961 Charter: Article 3 (i.e., the right to safe and healthy working conditions), Article 4 (i.e., the right to a fair remuneration), Article 10 (i.e., the right to vocational training), Article 12 (i.e., the right to social security), Article 15 (i.e., the right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement), Article 18 (i.e., the right to engage in a gainful occupation in the territory of other Contracting Parties), and Article 19 (the right of migrant workers and their families to protection and assistance).³

The Revised European Social Charter was signed by Croatia on 6 November 2009, but the ratification process has not taken place yet.⁴

¹ Croatia and the European Social Charter [2013] Council of Europe
<http://www.coe.int/t/dghl/monitoring/socialcharter/countryfactsheets/Croatia_en.pdf> accessed 24 January 2015.

² The Constitution of the Republic of Croatia (consolidated text 2010) [1990]
<<http://www.wipo.int/wipolex/en/details.jsp?id=11243>> accessed 24 January 2015.

³ European Social Charter [1961] Council of Europe
<<http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm>> accessed 24 January 2015.

⁴ Croatia and the European Social Charter [2013] Council of Europe
<http://www.coe.int/t/dghl/monitoring/socialcharter/countryfactsheets/Croatia_en.pdf> accessed 24 January 2015.

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

The global financial crisis began to negatively affect Croatia in 2009, when “a collapse in the exports of goods and services, in the rate of credit growth and in inflows of foreign direct investment devastated the economy”.⁵ After six consecutive years of recession, the International Monetary Fund predicts stagnation of the economy for year 2015.⁶ What follows is a brief overview of measures taken or announced in Croatia as a response to the 2008 global crisis from 2009 till the present day.

In July 2009, the new centre-right government headed by the Croatian Democratic Union (HDZ) and presided over by the Prime Minister Jadranka Kosor came into office.⁷ The government adopted “an emergency budget to reduce spending, national debt, and rising unemployment”.⁸ Instead of resorting to large structural reforms in order to fight against the economic crisis, they cut public infrastructure programmes and introduced new taxes.⁹ In August 2009, a general VAT rate increased from 22 per cent to 23 per cent and a special purpose income tax, the so-called “crisis tax” (Zakon o posebnom porezu na plaće, mirovine i druge primitke) was introduced.¹⁰ The crisis tax was imposed at 4 per cent rate for monthly incomes higher than HRK 6,000 (i.e., EUR 819) and at 2 per cent rate for monthly incomes between HRK 3,000 (i.e., EUR 409) and HRK 6,000 (i.e., EUR 819).¹¹ Both taxes were meant to be temporary, and they

⁵ Zdravko Petak, William Bartlett, Frank Bönker, *Sustainable Governance Indicators -Croatia Report* [2014] <http://www.sgi-network.org/docs/2014/country/SGI2014_Croatia.pdf> accessed 24 January 2015.

⁶ Jasmina Kuzmanovic, 'IMF sees Croat Economy Stagnating in 2015 After Recession?' (Bloomberg, 12 November 2014) <<http://www.bloomberg.com/news/2014-11-12/imf-sees-croat-economy-stagnating-in-2015-after-recession.html>> accessed 24 January 2015.

⁷ Markus Salzman, 'Balkan governments introduce harsh austerity measures' (World Socialist Web Site, 19 August 2009) <<http://www.wsws.org/en/articles/2009/08/balk-a19.html>> accessed 24 January 2015.

⁸ Bojana Kocijan, 'Prime Ministers in Crisis: How did CEE and Baltic Prime ministers successfully navigate through the crisis?' [2013] <<https://ecpr.eu/Filestore/PaperProposal/b9b6b347-c0ed-479b-afa8-e0e13faba3c0.pdf>> accessed 24 January 2015.

⁹ *ibid* 16.

¹⁰ Velimir Šonje, 'No More Buying Time: Fiscal Austerity in Croatia' [2012] Friedrich-Ebert-Stiftung, 3. <<http://library.fes.de/pdf-files/id-moe/09338.pdf>> accessed 24 January 2015.

¹¹ Balkan Insight, 'Croatia Measures Aim to Strengthen Economy' (Balkan Insight, 16 March 2010) <<http://www.balkaninsight.com/en/article/croatia-measures-aim-to-strengthen-economy>> accessed 24 January 2015.

were abolished in 2010, but the higher VAT rate remained in force.¹² A luxury tax on yachts, cars and villas was also levied.¹³ As part of lower expenditures in public sector, the government aimed to reduce the number of employees in public employment by 5%.¹⁴ In order to diminish the role of the pension system as the biggest generator of the fiscal deficit in the long run, the extension of the retirement age for women and a system of penalties for early retirement were introduced.¹⁵ To solve the fiscal problem “without needing to cut transfers, subsidies and public sector wages”, the Law on Fiscal Responsibility was adopted in the parliament, in force from 1 January 2011.¹⁶ According to this law, the government is obliged

to reduce general government fiscal expenditures by 1 per centage point of GDP per annum as long as there is primary fiscal deficit. When the primary fiscal deficit becomes positive, the government is obliged to keep the structural fiscal deficit in balance.¹⁷

This legal framework has remained in force under the new centre-left coalition government led by the Social Democrats and presided over by the Prime Minister Zoran Milanović which took office in January 2012.¹⁸ At the time, the government was faced with two big challenges, namely with a large public debt and a deterioration in credit ratings and the authorities launched a significant fiscal consolidation programme.¹⁹ In March 2012, the government raised a general VAT rate from 23 per cent to 25 per cent.²⁰ The government also announced an adjustment of tax rates in favour of the middle class at the expense of the wealthy, a tax on dividend payments, improved measures of tax collection, the termination of temporary contracts in the public sector, reduction of benefits for workers in the public sector, continued privatization, and less subsidies

¹² Šonje, (n 10) 3.

¹³ Encyclopaedia Britannica Inc., 2010 Britannica Book of the Year (Chicago, Encyclopaedia Britannica, Inc., 2010), 389.

¹⁴ Vibilla Beta 10420, ‘As of November the 1st, crisis tax in Croatia will be abolished’ (Vibilla Business Portal, 20 April 2010) <http://www.vibilia.rs/dokument_new.php?s=vesti&ID=5045474&lang=en> accessed 24 January 2015.

¹⁵ Šonje, (n10) 3.

¹⁶ *ibid* 3.

¹⁷ *ibid* 3.

¹⁸ *ibid* 1.

¹⁹ *ibid* 1.

²⁰ European Commission, Commission Staff Working Document - Assessment of the 2013 economic growth programme for Croatia [2013] p.13 <http://ec.europa.eu/europe2020/pdf/nd/swd2013_croatia_en.pdf> accessed 24 January 2015.

for agricultural sector.²¹ Moreover, the social insurance contributions to the Croatian Health Insurance Fund were reduced from 15% to 13% in order to lower the cost of labour and in doing so, to boost competitiveness.²² In January 2013, a 5% VAT rate was introduced for previously untaxed goods and services, such as some basic foods like bread and milk.²³ Moreover, the intermediate VAT was increased from 10% to 13% on 1 January 2014, affecting, inter alia, prices in tourism, and prices of baby food, oil, sugar, and water from public supply system.²⁴

After the accession to the European Union on 1 July 2014, Croatia is obliged to respect the EU debt criteria. On 28 January 2014, the EU finance ministers have placed the country under the “excessive debt procedure”.²⁵

Acting on recommendations from the European Commission, the measure subject’s countries with budget deficit in excess of 3 per cent and deficit of more than 60 per cent of GDP to direct economic control by the EU.²⁶

The procedure has been launched for a breach of both criteria and a target has been set to reduce the excessive deficit from 5.4% of GDP in 2013 to 2.7% of GDP by 2016.²⁷ The Council of the European Union has invited the Croatian authorities to “carry out a thorough expenditure review with the objective of rationalizing wage, social security and subsidy outlays and to provide sufficient fiscal space for the implementation of growth-enhancing expenditure, including co-financing of projects funded by the Union.”²⁸ According to the Council, tax compliance and

²¹ Ansamed, ‘Croatia: Austerity programme to avoid downgrade’ (Ansamed, 20 February 2012) <http://www.ansamed.info/ansamed/en/news/nations/croatia/2012/02/20/visualizza_new.html_101545327.html> accessed 24 January 2015

²² Šonje, (n 10) 11.

²³ European Commission, *Commission Staff Working Document - Assessment of the 2013 economic growth programme for Croatia* [2013] p. 8 <http://ec.europa.eu/europe2020/pdf/nd/swd2013_croatia_en.pdf> accessed 24 January 2015.

²⁴ Inštitut za strateške rešitve, ‘Kvaliteta življenja prebivalcev v državah zahodnega Balkana’ (Inštitut za strateške rešitve, 7 January 2014) <<http://isr.si/tag/ddv/>> accessed January 24 2015 [Slovenian];

²⁵ NEOnline, ‘Croatia joins excessive deficit procedure club’ (neurope.eu, 28 January 2014) <<http://www.neurope.eu/article/croatia-joins-excessive-deficit-procedure-club>> accessed 24 January 2015.

²⁶ Ognjen Markovic, ‘EU imposes harsh austerity on Croatia, its newest member’ (World Socialist Web Site, 15 February 2014) <<http://www.wsws.org/en/articles/2014/02/15/croa-f15.html>> accessed 24 January 2015.

²⁷ NEOnline, ‘Croatia joins excessive deficit procedure club’ (neurope.eu, 28 January 2014) <<http://www.neurope.eu/article/croatia-joins-excessive-deficit-procedure-club>> accessed 24 January 2015.

²⁸ Council of the European Union, Council Recommendation of with a view to bringing an end to the situation of an excessive government deficit in Croatia [2014] p.10

efficiency of tax administration should be further improved; the multi-annual budgetary programming should be enhanced. Potential GDP growth should be further stimulated by structural reforms, particularly in the field of labour market and business environment.²⁹ In order to meet the EU requirements, Croatia announced to “cut subsidies for farmers and shipyard restructuring, as well as planned funds for the state development bank, road building and business incentives.”³⁰ A raise in excise on petrol and telecom operators was also envisaged.³¹ In addition, dismissals of workers in public sector and cuts to their allowances, further cuts in health spending and pensions, and new taxes on gambling, were announced.³²

A rebalanced state budget for 2015 predicts “cutting spending by EUR 390 million from about EUR 2 billion euro to EUR 1.57 billion, or 3.9 per cent of GDP”³³, and the decrease in funds will mostly affect the central government office, the Ministry of Agriculture, the Ministry of Entrepreneurship, and the Health Ministry.³⁴

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

Croatian Constitution as well as the Croatian Labour Act guarantees the Freedom of Association. The right to establish unions, to freely join them and resign from them, is guaranteed to both employers and employees. Croatian Labour Act allows Unions to form alliances and join international union organizations.³⁵ Employers and employees have the right,

<http://ec.europa.eu/economy_finance/economic_governance/sgp/pdf/30_edps/126-07_council/2014-01-21_hr_126-7_council_en.pdf> accessed 24 January 2015.

²⁹ *ibid*

³⁰ Reuters, ‘Croatia cuts GDP growth forecast, budget spending’ (Reuters, 17 April 2014) <<http://www.reuters.com/article/2014/04/17/croatia-budget-idUSL6N0N92AD20140417>> accessed 24 January 2015.

³¹ *ibid*

³² Ognjen Markovic, ‘EU imposes harsh austerity on Croatia, its newest member’ (World Socialist Web Site, 15 February 2014) <<http://www.wsws.org/en/articles/2014/02/15/croa-f15.html>> accessed 24 January 2015.

³³ Sven Milekic, ‘Croatia’s 2015 Budget Cuts 390 Million Euro’ (Balkan Insight, 13 November 2014) <<http://www.balkaninsight.com/en/article/croatia-cuts-the-state-budget-deficit-by-390-million-euro>> accessed 24 January 2015.

³⁴ *Ibid*.

³⁵ The Constitution of the Republic of Croatia (consolidated text 2010) [1990], Article 60.

in their own choice, to form and join a union, under conditions which can be prescribed only with Statutes or Regulations of the union.³⁶ At least ten adult persons with legal capacity may establish a trade union. Employer's association may be established by at least three legal entities or adult persons with legal capacity.³⁷ Unions and employers associations have to be registered at the register of the associations to gain their legal capacity and to be authorized for collective bargaining. Social dialogue in Croatia is institutionalized through the Economic and Social Council. Activity of the Council is based on a tripartite cooperation of the Government of the Republic of Croatia, unions and employer's associations on the national level³⁸. The Council is established for the determination and realization of coordinated activities in order to protect and promote the economic and social rights. Respectively, to promote interests of workers and employers, to lead a harmonized economic, social and development policies, to foster the conclusion and application of collective agreements and their harmonization with the measures of economic, social and development policies.³⁹ In 2013 The Economic and Social Council established five Committees: for wage policy, tax system and living standard; for social policy; for employment, education and harmonization with the labour market; for legislation, collective bargaining and protection of rights; for sustainable development, promotion of economy, energy and climate change. The Committees are expert bodies that participate in the shaping of public policies for areas they are established. They are following the implementation public policies, application of regulations and make proposals for their improvement. Committees adjust various issues of interest with the aim of achieving social consensus as a guarantee of compliance adopted legislation, and of general social progress. Another form of social dialogue is collective bargaining. A collective agreement is an agreement that shall regulate the rights and obligations of the parties to the agreement. It may also contain legal rules governing the conclusion, contents and termination of employment, social security issues, and other issues arising from or related to employment.⁴⁰ Parties to a collective agreement may be, on the employer's side, the Government, one or more employers or their associations and on the trade union side, one or

³⁶ Labour Act 2014, Article 165.

³⁷ *ibid* Article 171, §1 and §2.

³⁸ *ibid* Article 221, §2.

³⁹ *ibid* Article 221, §1

⁴⁰ Labour Act 2014., Article 192

more trade unions.⁴¹ The parties to a collective agreement shall in good faith engage in negotiations over the conclusion of a collective agreement, in relation to the issues that, under this Act, may be a subject matter of a collective agreement.⁴² In addition, the parties to a collective agreement and the persons to whom it applies shall in good faith comply with its provisions. A person to whom a collective agreement applies may claim compensation for damages he suffered as a result of non-compliance with the obligations arising from the collective agreement.⁴³ A party to a collective agreement may seek judicial protection of the rights arising from such an agreement, by a complaint filed with the court having jurisdiction.⁴⁴

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

As stated before, in the Republic of Croatia, all employees have the right to found unions and to join them for the protection of their economic and social interests.

Article 6 of the European Social Charter prescribes the right to bargain collectively. A union has to be representative in order to bargain collectively. A representative trade union is a union that has at least twenty per cent of workers of all unionized workers at this level to be their members.⁴⁵ If it is determined representativeness for more trade unions operating at the same level, the employer or employers' association can negotiate only with a bargaining committee composed of representatives of these unions.⁴⁶ The conciliation procedure is performed in the event of a dispute that may result in a strike or other form of industrial action. It is performed only if the parties have not agreed otherwise for its resolution. Parties to the dispute can be one or more unions or their associations on the one hand, and one or more employers or employers' associations on the other side.⁴⁷ The mediator has to be a person educated to conduct mediation. The education is provided by the Office for Social Partnership in the Republic of

⁴¹ Representation of employers' organisations and their associations Act (consolidated text 2015) 2014. Article 25

⁴² Labour Act 2014. Article 193

⁴³ *ibid* Article 196

⁴⁴ *ibid* Article 204

⁴⁵ Representation of employers' organisations and their associations Act (consolidated text 2015) 2014, Article 8

⁴⁶ *ibid* Article 9

⁴⁷ Ordinance on the manner selection of conciliation proceedings in collective labour disputes, Article 2 (Pravilnik o načinu izbora miritelja i provođenju postupka mirenju u kolektivnim radnim sporovima)

Croatia. Union associations or higher-level trade union associations, employers' associations, and employers' associations of the higher levels, the Croatian Government and the County Economic and Social Councils, can propose mediators.⁴⁸

However, even though Croatia guarantees its citizens the right to a fair social dialogue, the right to collective bargaining has been severely affected by the austerity measures. Only in the first four months of 2015, Croatian Government passed two new Acts that restrict workers' rights from collective agreements; the Act on deprivation of rights to a wage increase based on actual years of service⁴⁹ and the Act on deprivation of payment of certain material rights of employees working in the public service⁵⁰. With this legislation, Croatian Government is nullifying the payment of certain material rights for public employees agreed in the collective agreements. Some of the workers' rights that were cancelled are the right to receive Christmas bonus and the right to receive payment of recourse for using the annual leave for 2015. The official explanation on why is Croatian legislator cancelling workers' right guaranteed even in the Constitution of the Republic of Croatia is that those measures are necessary due to the change in the economic situation for the year 2015.

To conclude, Croatia would be in breach of both Articles 5 and 6 of the European Social Charter. Even though Croatian legislation protects workers' rights, we can observe that in reality those rights are being heavily neglected.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

Croatia is not bound by Article 4 of the Revised Charter called "The right to a fair remuneration". Article 4 prescribes the right of men and women to equal pay for work of equal value, an appropriate notice period and deduction of wages only under certain conditions.

⁴⁸ *ibid* Article 3

⁴⁹ Act on deprivation of rights to a wage increase based on actual years of service, 2015 (Zakon o uskrati prava na uvećanje plaća po osnovi ostvarenih godina radnog staža)

⁵⁰ Act on deprivation of payment of certain material rights of employees working in the public service, 2015 (Zakon o uskrati isplate pojedinih materijalnih prava zaposlenima u javnim službama)

In the midst of the economic crisis, in 2014, Croatian Parliament passed a new Labour Act, which entered into force in August 2014. The new Labour act has many changes; its main objectives are to liberalize the work conditions, increase mobility of the workers and the number of working hours. The biggest changes occurred in the area of working hours. Full-time working week cannot be more than 40 hours. Employees can work part-time with maximum of 8 hours per week, but with consent of the employer with whom the employee has signed the employment contract. Overtime work increased from eight to ten hours per week with addition that employers now have to enjoin overtime to the employee in writing. One of the improvements in this Act is the introduction of the right to an increased salary. The employee is entitled to a salary increase in the case of difficult working conditions, overtime and night work, work on Sundays, holidays and other days that usually are not working days.⁵¹ Further changes concern the notice period. The Act protects the right of all workers to a reasonable period of notice and notice period shall not be suspended for a period of annual leave and paid leave, and the period of temporary incapacity for work of the worker released by the employer from obligation to work during the notice period.⁵²

Equal pay for men and woman is guaranteed by the new Labour Act. Employers have a duty to pay woman and man equally for the work of equal value. Two persons of the opposite sex perform a work of equal value if they perform the same job in the same or similar conditions and can replace each other in relation to the work they do, if they are working in a similar job and if the differences between the work and the conditions under which they are performed are irrelevant⁵³. Although Labour Act guarantees this right, statistic data show that reality is different. The average monthly net earnings of women employed in legal entities in the Republic of Croatia for 2012 amounted to HRK 5,172. On the other hand, net earnings of an employed man in the same sector amounted to HRK 5,719. It is a difference of more than HRK 500 and looking at this data, one can conclude that this right is in violation.⁵⁴

⁵¹ Labour Act 2014. Article 94

⁵² *ibid* Article 121, §5

⁵³ *ibid* Article 91.

⁵⁴ Croatian Bureau of Statistics.

In March of 2013 new Minimum Wage Act entered into force. The act was one of the austerity measures adopted by the Government that aims to provide workers and their families a decent standard of living. It prescribes the amount of the wage by using relevant statistical data:

- Data on a monthly threshold of risk of poverty for single-member household in 2011;
- Number of members of the average household in the Republic of Croatia;
- The ratio of the total population in the Republic of Croatia and the number of active population in Croatia;
- Change in the average consumer price index of goods in 2012 compared to 2011.⁵⁵

The amount of the minimum wage is determined every year at the proposal of the Croatian Minister of Labour. Exceptionally, with a collective agreement the amount of the minimum wage can be lower, but not less than 95% of the regulated amount.⁵⁶

In conclusion, Croatia would not be in breach of the Article 4 of the European Social Charter. With its Labour Act, Croatia protects the right of workers to an increased salary for overtime work, the right of men and women to equal pay and the right of all workers to a reasonable period of notice. In addition, with its Minimum Wage Act it guarantees the right of workers to a remuneration that gives them and their families a decent standard of living.

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by their own efforts or from other sources?

Social welfare system in the Republic of Croatia provides assistance for persons who are unable to secure adequate resources from their own work, rights arising from work or insurance, receipt from property, from other sources or from other individuals who are legally obligated to support them or are unable to secure adequate resources in any other way.⁵⁷ The Social Welfare Act in

⁵⁵ Minimum Wage Act, 2013. Article 5 (Zakon o minimalnoj plaći).

⁵⁶ *ibid* Article 8.

⁵⁷ Social Welfare Act (consolidated text 2014) 2013., Article 7.

the Republic of Croatia ensures a minimum living standards and appropriate fulfilment of personal and family needs to the most vulnerable individuals and groups of people in the society. Social welfare beneficiaries in Republic of Croatia are:⁵⁸

- Single persons and families who do not have enough means to pay for their basic living needs;
- Children without parents or without adequate parental care, young adults, children and adults victims of domestic, peer or other type of violence, children and adults who are victims of human trafficking, children with disabilities, children and young adults with behavioural problems and children who are present outside of the place of their residence without the supervision of parents or other adults who are responsible to take care of them and children who are foreigners and are found on the territory of the republic of Croatia without the supervision of their parents or other adults who are responsible to take care of them;
- Pregnant women or a parent of a child under the age of one year with no family support and appropriate life conditions;
- Families which requires professional or other assistance due to disturbed relations or other forms of adversity;
- An adults victims of domestic or other violence and victims of human trafficking;
- Persons addicted to alcohol, drugs and other forms of addiction;
- Homeless persons and other persons who meet the requirements prescribed by this act;

The basic right that social welfare system ensures to ones who are in need and are meeting legislative requirements is guaranteed minimum livelihood assistance which is intended for payment of beneficiaries' basic life needs. Guaranteed minimum livelihood assistance is the most crucial right in the social welfare system because of its primary function in prevention of general poverty in the Republic of Croatia. Croatian government is setting the basis which is used for determination of the amount of this right. That amount cannot be under 22.5% of the monthly amount of the relative poverty line for a single- person household. At the moment, the basis for

⁵⁸ *ibid* Article 21.

calculation of minimum livelihood assistance in the Republic of Croatia is HRK 800 (EUR 104), but HRK 500 (EUR 65) for calculation of other right given in social welfare system.⁵⁹ The amount of the guaranteed minimum benefit for a single person is established in the amount of 100% of the base (HRK 800). The amount of the guaranteed minimum benefit for household is determined in the amount which represents the sum of the share for each member, while the shares of household members are as following; for single-parent: 100 per cent of the base (HRK 800) for adult household member: 60 per cent of the base (HRK 480) and for a child: 40 per cent of the base (HRK 320)⁶⁰. One of the scenarios where this right can be suspended is when a single person or household member who is capable or partially capable of working turns down a job, training, retraining, and additional training or arbitrarily dismisses employment contract.⁶¹ In that case the amount of assistance will be reduced by the corresponding share of that member.⁶² This suspension of livelihood assistance serves as a penalty for having refused a job offer.

The new request for recognition of the right to a guaranteed minimum benefit, or for enlargement of the amount of the guaranteed minimum benefit for a household, cannot be submitted in the next six months.⁶³

The right to the assistance for the payment of housing expenses is granted to the beneficiary of guaranteed minimum livelihood assistance.⁶⁴ This assistance is intended for covering up the costs of household and it is given in the amount that does not exceed half of the amount given in the name of livelihood assistance.⁶⁵ If the beneficiary of minimum livelihood assistance is using firewood heating, he/she shall be entitled to the firewood heating costs.⁶⁶

Furthermore, a person can receive assistance for personal needs while being a user of accommodation or organized housing.⁶⁷ In addition there is a possibility of education assistance, which is including assistance for accommodation expenses in student dormitories, transport cost

⁵⁹ Official web page of Ministry of Health and Social Welfare of Republic of Croatia (http://www.mspm.hr/pitanja_i_odgovori/koliko_iznosi_osnovica_za_ostvarivanje_prava_iz_socijalne_skrbi_i_tko_je_donosi) accessed 17 January 2015 [Croatian].

⁶⁰ Social Welfare Act 2014. Article 30.

⁶¹ *ibid.* Article 39/3.

⁶² *ibid.* Article 39/3.

⁶³ *ibid.* Article 39/4.

⁶⁴ *ibid.* Article 41/2.

⁶⁵ *ibid.* Article 41/3.

⁶⁶ *ibid.* Article 43.

⁶⁷ *ibid.* Article 45.

assistance, school textbooks assistance and assistance for regular university studies.⁶⁸ Finally, one-time assistance can be given when unexpected situations occur and disable a single person or family in payment for their basic living needs.⁶⁹

3.1.2. Persons who are unable to secure adequate resources either by their own efforts or from other sources due to illness?

Persons who are unable to secure adequate resources either by his/her own efforts or from other sources due to illness are provided with adequate assistance and care. These persons are:

- Adults with a disability who are not able to meet their basic living needs;
- Persons who are not able to independently take care of their own basic life need due to their old age or infirmity.⁷⁰

Persons with severe disability or other severe permanent changes in their health status are entitled to a personal disability allowance.⁷¹ This right, whether exercised on the base of Social Welfare Act or on the base of any other Act, cannot be combined with the right to help and care allowance⁷². This right is provided to persons who are not able to satisfy their basic needs and due to the fact they need assistance and care of another person. This assistance is manifested through; preparing meals, purchasing food, cleaning and house cleaning, dressing and undressing, personal hygiene, as well as performing other basic needs.

Status of parent - caretaker or caretaker⁷³ is granted to a parent of a child with developmental disabilities, or to a parent of a disabled person, who is completely dependent on the assistance and care of other persons and who for his or her survival needs specific medical and technical care. Exceptionally, this right can be granted to both parents as well as to other family members, if two or more persons from the same family need assistance.

Finally, the right to unemployment assistance⁷⁴ is granted to child with disabilities, or a person with disabilities in physical, mental, intellectual or sensory impairment after the end of primary,

⁶⁸ *ibid* Article 51.

⁶⁹ *ibid* Article 46.

⁷⁰ *ibid* Article 21.

⁷¹ *ibid* Article 54.

⁷² *ibid* Article 57.

⁷³ *ibid* Article 63.

⁷⁴ *ibid* Article 72.

secondary or higher education, at the earliest age of 15. The person must be registered as unemployed in the relevant employment bureau, as this assistance shall be repealed if the beneficiary acquires employment. If employment terminates regardless of the (ex) beneficiary's willingness, the unemployment assistance may again be recognized.

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

In the Republic of Croatia 96 per cent of the means for financing activities of social welfare are ensured from the state budget, whereas the remaining 4 per cent is ensured from special purpose revenues in accordance with the Social Welfare Act and the Ordinance on the participation and method of payment of beneficiaries and other parties obliged to pay accommodation expenses outside of their families.⁷⁵ Constitution of the Republic of Croatia states that social justice and respect for human right are, among others, the highest values of Croatian constitutional order.⁷⁶ Total social protection expenditures in 2008 were HRK 64,323,782,802 (EUR 8,355,401,161.07) and after that they started growing. That is 18.7 per cent⁷⁷ of GDP for the same year. For 2009 social protection expenditures were HRK 68,347,442,373 (EUR 8,878,058,386.55). That is 20.8 per cent⁷⁸ of GDP for the same year. For year 2010 social protection expenditures were HRK 68,085,160,837 (EUR 8,843,989,067.94). That is 21.0 per cent⁷⁹ of GDP for the same year. Social protection expenditures for the year 2011 were HRK 68,111,087,201 (EUR 8,847,356,798.54). That is 20, 6 per cent⁸⁰ of GDP for the same year. Social protection expenditures for the year 2012 were HRK 69,184,108,604 (EUR 8,986,737,971.20).⁸¹ To conclude, the amount of money given to beneficiaries was in total higher, meaning that austerity measures were mostly dislocated to other parts of state budget. In accordance with stated above, austerity measures haven't had an impact on beneficiaries receiving help from social welfare fund as the growth of the amount

⁷⁵ THE GOVERNMENT OF CROATIA, *7th National Report on the implementation of the European Social Charter*, (Articles 11, 13 and 14 and for the period 01/01/2008- 31/12/2011) [2013] 172.

⁷⁶ The Constitution of the Republic of Croatia (consolidated text 2010) [1990]- Article 3.

⁷⁷ EUROSTAT- Social protection expenditures 2011, STAT/13/174- 21 November 2013.

⁷⁸ *ibid.*

⁷⁹ *ibid.*

⁸⁰ *ibid.*

⁸¹ Croatian Bureau of Statistics- BROJ/NUMBER: 10.1.5., Social protection in the Republic of Croatia, 2011 (Esspros methodology).

of money given to the socially vulnerable persons is in proportion with growth of the economic crisis.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

Social services in the Croatian social welfare system are: primary social services, consulting and help services, service of help in the home, service of psychosocial support, service of early intervention, service of assistance in the inclusion in education programs(integration), residence services, placement services and service of organized housing.⁸² These services are carried out by social welfare institutions, non- governmental organizations, religious groups and other judicial persons, natural persons as a professional activity and foster families.⁸³ Social welfare institutions are: social welfare centres, social welfare homes, centres for providing community services and centres for In- Home assistance.⁸⁴ Since the social welfare centres are deciding as a first-instance decision body about the social welfare rights together with the family-law and criminal-law measures, and the other rights under special regulations, it is important that work in these institutions is performed by professionals. These professionals are social workers, psychologists, lawyers and special education experts.

Due to the economic crisis, the Republic of Croatia is confronted with numerous financial difficulties (the country's unemployment rate is 20.3 per cent⁸⁵, slow progress of the necessary economic reforms, heavily backlogged judiciary system etc.). Yet the government has not cut funding for services for people with disabilities and it continues to demonstrate the political will to reform how social welfare services are provided.⁸⁶ Good examples are Family centres-institutions that used to provide help and support to persons in need. Family centres were closed

⁸² Social Welfare Act 2014 Article 74.

⁸³ *ibid* Article 123.

⁸⁴ *ibid* Article 124.

⁸⁵ Official web page of Croatian Employment Service (<http://www.hzz.hr/default.aspx>) accessed 16 April 2015 [Croatian].

⁸⁶ Judith E. Klein May, *Deinstitutionalization in Croatia: A Summary of Open Society Support*, [2014] Open Society Public Health Program (open society foundation- briefing paper) 20.

but their work and obligations have been overtaken by other qualified professionals in social welfare centres established for the each regional self- government unit.⁸⁷

One can conclude that the Republic of Croatia is in conformity with Article 13 (3) of European Social Charter. Despite the latest institutional reforms, Social welfare servicers, which are free of charge for the user, are still sufficient in the area of providing advices and personal assistance to those in need with the goal of prevention, removal, or alleviation of personal or family want.

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

Global crisis was deeply reflected on the economy of Croatia, unemployment has increased and Gross domestic product has decreased. The crisis also affected employed people who are either not receiving their salary or they are not receiving it on time. Population of Croatia is in decline for two decades and there is a trend of population ageing, 17.7% of Croatians are over 65 years old. Only in 2012 12,877 Croatians have moved out of the country.⁸⁸ Value added tax has risen from 22% to 25%.⁸⁹

According to data given by Croatian Bureau of Statistics at-risk-of-poverty rate is 19.5% and 29.9% are at risk of poverty or social exclusion. 14.7% of people are/is severely materially deprived, and 14.8% of people are living in households with very low work intensity.

When social transfers are excluded from income at-risk-of-poverty rate rises to 29.7% and excluding both pensions and social transfers from income it raises to 44.6%.

⁸⁷ Social Welfare Act 2013 Article 276.

⁸⁸ *Migration of Population of Republic of Croatia, 2013*, http://www.dzs.hr/Hrv_Eng/publication/2014/07-01-02_01_2014.htm, 22 January 2015.

⁸⁹ Value Added Tax Act 2013. (*Zakon o porezu na dodanu vrijednost*).

The highest at-risk-of-poverty rate is found in the population between 65 and more years of age and it amounts to 23.4%, also the difference by sex was the highest in this age group 26.6% for women and 18.6% for men. The lowest rate was found in persons aged between 25 to 54 and it was 16.9%.

At the very beginning of the financial crisis some key amendments in our legislation were introduced. They 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.⁹⁰ Main policies for fighting poverty and social exclusion have been presented in Strategy for Fighting Poverty and Social Exclusion in Republic of Croatia, 2014-2020⁹¹. The Strategy defines three main priorities: granting conditions for fight against poverty and social exclusion and lowering inequality, granting conditions for preventing of forming new categories of poor people, as well as lowering the number of poor and socially excluded population and establishing coordinated system of support for groups at risk of poverty and social exclusion. This Strategy is an important part of participation in the process of coordination with the goals of Europe 2020 Strategy. The Europe 2020 Strategy consists of three priorities: smart growth, sustainable growth and inclusive growth.

In January 1 2014 the new Social Welfare Act was put into effect.⁹² Its goal is to direct financial compensations to the socially most vulnerable citizens through installing the institute of guaranteed minimal compensation that consolidates four former social compensation measures.

In January 2015 Croatian Prime Minister signed Agreement on debt relief for dis-trainees in enforcement proceedings for little value debts⁹³. According to the Agreement debts that do not exceed HRK 25,000 will be relieved with the help of the Government and cities. Maximum amount of debt to private companies can be HRK 10,000 and the additional HRK 15,000 can be

⁹⁰ 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.

⁹¹ 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 , 15 January 2015.

⁹² Social Welfare Act 2014.

⁹³ Decision on Activities regarding the Agreement on Debt Relief for Distraintees in Enforcement Proceedings for Little Value Debts 2015. (Odluka o otpisu duga građanima).

debts to publicly owned enterprises. This measure was considered necessary because of a vast number of citizens whose bank accounts were blocked. Croatia has also signed the Joint Inclusion Memorandum and has passed the National Implementation Plan on Social Inclusion 2011-2012.

One of the most talked about measures in this field was the introduction of Professional Training Through Temporary Employment. This measure aims at unemployed people with medium and high expertise in education. The State pays the contributions for social benefits and the sum of HRK 2,400 and the employer has to provide a position and a mentor to educate the employee. The goal of this measure is to help and train young people gaining experience in their vocations. Employment Promotion Act⁹⁴ was passed in 2012 and in that year this measure had 9,583 beneficiaries, in 2013 the number grew to 19,322 and in 2014 it grew again to 23,163. One year after leaving the program 62% of beneficiaries was listed as employed.

Croatian Employment Service has introduced various policies and measures to reduce unemployment. Active Employment Measures in April 2015 have had 25,051 active users.⁹⁵ Act on Investment Promotion and Development of Investment Climate⁹⁶ proscribes various stimuli for investors such as tax and custom relief, non-refundable aid for purchase of equipment or machines, additional aid for new workplaces, etc.

Along with the already mentioned reimbursement for housing expenses under the Social Welfare Act, we should also mention the institute of public housing. The apartments owned by the local government are being rented to citizens who fulfil the conditions set out by local regulations. For example, the city of Zagreb has the Decision on apartment lease⁹⁷. In this Decision the right on public housing have people without an apartment of their own and no possibilities for acquiring one if they have been citizens of Zagreb for minimum of ten years, protected tenants in buildings owned by the City, which are scheduled for demolition and other underprivileged citizens.

⁹⁴ Employment Promotion Act 2012. (Zakon o poticanju zapošljavanja).

⁹⁵ Croatian Employment Institute, <http://www.hzz.hr/default.aspx?id=10023>, 10 April 2015.

⁹⁶ Act on Investment Promotion and Development of Investment Climate 2012. (Zakon o poticanju investicija i unapređenju investicijskog okruženja).

⁹⁷ Decision on Apartment Rental 2012. (Odluka o najmu stanova).

The Act on Subsidized Housing Construction⁹⁸ regulates construction of apartment buildings enabling payment in instalments under favourable conditions. The apartments and apartment buildings are designated for Croatian citizens, local government units and other legal persons registered in Croatia. The conditions for purchase of such an apartment give priority to persons or families living in unsatisfactory conditions, families with more children in school, persons with disabilities, persons who participated in the Independence War, etc.

There are six measurement policies focused on educating the unemployed and three focused on subsidizing professional specialization, the Croatian Employment Service implements them. Education of the unemployed consists the following measures: “Knowledge pays off”, “Learning to be an entrepreneur”, “Training on the workplace”, “Literacy program”, “Preparation for employment through learning Croatian language”, “Training for self-employment”. Subsidizing professional specialization is conducted through: “Learning through work”, “Knowledge pays off for the employed as well”, “The young are studying for work as well”- educational programs and training of unemployed persons.

There are a few significant measures our government and its cultural institutions installed in to bring the culture closer to the poor and socially excluded. Museum Night is a project that started in 2005 in Zagreb and since it spread across the entire country. The idea is to open all museums to visitors, free of charge, one night a year. The Croatian Museum Association in collaboration with the Ministry of Culture organizes it. The Museum Night in 2014 attracted over 360,000 visitors in 100 cities all over the country. In the past nine years there has been over 2 million of visitors.⁹⁹In the past few year other cultural institutions, such as archives, libraries and book clubs joined the project. Theatre Night is a similar project aiming to open the theatres to the general population. In 2014 6th Theatre Night was held in 43 cities and with help of 94 different institutions. 42,000 visitors had the opportunity to enjoy 148 shows.¹⁰⁰

⁹⁸ Act on Subsidized Housing Construction (consolidated text 2012.) 2001. (Zakon o društveno poticanoj stanogradnji).

⁹⁹ The Nigh of the Museums, <http://nocmuzeja.hr/o-nama/>, 19 January 2015.

¹⁰⁰ *ibid.*

Croatian healthcare system was also affected by the crisis, and changes were inevitable. Act on the Amendments to the Act on (Social Security) Contributions¹⁰¹ increased the contribution for health care from 13% to 15%. Estimated income increase for 2014 is HRK 1.4 billion, and for 2015 it amounts to HRK 2.4 billion. Significant savings are expected from cutting prescription drugs expenses, better sick leave control and rationalization of hospital management. The Health Care Act¹⁰² primarily determines the health care system and it is also the foundation for National Health Care Strategy 2012. -2020¹⁰³. The Strategy has a special focus on health of vulnerable groups: children, elderly, persons with disabilities, Croatian war veterans and Roma. The Government covers Supplementary Medical Insurance for these and other socially unprivileged groups, namely students, blood donors, organ donors, persons whose monthly income does not exceed HRK 1,516.32 per family member or HRK 1,939.39 for one person households. Children under the age of 18 have their obligatory health insurance if their permanent residence is in Croatia, regardless of their parents' health care status or if they are in school.¹⁰⁴

When austerity measures are introduced the first ones to suffer the consequences are, of course, the people with the lowest income and others who are socially excluded on any level. From 2008 until today many austerity measures were proscribed in Croatia and their impact on the population was diverse. Act on Special Tax on Salaries, Pensions and Other Income¹⁰⁵ increased taxation between 2 and 4 per cent, depending on the amount of the income. It did, however, exclude from additional taxation incomes below HRK 3,000. In 2009 Value Added Tax was increased from 22% to 23%, and in 2012 it grew to 25%, which is the third highest VAT rate in Europe. For certain services in tourism department VAT was reduced to 10%.

¹⁰¹ Act on the Amendments to the Act on Social Security Contributions 2014. (Zakon o doprinosima za obavezno socijalno osiguranje).

¹⁰² The Health Care Act 2014. (Zakon o zdravstvenoj zaštiti).

¹⁰³ Ministry of Health of the Republic of Croatia, National Health Care strategy 2012-2020, http://www.hrt.hr/fileadmin/video/49._-1.pdf 15 January 2015.

¹⁰⁴ Compulsory Health Insurance Act 2013. (Zakon o obveznom zdravstvenoj osiguranju).

¹⁰⁵ Act on Special Tax on Salaries, Pensions and Other Income 2009. (Zakon o posebnim porezima na plaće, penzije i druge prihode).

Act on the Denial of the Right to Increase Salary Based on Years of Service¹⁰⁶ has, allegedly, violated rights guaranteed to government employees granted to them in collective agreements. The Constitutional Court of Croatia is currently reviewing the constitutionality of this act.

These are just some of many austerity measures introduced in Croatia. They cannot be judged as a whole, because they had very different goals and impacts on poverty level and social exclusion.

To conclude, Croatia is possibly in breach of Article 30 of the Charter. Available statistical data regarding persons who live in poverty or risk living in the situation of poverty indicate towards significant social stratification and limited access to various above mentioned sectors. Various measures regarding employment, housing, training, education, culture, social and medical assistance have been taken in order to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance. Although the list of these measures is extensive, the effects of the global crisis could not be avoided. It is still too soon to estimate their effectiveness on a broader scale.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with Disabilities (Article 15 ESC)

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

Vocational rehabilitation in Croatia is regulated with two acts: Act on Vocational rehabilitation and employment of Disabled persons (further in text Employment of Disabled persons Act) and

¹⁰⁶ Act on the Denial of the Right to Increase Salary Based on Years of Service 2014. (Zakon o uskrati prava na povećanje plaće po osnovi ostvarenih radnih godina radnog staža).

Act on Pension insurance (further in text Pension Act).¹⁰⁷ Despite these facts Croatia has yet not developed the exact criteria for the enforcement of vocational rehabilitation.

Different acts that regulate vocational rehabilitation and employer's lack of awareness result with unacceptable practices of employers usually not giving disabled persons who have gone through professional rehabilitation their jobs back. The Ombudsperson stated that the disabled employees who go through vocational training usually receive a conditioned termination of employment with an explanation that there isn't an available position to which the disabled person could be placed because of his/hers re-qualification.¹⁰⁸

If the disabled employee does not get his job back after vocational rehabilitation or pre-qualification, he is entitled to an anticipatory disability pension. The anticipatory disability pension is provided if the disabled employee is long-term unemployed (at least five years after vocational rehabilitation or pre-qualification), or if he was employed until the age of 58.¹⁰⁹ The age-old problem in this area that we can point to is based on the above mentioned information is the fact that our system is traditionally rooted in a welfare state model, which means the state regulates working and employment disabilities mostly with compensations and fees and this results with creation of dependent relations in two directions: persons with disabilities are relying on this fees as a source of living instead of being supported by the system to take part in the labour market and also, because of the high amounts of money allocated for these compensations for disabled individuals, the state has hard time promoting alternative programs of vocational training and employment.¹¹⁰ It is obvious that it is hard to preserve this system that consumes such huge amounts of money, especially in these times of crisis. According to the

¹⁰⁷ Act on Vocational rehabilitation and employment of Disabled persons 2013. [Zakon o profesionalnoj rehabilitaciji i zapošljavanju osoba s invaliditetom].

¹⁰⁸ Ombudsperson's Recommendation on professional rehabilitation 2013, 2. www.posi.hr/index.php?option=com_joomdoc&task=doc_details&gid=33&Itemid=182, accessed April 15 2015.

¹⁰⁹ Act on Pension insurance (consolidated text 2015) 2013., paragraph 57.

¹¹⁰ Ombudsman for persons with disabilities, *Official report from the Office of Ombudsman for persons with disabilities for 2013*, 165. http://www.posi.hr/index.php?option=com_joomdoc&task=doc_details&gid=205&Itemid=98, accessed January 17 2015.

statistics, in 2013 Ministry of Social policy and Youth allocated HRK 332,789,873 (approximately EUR 43,219,464) on disability benefits.¹¹¹

The Employment of disabled persons Act (in effect since January 1 2015) proposed some new solutions to underlay the process of vocational rehabilitation and guidance. For this purpose the state should, together with units of local and regional self-government and legal persons, establish so-called Centres. Centres primary tasks are organising and providing vocational training, rehabilitation, education, pre-qualification, providing information and advice for identifying possible sources for financing the needs of persons with disabilities, etc.¹¹²

The Ombudsperson underlines the importance of the fact that in 2013 a “Study of viability of the vocational rehabilitation in Republic of Croatia” was published. This study recommends a systematic approach to vocational rehabilitation.¹¹³ It implies that vocational rehabilitation should be observed not only from the economical or sociological viewpoint but also from the point that every person should have a possibility of a free choice of personal development and full use of their talent and abilities. Due to the vocational program/education and adaptation of working places, every disabled person can upgrade their efficiency in their workplace. Study is very precise in showing that it is 'possible to see positive results from investing in vocational rehabilitation after 2-3 years'.¹¹⁴

Establishing Centres across the state could be an important breakthrough regarding the inclusion of persons with disabilities in the labour market.¹¹⁵

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible

¹¹¹ Ministry of Social Policy and Youth, Annual report 2013. http://www.mspm.hr/djelokrug_aktivnosti/socijalna_skrb/statisticka_izvjesca/godisnje_izvjesce_2013, accessed April 18 2015.

¹¹² Act on Vocational rehabilitation and employment of Disabled persons 2013, paragraph 4 subparagraph 4, and paragraph 15.

¹¹³ Predrag Bejaković, Ivica Urban, Petar Sopek, Ivan Škoc, *Study of viability of the vocational rehabilitation in Republic of Croatia*, Institute for public finances, Zagreb, 2013.

¹¹⁴ *ibid* 110.

¹¹⁵ Official report from the Office of Ombudsman for persons with disabilities for 2013.

by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

Labour act states that any direct or indirect discrimination in the area of labour and working conditions shall be prohibited, including the selection criteria and requirements for employment, advance in employment, professional guidance, education, training and retraining, in accordance with this Act and special laws and regulations.¹¹⁶ The Anti-discrimination Act states that discrimination in relation to persons with disabilities is a failure to enable disabled persons use of publicly available resources, participation in the public and social life, access to workplace and appropriate working conditions by adapting the infrastructure and premises, by using equipment and in another manner which does not present unreasonable burden for the person that is obliged to provide for it.¹¹⁷

The Employment of the Disabled persons Act of 2013 is the newest attempt to underlay the previous mentioned provisions in practice, by giving persons with disabilities a chance not to be discriminated against on the labour market.¹¹⁸

On January 1, 2015 the Employment of Disabled persons Act comes into force which, inter alia, provides the rights of people with disabilities in the employment. Employers with 20 or more employees are obliged to fulfil the quota of employment in accordance with the Ordinance on Determining the quota of employment of persons with disabilities and have the following options: to employ a disabled person according to the required quota, to use a replacement quota or to pay the fee for the unfulfilled quota.¹¹⁹

The quota is determined on the basis of the company's activities according to the National Classification of Economic Activities 2007 – “NKD 2007”¹²⁰ The quota can be different, but cannot be less than 2% or more than 6% of the total number of employees. In the case that the value of the quota is less than 0.5 % it is rounded down and if the value of quota is 0.5 % or

¹¹⁶ Labour Act 2014., paragraph 7, subparagraph 4.

¹¹⁷ Anti-discrimination Act (Consolidated text 2012) 2008., paragraph 4, subparagraph 2 [Zakon o suzbijanju diskriminacije].

¹¹⁸ Act on Vocational rehabilitation and employment of Disabled persons 2013.

¹¹⁹ Ordinance on Determining the quota of employment of persons with disabilities 2014. paragraph 2 [Pravilnik o određivanju kvote za zapošljavanje osoba s invaliditetom].

¹²⁰ Ibid paragraph 3.

more it is rounded up. For employers who employ less than 50 workers, the quota will be reduced by one percentage point, but cannot be lower than 2%.¹²¹

The employer can fulfil the obligation of quota employment by using recruiting a prescribed number of persons with disabilities or to use a replacement quota in one of the following ways described below:

- Business cooperation with persons with disabilities who are self-employed;
- Students with disabilities (four interns are recognized as one employed person with disability);
- Rehabilitating persons on internship within of the professional rehabilitation conducted by the centre for professional rehabilitation, except that the two rehabilitating persons are recognized as one employed person with disability;
- Conclude one or more temporary service contracts with students with disabilities, who have the status of a full-time student;
- Provides one or more scholarships for full-time education to persons with disabilities.

If the employer, who is obliged to, does not employ a person with a disability and does not use a replacement quota, he is obligated to calculate and pay a fee in the amount of 30% of the minimum wage for each person with disability the employer was obliged to employ.¹²² We can conclude that this new system of employment quotas is a good start in opening the labour market to persons with disabilities, but the system also needs to prepare persons with disabilities for the demands of the labour market and the challenges of today's economy.

As we pointed out above, the Anti-discrimination Act states that the existence of discrimination on the grounds of disability and the denial of reasonable accommodation as a form of discrimination is prohibited in all areas.¹²³ Based on the Ombudsman's report most of the complaints she received were based on the fact that employers failed to fulfil their obligations to reasonably adapt working places, or even failed to understand what their obligations are.¹²⁴ What is underlined in this situation is the need for a systematic approach to the deeply rooted

¹²¹ Ibid.

¹²² Ibid paragraph 13.

¹²³ Anti-discrimination Act 2008. paragraph 14.

¹²⁴ Official report from the Office of Ombudsman for persons with disabilities for 2013, 169.

prejudices of working abilities and incorrect information about productivity of persons with disability, especially in the areas where their incapacity does not interfere with their working tasks.¹²⁵ This important social task can be fulfilled only with support from organizations that work with persons with disabilities. We should also mention two solutions the Act provides for persons who are not able to work in a competitive working environment and at the open market: a sheltered workshop and a sheltered workplace. Sheltered workshop is an institute or a business organization for persons who cannot work in an open market. It is fully adapted to their needs, and employs at least 40% of persons with disabilities on a total number of employees.¹²⁶ Sheltered workplace is an institute or business organization for persons who cannot work in a sheltered workshop. It is fully adapted to their needs, and employs at least 51% of persons with disabilities on a total number of employees.¹²⁷ Both of these sheltered employment units can be founded by units of local and regional self-government, business organizations, Croatian employment service, NGO's for persons with disabilities, organizations of employers, unions, etc.¹²⁸ As the Ombudsperson pointed out in her report to the United Nations Human Rights Office of the High Commissioner, many sheltered employment units in Croatia have closed in the last few years. This does not indicate that persons with disabilities were employed on the open market, but rather that these units were closed due to lack of support from both the state and local and regional self-government. This unfortunate situation is only deepening the already difficult position of persons with disabilities on the labour market because it prevents them from gaining sufficient working experience and the long-term unemployment leads to loss of knowledge and skills.¹²⁹

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

Difficult financial situation and the long-lasting recession have also had an impact on the rights of persons with disabilities in Croatia. Because of the demands of today's economy and the

¹²⁵ Predrag Bejaković, Ivica Urban, Petar Sopek, Ivan Škoc, *Study of viability of the vocational rehabilitation in Republic of Croatia*, Institute for public finances, Zagreb, 2013.

¹²⁶ Act on Vocational rehabilitation and employment of Disabled persons, 2013. paragraph 18, sub 1.

¹²⁷ Ibid paragraph 20

¹²⁸ Ibid paragraph 19 and 21

¹²⁹ http://www.ohchr.org/Documents/Issues/Disability/SubmissionWorkEmployment/CivilSociety/Ombudsman_Croatia.pdf, accessed April 15 2015.

labour market the employers are even more unwilling to employ a person with disabilities as they are perceived as unnecessary business expenses.

Person with disabilities are already in a very vulnerable position on the labour market and allowing the economic situation to further dictate their labour rights is a very dangerous path that leads in the direction of denying the importance of their integration in the society.¹³⁰

If we look at the period of last ten years, the year 2014 was the best year so far in regards of employment of persons with disabilities (additional 7% of persons with disabilities were employed). The Ombudsperson predicts that the next few years will show whether these numbers are the direct result of the Employment of the Disabled persons Act and the active employment measures carried out by the Croatian employment service.¹³¹ These measures are valuable because they provide persons with disabilities with opportunities to test their competences, improve skills and knowledge, to find a way to integrate to the working environment and society.¹³² They also provide employers with a chance to change their perspectives on persons with disabilities by evaluating their competences in concrete tasks. The temporal nature of these measures is their biggest disadvantage because persons with disabilities could find themselves on the unemployment lists again.¹³³

Another big obstacle to the growth of employment of persons with disabilities is also the fact that our educational system is still not adjusted to the needs of persons with disabilities and needs of the labour market. This problem is especially highlighted in the case of persons with disabilities who often finish various colleges but are again deemed “non-hireable” due to their disabilities. The potential solution for repairing the existing defects in the labour market could be the already mentioned Centres for vocational rehabilitation, but this solution also faces financial issues that are definitely accentuated in this time of the economic crises.¹³⁴

If we take into consideration all of the arguments above, it is possible to conclude that if Croatia had ratified the revised Charter there would not be a breach of article 15 of the Charter. All the mentioned measures are a sign of improvement in employment opportunities for persons with

¹³⁰ Official report from the Office of Ombudsman for persons with disabilities for 2013, 171.

¹³¹ Official report from the Office of Ombudsman for persons with disabilities for 2014, 103.

¹³² Ibid 106.

¹³³ Ibid.

¹³⁴ Ibid 94.

disabilities. In 2014 the number of employed persons with disabilities increased by 7%. The Ombudsperson is determined in her constant effort in persuading key members of the society to harmonise anti-discrimination legislation with the labour one. This harmonisation is the key in providing persons with disabilities with equal opportunities on the labour market.¹³⁵

5.2. Children and Young Persons (Article 17 ESC)

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

It is state's duty and obligation to provide care for preschool-age children.¹³⁶ Preschool education in the Republic of Croatia has been regulated as a sub-system of education since 1997 by the Preschool Education Act.⁷

At the beginning of the 2010/2011 pedagogic year, there was a total of 1,495 kindergartens and other legal entities implementing preschool programmes. The total number of children covered by preschool programmes was 125,166.¹³⁷ Although statistic sounds reassuring, in 2013 Office of the Ombudsman for Children received 262 applications for individual infringements of 423 children to education, which represents 18.3% of the total number of the applications received for individual violations of children's rights in the Office. The greatest number of those applications was concerned with the lack of availability of preschool education. Unfortunately, the latest information show us that there is 'a lack of children's kindergartens and appropriate programs, that amount of co- financing by some founders (local and regional self- government) is more and more frugally due to severe economic situation both at the local and national level.'¹³⁸

¹³⁵ Ibid .114

¹³⁶ Convention No. 156 on Workers with Family Responsibilities; Article 5, Item B.

¹³⁷ Croatian Bureau of Statistics, ISSN 1332-0297, "Basic Schools and Kindergartens and Other Legal Entities Implementing Preschool Education Programmes, End of School Year and Beginning of School/Pedagogic Year".

¹³⁸ Ombudsman for children, '*Izvješće o radu pravobraniteljice za djecu 2013*', (<http://www.dijete.hr/hr/izvjemainmenu-93/izvjeco-radu-pravobranitelja-za-djecu-mainmenu-94.html>) accessed March 1 2015 [Croatian] 51.

Due to the shortage of places in preschool education institutions government introduced The Act on Nannies in March 2013. This Act was adopted for the purpose of meeting the needs of children while they are users of extra institutional child care. It is significant for nannies as well, as they are able to know which requirements need to be set in order to provide their services. Local and regional self-government units may participate in co-financing of nanny' activities within their units.¹³⁹

Education in Croatia is a constitutional right. 'In the Republic of Croatia, everyone shall have access to education under equal conditions and in accordance with his/her aptitudes.'¹⁴⁰ 'Compulsory education shall be free, in conformity with law.'¹⁴¹ 'This refers to all children with permanent residence in the Republic of Croatia, irrespective of their citizenship.'¹⁴² Parents are legally obligated to enrol their children into elementary education at the age of six years.¹⁴³

Secondary education is provided to everyone, upon the completion of primary schooling, under equal conditions and based on individual capability, the opportunity to acquire knowledge and the competence needed to enter the workforce and to undertake further education.¹⁴⁴

Funds for financing primary and secondary education are ensured from the state budget, the budgets of local and regional self- government. Also from funds of other founders when that is a case, as well as from incomes earned from performing its own activities or other earmarked revenue, payment of parents due to special activities and also donations.¹⁴⁵

Although in theory education is provided to everyone under same circumstances, there are still some technical difficulties which are requiring solution. For example, Ombudsman for Children received complaints in regard to the transportation of students. It was reported that children often have to walk far distances, on dangerous road conditions, often even without sidewalks, to get to school or to the publicly organized transport. This problem is more often in smaller

¹³⁹ The Act on Nannies 2013.

¹⁴⁰ The Constitution of the Republic of Croatia (consolidated text 2010) [1990]- Article 66.

¹⁴¹ The Constitution of the Republic of Croatia (consolidated text 2010) [1990]- Article 66.

¹⁴² Official web page of Ministry of Science, Education and Sports (<http://public.mzos.hr/Default.aspx?sec=2499>) accessed 16 April 2015.

¹⁴³ Primary and Secondary School Education Act 2008.- Article 19.

¹⁴⁴ Official web page of Ministry of Science, Education and Sports (<http://public.mzos.hr/Default.aspx?art=5839&sec=2504>) accessed 16 April 2015.

¹⁴⁵ Primary and Secondary School Education Act 2008. Article 141.

municipalities and on islands. During the years 2012, 2013, 2014 and 2015¹⁴⁶ government adopted decisions on criteria for co-financing public transport for regular high school students. When student has the possibility to use a train or a bus, Ministry of Science, Education and Sports may cover the cost of the train transportation. It is conditional that students' residence address is situated two kilometres from the train station and that the timetable is adjusted to the teaching schedule. Intercity transport is co-financed in the amount of 75 per cent of final cost. It is conditional that students' residence address is situated 5 kilometres from the school. Although progress in legislation on this matter is notable, it still is not enough and the Children's Ombudsman appeals to the need for new regulations

To conclude, the Republic of Croatia would be in conformity with Article 17(1) of European Social Charter. Although savings are significant in all sectors of the state budget, new decisions and acts¹⁴⁷ which are regulating the matter should be gladly received and loudly welcomed. It can be noticed that The Republic of Croatia is self-conscious about the problems in education and has decided to legislatively react. Our common future depends on the youth and it is praiseworthy that government is directing means and efforts in that particular field.

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

UN Guidelines for the Alternative Care of Children accentuate the importance of the family and the need to keep the child in the custody of the family or close relatives. Once the child is left without proper care the state is responsible for the protection of its rights and securing alternative care. There are two ways to do that:

5.2.2.1. Institutional Care

Institutional care has proven to have a negative effect on the behaviour of children, particularly the ones of ages three and younger.¹⁴⁸

¹⁴⁶ Decision on the criteria and the method of financing the cost of public transport for regular students in secondary schools in the period September-December 2014.

¹⁴⁷ Decision on the acquisition of textbooks and related supplemental educational resources for the purpose of elementary and secondary schools in the Republic of Croatia for the school year 2014/2015 („ Official Gazette” 27/2010, 55/2011, 101/2013) and The Act on Nannies („ Official Gazette” 37/13).

¹⁴⁸ Analysis of Rights of Women and Children in Croatia,

In October 2010 the National plan for Deinstitutionalization and Transformation of Social Care and Other Legal Entities that Provide Social Care in Republic of Croatia was passed. One of its main goals is to reduce the number of children in institutional care and increase family type of accommodation. Currently there are 71 public and 24 privately owned institutions and 19 other legal entities for providing care to children and youth without parental custody, youth and children with behaviour disorders and children (and adults) with a disability. In 2010 there were 4 953 children and young persons in either one of these facilities.¹⁴⁹

5.2.2.2. Foster Care

Foster care is the other form of alternative family care. Compared to the institutional care it has many advantages. It gives children more privacy, intimacy, affection, less stressful situations and more social interaction. There are still some issues, for example there are areas without foster homes, meaning that the children then must move in order to get proper care. Foster care ends when the child turns 18, but there are some housing communities for students where they can live until graduation. In 2009, there were 1,955 children in foster care, and 1,332 foster homes. Most of the foster parents are women (85%) and they are usually between 40 and 60 years of age. Children are mostly put to foster care because of inadequate parental care (70%).¹⁵⁰

Adoption process in Croatia has some weaknesses, mostly regarding the duration of the procedure. This was the subject of 14 complaints to the Ombudsperson for Children in 2014¹⁵¹.

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

In Croatia, primary and secondary education is defined in Primary and Secondary School Education Act (further in text Education Act) as a public service based on the following

http://www.unicef.hr/upload/file/370/185135/FILENAME/Analiza_stanja_prava_djece_i_zena.pdf, 15
January, 2015, page 82.

¹⁴⁹ Analysis of Rights of Women and Children in Croatia,
http://www.unicef.hr/upload/file/370/185135/FILENAME/Analiza_stanja_prava_djece_i_zena.pdf, 15
January, 2015, page 83.

¹⁵⁰ Analysis of Rights of Women and Children in Croatia,
http://www.unicef.hr/upload/file/370/185135/FILENAME/Analiza_stanja_prava_djece_i_zena.pdf, 15
January, 2015, page 87.

¹⁵¹ Annual Report on the Activities of the Ombudsperson for Children 2014, page 28.

principles: compulsory primary education for all pupils, education based on equal opportunities for all according to their abilities, high standards for programs and national educational curriculums etc.¹⁵² The Croatian Constitution states that education should be available to every person under equal terms and in accordance with personal abilities and that compulsory education is free, as defined in relevant acts.¹⁵³ This paragraph from the Constitution could lead us to the conclusion that only primary education is free, but in reality all public secondary schools are free too because the Education Act states that the public primary and secondary education is financed from the state budget, local and regional units budget, legal persons budget or donations.¹⁵⁴ Secondary education allows everyone under the same conditions and according to his/her abilities after completing primary education, to acquire knowledge and skills for work and continued education.

The question whether the public primary and secondary education is actually free emerges considering all the other expenses that are carried out by his parents. These expenses include books and educational materials, transport expenses or gear/materials necessary in various classes (pens, notebooks, and gear for P.E). Regulation of financing transport and book expenses is in the domain of units of local and regional self-government, and the Ministry of science, education and sports can decide to participate in some of these expenses each year but the financial crises is an important factor that influences the capacity of the state to alleviate the pressure from the parents budgets and it varies from year to year.¹⁵⁵ At the end, it always depends on the individual unit in which way and to which extent it will cover expenses for the pupils in its area. This means that children from different parts of Croatia have different educational opportunities which is a discriminatory, unconstitutional practice.

Based on the information provided above, we can conclude that certain effort is made on the part of the state concerning free primary and secondary education but many legal provisions are distorted in practice, as shown above.

¹⁵² Primary and Secondary School Education Act [Zakon o odgoju i obrazovanju u osnovnim i srednjim školama] Official gazette no. 87/08, 86/09, 92/10, 105/10, 90/11,5/12, 16/12, 86/12, 94/13, 136/14, 152/14, paragraphs 3 and 4.

¹⁵³ Constitution of Republic of Croatia, Official gazette no. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14, paragraph 66, subparagraph 1.

¹⁵⁴ Primary and Secondary School Education Act, op. cit., (footnote 28), paragraph 141.

¹⁵⁵ Ibid, paragraph 142 and 143.

Tertiary education and its accessibility is always an object of strong debate in our society. The newest Report on the student standard in Croatia shows that the total cost of study for one semester is HRK 15,755 (approximately EUR 2,046).¹⁵⁶ In case of 82% students this cost is mainly covered by their families. Only 3% of students use student loan to cover all expenses.¹⁵⁷ This of course means that any decision concerning financing tertiary education is of highest importance to every student. To provide every student with a chance to have access to tertiary education, the Government passed a Decision which determinates financing scholarships for public universities. This Decision provides: free scholarship for a student who enrolls into the first year of university, free scholarship for a student who has obtained at least ECTS 55 points in previous academic year, and for a student with disabilities who has obtained at least ECTS 30 in previous academic year.¹⁵⁸ This system provides every first year student with the same starting point and after the first year the achievements in the previous academic years are rewarded. This is a system which definitely supports successful students who may have financial difficulties. Scholarships for the rest of the students, who did not fulfil the previous mentioned demands, are determined by the Ministry of Science, Education and Sports together with the University.¹⁵⁹

If we take into consideration all the above stated and if Croatia had ratified the Revised Charter, it is possible to conclude that there would not be a breach of article 17. This article specifies obligations that Croatia has fulfilled: free primary and secondary school, although the secondary education doesn't have the same level of guarantee as the primary one, since it still isn't compulsory. It should be pointed out that there is a large number of young people in Croatia (as a member of the group of the European countries with the shortest compulsory schooling) who do not enrol into high school after finishing elementary school, and of those who do enrol into it, as few as 69.5 % finish it.¹⁶⁰ Young population comprised of low-qualified persons (persons

¹⁵⁶ National report on student standard in Croatia (EUROSTUDENT), <http://public.mzos.hr/Default.aspx?sec=2259>, accessed April 15 2015, page 8; This cost includes direct (scholarship for semester, other costs of additional services at faculty like library, textbooks, etc.) and indirect (accommodation, alimention, etc.) costs of studies.

¹⁵⁷ Ibid 9.

¹⁵⁸ Government Decision on full subvention of participation in costs of studying for students in public universities in Republic of Croatia in academic years 2012/2013, 2013/2014, 2014/2015 [Odluka o punoj subvenciji participacije u troškovima studija za redovite studente na javnim visokim učilištima u Republici Hrvatskoj].

¹⁵⁹ Ordinance on the financing of high education on the public universities (consolidated text 1995) 1993. [Pravilnik o osnovama financiranja visoke naobrazbe na javnim učilištima].

¹⁶⁰ Ministry of Science and Education, <http://public.mzos.hr/Default.aspx?art=9443>, accessed April 17 2015.

who finished elementary school) is faced with slim or no chances at all for finding a job, which leaves them without a basis for settling their existential issues and deprived, at an early age, of the fundamental rights of the democratic society: right to employment and right to social benefits. The strategic goal of the Ministry of Science, Education and Sports is to reduce the number of pupils who have not finished high school, by gradually introducing compulsory secondary education, and to enable a large number of them to continue their education on higher levels, thus greatly increasing their preparedness to respond to the fast changes on the labour market, their ability to acquire new knowledge and skills, as well as facilitating their job finding. The Croatian Parliament adopted on 21 June 2007 the National Programme of Measures for the Introduction of Compulsory Secondary Education (Official Gazette NN, 71/07) with the following goals¹⁶¹:

- Increase the enrolment rate of pupils and the rate of finishing regular secondary education;
- Improve the quality of the Croatian secondary education, while coordinating it with the European educational systems and the standards of the European Union member countries;
- Ensure the possibilities for a life-long learning in line with the demands of the modern life and economy.

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue

The youth unemployment rate¹⁶² in Croatia was at 46.4% in the fourth quarter 2014.¹⁶³ The percentage of young people not in employment, education or training (NEETs) amounted to 19.6% in 2013.¹⁶⁴ In comparison to the general unemployment rate of 18.5% in Croatia in

¹⁶¹ Ibid.

¹⁶² Young people under 25 were taken into account. Eurostat, Statistics Explained - Unemployment Statistics [2015] <http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics> accessed 14 April 2015.

¹⁶³ ibid

¹⁶⁴ The data was based on the age group 15-24. Eurostat, Youth neither in employment nor in education and training (NEET) rate, age group 15-24 [2015] <<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tesem150&plugin=1>> accessed 14 April 2015.

February 2015,¹⁶⁵ those figures are especially concerning. The government of Croatia has adopted several measures to address the issue.

In 2009, the new National Youth Program was adopted for the period of 2009-2013.¹⁶⁶ The programme was an update of the older National Youth Action Program adopted in 2003, a comprehensive plan devoted to improving well-being of youth in several areas, one of them being employment and entrepreneurship of young people.¹⁶⁷ In the area of employment and entrepreneurship, the 2009 Program aimed to provide an adequate support and measures for young people, including vocational guidance services, funding of education of young unemployed persons, and co-funding of first employment of young people without previous working experience.¹⁶⁸ Subventions and deductions for employers in certain public sector areas employing persons under the age of 29 were set up.¹⁶⁹ The National Employment Promotion Act adopted in May 2012 expanded the subsidies to occupations in the private sector.¹⁷⁰

As a EU member state, Croatia participates in two key programmes relevant for the issue of youth unemployment, i.e., the European Youth Guarantee and the Youth Employment Initiative. Firstly, the main idea behind the Youth Guarantee scheme, approved by the EU's Council of Ministers on 22 April 2013, is to ensure that young people under 25 do not stay out of education, training, or employment for more than four consecutive months. The European Youth Guarantee is both a structural reform aiming to improve school-to-work transitions, and a measure which directly supports job creation in the short term.¹⁷¹ The Croatian Youth Guarantee covers young people from 15 to 30 years old and as of 2014, had an allocation of 66.18 million

¹⁶⁵ Eurostat, Statistics Explained - Unemployment Statistics [2015] <http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics> accessed 14 April 2015.

¹⁶⁶ The Government of the Republic of Croatia, The National Youth Program from 2009 till 2013 [2009] <http://planipolis.iiep.unesco.org/upload/Youth/Croatia/Croatia_nacionalni%20program%20za%20mlade.pdf> accessed 24 January 2015.

¹⁶⁷ Council of European Union, Country Sheet on Youth Policy in Croatia [2011], 2. <http://pjp-eu.coe.int/documents/1017981/1668137/Country_sheet_Croatia_2011.pdf/c8d101f2-6f73-4ab2-887e-05efb1c2cd5d> accessed 24 January 2015.

¹⁶⁸ The Government of the Republic of Croatia, *The National Youth Program from 2009 till 2013* [2009] 155. <http://planipolis.iiep.unesco.org/upload/Youth/Croatia/Croatia_nacionalni%20program%20za%20mlade.pdf> accessed 24 January 2015.

¹⁶⁹ *ibid.*

¹⁷⁰ Yermi Brenner, 'Europe's jobless youth crisis hits Croatia' (Aljazeera, 26 February 2014) <<http://www.aljazeera.com/indepth/features/2014/02/europe-jobless-youth-crisis-hits-croatia-201422581849915221.html>> accessed 24 January 2015.

¹⁷¹ Eugene Eteris, 'The EU Youth Guarantee to support job creation' (The Baltic Course, 17 September 2014) <<http://www.baltic-course.com/eng/analytics/?doc=96449>> accessed 24 January 2015.

Euros.¹⁷² In its 2014 report on the implementation of the Youth Guarantee in Croatia, the Commission, *inter alia*, identified the challenges related to the lack of data and analysis about NEETs, insufficient capacities of the Public Employment Service, inadequate quality of vocational education, training and higher education, insufficient labour-market relevance, and an inadequate mobilization of the private sector.¹⁷³

Secondly, Croatia is eligible for the Youth Employment Initiative, i.e., the EU financial support which concentrates on regions experiencing youth unemployment rates above 25% and on NEETs. *Inter alia*, initiative provides traineeships, apprenticeships, further education and training, helps young people to take up their first job or start a business, and provides money for hiring subsidies.¹⁷⁴ Based on the partnership agreement with the European Commission, more than EUR 1.5 billion will be allocated to the Croatian European Social Fund (ESF) over the 2014-2020 period, and the money from this fund will also be used to create opportunities for young people, including through the Youth Employment Initiative.¹⁷⁵

In November 2014, the government announced new measures to be taken in 2015 to fight against the youth unemployment. Firstly, “the current monthly compensation for employers who employ a youth worker with no prior experience” will “increase from HRK 1,600 (EUR 210) to HRK 2,400 (EUR 310)”.¹⁷⁶ In addition, wage contributions for pension and health fund for workers under 29 years will not have to be paid by the employers. The government also plans to adopt policies to stimulate more opportunities available to young people that are offered by vocational schools and enterprises.¹⁷⁷

¹⁷² European Commission, State of play of the implementation of the Youth Guarantee - Croatia [2014] <<http://ec.europa.eu/social/main.jsp?catId=1094&langId=en>> accessed 24 January 2015.

¹⁷³ *ibid*

¹⁷⁴ Eugene Eteris, ‘The EU Youth Guarantee to support job creation’ (The Baltic Course, 17 September 2014) <<http://www.baltic-course.com/eng/analytics/?doc=96449>> accessed 24 January 2015.

¹⁷⁵ European Commission, European Commission adopts ‘Partnership Agreement’ with Croatia on using EU Structural and Investment Funds for growth and jobs in 2014-2020 (Press Release) [2014] <http://europa.eu/rapid/press-release_IP-14-1223_en.htm> accessed 24 January 2015.

¹⁷⁶ Croatia Week, ‘Minister: New Stimulants Coming to Cut High Youth Unemployment Rate’ (Croatia Week, 12 November 2014) <<http://www.croatiaweek.com/minister-new-stimulants-coming-to-cut-high-youth-unemployment-rate/>> accessed 24 January 2015.

¹⁷⁷ english.news.cn, ‘Croatia to take new measures to increase youth employment’ (Xinhuanet, 15 November 2014) <http://news.xinhuanet.com/english/europe/europe/2014-11/15/c_133790977.htm> accessed 24 January 2015.

According to Article 17 of the Revised Charter, referring to the “right of children and young person’s to social, legal and economic protection”, the state needs to provide, inter alia, the necessary training for young people, “in particular by providing for the establishment of maintenance of institutions and services sufficient and adequate for this purpose”. From the above stated facts about the measures taken by the Croatian government to fight the youth unemployment we can conclude that Croatia, had it ratified the Revised Charter, would not be in breach of this particular provision.

6. OTHER ISSUES

Are there any other relevant issues regarding the ESC, and not covered by the questions above, in your MS? Please describe the applicable legal framework and explain how it is not in compliance with the ESC

Another relevant issue in Croatia regarding the ESC is the issue of gender equality in the labour market.

The principle of gender equality is enshrined in Article 3 of the Constitution of the Republic of Croatia¹⁷⁸ which places this principle among the highest values of the constitutional order. This Article provides a basis for further legislation promoting equal opportunities for both genders. There are two general laws of the Republic of Croatia which protect citizens from gender-based discrimination, namely The Anti-Discrimination Act¹⁷⁹ and The Act on Gender Equality.¹⁸⁰ According to Article 5 of the latter, gender equality demands an equal presence of women and men “in all segments of public and private life” and their “equal status, equal access to all rights and equal benefits from achieved results”. Both acts prohibit, inter alia, discrimination on the grounds of sex, and marital or family status.¹⁸¹ Furthermore, the Act on Gender Equality adds that “/l/ess favourable treatment of women” due to “pregnancy and maternity” also amounts to discrimination.¹⁸²

¹⁷⁸ The Constitution of the Republic of Croatia (consolidated text 2010) [1990].

¹⁷⁹ The Anti-Discrimination Act 2008.

¹⁸⁰ The Act on Gender Equality 2008.

¹⁸¹ The Anti-Discrimination Act 2008 Article 1.; The Act on Gender Equality 2008. Article 6.

¹⁸² The Act on Gender Equality Article 6.

The area of employment is covered in greater detail by the Labour Act of 2014 (from hereafter referred to as “the Act”).¹⁸³ Article 7(4) of the Labour Act states that:

any direct or indirect discrimination in the area of labour and working conditions shall be prohibited, including the selection criteria and requirements for employment, advance in employment, professional guidance, education, training and retraining.

Additionally, of great importance for gender equality are parts of the Act referring to the protection of pregnant workers, parents and adoptive parents, and moreover, provisions on equal pay for women and men.

Despite the principle of gender equality in the labour market is well-grounded in the existing Croatian legislation, the reality shows the laws are not adequately implemented in practice. The Annual Report 2013 of the Ombudsperson for Gender Equality (“the Report”)¹⁸⁴ (issued prior to the enactment of the Labour Act of 2014) points out several problems with respect to gender equality in the labour market. To begin with, estimations for period 2012-2013 show that activity rate of women and employment rate of women were unfavourably lower in comparison to the same figures for men.¹⁸⁵ It is concerning that “unemployment rate among highly educated women increases, in general and in comparison to men”, and “the share of highly educated women who are unemployed continues to grow.”¹⁸⁶ Discrimination against women continues to occur both with respect to entering the employment market on the one hand (cases include discriminatory practices regarding job interviews, selection criteria for work, and access to all forms of professional guidance, vocational education and training and retraining),¹⁸⁷ and with respect to “opportunities for further education, advancement in career, and better remuneration” once they are already employed on the other hand.¹⁸⁸ In 2002, when the last official data on the

¹⁸³ The Labour Act 2014.

¹⁸⁴ Ombudsperson for Gender Equality, *Annual Report 2013* [2014] <<http://www.prs.hr/index.php/izvjesca>> accessed 14 April 2015.

¹⁸⁵ In the period of 2012-2013, activity rate amounted to 43% for women and to 52% for men. Employment rate in the same period amounted to 34% for women and to 45.8% for men. Ombudsperson for Gender Equality, *Annual Report 2013* [2014] p.18 <<http://www.prs.hr/index.php/izvjesca>> accessed 14 April 2015.

¹⁸⁶ *ibid* 18.

¹⁸⁷ *ibid* 20.

¹⁸⁸ European Parliament, Directorate-General for Internal Policies, Policy Department of Citizen’s Rights and Constitutional Affairs, *The Policy on Gender Equality in Croatia, Update 2013* [2013] p.10-11 <[http://www.europarl.europa.eu/RegData/etudes/note/join/2013/493016/IPOL-FEMM_NT\(2013\)493016_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2013/493016/IPOL-FEMM_NT(2013)493016_EN.pdf)> accessed 24 January 2015.

gender pay gap was collected, “the average female employee earned 11% less than the average male employee”.¹⁸⁹ In fact, the existing trend points to “strengthening of the wage gap between men and women” which is “transferred over to the gap in pensions.”¹⁹⁰ Pregnancy, maternity, and exposure to sexual harassment create additional grounds for unfavourable status of women in the labour market.¹⁹¹ Patriarchal society and gender stereotypes are still largely present, and have harmful effects for equal opportunities of women in the labour market.¹⁹² The traditional role of women being almost exclusively responsible for housework, the care of the children, the care of “the elderly, the infirm, the sick, the dying and the socially excluded” makes reconciliation of private and professional life more difficult for women than for men.¹⁹³ Family duties often prevent women from entering the labour market.¹⁹⁴ What is more, this “dominant gender stereotype of woman’s natural predisposition” to perform the above-mentioned tasks also results in a more frequent job losses for women once in the labour market¹⁹⁵ and may also be observed in disproportion “between the number of highly educated women and their share in managerial positions.”¹⁹⁶

In her comments of the Draft proposal on the Labour Law of 2014 (“the Act”) the Ombudswoman exposed three segments of the law which represent “the highest risk of discrimination of /.../ women, mothers, pregnant women”, namely the “fixed-term and temporary employment, working hours and rest, and terminations of employment contracts”.¹⁹⁷ Arguably, the new Labour Act has not legally improved the situation of women in the labour market. Firstly, contrary to the Ombudswoman’s proposals, the Act seemingly favours “an atypical form of employment contract”, i.e., the fixed-term employment, “as the dominant

¹⁸⁹ European Commission, Directorate-General Justice, *The current situation of gender equality in Croatia - Country Profile 2012* [2012] p.11 <http://ec.europa.eu/justice/gender-equality/files/epo_campaign/country-profile_croatia_en.pdf> accessed 14 April 2015.

¹⁹⁰ Ombudsperson for Gender Equality, *19*.

¹⁹¹ *ibid*.

¹⁹² Ombudsperson for Gender Equality, *Annual Report 2013* [2014] p.33; p.18 <<http://www.prs.hr/index.php/izvjescja>> accessed 14 April 2015.

¹⁹³ Ombudsperson for Gender Equality, *Annual Report 2013* [2014] 19-20.

¹⁹⁴ European Commission, Directorate-General Justice, *The current situation of gender equality in Croatia - Country Profile 2012* [2012] 7. <http://ec.europa.eu/justice/gender-equality/files/epo_campaign/country-profile_croatia_en.pdf> accessed 14 April 2015.

¹⁹⁵ Ombudsperson for Gender Equality, *Annual Report 2013* [2014] 19.

¹⁹⁶ *ibid* 20.

¹⁹⁷ *ibid* 53-54.

one”.¹⁹⁸ According to Article 12 of the Act, it is possible to sign successive fixed-term employment contracts over a course of three consecutive years. Such provisions place a worker in an insecure position, since she can never be sure whether her employment contract will be renewed and consequently, she is willing to compromise her rights in order to keep her job. This observation is confirmed by the following comments of the Ombudswoman (albeit made prior to the enactment of the Act, but nevertheless relevant to make a point here): despite “decrease in the number of complaints /.../ related to work, working conditions, employment, access to all forms of vocational guidance, training and retraining” in year 2013 in comparison to 2012, there was a simultaneous increase in the number of complaints “concerning unfavourable conduct in the field of social security” in the same time period.¹⁹⁹ Since the first type of complaints place an employee at risk of punishment or retribution by the employer, and the latter type does not, the reason for decrease in the first type of complaints can be attributed to the already mentioned concern about keeping the job, and this conclusion is further made obvious by the fact that the highest share of complaints was filed by the “persons employed on the basis of unlimited term contracts”.²⁰⁰ Even though the system of fixed-term contracts affects both genders,²⁰¹ arguably, “women are particularly exposed to such non-standard employment.”²⁰² Thus, seemingly gender neutral provisions of the Act providing for the system of fixed-term contracts potentially place women in more unfavourable position than men, and may lead to indirect gender discrimination in practice.

It is important to emphasise that the above-discussed potential practical implications of provisions of the Labour Act of 2014 which presumably pose the highest risk of gender inequality in the area of employment are merely theoretical, and are yet to be confirmed or denied in practice. Due to general public lack of knowledge of indirect gender discrimination,²⁰³ detecting its effects may prove to be a difficult task.

¹⁹⁸ *ibid* 54.

¹⁹⁹ *ibid* 21.

²⁰⁰ *ibid*

²⁰¹ *ibid* 23.

²⁰² European Commission, Exchange of good practices on gender equality (Comments paper - Croatia) [2011] p.3 <http://www.ured-ravnopravnost.hr/site/images/pdf/EU/HR_Comments-paper_NL2011.pdf> accessed 15 April 2015.

²⁰³ Ombudsperson for Gender Equality, *Annual Report 2013*, 21.

As discussed in Introduction, Croatian legislation specifically prohibits direct and indirect gender discrimination in the labour market and as such does not violate any provisions of the ESC. However, if future assessment of conditions in practice would, albeit unlikely, show a link between the Labour Act and indirect gender discrimination in employment, this conclusion might change.

To conclude, despite the fact that the principle of gender equality in the labour market is well-protected by the Croatian legislation, the conditions in practice call for a better implementation of existing laws. While there is no proof of violations of the ESC in this area, this might change if future assessments establish a link between the Labour Act and indirect gender discrimination.

7. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

By creating the Additional Protocol to The European Social Charter providing for a System of Collective Complaints, the member States of the Council of Europe, signatories to this Protocol to the European Social Charter, resolved to take new measures to improve the effective enforcement of the social rights guaranteed by the Charter.

States considered that this aim could be achieved in particular by the establishment of the collective complaints procedure, which, inter alia, would strengthen the participation of management and labour and of nongovernmental organisations. Croatia ratified the Amending Protocol to the Charter and the Additional Protocol providing for a system of the collective complaints on 26/02/2003 (Collective Complaint protocol - CCP in further text).

According to the Article 1 of the CCP Protocol;

The Contracting Parties to this Protocol recognise the right of the following organisations to submit complaints alleging unsatisfactory application of the Charter:

- International organisations of employers and trade unions referred to in paragraph 2 of Article 27 of the Charter;

- Other international non-governmental organisations which have consultative status with the Council of Europe and have been put on a list established for this purpose by the Governmental Committee;
- Representative of national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint.

Croatia has not made a declaration enabling national NGOs to submit collective complaints²⁰⁴. Since the start of the economic crisis, Croatian representative national organisations of employers or trade unions have not filed any collective complaints against the effects that austerity measures had on labour and social rights in Croatia. Trade unions rely more on the Constitutional Court of Croatia²⁰⁵ in securing their rights and have not shown interest in filing a collective complaint procedure to the European Committee of Social Rights. This has been the case even though there is no time limit from bringing a complaint and there is no requirement to exhaust domestic remedies.

Why is this the case? From a theoretical point of view we can only assume that it is the problems the collective complaint system faces in its application in general. Under the CCP protocol, members of international organizations and trade unions can submit a complaint if a Contracting Party fails to meet its obligations under the Charter. Collective complaints are submitted to the European Committee of Social Rights, which assesses whether the state party failed to comply with its obligations under the Charter or Revised Charter and drafts a report for the Committee of Ministers. The Committee of Ministers may then issue a recommendation to the party if it agrees with the assessment of the European Committee of Social Rights. The Charter is silent on the power granted to the Committee of Ministers to enforce its recommendations and does not provide for punitive measures should a Contracting Party fail to comply with its obligations. The

²⁰⁴ Department of the European Social Charter, Directorate General of Human rights and the Rule of Law, 'Croatia and the European Social Charter' <http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Croatia_en.pdf > accessed January 2015.

²⁰⁵ Decision U-VIIR-1159/2015, (Decree n.U-VIIR-1159/2015) 2015, Odluka U-VIIR-1159/2015.

procedural aspects of the system have often been criticised, particularly the lack of remedial powers and the significant role played by the Committee of Ministers.²⁰⁶

This serves to discredit the system and discourage complaints because complainants will feel that there is little point in utilizing the system if a finding of non-compliance by the European Committee of Social Rights will not be endorsed and a recommendation addressed to the defendant state by the Committee of Ministers. More fundamentally, it is undesirable that the Committee of Ministers, a political body, should have any role to play in what is, or at least ought to be, a quasi-judicial process.²⁰⁷ Another possible factor influencing filing a collective complaint is the degree of knowledge of the system by potential complainants. National organizations of employers and trade unions will know about the Charter generally from their involvement in the reporting system, but they may not be very familiar with the collective complaints system.

The next factor may be the willingness (or better to say, lack thereof) of potential complainants to bear the costs and effort of making a complaint. While encouraging increased participation in the CCP is desirable, such participation may be of limited benefit in the case of states parties only to the original Charter, as it is the case with Croatia who has signed the Revised European Social Charter on 6 November 2009, but has not yet ratified it. Many of the rights contained in the latter are out-dated and lag behind the national laws of states parties and EU law (where applicable), so that the bringing of collective complaints is likely to be of limited use.²⁰⁸ The collective complaints system is likely to be of greatest utility in those states parties to the Revised Charter where the level of protection afforded by the rights of that instrument is higher and less likely to be met by the national laws of its parties. As well as increasing participation in the collective complaints system generally, it would also be desirable for Croatia to allow NGOs to file collective complaints. Allowing such organizations to make complaints would generate more complaints about social rights and increase the level of domestic awareness of the Charter.

²⁰⁶ Robin R. Churchill and Urfan Khaliq, *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*, 2004, page 446.

²⁰⁷ *ibid* 447.

²⁰⁸ *ibid* 453

8. CONCLUSIONS

Main findings from our research are as follows:

8.1. Croatia is mostly in conformity with the Article 4 of the European Charter

With its Labour Act, Croatia protects the right of workers to an increased salary for overtime work, the right of men and women to equal pay and the right of all workers to a reasonable period of notice. In addition, with its Minimum Wage Act it guarantees the right of workers to a remuneration that gives them and their families a relatively decent standard of living.

8.2. Croatia is mostly not in conformity with Articles 5 and 6 of the European Social Charter

Even though Croatian legislation protects workers' rights, we can observe that in reality those rights are being heavily neglected.

8.3. Croatia is mostly in conformity with Article 13 of the European Charter.

Despite the latest institutional reforms, Social welfare services, which are free of charge for the user, are still sufficient in the area of providing advices and personal assistance to those in need with the goal of prevention, removal, or alleviation of personal or family want.

8.4. Croatia is mostly in conformity with Article 15 of the Charter

All the measures mentioned related to persons with disability and their inclusion in the Croatian labour market show a sign of improvement in employment opportunities for them. In 2014 the number of employed persons with disabilities increased by 7%.

8.5. Croatia is mostly in conformity with Article 17 of the Charter

The state has taken measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for free primary and secondary school, although the secondary education doesn't have the same level of guarantee as the primary one, since it still isn't compulsory. It can be noticed that The Republic of Croatia is self-conscious about the problems in education. The strategic

goal of the Ministry of Science, Education and Sports is to reduce the number of pupils who have not finished high school, by gradually introducing compulsory secondary education, and to enable a large number of them to continue their education on higher levels, thus greatly increasing their preparedness to respond to the fast changes on the labour market, their ability to acquire new knowledge and skills, as well as facilitating their job finding. In the context of the Article 17 we have to mention that the youth unemployment rate²⁰⁹ in Croatia was at 46.4% in the fourth quarter of 2014 which is concerning.²¹⁰ Although the state has introduced various measures to combat this problem in the last few years, the unemployment numbers are decreasing very slowly.

8.6. Croatia is possibly in breach of Article 30 of the Charter

Available statistical data regarding persons who live in poverty or risk living in the situation of poverty indicate towards significant social stratification and limited access to various above mentioned sectors. Various measures regarding employment, housing, training, education, culture, social and medical assistance have been taken in order to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance. Although the list of these measures is extensive, the effects of the global crisis could not be avoided. It is still too soon to estimate their effectiveness on a broader scale.

Another important issue that we additionally covered was gender equality on the labour market. We have come to the conclusion that despite the fact that the principle of gender equality in the labour market is well-protected by the Croatian legislation, the conditions in practice call for a better implementation of existing laws. While there is no proof of violations of the ESC in this area, this might change if future assessments could establish a link between the Labour Act and indirect gender discrimination.

²⁰⁹ Young people under 25 were taken into account. Eurostat, *Statistics Explained - Unemployment Statistics* [2015] <http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics> accessed 14 April 2015.

²¹⁰ *ibid*

As a general conclusion, it should be emphasised that there is still room for a number of improvements in all the sectors that were mentioned. It is simply not enough to have good laws in accordance with the Charter, or to purely proclaim measures just for the sake of politic points. What matters is the level of successful enforcement of these laws and various policies, measured by various national statistical reports. Data cannot lie, but it often takes a few years to be able to fully evaluate their value.

Croatia has been deeply affected by the austerity measures. Any progress in this context will require further serious commitment from all participants of the society, including the government, civil society and the media.

9. BIBLIOGRAPHY AND ONLINE RESOURCES

9.1. Croatian titles

9.1.1. Legislation

- The Constitution of the Republic of Croatia (consolidated text 2010) [1990] [Ustav Republike Hrvatske].
- The Anti-Discrimination Act 2008.
- The Act on Gender Equality 2008. [Zakon o ravnopravnosti spolova].
- The Labour Act 2014. [Zakon o radu].
- Social Welfare Act 2014. [Zakon o socijalnoj zaštiti].
- Employment Promotion Act 2012. [Zakon o poticanju zapošljavanja].
- Act on Investment Promotion and Development of Investment Climate 2012. [Zakon o poticanju investicija i unapređenju okruženja].
- Act on the Amendments to the Act on Social Security Contributions 2014. [Zakon o izmjenama i dopunama zakona o doprinosu].
- The Health Care Act 2014. [Zakon o zdravstvenoj zaštiti].
- Compulsory Health Insurance Act 2013. [Zakon o obeznom zdravstvenom osiguranju].
- Act on Special Tax on Salaries, Pensions and Other Income 2009. [Zakon o posebnom porezu na plaće, mirovine i ostale prihode].
- Act on the Denial of the Right to Increase Salary Based on Years of Service 2014. [Zakon o uskrati prava na uvećanje plaće po osnovi ostvarenih godina radnog staža].
- Anti-discrimination Act [Zakon o suzbijanju diskriminacije], Official gazette no.85/08, 112/12.
- Act on Pension insurance 2013. [Zakon o mirovinskom osiguranju].
- Act on Vocational rehabilitation and employment of Disabled persons 2013. [Zakon o profesionalnoj rehabilitaciji i zapošljavanju osoba s invaliditetom].

- Primary and Secondary School Education Act 2014. [Zakon o odgoju i obrazovanju u osnovnim i srednjim školama].
- The Act on Nannies 2013. [Zakon o dadiljama].
- Preschool Education Act 2013. [Zakon o predškolskom odgoju].

9.1.2. Legislation Explanatory notes and Reports

- Ombudsperson for Gender Equality, *Annual Report 2013* [2014] <<http://www.prs.hr/index.php/izvjesca> accessed 14 April 2015.
- Republic of Croatia Ombudsman, 'Revised European Social Charter - realisation of a social welfare state' (Republic of Croatia Ombudsman, 19 November 2013) <<http://www.ombudsman.hr/index.php/en/top-stories-3/international-cooperation/217-revised-european-social-charter-realisation-of-a-social-welfare-state-zagreb-november-19-2013>> accessed 24 January 2015.
- Annual Report on the Activities of the Ombudsperson for Children 2014 The Government of the Republic of Croatia, *The National Youth Program from 2009 till 2013* [2009] <http://planipolis.iiep.unesco.org/upload/Youth/Croatia/Croatia_nacionalni%20program%20za%20mlade.pdf> accessed 24 January 2015.
- Ombudsman for children, 'Izvješće o radu pravobraniteljice za djecu 2013', (<http://www.dijete.hr/hr/izvjemainmenu-93/izvjeo-radu-pravobranitelja-za-djecu-mainmenu-94.html>) accessed March 1 2015 [Croatian] 51.
- National report on student standard in Croatia (EUROSTUDENT), <http://public.mzos.hr/Default.aspx?sec=2259>, accessed April 15 2015.
- Official report for 2014 of Croatian Institute for Public health, http://www.hzjz.hr/wp-content/uploads/2014/09/bilten_invalidi_2014.pdf, accessed April 15 2015.
- Official report from the Office of Ombudsman for persons with disabilities for 2013, http://www.posi.hr/index.php?option=com_joomdoc&task=doc_details&gid=205&Itemid=98, accessed January 17 2015.

- Official report from the Office of Ombudsman for persons with disabilities for 2014, http://www.posi.hr/index.php?option=com_joomdoc&task=doc_details&gid=290&Itemid=98 , accessed April 15 2015.
- Ombudsman's report to the United Nations Human Rights Office of the High Commissioner
http://www.ohchr.org/Documents/Issues/Disability/SubmissionWorkEmployment/CivilSociety/Ombudsman_Croatia.pdf , accessed April 15 2015.

9.1.3. Decrees, Regulations, Orders and Public Documents

- Croatian Bureau of Statistics- BROJ/NUMBER: 10.1.5., Social protection in the Republic of Croatia, 2011(Esspros methodology).
- Croatian Bureau of Statistics- BROJ/NUMBER: 10.1.5.Social protection in the Republic of Croatia, 2012 (Esspros methodology).
- Croatian Bureau of Statistics, ISSN 1332-0297, “Basic Schools and Kindergartens and Other Legal Entities Implementing Preschool Education Programmes, End of School Year and Beginning of School/Pedagogic Year”.
- Decision on the acquisition of textbooks and related supplemental educational resources for the purpose of elementary and secondary schools in the Republic of Croatia for the school year 2014/2015 („ Official Gazette” 27/2010, 55/2011, 101/2013).
- Decision on the criteria and the method of financing the cost of public transport for regular students in secondary schools in the period September-December 2014(„ Official Gazette” 87/2008, 86/2009, 92/2010, 105/2010, 90/2011, 16/2012, 86/2012, 94/2013).
- Government Decision on full subvention of participation in costs of studying for students in public universities in Republic of Croatia in academic years 2012/2013, 2013/2014, 2014/2015 [Odluka o punoj subvenciji participacije u troškovima studija za redovite studente na javnim visokim učilištima u Republici Hrvatskoj], Official gazette no. 90/12.

- Ordinance on Determining the quota of employment of persons with disabilities, [Pravilnik o određivanju kvote za zapošljavanje osoba s invaliditetom], Official gazette no. 44/14.
- Ordinance on the financing of high education on the public universities [Pravilnik o osnovama financiranja visoke naobrazbe na javnim učilištima], Official gazette no. 96/93; 34/94., 48/95.
- Predrag Bejaković, Ivica Urban, Petar Sopek, Ivan Škoc, Study of viability of the vocational rehabilitation in Republic of Croatia , Institute for public finances, Zagreb, 2013.
- Decision on Activities regarding the Agreement on Debt Relief for Distraintees in Enforcement Proceedings for Little Value Debs (Official Gazette, Nr. 11/15).
- 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, 15 January 2015.
- Decision on Activities regarding the Agreement on Debt Relief for Distraintees in Enforcement Proceedings for Little Value Debs (Official Gazette, Nr. 11/15).
- Measures of Active Employment Policies <https://vlada.gov.hr/istaknute-teme/mjere-aktivne-politike-zaposljavanja/211> 15 January 2015
- Decision on Apartment Rental (Official Gazette of City of Zagreb, No. 22/09, 3/12).
- Community Action Program on Social Exclusion, The role of culture in preventing and reducing poverty and social exclusion
http://ec.europa.eu/employment_social/social_inclusion/docs/studyculture_leaflet_en.pdf , 15 January 2015.
- Ministry of Health of the Republic of Croatia, National Health Care strategy 2012-2020,
http://www.hrt.hr/fileadmin/video/49._-1.pdf 15 January 2015.

- Analysis of Rights of Women and Children in Croatia,
http://www.unicef.hr/upload/file/370/185135/FILENAME/Analiza_stanja_prava_djece_i_zena.pdf, 15 January, 2015.
- MIGRATION OF POPULATION OF REPUBLIC OF CROATIA, 2013,
http://www.dzs.hr/Hrv_Eng/publication/2014/07-01-02_01_2014.htm, 22 January 2015.
- POVERTY INDICATORS, 2013 – Final Results,
http://www.dzs.hr/Hrv_Eng/publication/2014/14-01-02_01_2014.html, 17 January 2015.
- THE GOVERNMENT OF CROATIA, ‘7th National Report on the implementation of the European Social Charter’, (Articles 11, 13 and 14 and for the period 01/01/2008-31/12/2011) [2013] 172.

9.1.4. Books and Articles

- Anamarija Miletić, *Actuality in employment of persons with disabilities, Law and taxes*, 2014.

9.1.5. Websites, Blogs and Internet Sources

- Jadranka Dizdar, ‘Hrvatska Vlada najavljuje nove mjere štednje: I branitelji u Milanovićevim škarama’ (Oslobodjenje, 29 September 2013)
<<http://www.oslobodjenje.ba/vijesti/region/hrvatska-vlada-najavljuje-nove-mjere-stednje-i-branitelji-u-milanovicevim-skarama>> accessed 24 January 2015 [Croatian].
- Pragma, ‘Revidirana Europska socijalna povelja - oživotvorenje socijalne države’ (Pragma, November 2014) <http://www.udruga-pragma.hr/index.php?option=com_content&view=article&id=246%3Arevidirana-europska-socijalna-povelja-oivotvorenje-socijalne-drave&catid=45%3Aeuropska-socijalna-povelja&Itemid=203&lang=hr> accessed 24 January 2015 [Croatian].
- Tamara Opačić, ‘Fleksibilizacijom do feminizacije siromaštva’ (h-alter.org, 7 March 2014)
<<http://www.h-alter.org/vijesti/fleksibilizacijom-do-feminizacije-siromastva>> accessed 24 January 2015 [Croatian].

- Statistic information from official web page of Ministry of Science, Education and Sports of Republic of Croatia (<http://public.mzos.hr/Default.aspx?sec=2428>) accessed 25 January 2015.
- Official web page of Ministry of Science, Education and Sports (<http://public.mzos.hr/Default.aspx?sec=2499>) accessed 16 April 2015.
- Official web page of Croatian Employment Service (<http://www.hzz.hr/default.aspx>) accessed 16 April 2015 [Croatian].
- Croatian Employment Institute, <http://www.hzz.hr/default.aspx?id=10023>, 10 April 2015.
- The Night of the Museums, <http://nocmuzeja.hr/o-nama/>, 19 January 2015.
- The Night of the Theatres, <http://www.noc-kazalista.com/arhiva-2014/>, 19 January 2015.

9.2. English titles

9.2.1. Legislation

- European Social Charter [1961] Council of Europe <<http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm>> accessed 24 January 2015.
- Convention No. 156 on Workers with Family Responsibilities; Article 5, Item B.

9.2.2. Legislation Explanatory Notes and Reports

- <http://pjp-eu.coe.int/documents/1017981/1668137/Country_sheet_Croatia_2011.pdf/c8d101f2-6f73-4ab2-887e-05efb1c2cd5d> accessed 24 January 2015.
- Council of the European Union, *Council Recommendation of with a view to bringing an end to the situation of an excessive government deficit in Croatia* [2014] <http://ec.europa.eu/economy_finance/economic_governance/sgp/pdf/30_edp_s/126-07_council/2014-01-21_hr_126-7_council_en.pdf> accessed 24 January 2015.

- Croatia and the European Social Charter [2013] Council of Europe <http://www.coe.int/t/dghl/monitoring/socialcharter/countryfactsheets/Croatia_en.pdf> accessed 24 January 2015.
- European Commission, *Exchange of good practices on gender equality (Comments paper - Croatia)* [2011] <http://www.ured-ravnopravnost.hr/site/images/pdf/EU/HR_Comments-paper_NL2011.pdf> accessed 15 April 2015.
- European Commission, Directorate-General Justice, *The current situation of gender equality in Croatia - Country Profile 2012* [2012] <http://ec.europa.eu/justice/gender-equality/files/epo_campaign/country-profile_croatia_en.pdf> accessed 14 April 2015.
- European Commission, *Commission Staff Working Document - Assessment of the 2013 economic growth programme for Croatia* [2013] <http://ec.europa.eu/europe2020/pdf/nd/swd2013_croatia_en.pdf> accessed 24 January 2015.
- European Commission, *State of play of the implementation of the Youth Guarantee - Croatia* [2014] <<http://ec.europa.eu/social/main.jsp?catId=1094&langId=en>> accessed 24 January 2015.
- European Commission, European Commission adopts 'Partnership Agreement' with Croatia on using EU Structural and Investment Funds for growth and jobs in 2014-2020 (Press Release) [2014] <http://europa.eu/rapid/press-release_IP-14-1223_en.htm> accessed 24 January 2015.
- European Parliament, Directorate-General for Internal Policies, Policy Department of Citizen's Rights and Constitutional Affairs, *The Policy on Gender Equality in Croatia, Update 2013* [2013] <[http://www.europarl.europa.eu/RegData/etudes/note/join/2013/493016/IPOL-FEMM_NT\(2013\)493016_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2013/493016/IPOL-FEMM_NT(2013)493016_EN.pdf)> accessed 24 January 2015.

9.2.3. Decrees, Regulations, Orders and Public Documents

- EUROSTAT- Social protection expenditures 2011, STAT/13/174- 21 November 2013.

9.2.4. Books and Article

- Bojana Kocijan, *Prime Ministers in Crisis: How did CEE and Baltic Prime ministers successfully navigate through the crisis?* [2013] <<https://ecpr.eu/Filestore/PaperProposal/b9b6b347-c0ed-479b-afa8-e0e13faba3c0.pdf>> accessed 24 January 2015.
- Encyclopaedia Britannica Inc, 2010 Britannica Book of the Year (Chicago, Encyclopaedia Britannica, Inc., 2010).
- Zdravko Petak, William Bartlett, Frank Bönker, *Sustainable Governance Indicators - 2014 Croatia Report* [2014] Bertelsmann Stiftung <http://www.sgi-network.org/docs/2014/country/SGI2014_Croatia.pdf> accessed 24 January 2015.
- Velimir Šonje, *No More Buying Time: Fiscal Austerity in Croatia* [2012] Friedrich-Ebert-Stiftung <<http://library.fes.de/pdf-files/id-moe/09338.pdf>> accessed 24 January 2015.
- Judith E. Klein May, *'Deinstitutionalization in Croatia: A Summary of Open Society Support'*, [2014] Open Society Public Health Program (open society foundation- briefing paper) 20.
- Churchill RR, Khaliq U, *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*, 2004.

9.2.5. Websites, Blogs and Internet Sources

- Ansamed, 'Croatia: Austerity programme to avoid downgrade' (Ansamed, 20 February 2012) <http://www.ansamed.info/ansamed/en/news/nations/croatia/2012/02/20/visualizza_new.html_101545327.html> accessed 24 January 2015.
- Balkan Insight, 'Croatia Measures Aim to Strengthen Economy' (Balkan Insight, 16 March 2010) <<http://www.balkaninsight.com/en/article/croatia-measures-aim-to-strengthen-economy>> accessed 24 January 2015.
- Yermi Brenner, 'Europe's jobless youth crisis hits Croatia' (Aljazeera, 26 February 2014) <<http://www.aljazeera.com/indepth/features/2014/02/europe-jobless-youth-crisis-hits-croatia-201422581849915221.html>> accessed 24 January 2015.

- Croatia Week, 'Minister: New Stimulants Coming to Cut High Youth Unemployment Rate' (Croatia Week, 12 November 2014) <<http://www.croatiaweek.com/minister-new-stimulants-coming-to-cut-high-youth-unemployment-rate/>> accessed 24 January 2015.
- english.news.cn, 'Croatia to take new measures to increase youth employment' (Xinhuanet, 15 November 2014) <http://news.xinhuanet.com/english/europe/europe/2014-11/15/c_133790977.htm> accessed 24 January 2015.
- Eugene Eteris, 'The EU Youth Guarantee to support job creation' (The Baltic Course, 17 September 2014) <<http://www.baltic-course.com/eng/analytics/?doc=96449>> accessed 24 January 2015.
- EU Croatia Portal, 'Economy' (EU Croatia Portal, 2014) <<http://www.eu-croatia.org/economy>> accessed 24 January 2015.
- Eurostat, *Statistics Explained - Unemployment Statistics* [2015] <http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics> accessed 14 April 2015.
- Eurostat, *Youth neither in employment nor in education and training (NEET) rate, age group 15-24* [2015] <<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tsem150&plugin=1>> accessed 14 April 2015.
- Jasmina Kuzmanovic, 'IMF sees Croat Economy Stagnating in 2015 After Recession' (Bloomberg, 12 November 2014) <<http://www.bloomberg.com/news/2014-11-12/imf-sees-croat-economy-stagnating-in-2015-after-recession.html>> accessed 24 January 2015.
- Ognjen Markovic, 'EU imposes harsh austerity on Croatia, its newest member' (World Socialist Web Site, 15 February 2014) <<http://www.wsws.org/en/articles/2014/02/15/croa-f15.html>> accessed 24 January 2015.

- Sven Milekic, ‘Croatia’s 2015 Budget Cuts 390 Million Euro’ (Balkan Insight, 13 November 2014) <<http://www.balkaninsight.com/en/article/croatia-cuts-the-state-budget-deficit-by-390-million-euro>> accessed 24 January 2015.
- Markus Salzmann, ‘Balkan governments introduce harsh austerity measures’ (World Socialist Web Site, 19 August 2009) <<http://www.wsws.org/en/articles/2009/08/balk-a19.html>> accessed 24 January 2015.
- NEOnline, ‘Croatia joins excessive deficit procedure club’ ([neurope.eu](http://www.neurope.eu), 28 January 2014) <<http://www.neurope.eu/article/croatia-joins-excessive-deficit-procedure-club>> accessed 24 January 2015.
- Reuters, ‘Croatia cuts GDP growth forecast, budget spending’ (Reuters, 17 April 2014) <<http://www.reuters.com/article/2014/04/17/croatia-budget-idUSL6N0N92AD20140417>> accessed 24 January 2015.
- Vibilla Beta 10420, ‘As of November the 1st, crisis tax in Croatia will be abolished’ (Vibilla Business Portal, 20 April 2010) <http://www.vibilia.rs/dokument_new.php?s=vesti&ID=5045474&lang=en> accessed 24 January 2015.

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

Cyprus had ratified the ESC on 7 July 1968,¹ and the revised ESC on 27 September 2000.² When the Charter became published in the official Gazette, it took precedence over domestic law, including the Constitution.³ Since 1970 Cyprus has submitted a total of 21 reports on the application of the Charter and 12 on the application of the Revised Charter.

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

The Cypriot economic crisis has led to the agreement between Cyprus, the Eurogroup, the European Commission, the European Central Bank and the International Monetary Fund of a 10 billion euros 'bail-in' in March 2013.⁴ The condition was that the Cypriot government would contribute EUR 5.8 billion. Cyprus adopted a series of measures. The second largest bank of Cyprus, Laiki Bank, was closed down and deposits above EUR 100,000 were moved to the Bank of Cyprus –the country's biggest bank. Deposits at the Bank of Cyprus of less than EUR 100,000 were protected. For the first time during the history of the European Union, creditors and even depositors of a bank were called upon to finance its deficit.⁵

¹ European Social Charter, with appendix, Turin, 18 October 1961, Entry into force 26 February 1965, Ratified by Cyprus 7 March 1968, Depository: Secretary-General of the Council of Europe, COG S.I 603, 20.10.1967, p. 693; Law No. 64/1967; COG S.I 1168, 31.01.1975, p. 9; Law No. 5/1975; COG S.I 2648, 22.11.1991, p. 1937; Law No. 203/1991; CETS No. 35; Protocol amending the European Social Charter, Turin, 21 October 1991, Not yet in force. Ratified by Cyprus 1 June 1993 Depository: Secretary-General of the Council of Europe COG S.I(III) 2791, 23.04.1993, p. 187; Law No. 10(III)/1993; CETS No. 142.

² European Social Charter (revised), Strasbourg, 3 May 1996, Entry into force 1 July 1999, Ratified by Cyprus 27 September 2000, Depository: Secretary-General of the Council of Europe, COG S.I(III) 3420, 21.07.2000, p. 641; Law No. 27(III)/2000; COG S.I(III) 4149, 15.07.2011, p. 611; Law No. 17(III)/2011; CETS No. 163.

³ Article 82 Constitution of the Republic of Cyprus.

⁴ Memorandum of Understanding on Specific Economic Policy Conditionality, <<http://www.mof.gov.cy/mof/mof.nsf/final%20MOUf.pdf>> accessed 24 April 2015.

⁵ See further: Myron Michael Nicolatos, Justice of the Supreme Court of Cyprus, Substitute Member of the Venice Commission, "Austerity measures and economic crisis. The Case of Cyprus, A Judge's approach",

Other measures adopted by Cyprus to reduce the deficit, were the selling of 400 million in gold reserves, and the announced privatization of state assets worth EUR 1.4 billion, including electricity, telecommunications and port authorities.⁶ 4,500 public-sector jobs were announced to be cut, and the remaining employees received pay cuts or had been laid off. Between May 2012 and May 2013, the retail industry shed 2,464 workers, the construction industry laid off 1,242 workers and civil servants were reduced by 1,391.⁷

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

The basic social and collective rights are protected under the Constitution. Article 21(1) of the Constitution of Cyprus establishes the right of freedom of assembly.⁸ Article 21(2) provides that:

Every person has the right to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. Notwithstanding any restriction under paragraph 3 of this Article, no person shall be compelled to join any association or to continue to be a member thereof.

Article 21(3) provides that:

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are absolutely necessary only in the “interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person, whether or not such person participates in such assembly or is a member of such association.

available at:

<http://www.supremecourt.gov.cy/Judicial/SC.nsf/bebb37ebef33db18c225734e0035a245/f474b9ec2a7494d2c2257cc500387a2b?OpenDocument>.

⁶ Larry Liu, *The Austerity Trap: Economic and Social Consequences of Fiscal Consolidation in Europe*, June 2013, at p. 18 available at:

https://www.academia.edu/4083342/The_Austerity_Trap_Economic_and_Social_Consequences_of_Fiscal_Consolidation_in_Europe accessed 24 April 2015.

⁷ Ibid.

⁸ The Constitution of Cyprus, < <http://www.kypros.org/Constitution/English/>>, accessed April 07 2015.

The House of Representatives has enacted several pieces of legislation to grant labour rights to Cypriot citizens. In this respect, the right to the freedom of assembly has been strengthened in order to meet the international and European obligations of Cyprus. An example is Law No. 30(III)/ 1995,⁹ which is about the Convention of workers' representatives. Article 5 of this piece of legislation provides:

Where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned of their representatives and to encourage co-operation on all relevant matters between the elected representatives and the trade unions concerned and their representatives.¹⁰

Another example is Law No. 10(III)/2012,¹¹ which introduced provisions for the right of the trade unions or representatives of workers to have access to the workplace. Specifically, the amending law introduced provision 5(b) which grants the right to trade unions to check the terms and conditions of the employees' workplace or about the functions of trade union, such as participation in the amendment/signing of a collective agreement, mediation about labour matters, etc. The Cypriot Report of 2009-2012 states that '...trade union representatives have the right to promote the right to organise with campaigns they may undertake at an employer's premises'.¹²

Under Article 27 of the Constitution the right to strike is granted to Cypriot citizens. Article 27(1) provides that:

The right to strike is recognised and its exercise may be regulated by law for the purposes only of safeguarding the security of the Republic or the constitutional order or the public order or the public safety or the maintenance of supplies and services essential to the life of the inhabitants or the protection of the rights and liberties guaranteed by this Constitution to any person.

⁹ Convention concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking, <http://www.cylaw.org/nomoi/arith/1995_3_030.pdf>, accessed April 07 2015.

¹⁰ Ibid, Article 5

¹¹ Law No. 10(III)/2012:

<[http://www.mlsi.gov.cy/mlsi/dlr/dlr.nsf/All/FA012C406683978AC2257C9300366F87/\\$file/αντιπροσώπων%20των%20εργαζομένων%20ενοποίηση.pdf?OpenElement](http://www.mlsi.gov.cy/mlsi/dlr/dlr.nsf/All/FA012C406683978AC2257C9300366F87/$file/αντιπροσώπων%20των%20εργαζομένων%20ενοποίηση.pdf?OpenElement)> accessed 03/04/2015.

¹² ESC, 11th National Report on the implementation of the European Social Charter submitted by the Government of Cyprus for the period January 01 2009 – December 31 2012, reported on 22 April 2014, page 9.

Further, Article 27(2) provides that: “Members of the armed forces, of the police and of the gendarmerie shall not have the right to strike. A law may extend such prohibition to the members of the public service.”¹³

The right to strike is an aspect of the general right to bargain collectively.¹⁴ All labour disputes in Cyprus are governed by the Industrial Relations Code 1977.¹⁵ It is a voluntary contract that explains extensively the procedure that has to be followed for the resolution of a dispute between an employer and a workers’ representative. Even though the Code is a voluntary agreement, it is highly respected and largely complied by social partners, including workers’ representatives and employers. The procedure of solving a dispute is as follows. The recognised trade union submits a claim to the employer in writing for the conclusion¹⁶ or renewal of an agreement.¹⁷ If a collective contract is signed, it has to be followed by the contracting parties, namely the employer and the worker.

If a dispute arises regarding a collective contract or during a negotiation of a theme, after the lapse of a reasonable period from the commencement of the negotiations, a claim must be submitted for mediation to the Senior Industrial Relations Officer or the District Labour Officer by the workers representatives and/or by the employer and/ or jointly.¹⁸ If the Ministry fails to find a common solution, a deadlock will be announced and every party will be free to undertake whatever legal actions to defend their rights. Otherwise, they can proceed to arbitrate their dispute either before or after the submission of the dispute to the Ministry.¹⁹

In addition, Law No. 55(I)/2012,²⁰ the Recognition of Trade Unions and the Provision of Trade Union Facilities for Collective Bargaining Purposes Law, emphasised the right of trade unions ‘to deal with possible cases in which free collective bargaining was hindered by employers who

¹³ Constitution of Cyprus, Article 27.

¹⁴ ESC, Article 6.

¹⁵ Industrial Code Relations, Signed at the Ministry of Labour, Welfare and Social Insurance, in Nicosia, on the 25th April 1977, <[http://www.mlsi.gov.cy/mlsi/dlr/dlr.nsf/F2D01AEC93C7C090C22578AA0023C4B6/\\$file/Industrial%20Relations%20Code.pdf](http://www.mlsi.gov.cy/mlsi/dlr/dlr.nsf/F2D01AEC93C7C090C22578AA0023C4B6/$file/Industrial%20Relations%20Code.pdf)>, accessed March 13 2015.

¹⁶ Industrial Relations Code, Article 1 (a).

¹⁷ Ibid, Article 1 (b).

¹⁸ Ibid, Article 2 (a) and(b). See the Ministry of Labour, Welfare and Social Insurance for further information on District Labour Officers: <http://www.mlsi.gov.cy/>.

¹⁹ Ibid, Article 3 (a).

²⁰ Recognition of Trade Unions and the Provision of Trade Union Facilities for Collective Bargaining Purposes Law, <http://www.cylaw.org/nomoi/arith/2012_1_55.pdf>, accessed March 13 2015.

refuse to recognise trade unions for collective bargaining purposes'.²¹ Law no. 55(I) sets out the procedure that could be followed for a complaint by the workers' trade union and how it can be handled before it will lead to the labour courts. Specifically, under Article 19 it is claimed that if an employer, after the publication of the recognition order of the workers, is refusing to negotiate or to negotiate in good faith or to meet or to recognise the worker's representatives, then the trade union has the right to either submit a complaint to the Registrar of Trade Unions or to submit an application for mediation to the Department of Industrial Relations. Law 55(I) "enhances existing mechanisms for voluntary negotiations between employers or employers' organisations and workers' organisations".²²

There are several organisations in Cyprus that represent workers. These include: the Cyprus Workers' Confederation (SEK), the Pancyprian Federation of Labour (PEO), the Democratic Labour Federation of Cyprus (DEOK), the Pancyprian Guild of Public Employees (PASDY), the Greek Association of Secondary Education in Cyprus (OELMEK) etc. PEO is a member of the World Federation of Trade Unions (WFTU), SEK is a member of the European Trade Union Confederation (ETUC), the International Confederation of Free Trade Unions (ICFTU), and the Greek General Confederation of Workers. Moreover, there are also employers' organisations, such as the Cyprus Chamber of Commerce and Industry (KEVE) and the Employers and Industrialists Federation (OEV).²³ Both organisations have equal representation in the various tripartite bodies, including the Labour Advisory Board, the Economic Consultative Committee, the Social Security Committee, and others.²⁴

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

²¹ ESC, 11th National Report on the implementation of the European Social Charter submitted by the Government of Cyprus for the period 01/01/2009 – 31/12/2012, reported on May 22 2014, page 12.

²² Ibid, page 12.

²³ A historical review of those organisations can be found at the Ministry of Labour website: <http://www.mlsi.gov.cy/mlsi/dlr/dlr.nsf/page05_gr/page05_gr?OpenDocument&print>, accessed March 20 2015.

²⁴ The Role of Social Partners, The composition of the employers' and trade union organisations: <<http://www.mlsi.gov.cy/mlsi/dlr/dlr.nsf/All/DBBC046A7BF9D3DFC22578AA0023BFB1?OpenDocument&highlight=SEK>>, accessed 9 April 2015.

The right of social dialogue under Articles 5 and 6 ESC seems to have been violated in Cyprus.²⁵ The legal provisions protecting collective social rights are only theoretical. The austerity measures, including the hair-cut of deposits in the two largest Cypriot banks, have changed the Cypriot legal reality: 'In the case of Laiki Bank, depositors have probably lost all of their deposits in excess of EUR 100,000. In the case of the Bank of Cyprus, 47.5 per cent of the deposits in excess of EUR 100,000 were frozen for almost four months before they were compulsorily converted into shares...'²⁶

The right to collective bargaining and respect for social dialogue has been indirectly violated. The above-mentioned decision led many businesses and individuals to bankruptcy or on the verge thereof. Consequently, companies have reduced wages of workers without negotiation and the workers accepted the new working conditions, given the lack of alternatives. Moreover, it has been argued that 'the typical form of interference with or intervention in collective bargaining, in the context of an austerity policy, has been state intervention into the material content of valid (collective) agreements that are in force. This would take the form of cuts in agreed levels of pay and pay-related benefits, especially in the public, but also, in the private, sectors'.²⁷ A series of cuts were recently approved by Parliament, pursuant to the Memorandum imposing austerity measures in Cyprus, including the additional cuts to the Health Fund and the Social Insurance Fund.²⁸ Under Article 3 of the Law 168(I)/2012,²⁹ provides for the reduction of salaries and pensions of Officials, Employees and Pensioners of the State Agency and the Public Sector. The workers' representatives led in a series of strikes for their flagrant violation of the right to negotiate and sequentially of the collective agreements.³⁰

²⁵ Social dialogue includes all types of negotiation, consultation and exchange of information between, or among, representatives of governments, employers and workers on issues of common interest.

²⁶ Kypros Chrysostomides, 'Cyprus bailout: the test of illegality'(September 2013), <<http://cyprus-mail.com/2013/09/07/cyprus-bailout-the-test-of-illegality/>>, accessed 09 April 2015.

²⁷ Niklas Bruun, 'Social Policy and Labour Law during Austerity in the European Union' (2015) SIEPS, page 7.

²⁸ Sokratis Ioakim, 'The standard salary for each employee cause of Memorandum'(May 2013) <<http://www.ant1iwo.com/news/oikonomia/article/53936/h-apokoph-misuoy-gia-kaue-ergazomeno-log/>> , accessed April 09 2015.

²⁹ Law 168(I)/2012, <http://www.cylaw.org/nomoi/arith/2012_1_168.pdf> , accessed 9 April 2015.

³⁰ "Strike ringer in public and semi-public sector in Friday" (September 2014), <<http://www.philenews.com/el-gr/koinonia-aidiseis/160/218281/apergiakos-kloios-se-dimosio-kai-imidimosio-tomea-tin-paraskevi>> , accessed 9 April 2015.

The haircut and freezing of deposits, the refusal of giving loans by the banks has led numerous businesses to let go of their employees and to their inability to hire new ones. The number of registered unemployed individuals at the end of March 2015 was 47,833³¹ Cypriot employees are now in a weaker bargaining position, because employers have the most bargaining market power. Trade unions have lost their power to sign new collective agreements or to amend them. The role of trade unions has subsequently diminished to adequately represent employees and to protect the rights of the workers in an effective way. Nobody has enough credibility or power to protect employees' rights in Cyprus at the moment. The minimum wage that has been adopted amounts to EUR 870 (net)³² and it has led many Cypriots to the brink of poverty.

Furthermore, the increase of taxation is another measure of the austerity policy adopted in Cyprus.³³ Specifically, the Cypriot government has decided that, as per 1 January 2013, the lump sum or gratuity received for service by state officials and employees of the broader public sector will be subject to income tax. The decision of taxing the gratuity of the public employees indirectly violates labour rights, notwithstanding the strikes of the workers' representatives and their refusal to accept the taxation on gratuity decided by the government. PEO workers' representatives stated that 'the social dialogue has been marginalised by the government'.³⁴ The above demonstrates that the role of the trade unions during the imposition of austerity measures has diminished.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

³¹ Data available the website of the Statistical Department of the Republic of Cyprus: <http://www.mof.gov.cy/mof/cystat/statistics.nsf/All/7A7018AC21D916BCC2257DBF002F916D?OpenDocument&sub=2&sel=1&e=&print>.

³² The minimum wage order 180/ 2012 in Cyprus, <[http://www.mlsi.gov.cy/mlsi/dlr/dlr.nsf/All/8D4A59CB04D35D3BC2257A0800291889/\\$file/Minimum%20Wage%202012.pdf](http://www.mlsi.gov.cy/mlsi/dlr/dlr.nsf/All/8D4A59CB04D35D3BC2257A0800291889/$file/Minimum%20Wage%202012.pdf)>, accessed April 09 2015.

³³ All the types of taxation that have been adopted by Cyprus Government can be found in: Stelios A. Violaris "The new tax data in view of the instruments of structural reforms and the final Memorandum of Understanding" (June 2013) ,<<http://www.pwc.com.cy/en/articles/2013/new-regulations-under-mou.jhtml>> , accessed April 09 2015.

³⁴ Strike ringer in public and semi-public sector in Friday (September 2014), <<http://www.philenews.com/el-gr/koinonia-aidiseis/160/218281/apergiakos-kloios-se-dimosio-kai-imidimosio-tomea-tin-paraskevi>>, accessed 9 April 2015.

The right to a fair remuneration, protected by Article 4 ESC, seems to have been violated in Cyprus. Article 4 ESC protects the right of workers to be paid a sufficient amount and the right of workers to be notified when their services are terminated. The Cypriot Protection of Wages Law of 2007 provides that “deductions from wages are permitted only under specific conditions and only to the extent deemed necessary for the support/ subsistence of the employee and his/ her family”.³⁵ It is specifically mentioned that: “It should be noted that before any deduction is made, the employer must consult with the employee representatives with a view to determine the amount and method of payment of any deductions”.³⁶ If the employee does not consent to the deduction, then the abovementioned procedure should be followed, i.e. mediation or filing an employment law claim with the court.

The above legal provisions are clear, but the Cypriot reality is far from complying with them. There are many examples demonstrating the violation of labour rights. Young workers are the most affected by austerity measures, because they lack relevant work experience. Young Cypriot workers lost the right to bargain the terms of their contracts and most of them are working with humiliating wages. Even if the minimum wage is EUR 870, young people are working even at lower salaries, without being able to cover their basic necessities or without being paid on the grounds that there is an economic crisis and there are no revenues from the employers' companies. The only way to obtain work experience is by accepting the terms that employers are enforcing. Specifically, it has been stated that:

Member States need to make dedicated efforts to address the increase in involuntary part-time employment and temporary contracts, payless internships and apprenticeships, and bogus self-employment, as well as the activities of the black economy.³⁷

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for:

³⁵ The protection of Wages Law 35(I)/2007, 12, Appendix III <http://www.cylaw.org/nomoi/enop/non-ind/2007_1_35/full.html>, accessed 9 April 2015.

³⁶ ESC, 11th National Report on the implementation of the European Social Charter submitted by the Government of Cyprus for the period 01/01/2009 – 31/12/2012, reported on 22 May 2014, page 9.

³⁷ Niklas Bruun, ‘Social Policy and Labour Law during Austerity in the European Union’,(2015) SIEPS, page 4.

3.1.1. Persons who are unable to secure adequate resources either by their own efforts or from other sources?

The 10th National Report on the implementation of the Revised ESC submitted by Cyprus touches on the question whether social services for persons without resources are provided with sufficient means to give appropriate assistance as necessary.³⁸ It notes that the *Public Assistance and Services Act No.8* of 1991(PASA)³⁹ guarantees a dignified standard of living for all persons legally residing in Cyprus through monetary assistance (covering basic and special needs) and services, which are provided free of charge.⁴⁰ There is a provision for 'minimum resources' under the PASA. In particular, any person whose income and other economic resources are insufficient to meet their basic and special needs, as defined in the legislation, may apply for public assistance, which may be provided in the form of monetary support and/or service.⁴¹ The claimant is guaranteed entitlement to the benefit if he/she satisfies all the conditions laid down by law.⁴² Any person legally residing in the government-controlled areas of Cyprus with income and other economic resources not enough for her/his basic and special needs is eligible for public assistance benefit, subject to the following conditions:

- For adult Cypriot citizens, residence period of at least one year;
- For adult EU citizens employee or self-employed status (those searching for a job are excluded) or proof of adequate economic means for herself/himself and her/his family in the previous three months;

³⁸ European Committee of Social Rights Conclusions, European Social Charter, *Addendum to the 10th National Report on the implementation of the Revised European Social Charter submitted by The Government of Cyprus, (Articles 13 and 14 for the period of 01/01/2008 – 31/12/2011)* Cycle 2013 (European Committee of Social Rights Conclusions, December 19 2013) 6
<http://www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/Cyprus10add_en.pdf>
accessed 19 March 2015.

³⁹ As amended by Act No. 97(I) of 1994 and Law No. 74(I) of 2003,
<http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=CYP&p_classification=15&p_origin=SUBJECT> accessed 19 March 2015.

⁴⁰ European Social Charter, *European Committee of Social Rights Conclusions 2013 (CHYPRE)*, November 2014,
<http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Cyprus2013_en.pdf > accessed 19 March 2015.

⁴¹ ST PASA Report, 2006 <<http://www.westernpower.com.au/documents/STPASAReporUserGuide.pdf>>
accessed 1 April 2006.

⁴² Michael Coucheir and Maija Sakslin, *Think Tank Report, The relationship and interaction between coordination Regulations and Directive 2004/38/EC*, 2008.

- For adult third country citizens long stay, refugee or asylum seeker status or temporary stay for humanitarian reasons; and
- For under-aged persons being victims of trafficking or sexual exploitation.

The scheme is non-contributory as it is not calculated based on the contributions paid by employers, employees or insured persons.⁴³

The PASA is managed by the Social Welfare Services of Cyprus. The person concerned may apply to the Local Welfare Offices for public assistance. The application will be processed by a Social Service Officer, who will first check the correct completion of the application and documentation and notify the applicant accordingly. The Social Welfare Services personnel consist of 257 Social Welfare Services Officers and 149 Residential Officers. The Secretarial personnel, consists of 8 Secretarial Officers and 41 Assistant Secretarial Officers.

Social Welfare Officers are placed at the Central Office of the Social Welfare Services and at the six Social Welfare Services District Offices, in Nicosia, Limassol, Larnaca, Pafos, Ammochostos (seat in Paralimni) and Morphou (seat in Evrichou). A sub-office in the District of Pafos operates in Polis Chrysochous. The Officer usually visits the applicant at their home and he/she performs a socio-economic analysis of the situation of the applicant and their family, describing their needs. In parallel the Officer will investigate their financial situation (through credit institutions, national property agencies etc.) in order to verify its validity. If the person finds themselves in this situation because of unemployment and no other circumstances exist (such as health problems), then the applicant must provide justification that they are actively searching for work and that they are registered with the Department of Labour. Before the final granting of public assistance the officer will also check whether they receive any social insurance benefits, which are to be deducted from the public assistance.⁴⁴

Another important scheme is the *Legal Aid Act No. 165(I) of 2002* which provides for legal aid to persons with low income and for proceedings both before civil and criminal courts, regarding family cases and human rights cases.

⁴³ Panos Pashardes, 'Cyprus Minimum Income Schemes A Study of National Policies', (*European Commission DG Employment, Social Affairs and Equal Opportunities*, April 2009).

⁴⁴ *Ibid.*

There are other schemes which provide assistance to those who are unemployed or are unable to earn due to various factors. It must however be reminded that people falling within such categories depend on the insurance amount paid when they had adequate financial sources. This *Social Insurance Scheme*,⁴⁵ introduced in 1957, and subsequently reformed, provides that for any period of incapacity or unemployment, earnings are credited based on the insurable earnings of the person on which the payment is calculated. Also, insurable earnings are credited for any period between the dates of death/incapacity up to the pensionable age for the purpose of increasing the rate of a widow's and/or an invalidity pension. Furthermore, insurable earnings up to basic insurable earnings are credited for periods of education.⁴⁶ The current pension system in Cyprus comprises several schemes, making provision for various types of allowances and pensions.⁴⁷

3.1.1.1. *The General Social Insurance Scheme*

The General Social Insurance Scheme provides comprehensive benefits which consist of the basic benefit – related to insurable earnings in the lower band - and the supplementary benefit – related to insurable earnings in the upper band.⁴⁸

3.1.1.2. *The Government Employees Pension Scheme*

The Government Employees Pension Scheme provides retirement and survivors pensions to civil servants, members of the educational service, the police and the armed forces. It is financed almost entirely by general taxation on a pay-as-you-go basis. There are other occupational pension schemes that provide cover to permanent employees of public utility organizations, local

⁴⁵ Ministry of Labour, Welfare and Social Insurance, 'Social Insurance Services: Social Insurance Law', <<http://www.mlsi.gov.cy/mlsi/sid/sidv2.nsf/All/0592D9827BB620FEC22578680047BC52?OpenDocument>> accessed 20 March 2015, Law 28(I)/2001.

⁴⁶ European Commission, Employment, Social Affairs & Inclusion, *Your social security rights in Cyprus*, (European Union, July 2013) <http://ec.europa.eu/employment_social/empl_portal/SSRinEU/Your%20social%20security%20rights%20in%20Cyprus_en.pdf> accessed March 19 2015.

⁴⁷ European Commission, *Cyprus: Pension System and Pension Projections*, page 1 <http://ec.europa.eu/economy_finance/publications/publication7024_en.pdf>, accessed March 19 2015.

⁴⁸ The Cyprus Social Insurance Scheme: [http://www.mlsi.gov.cy/mlsi/sid/sidv2.nsf/All/175A9A59E0A59FAEC2257B7F002572C0/\\$file/2012-12-21%20Cypriot%20Guide%20for%20Bulgarian%20Migrants%20EN%20-%20FINAL.pdf](http://www.mlsi.gov.cy/mlsi/sid/sidv2.nsf/All/175A9A59E0A59FAEC2257B7F002572C0/$file/2012-12-21%20Cypriot%20Guide%20for%20Bulgarian%20Migrants%20EN%20-%20FINAL.pdf)

governments and of other public law authorities under the same terms and conditions as for civil servants.⁴⁹

3.1.1.3. *The Social Pension Scheme*

The *Social Pension Scheme*⁵⁰ which aims to provide a minimum income for persons residing in Cyprus who have reached the age of 65 and who are not entitled to a pension or other similar income from any source, and who satisfy the residence conditions as provided for by the law.⁵¹ If the pension or similar payment received is less than the amount of the social pension, then the person may receive the difference between the two amounts. Thus, it is a pension for those who did not enter into the labour market.⁵²

3.1.1.4. *Special Allowance to pensioners*

A special allowance, currently amounting to up to EUR 1,538 per year, is payable to pensioners whose total pension income from the General Social Insurance Scheme and any other pension scheme does not exceed EUR 11,106 per year.⁵³ It is paid without any test of income from work or other sources and without taking into account the household total pension income, since each pensioner is treated as a member of a single person household.

3.1.1.5. *The Pensioners' Scheme*

There is another scheme for supporting pensioners' households with low income, which is a cash benefit scheme addressed to pensioners' households, whose total annual income is below the poverty threshold.⁵⁴

3.1.1.6. *The Maternity Benefit*

⁴⁹ European Commission, *Cyprus: Pensions System and Pensions Projection*, page 3, available at: http://ec.europa.eu/economy_finance/publications/publication7024_en.pdf, accessed 23 April 2015.

⁵⁰ *Ibid*, page 4.

⁵¹ Social Pension Law, Republic of Cyprus:

<<http://www.mlsi.gov.cy/mlsi/sid/sidv2.nsf/All/B1637B08CB487AD9C2257A06003CE094?OpenDocument>> accessed April 14 2015.

⁵² Economic Policy Committee and Directorate-General for Economic and Financial Affairs, *Pensions Schemes and Projection Models in EU-25 Member States, Cyprus*, (*European Economy Occasional Papers*, Number 35 – November 2007), pages 191, 195.

⁵³ *Supra*, n. 42.

⁵⁴ Cyprus Law 208(I)/2012.

The Maternity Protection Act No. 54/1987⁵⁵ regulates the prohibition of dismissal during maternity leave and allows for the possibility of court-ordered reinstatement for unlawfully dismissed employees in firms with twenty or more employees.⁵⁶ The period during which maternity allowance is paid has increased from 16 to 18 weeks.⁵⁷ Additionally, a maternity grant is payable after the birth of each child if the mother, or her spouse, satisfies the insurance conditions. The allowance is not payable if a woman receives her full wages during the maternity allowance period. If reduced wages are paid, the amount of such wages and the benefits payable may not exceed the full wage. The insurance conditions taken into consideration are either those of the claimant or her spouse.⁵⁸

3.1.1.7. Benefits for Children

Children also require care and assistance. Children under the age of are prohibited from working and compulsory education for all children up to the age of 15 is in force in Cyprus (*Protection of Young Persons at Work Act of 2001*).⁵⁹ The prohibition of employment of children under 15 year old does not apply to children employed in occasional or short-term domestic work as provided under Section 3 of the 2001 law.⁶⁰

The *Combating of Trafficking in Persons and of Sexual Exploitation of Children Law of 2000* (No. 3(I)/2000) criminalizes, among others, child pornography conducted through Internet (Section 2).⁶¹ The social service scheme in Cyprus fails to conform with Article 7(10) of ESC which calls

⁵⁵ As amended by Act No. 48 (I) of 1994

⁵⁶ Act No. 61 (I) 1994

⁵⁷ Social Insurance (Amendment) Law 110(I) of 2007)

⁵⁸ Your social security rights in Cyprus, *Supra n.46*

⁵⁹ Government of the Republic of Cyprus, *Second Report on Article 7 of the Revised European Social Charter, The Right of Children and Young Persons to Protection*, Ref.N.: 4.17.07.5.7

⁶⁰ Council of Europe, *Cyprus and the European Social Charter*, <http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Cyprus_en.pdf> accessed 19 March 2015

⁶¹ Section 2 –“ Interpretation: In this Law unless the context otherwise requires:

"Child" means a person who has not completed the eighteenth year of his age;

"Minister" means the Minister of Interior including any officer of his Ministry, authorised by the Minister for purposes of this Law;

"Prescribed treaties" means the Treaty for Prevention and Eradication of White Slave-traffic and Prostitution of Others (Ratification) Law of 1983;

"Pornography" means the visual or sound or audio-visual recording or depiction of any type or nature of sexual act on any person or with his participation, and the term "pornographic material" is accordingly interpreted;

for special protection against physical and moral dangers for children and young persons. On 12th May 2014, the European Committee of Social Rights, decided the case of *Association for the Protection of all Children (APPROACH) Ltd v. Cyprus*, Complaint No. 97/2013. This case was lodged by the Association for the Protection of all Children Ltd, requesting the Committee to find that the situation in Cyprus was not in conformity with Article 7 of the Revised European Social Charter.⁶² It had not been established that children are effectively protected against the misuse of information technologies and the application was dismissed.⁶³

Minors in Cyprus are also eligible to the *Orphan's Benefit* in several cases, which will be explained in full in section 5.2.2.

3.1.2. Persons who are unable to secure adequate resources either by their own efforts or from other sources due to illness?

In Cyprus, there are schemes to support individuals who are unable to secure adequate resources due to illness. Such schemes were introduced with the entry into force of the system of social security (Act No. 106/1972) and subsequently with the introduction of the General Health Scheme in 2001, covering the whole population.⁶⁴ Generally, the eligibility for healthcare benefits is conditional upon registration to the National Health System.

Law No. 127(I)/2002, specifically Article 15 thereof, guarantees that persons with disabilities are equally treated with other employees by their employer as regards the procedure for application for employment, recruitment, promotion, dismissal, compensation, training and other terms and

"sexual exploitation of an adult" means the exploitation of an adult for prostitution; *"sexual exploitation of a child"* means:

- a. the incitement or compelling of a child to participate in any sexual activity;
- b. the exploitation of a child for his prostitution or participation in other sexual practices;
- c. the exploitation of a child with his participation in pornographic shows and material, including the production, sale and distribution of other kinds of trading in similar material, as well the possession of such material;

"trafficking" means any act that facilitates the entry into, transit through, residence in, or exit from the Republic or purposes of sexual exploitation;

"victim" means any person who is the subject of exploitation or any act prohibited by this Law or other Law or prescribed treaty punishable under this Law”.

⁶² Decision to strike out: *Association for the Protection of all Children (APPROACH) Ltd v. Cyprus* Complaint No. 97/2013, cc-97-2013-dstrikeout-en, <<http://hudoc.esc.coe.int/eng?i=cc-97-2013-dstrikeout-en>>, accessed 19 March 2015.

⁶³ *Supra*, n.60.

⁶⁴ Law No. 89(I) of 2001- A Law to Provide for the Introduction of General Health Care Scheme and Related Issues; web: <<http://www.hio.org.cy/docs/nomos%20gesy%20english.pdf>>.

conditions of employment.⁶⁵ Specifically, Article 15(2) of *Act 113(I)/1999* provides for the 'Right of persons with disabilities to independence, social integration and participation in the life of the community'. Article 15(1) on Education and Training of Children with Special Needs and its 2001 implementing regulation place emphasis on the education of the large majority of children with special needs within mainstream schools.⁶⁶ Articles 3(1), 11(1), 11(3) and 12(3) provide that the health and safety in agriculture is regulated with the extension of the Labour Inspectorate's purview to include this sector (Act No. 22/1982).⁶⁷

Preventive and protective measures against asbestos⁶⁸ are in place in conformity with the *acquis communautaire* along with the Protection against Radiation Act, No. 115(I)2002 which transposes Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation, and Regulation No. 497/2002 which transposes Council Directive 97/43/Euratom of 30 June 1997 on health protection of individuals against the dangers of ionising radiation in relation to medical exposure.⁶⁹

The beneficiaries of severe motor disability (MS) allowance are persons with MS, who cannot walk and permanently use a wheelchair.⁷⁰ A care allowance scheme provides for quadriplegic persons whose limbs do not or almost not move.⁷¹ The care allowance scheme for paraplegic persons helps persons whose two lower limbs do not or almost not move.⁷² There is also a special allowance for blind persons where the beneficiaries are: persons whose visual acuity is equal or less than 6/60 in both eyes; or persons who attended the School of the Blind until

⁶⁵ *Supra* n. 60 at page 2

⁶⁶ Fifth report on the implementation of the Revised European Social Charter submitted by 'The Government of Cyprus' 2006, available at: https://www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/Cyprus5Reply15-1_fr.pdf accessed on 14 April 2015.

⁶⁷ *Supra* n. 60 at page 2.

⁶⁸ Act No. 47(1)/2000 and Reg. No. 104/2000.

⁶⁹ *Supra* n. 60 at pages 2-3.

⁷⁰ Department for Social Inclusion of Persons With Disabilities, *Severe Motor Disability Allowance Scheme*, <http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsispd10_en/dsispd10_en?OpenDocument>, accessed 19 March 2015.

⁷¹ Department for Social Inclusion of Persons With Disabilities *Care allowance scheme provides for quadriplegic persons*, <http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsispd11_en/dsispd11_en?OpenDocument>, accessed 19 March 2015.

⁷² Department for Social Inclusion of Persons With Disabilities *Care allowance scheme for paraplegic persons*, <http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsispd12_en/dsispd12_en?OpenDocument>, accessed 19 March 2015.

1990.⁷³ Mobility allowance beneficiaries are: persons whose visual acuity is equal or less than 6/36 in both eyes; persons with severe mobility problems to the lower limbs.⁷⁴

All persons legally residing in Cyprus are entitled to long-term care if their resources are not sufficient to meet their special needs for care.⁷⁵ There are three categories of Residential Long-term Care Facilities in Cyprus. These are state care homes, local Community care homes and private care homes. The system of long-term care is based upon need and it is not compulsory. Only persons entitled to public assistance may be entitled to free-of-charge long-term care (i.e. older persons, persons with disabilities, dysfunctional families). There is no such provision and for the reimbursement of LTC for people can privately pay it.

In the case of pensioners, their whole pension is paid against their long-term care in case individuals need to reside in care homes or use the home-care scheme. In case the money is not enough, the amount is complemented by the Social Welfare Services.

In the case of Public Assistance recipients, the Social Welfare Services cover the whole sum of the amount needed for their care. This includes both elderly and disabled persons of all ages. These funds cover the cases of all forms of residential care facilities, these being state, community or private.⁷⁶ The evaluation of care dependency is based on the individual needs of an applicant in cooperation with a welfare officer who assesses and develops a personal care plan (e.g. type of care, frequency). Services are delivered through six District Welfare Offices throughout Cyprus. It is provided through the Public Assistance and Services legislation and is based on a need-based entitlement. Long-term care is financed by the state budget of the Republic of Cyprus. In addition, long-term care programmes are also implemented at local level by non-governmental organisations .

When evaluating the care dependency of a claimant the following elements are taken into consideration:

⁷³ Department for Social Inclusion of Persons With Disabilities *Special allowance for blind persons*, <http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd13_en/dsipd13_en?OpenDocument>, accessed 19 March 2015.

⁷⁴ Department for Social Inclusion of Persons With Disabilities *Mobility Allowance*, <http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd14_en/dsipd14_en?OpenDocument>, accessed 19 March 2015.

⁷⁵ Your social security rights in Cyprus, *Supra n.46*.

⁷⁶ Christina Loizou, *Achieving quality long-term care in residential facilities*, Research Unit in Behaviour and Social Issues, University of Nicosia, 2010.

- The degree of disability and functionality, i.e. the ability of the claimant to cover his/her personal needs (personal hygiene, house cleaning, cooking, visits to doctors, etc.);
- The existence or not of a family network;
- The choice of the claimant for the type of care needed;
- The frequency of re-assessment depends on the particular needs of the beneficiaries;
- The particular situation of each beneficiary, medical reports and the frequency of required services.

Public assistance is not granted in the following cases:

- When one has assets or savings amounting to more than EUR 3,417 for one individual and EUR 1,709 for every dependant. The whole family should not have assets or savings amounting to more than EUR 8,543 in total. The claimant's own house, where he/she lives, is exempted;
- In case the applicant has transferred assets beyond the amount of EUR 17,086 to his/her children, or assets of any amount to any other individual(s);
- In case the applicant owns property other than the house he/she is living in;
- In case the applicant's house can be used in a way that could increase his income. Some categories of income and assets are excluded.⁷⁷

A sickness benefit is paid to employed and self-employed persons aged between 16 and 63 who are incapacitated to work.⁷⁸ Persons who do not satisfy the insurance conditions for entitlement to old-age pension at 63 are entitled to a benefit up to the required date, but never after the age of 65.⁷⁹ Spouses of such individuals are considered to be a dependant if they receive any salary or benefit at a rate lower than the increase for a dependant.⁸⁰ The benefit is not paid if the employee concerned receives full wages. If reduced wages are paid, the total of the benefit and the partial

⁷⁷ Your social security rights in Cyprus, *supra* n.46.

⁷⁸ Social Insurance Services of Cyprus, <http://www.mlsi.gov.cy/mlsi/sid/sidv2.nsf/index_en/index_en?OpenDocument> accessed 20 March 2015.

⁷⁹ The Cyprus Social Insurance Scheme, <[http://www.mlsi.gov.cy/mlsi/sid/sidv2.nsf/All/175A9A59E0A59FAEC2257B7F002572C0/\\$file/2012-12-21%20Cypriot%20Guide%20for%20Bulgarian%20Migrants%20EN%20-%20FINAL.pdf](http://www.mlsi.gov.cy/mlsi/sid/sidv2.nsf/All/175A9A59E0A59FAEC2257B7F002572C0/$file/2012-12-21%20Cypriot%20Guide%20for%20Bulgarian%20Migrants%20EN%20-%20FINAL.pdf)> assessed April 14 2015.

⁸⁰ Your social security rights in Cyprus, *supra* n. 46.

wage paid must not exceed the total wage. The period for which sickness benefit is paid may never exceed 156 days for each period the employment is interrupted. In case the incapacity for work is not permanent, the period is extended up to 312 days, under some special conditions. Incapacity for work due to illness can be certified by a doctor from the first day of illness.⁸¹

The invalidity pension is paid to persons who have been incapacitated for work for at least 156 days and who will probably remain permanently incapacitated.⁸² People who are incapable of earning, through an activity which they could in principle exercise under normal circumstances, more than one-third of the amount generally earned by a person in good health in the same profession or category and with the same level of education in the same field or, in the case of persons aged between 60 and 63, more than half of that sum. Although only the contributions of employees and self-employed workers are taken into consideration for entitlements, voluntary contributions are also considered when assessing the pension rate. Invalidity benefit may be claimed until the age of 63 for both total and partial invalidity (no minimum age stated). In case of a married male beneficiary the spouse is a dependant if she lives with or has been maintained by him and receives no pension from the Social Insurance Fund nor is gainfully occupied. In the case of a married female beneficiary, there is no entitlement to an increase for her husband unless he is incapable of supporting himself. In the case where the claimant is not entitled to any increase for a spouse the increase for dependent children or other dependants is equal to 10% of the basic pension for each of them (maximum two dependants). There is no statutory maximum pension. Beneficiaries also receive free medical treatment provided by government hospitals and institutions. Invalidity benefit must be applied for within three months of the occurrence.

Cypriot law also makes provision for benefits for accidents at work and occupational diseases.⁸³ The benefit for temporary incapacity is paid to any employed person who is incapable of working as a result of an accident at work or occupational disease for a maximum of 12 months from the date of the accident or contraction of the disease. The disablement benefit is payable to

⁸¹ Your social security rights in Cyprus, *Supra* n.46.

⁸² Invalidity Pension in Cyprus, available at: <<http://infocyprus.com/citizen/social-welfare/disability-and-illness/invalidity-pension>>, accessed on 23 April 2014.

⁸³ Regulation No. 285(III) of 2010 on Social Insurance (Occupational Diseases), *Episimi Efimeris (Official Gazette of the Republic of Cyprus)*, 2010-07-09, Part III(I), No. 4437, pp. 1682-1685, available at <http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=CYP&p_classification=15.03&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY> accessed 20 March 2015.

any employed person who, as a result of an accident at work, suffers a loss of physical or mental faculties to a degree of not less than 10%, except in the case of pneumoconiosis, which is compensated from a degree of 1%. The disablement benefit takes the form of a lump sum (disablement grant) or a pension, depending on the degree of disability. The former is paid for disability between 10% and 19%, and the latter for disability of 20% and above (no benefit is payable for disability below 10%).⁸⁴

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

Cyprus has not accepted Article 13(1) of the Revised European Social Charter.⁸⁵

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

There are public or private services in place in Cyprus which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want as required by Article 13(3) ESC. Article 13(3) provides that 'everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want'.

Social Welfare Services under the Ministry of Labour and Social Insurance⁸⁶ are the official agency of Cyprus for the provision and promotion of social welfare services. They consist of a central office, six district welfare offices and a sub-office, through which social welfare services are provided to every community in the government-controlled areas of Cyprus. The *Public*

⁸⁴ Refer Act No. 63(I) of 1997 to amend the Act on compulsory insurance for employers liability in the event of occupational accidents; *Episimi ephimeris tis Demokratias, first supplement, 1997-07-18, No. 3168, pp. 1251-125*; Act on the obligatory insurance of employers in case of responsibility for an accident at work 1989. No. 174, *Episimos Ephimeris tis Demokratias, 1989-11-10, No. 2456, pp. 3639-3648*
<http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=CYP&p_classification=15.03&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY> accessed 20 March 2015.

⁸⁵ Accepted Provisions of the Revised European Social Charter, 17 March 2015, <http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ProvisionTableRevMarch2015_en.pdf> accessed 20 March 2015.

⁸⁶ <http://www.mlsi.gov.cy/accessed>, 14 April 2015.

Assistance and Services Act No.8 of 1991 ensures a minimum standard of living for all persons who reside legally in Cyprus irrespective of nationality.⁸⁷ This piece of legislation is elaborated at section 3.1.1 of this report.

Counselling may also be provided within the framework of preventive services, with a view to enabling individuals and families at risk to effectively exercise their roles and responsibilities and preventing the aggravation of conditions, which might lead to family break-ups. Support may also be provided through a range of specific supportive services, such as the family support service which helps families who are eligible for public assistance to develop house-keeping and social skills, the child day-care service and services for the elderly and disabled persons (home care, meals-on-wheels, “tele-care”, day-care and residential care).⁸⁸

Social Welfare Services pursue citizen involvement in decision-making and planning of services and that several supportive services are being developed in partnership with the voluntary sector. The staff responsible for providing advice and help have mostly qualifications in social work, psychology or social sciences. All undergo in-service training on a continuous basis. Each Welfare Officer is responsible for a geographical area, which falls within the competence of a district welfare office. There is also a complaints procedure for clients of the Social Welfare Services. If clients are not satisfied with the response they receive at this level they may write to the Director of Social Welfare Services. If they are not satisfied with the decision of the Director, they may file recourse in Court or submit a complaint to the Commissioner for Administration (Ombudsman) who prepares a report addressed to Social Welfare Services on his findings, including recommendations on any remedial action.⁸⁹

⁸⁷ As amended by Act No. 97(I) of 1994 and Law No. 74(I) of 2003, <http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=CYP&p_classification=15&p_origin=SUBJECT> accessed March 20 2015. For further details see section 2.2 of this report.

⁸⁸ European Committee of Social Rights, *European Social Charter (revised): Bulgaria, Cyprus, Estonia, France, Ireland, Council of Europe, 2004 Conclusions* http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Cyprus2004_en.pdf. Also see the Council of Europe, Report of Government of Cyprus for Article 13 at <http://www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/Cyprus3Art5-6-13_fr.pdf> accessed 20 March 2015.

⁸⁹ C. Golna, P. Pashardes, S. Allin, M. Theodorou, S. Merkur, E. Mossialos., *Health care systems in transition: Cyprus*, (Copenhagen, WHO Regional Office for Europe on behalf of the European Observatory on Health Systems and Policies, 2004), pages 70, 72.

Doctors specialising in community medicine and hygiene, working in the Ministry's Department for Public Health and Medical Services as well as the Agency for the Protection of Mother and Child, are primarily responsible for organising and delivering preventive and health promotion services to the population⁹⁰

In Cyprus, an individual's right to free counselling is guaranteed through the Social Welfare Services which is designed to support individuals and families at the time of crisis. The majority of programmes registered with the social welfare services in Cyprus comply fully with legal requirements and in the case of contravention or non-compliance with any requirements imposed by the legislation, court proceedings may be initiated. The legislation provides for penalties imposed by the court for failure to register and for breach of requirements.⁹¹

Various private groups and non-governmental organisations also provide support, including disability groups, organisations promoting rights of elderly, youth organisations and sexual orientation groups.⁹² Disability groups are mostly focused on issues such as social inclusion, employment and accessibility and hold public seminars, offer advice to their members, issue publications, carry out direct lobbying with governmental bodies and try to exert pressure on policy makers and legislators for policy and/or law reform. Organisations promoting the rights of the elderly have been active in various campaigns on welfare, pensions and medical care and meet in Parliament in order to discuss the various problems facing this group. Youth organisations have been active on issues concerning education, culture, unemployment, employment rights, crime, drugs and the treatment of young persons in general. A.K.O.K. (Apeleftherotiko Kinima Omofilofilon Kiprou/Cypriot Gay Liberation Movement), founded in 1988, facilitates a network of support to homosexuals and handles discrimination complaints regarding labour issues, mostly unfair dismissal or refusal to hire based on sexual orientation.⁹³

⁹⁰ *Ibid* at page 41.

⁹¹ Government of Cyprus, *Revised European Social Charter, 6th National Report on the implementation of the European Social Charter (revised)* (Articles 3, 11, 12, 13 and 14 for the period 01/01/2005 – 31/12/2007), available at <http://www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/Cyprus6_en.pdf> accessed 20 March 2015.

⁹² National Activity Report Cyprus, *Anti-Discrimination and Diversity Training*, (2008) <http://ec.europa.eu/justice/discrimination/files/antidiscrimination_training_cyprus_en.pdf> accessed March 2015.

⁹³ Cypriot Gay Liberation Movement: <http://www.equal-jus.eu/node/443>.

There was a revision of public assistance legislation in 2006. The *Public Assistance and Services Law of 2006* increased the activation incentives for lone parents and people with disabilities,⁹⁴ as well as provisions for harmonisation with two EU Directives, namely Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states and Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers. Further, employment incentives incorporated in public assistance legislation (for lone parents, persons with disabilities, persons with mental illness, older persons, families with four or more children, families at high risk of dissolution), are provided to recipients of public assistance by discounting part of their earnings when estimating their monthly public assistance allowance.

Minor legislative changes were introduced in Cyprus in 2011, aimed at improving users' information and the efficiency of the services in accordance with the EU directive on Services in the Internal Market (2006/123/EU). It must be noted here that Cyprus was found in conformity with Article 13(3) of the Charter on this point. The following Laws were amended to a minor extent:

- The Homes for the Elderly and people with Disabilities Laws, amended in 2011;
- Children's Law, amended in 2011;
- The Children (Day Care Centres) Orders of 1993 and 1994, amended in 2011;
- The Day Care Centres for Adults Law of 1997, amended in 2011.

The above-mentioned Laws were amended in order to harmonise national legislation with the EU Directive on Services in the Internal Market (2006/123/EU). The amended Laws set out clear criteria and procedures so as to better inform and provide services as quickly as possible to citizens according to the EU Directive 2006/123/EU.⁹⁵

⁹⁴ Law 95(I)/2006.

⁹⁵ *Supra* n. 38.

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

Part II of the Constitution of the Republic of Cyprus protects human rights. It deals, *inter alia*, with the right to life, the right not to be tortured and humiliated, the right to decent living and social security, free movement within the Republic, right to personal and family life, the inviolability of residence, the right to freedom of thought, conscience and religion, the right to freedom of speech and of expression.⁹⁶

Article 30 of the ESC stipulates that:

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance; b to review these measures with a view to their adaptation if necessary.⁹⁷

Cyprus has not accepted Article 30.⁹⁸ It has however made significant efforts to promote the protection against poverty and social inclusion through legislation. Cypriot legislation was aligned with the Revised ESC in 2000, with the *Revised European Social Charter of 1996 (Ratification) Law of 2000*.

⁹⁶ Constitution of the Republic of Cyprus of 1960, articles 7, 8, 9, 13, 15, 16, 18, 19.

⁹⁷ Council of Europe, European Social Charter (Revised), 3 May 1996, ETS 163, Article 30.

⁹⁸ Council of Europe, Acceptance of provisions of the Revised European Social Charter (1996), Updated : 17 March 2015, available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ProvisionTableRevMarch2015_en.pdf, accessed on 6 April 2015.

Cyprus has made progress regarding the application of its social rights regime. It has adopted a set of priorities to prevent and remove obstacles to access fundamental social rights.⁹⁹ Regarding the situation of social exclusion in particular to employment, training, education, culture and social assistance, Cyprus provides services to help job seekers: 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.¹⁰⁰ Job seekers may be provided with information on available jobs; training opportunities, education and information on the conditions of employment and labour law. They can get personalised services from counsellors, who analyse the situation of the person concerned and suggest solutions, like a training course or retraining, work experience programmes, subsidized employment programmes.

In addition, Cyprus has introduced the HRDAuth (ANAD) programme, under EU Regulation 1407/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, to *de minimis* aid.¹⁰¹ This programme promotes the participation of enterprises and/or organizations and unemployed persons in training programs organized and accredited by ANAD.¹⁰² The aim of the project is to provide opportunities for participation in training and work experience programmes to unemployed persons, to substantially improve the chances of integration and/or reintegration into work.

Unemployed Cypriots can also get information from European Employment Services (EURES) counsellors.¹⁰³ Furthermore, they can use the internet services provided in specific self-service offices of the Ministry of Labour, Welfare and Social Insurance to find information, draft their

⁹⁹ Statement of Interpretation on Article 30, see in particular Conclusions 2003, France, page 214, available at <http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/GeneralIntro2013_en.pdf> accessed 14 April 2015.

¹⁰⁰ 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.

¹⁰¹ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, Official EN Journal of the EU L 352/1 of 24.12.2013.

¹⁰² Arhi Anaptiksis Anthropinou Dinamikou (ANAD): Cyprus Human Resources Development Authority, <<http://www.anad.org.cy/>> accessed 14/04/15.

¹⁰³ EURES Cyprus: <<http://www.eurescyprus.eu/>>, accessed on 23 April 2015.

resume, apply online to the job of their choice and use the Job Searching Online System available.¹⁰⁴

In July 2013, the President of Cyprus announced the reform of the social welfare system which would be based on ensuring the Guaranteed Minimum Income (GMI).¹⁰⁵ This is one of the main factors contributing to the creation of poverty in Cyprus. Equally important is the Decree on minimum wage of 2012, which specifies the amount of the minimum wage to EUR 870 gross.¹⁰⁶ The minimum wage for employees who on 1 April 2012 had over six months of service or after six months continuous service with the same employer, amounted to EUR 924.¹⁰⁷

Consequently, the House of Representatives in Cyprus passed Law 109(I)/2014, under which the people eligible for the GMI are those whose incomes are below the decent living threshold, regardless of class or professional situation.¹⁰⁸ The amount of the GMI is now set at EUR 480 plus 50% of the amount or EUR 240 if the wife or husband of the applicant does not work. Another 50% of the amount or EUR 240 is added for every child over 14 years, while a child under the age of 14 receives the amount of 30% or EUR 144. The GMI is designed to offer a decent living standard to Cypriot citizens, when they are unable to provide for themselves and for their families.

The conditions set by the Law for someone to be eligible for the GMI are:

- To be a Cypriot citizen;
- To be a European citizen;
- To be a citizen of a third country and to have a long term residence permit in the Republic of Cyprus;
- To be a citizen of a third country and to be eligible under the Refugee Law;

¹⁰⁴ Department of Labour of the Republic of Cyprus, <<http://www.pescps.dl.mlsi.gov.cy/CPSWeb/f001w.jsp>> , accessed on 17 March 2015.

¹⁰⁵ Politis Online Newspaper, <<http://www.politis-news.com/cgi-bin/hweb?-A=241736&-V=articles>> , 26 July 2013, accessed 7 April 2015.

¹⁰⁶ See the discussion under section 2.2 of this report.

¹⁰⁷ Law on Minimum Wage (Chapter 183) and Decree 180/2012 on Minimum Wage: <http://www.cylaw.org/nomoi/enop/non-ind/0_183/full.html> and at <[http://www.mlsi.gov.cy/mlsi/dlr/dlr.nsf/All/8D4A59CB04D35D3BC2257A0800291889/\\$file/Minimum%20Wage%202012.pdf](http://www.mlsi.gov.cy/mlsi/dlr/dlr.nsf/All/8D4A59CB04D35D3BC2257A0800291889/$file/Minimum%20Wage%202012.pdf)> accessed 14/04/15.

¹⁰⁸ Law 109 (I) / 2014 on Guaranteed Minimum Income and generally on Social Benefits of 2014, <http://www.cylaw.org/nomoi/enop/non-ind/2014_1_109/full.html> accessed 14 April 2015.

- To be a victim within the meaning of the “Prevention and Combating of Trafficking and Exploitation of Human Beings and Protection of Victims Law”¹⁰⁹.

The applicant must also have legal and continuous residence in the Republic during the preceding five (5) years prior to applying. The applicant becomes eligible as long as the provisions of the law are met and the monthly income, as defined and determined in Article 12 is less than the sum of monthly amounts determined and calculated according to the Regulations issued by the Cabinet.¹¹⁰

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*.¹¹¹ It guarantees the right to decent living for every person who legally resides in Cyprus and lacks the necessary resources. “Public assistance” under this piece of legislation, means aid in cash and/or in a similar way based on monthly allowance or otherwise; and it is provided to people who are considered to be poor.¹¹² Under Article 3(1) of the Law, public assistance may be given to the same categories of people stated above. The current amount of the monthly allowance for basic needs is EUR 452 for the head of household, EUR 226 for each dependent over 14 years old and EUR 135,60 for each dependent over 14 years of age.¹¹³

After the signing of the Memorandum of Understanding in March 2013,¹¹⁴ the Troika tried to promote policies in Cyprus which theoretically have a lower budgetary cost. The first relevant provision is the haircut of 47.5% for shareholders, bondholders, and depositors with more than EUR 100,000. Besides, on April 2013 the House of Representatives passed the Law prohibiting the of filling vacancies in the public and greater public sector,¹¹⁵ which was further enacted in 2015. This Law helps in achieving compliance with the obligation contained in the

¹⁰⁹ Article 5(1) of Law 109 (I) / 2014 on Guaranteed Minimum Income and generally on Social Benefits of 2014.

¹¹⁰ Article 5(3) of Law 109 (I) / 2014 on Guaranteed Minimum Income and generally on Social Benefits of 2014.

¹¹¹ The Public Assistance and Services Law of 2006 (95 (I) / 2006).

¹¹² Article 2, The Public Assistance and Services Law of 2006 (95 (I) / 2006).

¹¹³ <<http://www.mlsi.gov.cy/mlsi/sws/sws.nsf/All/8ADFCE3C40B256B0C2256E5F002E83A8?OpenDocument>> accessed 14 April 15.

¹¹⁴ Memorandum of Understanding on Specific Economic Policy Conditionality, *supra* n. 4.

¹¹⁵ Law 21(1)/2013 on the prohibition of filling vacancies in the public and greater public sector (Special Provisions), <[http://www.mof.gov.cy/mof/papd/papd.nsf/All/F0D81092F01DFB53C2257B660020B56F/\\$file/Νομος%20για%20απαγορευση%20πληρωσης%20κενων%20θεσεων.pdf?Openement](http://www.mof.gov.cy/mof/papd/papd.nsf/All/F0D81092F01DFB53C2257B660020B56F/$file/Νομος%20για%20απαγορευση%20πληρωσης%20κενων%20θεσεων.pdf?Openement)> accessed 14 April 2015.

Memorandum of Understanding to reduce the number of public sector employees by 4,500 between 2013 and 2016.¹¹⁶

According to the Survey on Income and Living Conditions 2010-2013,

Poverty is defined in relation to the average standard of living at a particular society at a given time. This is the relative view of poverty that emphasizes economic inequality, as opposed to the absolute poverty that emphasizes economic failure.¹¹⁷

According to the results of the Survey on Income and Living Conditions 2010-2013,¹¹⁸ the percentage of the Cypriot population living below the poverty line in the year 2013 amounted to 15.3% and was higher compared to 2012, i.e. EUR 9,524 per person.¹¹⁹

Unemployment in Cyprus increased after the Eurogroup agreement of March 2013.¹²⁰ Average unemployment has risen to 17% in Cyprus. According to statistical data, provided by the Statistical Service of Cyprus, the number of unemployed persons registered in Cyprus at the end of April 2013, was 42,201 persons.¹²¹ Compared to April 2012,¹²² there has been an increase of 9,803 persons. Newcomers' unemployment in the labour market had also increased, with 704 more registered unemployed people. In April 2014, an increase of 1,557 persons was noted, compared to April 2013. Newcomers' unemployment was also increased by 881 individuals. At

¹¹⁶ Memorandum of Understanding on Specific Economic Policy Conditionality, *supra* n. 4.

¹¹⁷ Survey on Income and Living Conditions 2010-2013, Ministry of Finance Statistical Service, General Social Statistics, Series II, Number 6, page 4, <[http://www.mof.gov.cy/mof/cystat/statistics.nsf/All/92AB0A3C219CADDBC22577DD003523E8/\\$file/EUSILC-2010_2013-311014.pdf?OpenElement](http://www.mof.gov.cy/mof/cystat/statistics.nsf/All/92AB0A3C219CADDBC22577DD003523E8/$file/EUSILC-2010_2013-311014.pdf?OpenElement)> accessed 14 April 2015.

¹¹⁸ Survey on Income and Living Conditions 2010-2013, Ministry of Finance Statistical Service, General Social Statistics, Series II, Number 6, <[http://www.mof.gov.cy/mof/cystat/statistics.nsf/All/92AB0A3C219CADDBC22577DD003523E8/\\$file/EUSILC-2010_2013-311014.pdf?OpenElement](http://www.mof.gov.cy/mof/cystat/statistics.nsf/All/92AB0A3C219CADDBC22577DD003523E8/$file/EUSILC-2010_2013-311014.pdf?OpenElement)> 14 April 2015.

¹¹⁹ *Supra*, page 10.

¹²⁰ Eurogroup Statement on Cyprus, 25 March 2013, available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ecofin/136487.pdf.

¹²¹ Statistical Service of the Republic of Cyprus, Latest Figures: Registered Unemployed People, April 2013, available at <http://www.mof.gov.cy/mof/cystat/statistics.nsf/All/FCBE1B4235358352C2257AFE002D1DBC?OpenDocument&sub=2&sel=1&e=&print>.

¹²² Statistical Service of the Republic of Cyprus, Latest Figures: Registered Unemployed People, April 2012, available at <http://www.mof.gov.cy/mof/cystat/statistics.nsf/All/719498F366F26DD9C2257992003DF375?OpenDocument&sub=2&sel=1&e=&print>.

the end of February 2015, the number of registered unemployed persons was 50,240¹²³. Unfortunately, unemployment is of a much greater scale than indicated by the numbers officially provided by the government of Cyprus.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

Article 15 of the ESC protects the right of persons with disabilities to independence, social integration and participation in the life of the community. The law and policies of the Human Resource Development Authority (HRDA) of Cyprus ensure equality of access to vocational training for all, as well as the participation in training activities which have been acknowledged and subsidised by the HRDA, for persons other than Cypriots is administered by the same regulations and circumstances as applied for Cypriots.¹²⁴ Consequently, under Article 15 of European Social Charter, as implemented in the national regulation and policies:

The measures taken to provide persons with disabilities with education, guidance and vocational training through specialized bodies, public or private are available to all persons with disabilities irrespective of age, and of nature and origin of their disability. All persons lawfully residing in Cyprus benefit from the aforementioned vocational training measures under the same conditions.¹²⁵

¹²³ Statistical Service of the Republic of Cyprus, Latest Figures: Registered Unemployed People, February 2015, available at <http://www.mof.gov.cy/mof/cystat/statistics.nsf/All/719498F366F26DD9C2257992003DF375?OpenDocument&sub=2&sel=1&e=&print>

¹²⁴ Human Resource Development Authority of the Republic of Cyprus, available at: <http://www.hrdaauth.org.cy/easyconsole.cfm?id=1>

¹²⁵ Revised European Social Charter: Fourth report on the implementation of the Revised European Social Charter submitted by The Government of Cyprus, 26 September 2006, page 88.

According to a 2002 Labour Force Survey, 12.2% of the total population are persons with long term health problems or impairment, i.e. approximately 53,369 persons are disabled.¹²⁶ The majority of persons with disabilities, an estimated number of 27,856 persons (48%), had reported that they were not working. Given that a more recent survey is not available at the moment, these numbers do not show the exact number of disabled people. Presumably, there are more disabled people in Cyprus at the moment, along with the growth of the overall population.

The measures Cyprus had taken to provide persons with disabilities with education, guidance and vocational training are divided in the form of general schemes or through specialised bodies, public or private. The schemes are operated by the Service of the Care and Rehabilitation of the Persons with Disabilities of the Department of Labour. There are also schemes that are co-financed by the European Social Fund and the Republic of Cyprus on an equal basis.¹²⁷ The following schemes are in operation:

- The Scheme for the Vocational training of persons with disabilities in courses of their own choice;
- The Self – employment scheme;
- The Supported Employment scheme;
- Schemes co-financed by the European Social Fund and the Republic of Cyprus;
- The Scheme for the Vocational training of persons with severe disabilities to help their integration to the labour force and society in general;
- The Scheme through which motives are offered to employers to promote the employment of persons with disabilities in the private sector, by funding part of their labour costs and also financing in order to make any essential adjustments to the workplace;

Under Articles 8 – 11 of *Law No. 113(I) of 1999*, children with special needs should follow a general procedure so that it is acknowledged they need special education. This process is usually undertaken with the written consent of the parents or after recommendation of a member of the school staff. Article 8(1) provides that:

¹²⁶ Labour Force Survey of 2002.

¹²⁷ See further section 3.1.2 of this report regarding disability allowances and benefits.

The District Committee shall have the duty to efficiently evaluate the needs of any child, considered to have special needs, detected by the District Committee or regarding whom the District Committee is informed, wherever that child attends classes or stays.

Article 8(2) provides that: “In case where the child is younger than three years, its needs shall be evaluated after the consent of its parents.”

Article 9 provides that:

The evaluation of the needs of any child shall be carried out by the District Committee and it shall be based on evaluation of the child of a first instance multi-subject team, including a psychologist specialist in children, an educational psychologist, a teacher of special education, a doctor, a speech-pathologist and any other specialist as the case may need.

Further,

Before any evaluation, the District Committee shall serve to the parent of the child, whose needs shall be evaluated, a written notice, stating his rights according to paragraph (2) of this section, as well as stating a period of maximum thirty days from the day of the service of such notice, within which the parent must reply.¹²⁸

The parent of the child shall have the right to attend during the evaluation and to participate alone or with a specialist on the specific matter, make representations and submit evidence and recommendations regarding the evaluation.¹²⁹

In Cyprus, ordinary schemes are made available to disabled individuals, and where this is impossible, it can be achieved through special facilities.¹³⁰ Disabled children receive an education that is suitable for their developmental needs, as well as specialised assistance. Also special schools for people with learning disabilities or with emotional and behavioural problems have access to vocational programmes for a smoother transit from school to work or from one place to another.¹³¹ There are 4,322 students with special needs in Cyprus, according to the 2002 survey. The Ministry of Education has the primary responsibility for special education and the

¹²⁸ Law No. 113(I) of 1999, Article 10(1).

¹²⁹ Law No. 113(I) of 1999, Article 10(2).

¹³⁰ Council of Europe, “Rights of people with disabilities: Fact sheet on Article 15 of the Revised European Social Charter”, available at:

http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Theme%20factsheets/FactsheetDisabled_en.pdf

¹³¹ Revised European Social Charter: Fifth report on the implementation of the Revised European Social Charter submitted by the Government of Cyprus, 5 November 2007, page 56.

Committee of Special Education has to decide whether a child will be placed in a mainstream school or be provided with special education.¹³² It is worth noting that the majority, approximately 77%, are placed in mainstream schools, which are equipped with all additional special education equipment and teachers. According to the Labour Force Survey of 2002, 3560 people with disabilities are university graduates or postgraduates and PhD holders.¹³³

Under the *Education and Training of Children with Special Needs Law No.113(I) of 1999* there are provisions for the detection of children with special educational needs; their placement into appropriate educational surroundings with teachers and resources that meet their needs, in addition to an on-going evaluation of their progress.¹³⁴ Notwithstanding, special schools are under an obligation to be built within mainstream schools and have activities and networks of contacts so as to minimise segregation. A series of institutions in Cyprus provide general education, guidance and vocational training to disabled individuals.

The School for the Blind provides support services to people with visual impairment. With the coming into force of the *Training and Education of Children with Special Needs' Law of 1999*, its support services were upgraded. There are also provisions for services to adults and programmes to help the emancipation of such persons.¹³⁵ The main goals of the organisation are the promotion of social welfare, education, vocational training and the integration of the blind as well as medical treatment and the provision for the essential technical aids. This school defends the rights of blind people, encourages and supports them.¹³⁶

The School for the Deaf provides general education, guidance and vocational training to persons with audio impairment regardless of their age.¹³⁷ In 2005 the Ministry of Education acknowledged the equivalence of the graduation certificate (apolitirion) granted by the school of the deaf with that granted from any other secondary education in Cyprus.¹³⁸ *Law 31(I)/2008*

¹³² http://www.moec.gov.cy/en/special_education.html.

¹³³ Labour Force Survey of 2002.

¹³⁴ Education and Training of Children with Special Needs Law No.113(I) of 1999, Articles 12 and 13.

¹³⁵ The Training and Education of Children with Special Needs' Law of 1999, Article 33.

¹³⁶ International Council for Education of People with Visual Impairment, European Region: National Page of Cyprus, available at: <http://www.icevi-europe.org/national/cy.html>.

¹³⁷ <http://eid-scholi-kofon-lef.schools.ac.cy/>.

¹³⁸ School of the Deaf, available at: <http://eid-scholi-kofon-lef.schools.ac.cy/data/uploads/scole-kopon-final-lr..pdf#page=25>.

provides that the Ministry of Education, in cooperation with the school of Deaf, the Cypriot sign language has been registered.

The Centre for the Vocational Rehabilitation of Persons with Disabilities operates under the Department for Social Inclusion of Persons with Disabilities. It provides training of some kinds of specializations. It requires upgrading in order to design and provide new and modern training and employment programmes for disabled people.¹³⁹ It offers services to help persons with disabilities to promote their skills, to become independent and face their problems.

Cyprus also features special schools for trainable children.

By trainable children we refer to those children who are able to attend mainstream schools. There are, however, children who attend special centres and are given support and guidance by educators appointed for this reason by the Ministry of Education and Culture.¹⁴⁰

Such schools include the Nicosia Special School; Evangelismos in Nicosia; Apostolos Loukas Special School in Limassol; Pediko Anarrotirio of the Cyprus Red Cross in Limassol; Agios Spyridon in Larnaca; Apostolos Varnavas in Liopetri; Theoskepaski in Pafos.

Cyprus also hosts mental health services. Athalassa hospital is a mental health hospital, which provides care and support to people with mental disorders. "The multidisciplinary teams of the Athalassa Hospital carry out therapeutic, rehabilitative and resettlement programmes for the patients residing in the hospital."¹⁴¹ They are also responsible for the assessment of the patients. In Athalassa an employment scheme provides jobs to patients in a variety of departments in the hospital, such as carpentry, cabinet making, basket making, general handicraft work and industrial work. The aim of the Athalassa Hospital is to shift the therapeutic and rehabilitative services into the community so as to improve the standard of living of the patients. A Vocational Rehabilitation Unit operates, which is a facility outside of the hospital, in the community, and it provides work assessment, work counselling services, opportunities for development of working skills and a support employment scheme-work placement. New schemes for vocational training in jobs of their own choice are now available.¹⁴²

¹³⁹ http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd27_en/dsipd27_en?OpenDocument.

¹⁴⁰ *Supra* n.131, page 62.

¹⁴¹ *Supra*, n. 131.

¹⁴² *Supra*, n.131, 63.

The Christos Steliou Ioannou Foundation aims to the personal fulfilment, social and vocational integration and better quality of the life of persons with mental retardation through the programmes on offer.¹⁴³ “The philosophy upon which the Foundation is based is to approach people with mental handicap as individuals with needs, feelings, rights, abilities and interests, as well as responsibilities.”¹⁴⁴ Consequently, it aims to develop the full potential of each individual and to provide opportunities for better life within the society.

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

Article 15(2) of the ESC requires member states to defend the right to employment of persons with disabilities.¹⁴⁵ Cyprus should therefore guarantee that disabled persons have access to employment on the open labour market. Moreover this article requires sheltered employment facilities for persons who cannot by reason of their disability be integrated into the open labour market. Consequently, Cyprus should aim to help persons with disabilities to integrate to the employment community and to defend their rights of enjoying the usual benefits that are available under Cypriot labour law, in particular the right to fair remuneration and respect for trade union rights.

The Law providing for Persons with Disabilities declares that those persons should be treated equally regarding the procedure for application, compensation, promotion and any other condition of employment.¹⁴⁶ Incentives, in the form of special funds, are granted to employers for creating employment opportunities. Hence, an employer “will receive an allowance, as a reimbursement for the salary paid to the disabled person during the first year of his/her

¹⁴³ Christos Stelios Ioannou Foundation, available at: <http://www.ioannoufoundation.org/main/12,0,0,0-Services-and-Programmes.aspx>.

¹⁴⁴ Christos Stelios Ioannou Foundation, available at: <http://www.ioannoufoundation.org/main/8,0,0,0-Philosophy-Principles.aspx>.

¹⁴⁵ ESC, Article 15(2).

¹⁴⁶ The Law providing for Persons with Disabilities L.127(I)/2000.

employment.”¹⁴⁷ Moreover, the employer will receive an additional allowance for the expenses of any ergonomic arrangements and alterations at the workplace so as to be considered as appropriate for persons with disabilities. Each employer will receive an allowance for the contribution to the Social Insurance Fund for the employment of each person with disabilities.

The amending Law 57(I)/2004 is in line with the provisions of 2000/78/EC Directive, which provides for non-discrimination in the employment and occupation of disabled persons. In other words, it prohibits any kind of discrimination or harassment against these persons regarding the conditions of access to employment and all levels of vocational rehabilitation. In order to minimise any actions of discrimination the law it provides for a fine up to EUR 4,000 and/or imprisonment up to 6 months. Law 17/1988¹⁴⁸ and 1/1990¹⁴⁹ provide priority to disabled candidates who fulfil the schemes of service, provided that they are capable to perform the requested duties.

Following the Public Assistance and Services Law of 2006¹⁵⁰ a person whose resources do not meet the basic and special needs, including a disability allowance,¹⁵¹ care services or other support services, may qualify for public assistance.¹⁵² This Law includes provisions promoting the social integration of all those requiring public assistance. It provides for financial and technical support, such as funds for training or professional equipment or some fixed amount per month or for holidays, accommodation and an amount for any alterations necessary in order for houses to become functional so as to help persons with disabilities to live a normal life.

Moreover, under the *Streets and Building (Amendment) Law No 97(I)/1992* and the relevant Regulation of 1999, the competent authority before granting a building permit, entailing plans for the access of persons with disabilities to the building.¹⁵³ Those plans and conditions need to be safe and easily-accessible by disabled people.

¹⁴⁷ *Supra* n.133, page 64.

¹⁴⁸ Law No. 17 of 1988 regarding the Engagement of Trained Blind Telephone Operators.

¹⁴⁹ Law No. 1 of 1990, The Public Service Law.

¹⁵⁰ Public Assistance and Services Law of 2006, L. 95(I)/2006.

¹⁵¹ Public Assistance and Services Law of 2006, L. 95(I)/2006 section 9(1)(η), (θ).

¹⁵² Public Assistance and Services Law of 2006, L. 95(I)/2006 section 8(ζ).

¹⁵³ Streets and Building (Amendment) Law No 97(I)/1992 section 8(1)(ε).

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

The progress achieved in Cyprus by taking positive action measures, has been weakened by the economic crisis that erupted in 2012. “A major consequence of such developments is that progress on the rights of people with disabilities as laid out in the UN Convention on the Rights of Persons with Disabilities (UNCRPD) is being put in jeopardy.”¹⁵⁴ The European Action Plan 2008-2009 expressed thoughtful concerns at the level of labour market exclusion of disabled people, not only from the viewpoint of equal opportunities but also from the economic perspective.¹⁵⁵ In the Annual Report of Economic Cycle Research Institute’s (ECRI) Activities, the Commission declared that reduced economic opportunities and cuts on welfare push persons with disabilities and in general vulnerable groups into poverty.¹⁵⁶

Additionally, the effect of the economic crisis and the austerity measures subsequently taken in 2013, has had an impact on persons with disabilities and particularly to their families as they have to bear the financial costs enabling them to perform everyday activities.¹⁵⁷ The level of employment of disabled individuals has dropped and their contracts are more likely to be precarious. Consequently, as the unemployment rate of disabled individuals is higher, the costs borne by the government are also higher due to the fact that they have to provide social assistance and protection. Thus, “it is difficult for people with disabilities to find a job even in the public sector where a recruitment freeze has been introduced to be effective for the next

¹⁵⁴ H. Hauben, M. Coucheir, J. Spooren, D. McAnaney, C. Delfosse, ‘Assessing the impact of European governments’ austerity plans on the rights of people with disabilities’ European Foundation Centre, October 2012, page 4

¹⁵⁵ 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) 738 final, 26 November 2007

¹⁵⁶ Annual Report of ECRI’s Activities 2011 (CRI(2012)23), page 7

¹⁵⁷ Carmen Quintanilla Barba ‘Committee on Equality and Non-Discrimination: Equality and inclusion for people with disabilities’, draft resolution and draft recommendation adopted unanimously by the Committee on 3 December 2014, Paris, page 8

three years.”¹⁵⁸ As a result, the poverty risk rates in 2008-2010 have sharply increased by 8.11%, due to direct cuts in benefits on a scale ranging from 20% to 40%.¹⁵⁹

The economic crisis and the political and social measures taken as a result have undermined the essential civil, political, social and economic rights of people with disabilities.¹⁶⁰ There has also been a reduction in expenditure for education as well as mergers of schools. Children with disabilities have suffered the negative consequences of austerity measures, as the budget cuts have significantly affected both inclusive education, as well as education in special schools.

5.2. Children and Young Persons (Article 17 ESC)

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

Cyprus has ratified Article 17 of the European Social Charter in its entirety.¹⁶¹ Article 17 provides that children and young persons have the right to appropriate social, legal and economic protection. Article 17(a) refers to the right to education, 17(b) mentions the protection of children and young persons from violence, negligence or exploitations and 17(c) alludes to protection and aid for children deprived of their family's support.¹⁶² Article 17(2) ensures that children and young persons have free primary and secondary education as well as regular attendance to school.¹⁶³

The Cypriot economic crisis and the austerity measures that were adopted to alleviate it have had an adverse impact on the right of children and young persons to have the necessary education

¹⁵⁸ The impact of the current financial crisis on the EBU member organisations: A report on the meeting of the EBU commission for liaising with the EU, 28th-30th of September 2012, Athens, available at: http://www.euroblind.org/newsletter/online/2012/november_december/newsletter/online/en/newsletter/feature/nr/1570/.

¹⁵⁹ Assessing the Impact of European Governments' Austerity plans on the Rights of People with Disabilities: Key Findings, available at: http://www.efc.be/programmes_services/resources/Documents/Austerity2012.PDF.

¹⁶⁰ Miguel Angel Cabra de Luna, Co-Chair of the European Consortium of Foundations on Human Rights and People with Disabilities.

¹⁶¹ ESC, Article 17.

¹⁶² *Ibid*, Article 17.

¹⁶³ *Ibid*, Article 17.

and training. Nevertheless, the promotion and safeguard of education has been kept at the top of the state agenda because of its immense significance and impact on the society as a whole.

The public education system in Cyprus is centralized. The ministry of Education and Culture of Cyprus is responsible for preparing and enforcing legislating concerning education. It also determines the curriculum, the class timetable, the courses and the textbooks.¹⁶⁴

Education in Cyprus is offered in public schools and private schools, which are run by individuals or councils. Both categories of schools are subject to supervision and control by the Ministry of Education and Culture.

Public schools are financed mainly by public funds, while private schools by tuition revenues. At the secondary education level, private schools receive little public subsidy and in some cases foreign aid from various religious organizations. The construction and maintenance of public schools is the responsibility of School Boards, under the supervision of the Technical Services of the Ministry of Education and Culture.¹⁶⁵ A notable exception is technical schools, which have their own budget.

The educational system in Cyprus is structured in the following way. Pre-primary education is compulsory and it lasts one year. It is offered by kindergartens for children under 5 and 2/3 years old. Children start primary school at the age of 5 and 2/3 years old. The training at this level has always been free and compulsory since 1962. Primary school in Cyprus is of a duration of six years.

Secondary education includes the Gymnasium circle, where studies last three years and the Lyceum Circle, which also lasts three years. The latter consists of two different paths: a) Secondary General Education and b) Secondary Technical and Vocational Education. Secondary education is provided mainly in public schools, as well as some private schools.

Higher Education in Cyprus consists of two levels. First, the university level, which is offered by the University of Cyprus, the Cyprus University of Technology which are public, but academically autonomous, along with various Universities functioning at a private sector level. The second form of Higher Education is non-university level and offered by the Public Schools of Higher Education and Private Colleges. The Public Schools at this level are the Higher

¹⁶⁴ <http://www.highereducation.ac.cy/en/>, accessed on 30 May 2015.

¹⁶⁵ *Ibid.*

Technical Institute of the Ministry of Labour, the Forest College of the Ministry of Agriculture, the School of Nursing of the Ministry of Health, Higher Hotel Institute of the Ministry of Labour, the Mediterranean Institute of Management of the Ministry of Labour, the Police Academy Ministry of Justice and Public Order, the School of Health Inspectors of the Ministry of Health and the School of Guides of the Cyprus Tourism Organisation.

Cypriot primary legislation concerning schools dates back to 1962. It is the *Law of the Community Schools of Primary and Secondary Education*.¹⁶⁶ This piece of legislation introduces free education in Cyprus.¹⁶⁷ Law No.6/1961 is primarily based on the dual community system (Greek and Turkish) as described in the Cypriot Constitution, a system which is now not effective because of the political developments on the island. Thus, the powers of the Greek Assembly as prescribed in the Law No.6/1961 Article 3 are now taken over by the Ministry of Education.¹⁶⁸

*Law No.24(I)/1993 on Primary and Middle Education (Compulsory Attendance and Free Provision of Education)*¹⁶⁹ was introduced in 1993 to clarify the educational system and reaffirm the basic principles. Article 3 of the Law No.24 (I)/1993 states that education is compulsory until the student completes the Gymnasium Cycle or until he completes fifteen years of age.¹⁷⁰ Further, according to Article 4 if the person who is responsible for the student omits the student's registration or superintendent of the student's attendance is committing a criminal offence punishable by penalty or imprisonment up to three months.¹⁷¹ Further, Articles 5 and 6 provide education and books in Cyprus for free.¹⁷²

The measures that have been taken in Cyprus regarding education are mostly policy oriented. In January 2013, the newly elected government prepared a new education policy in light of the banking crisis. According to the Annual Report by the ministry of Education and Culture in 2013, the objective of this new education policy was to manage the everyday needs of the

¹⁶⁶ Law No.6/1961 of the Community Schools of Primary and Secondary Education.

¹⁶⁷ *Ibid*, Article 9.

¹⁶⁸ *Ibid*, Article 3.

¹⁶⁹ Law No.24(I)/1993 on Primary and Middle Education (Compulsory Attendance and Free Provision of Education.

¹⁷⁰ *Ibid*, Article 3.

¹⁷¹ *Ibid*, Article 4.

¹⁷² *Ibid*, Article 5.

educational institutions in a way that is not disruptive to the achievement and implementation of these proposals.¹⁷³

Furthermore, fierce negotiations took place between the Ministry of Education and Culture and international organizations at the time of the negotiations for the bailout agreement, who acted as creditors to Cyprus, in order to achieve a minimum decrease to the budget of the Ministry and also the deletion of a clause in the bailout agreement which would essentially lead to thousands of public teachers to lose their jobs¹⁷⁴.

The policy objective of Cyprus, as set out in the Annual Report, was to protect, promote and increase the effectiveness of the education system in order to ensure that children and young people receive the necessary education.¹⁷⁵ The policy was founded on five pillars that are intrinsically bound to the success of children in school. The first pillar is development, training and qualitative upgrading of human resources of Education. The second pillar is the modernizing the administrative structures of the education system and school units. The third pillar is the upgrading the content and effectiveness of education. The fourth pillar is the support and strengthening each learner with acknowledgement of diversity and development of active citizenship, and fifthly, the strengthening and upgrading of Higher Education.¹⁷⁶

The Minister of Education of Cyprus submitted a proposal to the Education Union for the change of the appointment system of teachers, which is now the Catalogue of Appointed and the Evaluation Plan in March 2015. The current system of appointment of teachers is the Catalogue of the names of individuals that have the prerequisites for a teacher, which are appointed in the chronological order from the date that their degree was registered. It is foreseen that the new system will be implemented in 2018.¹⁷⁷ The new system will essentially replace the catalogue with the appointment after the consideration of the criteria that will be based on: a

¹⁷³ Annual Report by the Ministry of Education and Culture 2013, The Republic of Cyprus, page 7.

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*, page 7.

¹⁷⁶ *Ibid.*, page 7.

¹⁷⁷ “New Appointment System in Education” Proposal by the Ministry of Education and Culture, March 2015. http://www.moec.gov.cy/archeia/2014_nees_protaseis_paideia/2014_11_07_protasi_neo_schedio_diorismon_ekpaidefsi.pdf, accessed 22 May 2015.

written exam, extra academic qualifications, previous educational experience, the year a teacher's first degree was acquired and any service completed in the National Guard.¹⁷⁸

Further, the Ministry Education has established a Scientific Committee, made up of six academics, for the purpose of modernizing the Cypriot educational system and the Interdepartmental Committee of Evaluation of Curricula.¹⁷⁹ The Committee has been established in 2013 and its members are six distinguished academic professors: K. Koutselini, P. Pasiardi, P. Papapoliviou, N. Stylianopoulos, L. Kyriakides and M. Zembylas.¹⁸⁰ The Scientific Committee has created proposals for implementation to the Ministry of Education concerning the curricula and timetables of Elementary and Secondary Education, the reform of the Catalogue of Appointed Teachers and the modernizing of the education system.¹⁸¹

In this context, the Ministry of Education, with the help of the Scientific Committee, has introduced a new system of Evaluation of the Educational Work and the Educators.¹⁸² The proposal introduces a multidimensional system of evaluation not only for the educator but also for the whole educational work; it also introduces a system of internal evaluation in schools as a way of decentralization of the evaluation and democratic participation of everyone working in education.¹⁸³ Further, external evaluation will become of a consultative nature for the purpose of improvement and a Pedagogical Advisor will be introduced in order to support and help the educator concerning pedagogical issues.¹⁸⁴

The budget is important in the context of education. The total budget of the Ministry of Education for the year 2013 was 921,431 million Euros, from which 156,261 Euros were dedicated to development expenditure that are construction of new schools and maintain good condition of the existing one and purchase of equipment for clubs, for technology labs and special schools and 765,070 were used for regular costs which are operational costs and the

¹⁷⁸ *Ibid.*

¹⁷⁹ Annual Report by the Ministry of Education and Culture 2013, The Republic of Cyprus, page 8.

¹⁸⁰ *Ibid.*, page 8.

¹⁸¹ "The Minister of Education's meeting with the Scientific Committee", 26 July 2013, available at: <http://offsite.com.cy/sizitise-me-epistimoniki-epitropi-ton-eksigchronismo-tou-ekpedeftikou-sistimatos/> accessed on 20 June 2015.

¹⁸² New Formation of the System of Evaluation of the Educational Work and the Educators, Proposal By the Ministry of Education and Culture, November 2014, page 3.

¹⁸³ *Ibid.*, page 6.

¹⁸⁴ *Ibid.*

purchase of consumables for kindergartens, primary schools, special schools, and the operation of educational summer camps as well as the purchase of books and providing educational aid to diaspora schools.¹⁸⁵

The above costs included a budget dedicated to children with mental disabilities in nine special schools.¹⁸⁶ Funds were also used to acquire the appropriate equipment of special schools, including computers and software. Further, personal equipment for children with disabilities was acquired and renovations of school buildings have taken place. Auxiliary staff was also recruited, and free transportation is provided to children with mental disabilities when a school is not in a child's educational region. Grants have been subsidized by the Parents' Association for the implementation of programs for children during non-working school time and teaching,¹⁸⁷ administrative and secretarial staff was employed to provide assistance to children with disabilities.¹⁸⁸

Further, the expenditure for development of education has been mostly dedicated to the construction of new school buildings for primary education and the improvements and repairs of school buildings of primary education with an approved budget of 6,910,000 Euros and 9,635,000 respectively.¹⁸⁹ The sum of the approved budget was 17,600,000 euros, with the remaining of the budget attributed to the purchase and equipment of student clubs, the equipment of the laboratories and technology workshops, the equipment of the workshops of home economics and the equipment for the implementation of all-day schools.¹⁹⁰ The figures in 2013 increased regarding the budget of the Ministry of Education from the real expenditure of 14,066,155 euros in 2012 to 17,600,000 approved budget of 2013.¹⁹¹ This marks a successful attempt of the government, in arguably demanding and troublesome financial times, to safeguard the social rights of the children and young persons as protected by Article 17 and to maintain the level of quality in the educational system.

¹⁸⁵ Annual Report by the Ministry of Education and Culture 2013, The Republic of Cyprus, pages 13 and 62.

¹⁸⁶ *Ibid*, page 20.

¹⁸⁷ Pancyprrian Confederation of School Parents <<http://www.goneisdemotikon.com/>>.

¹⁸⁸ Annual Report by the Ministry of Education and Culture 2013, page 20.

¹⁸⁹ *Ibid*, page 62.

¹⁹⁰ *Ibid*, page 62.

¹⁹¹ *Ibid*, page 62.

Further, the largest proportion of the budget of secondary education, totaling EUR 10,125,000 EUR in 2013, was dedicated to education which has an aim of promoting activities, measures and projects that will strengthen the effort to upgrade the quality of secondary education.¹⁹² Included for this purpose were development expenditure as above that were used to construct new school buildings and maintain and improve the existing ones, the improvement of technology related modules, the improvement of equipment in the laboratories and the infrastructure of school sports.¹⁹³ The regular expenditure covered the wages of teachers and other regular costs, totaling EUR 34 million.

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

The Cypriot legal order provides a safeguard to the protection of children with Law 165(I)/2000 Law on the provision of free special state aid,¹⁹⁴ Law 5(III)/2000 Convention on the Rights of the Child¹⁹⁵ and Law 119(I)/2000 which provides for the Prevention of Violence in the Family and Protection of Victim.¹⁹⁶

Article 6 of the Law 165(I)/2000¹⁹⁷ explicitly refers to Legal aid in cases concerning family affairs. According to Article 6(1)¹⁹⁸ for the purposes of this article proceedings before the Family Court are proceedings based on bilateral or multilateral conventions to which the Republic of Cyprus is a party¹⁹⁹ and proceedings concerning parental responsibility, child maintenance, recognition of a child, adoption, property disputes between the spouses and any other legal or family dispute.²⁰⁰ Further, Article 4 clarifies that legal aid is defined as assistance in deciding upon any legal matter that a person may take on his behalf or by providing aid by deciding these legal issues by representing him²⁰¹.

¹⁹² *Ibid*, p.64.

¹⁹³ *Ibid*.

¹⁹⁴ Law 165(I)/2000 Law on the Provision of Free Legal Aid.

¹⁹⁵ Law 5(III)/2000 Convention on the Rights of the Child.

¹⁹⁶ Law 119(I)/2000 Law which provides for the Prevention of Violence in the Family and Protection of Victim.

¹⁹⁷ Law 165(I)/2000 Law on the Provision of Free Legal Aid, Article 6.

¹⁹⁸ *Ibid*, Article 6 (1).

¹⁹⁹ *Ibid*, Article 6 (1) (a).

²⁰⁰ *Ibid*, Article 6 (1) (b).

²⁰¹ *Ibid*, Article 4.

The Social Insurance Services provide financial aid to orphan children under Article 40 Law No.199/1987 Law on Social Insurance²⁰². Orphan children are children under 18 years old who have lost either one or both of their parents or the parent they have been living with on the time of the parents' death.²⁰³ The aid they receive is 40% of the weekly amount of the basic insurable earnings and a supplementary sum equal to 50% of the supplementary widow's pension which was paid or would be paid for the death of the parent.²⁰⁴ The aid is receivable until a child reaches the age of 18 years old. According to statistics in July 2014, social insurance services had an annual expenditure for orphan children allowances for the year of 2013 EUR 4,249 million for 1,490 orphan children, which could be compared to the 2012 figure of EUR 4,357 million for 1,516 children.²⁰⁵ The figures demonstrate a decrease in the number of people receiving aid and the amount of the budget available for these grants.

Law 5(III)/2000 has transposed the Convention of the Rights of the Child in its entirety in February 2000.²⁰⁶ Consequently, the Republic of Cyprus is bound by the obligations of the Convention of the Rights of the Child.²⁰⁷ The obligation stemming Article 4 is of paramount importance as “with regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation”²⁰⁸. Further, Article 20 imposes the obligation by the state to provide special protection and assistance to a child temporarily deprived of their families' environment or in where it is not in their own best interest to remain in that environment.²⁰⁹ Article 23 ensures that mentally or physically disabled children should enjoy a full and decent life with the appropriate assistance subject to the available resources²¹⁰ and Article 24 ensures that every child should enjoy the highest attainable standard of health and facilities for the treatment of illnesses²¹¹. In addition, Article 26 ensures the right of children to benefit from social security

²⁰² Law No.199/1987 Law on Social Insurance, Article 40.

²⁰³ *Ibid*, Article 40 (1).

²⁰⁴ *Ibid*, Article 10 (a).

²⁰⁵ Statistics Concerning the Plans of Social Insurance Services, July 2014, page 5, available at <http://www.mlsi.gov.cy/>.

²⁰⁶ Law 5(III)/2000 Convention on the Rights of the Child.

²⁰⁷ Convention on the Rights of the Child UNGA Res 44/25 (20 November 1989).

²⁰⁸ Law 5(III)/2000 Convention on the Rights of the Child, Article 4.

²⁰⁹ *Ibid*, Article 20.

²¹⁰ *Ibid*, Article 23.

²¹¹ *Ibid*, Article 24.

and Article 27(3) imposes the obligation of the Republic of Cyprus to take appropriate measures to assist the parents and others responsible for the child so as to achieve a standard of living adequate for the child's physical, mental, spiritual, moral and social development.²¹²

Law 119(I)/2000 which Provides for the Prevention of Violence in the Family and Protection of Victim sets out a comprehensive framework for combatting and preventing violence in the family.²¹³ Article 31 of Law 119/2000 provides for the creation and establishment of a Protection Shelter for the purpose of providing safe stay for victims of violence and legal immunity²¹⁴. Moreover, Part VII of the Law 119(I)/2000²¹⁵ established a "Fund for the Victims of Violence" in Article 26(1) with the purpose of attaining and promoting the prevention of violence and protecting the violence victims.²¹⁶ Article 26(5) provides that this fund will be available for addressing urgent needs, finding accommodation for the victims, aid to victims of violence and other purposes which the Consultative Committee, as established by Article 27²¹⁷, sees fit.²¹⁸

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

Firstly, primary education for children of ages 5 and 8 months old until the age of 11 and 8 months is free for all children in Cyprus as set out in Article 6 in *Law 24(I)/1993 of Primary and Middle Education*²¹⁹ Further, all the books necessary are free from primary education until the end of secondary education.

Moreover, as mentioned above, public secondary education for students between the ages of 12 and 18 is divided into two educational cycles. Education is free on all stages and it is compulsory until the student completes the lower secondary cycle or fifteenth year of age, whichever occurs first.²²⁰

²¹² *Ibid*, Article 27(1).

²¹³ Law 119(I)/2000 Law which Provides for the Prevention of Violence in the Family and Protection of Victim.

²¹⁴ *Ibid*, Article.

²¹⁵ *Ibid*, Part VII.

²¹⁶ *Ibid*, Article 26(1).

²¹⁷ *Ibid*, Article 27.

²¹⁸ *Ibid*, Article 26(5).

²¹⁹ Law 24(I)/1993 of Primary and Middle Education, Article 6.

²²⁰ Annual Report by the Ministry of Education and Culture 2013, The Republic of Cyprus page 24.

There is a service of career services available to all students with an aim to develop students in a personal, social, education and professional level through activities such as seminars and one-to-one sessions with each student.²²¹

The Ministry of Education also provides educational assistance to Greek Children of the diaspora by sending books and providing free lessons in the Greek language in training centres abroad.²²²

Regarding encouraging regular school attendance by children in Cyprus, there are provisions in the School Web Program that hold a Record of absences of students, which is applied in High Schools.²²³ The School Web Program (ΔΙΑΣ) has been in operation since 2007, which is a Digital Learning Environment that promotes communication within and outside of the class, between teachers, students and guardians and at the same time provides access to information for the educational procedures and vast amount of educational material.²²⁴

Further, tertiary education at the University of Cyprus and at the Technological University of Cyprus is free.²²⁵ The Ministry of Education's policy is to expand the 8 schools and 22 departments of the University of Cyprus both in number of students and curricula by 2020.²²⁶

The University of Cyprus was established in 1989 and admitted its first students in 1992 to meet the intellectual needs of the Cypriot people. Ever since its establishment it been funded by the Government in every school for purposes of research and development.²²⁷ It has the following faculties offering a range of programmes: Faculty of Humanities, Medical School, Faculty of Law, Faculty of Social Sciences, Faculty of Pure and applied Sciences, Faculty of Social Sciences and Education, Faculty of Economics and Management, Faculty of Engineering and Faculty of Letters²²⁸. The 202 Plan that is set out in the Annual Report by the Ministry of Culture and education has set out a strategic plan for the expansion of the school campus, the addition new

²²¹ *Ibid*, , page 30.

²²² *Ibid*, page 22.

²²³ *Ibid*, page 268.

²²⁴ *Ibid*, page 268.

²²⁵ *Ibid*, page 43.

²²⁶ *Ibid*.

²²⁷ *Ibid*, page 44.

²²⁸ University of Cyprus Website: <https://www.ucy.ac.cy/en/faculties-and-departments> accessed on 29 May 2015.

programmes of study in 9 different schools and has set out a target of 10,000 students enrolled and 1,000 academic professionals to be employed.²²⁹

The Cyprus University of Technology has been established in 2003 and accepted its first students in 2007 and it is also funded by the government.²³⁰ The Cyprus University of Technology offers undergraduate programmes, postgraduate as well as doctoral programmes. The University has the following Faculties: Faculty of Geotechnical Sciences and Environmental Management, Faculty of Management and Economics, Faculty of Communication and Media Studies, Faculty of Health Sciences, Faculty of Fine and Applied Arts and Faculty of Engineering and Technology.²³¹

The private Universities currently functioning in the Republic of Cyprus are: Frederick University, European University of Cyprus, and the University of Nicosia, all of which started functioning in October 2007; the newly established Neapolis University- Cyprus opened its doors in September 2010.²³² These universities set out their fee structure privately and the yearly prices differ depending whether the programme of studies is undergraduate or postgraduate.

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue

Youth unemployment has sharply increased over a short period of time in Cyprus due to the eruption of the economic crisis and consequent austerity measures adopted.²³³ In December 2007, Cyprus had an unemployment rate of 3.8%.

Youth Unemployment according to the National Action Plan for Youth Unemployment rate has cumulatively been increased in the period 2007-2013 28.7%, which is nearly three times the increase that was recorded in the adult unemployment rate which was 10.4%.²³⁴

According to the guidelines set out in the bail-in agreement the essence of combatting youth unemployment is the implementation of policies and the coming into force of instruments for

²²⁹ *Ibid.*

²³⁰ *Ibid.*, page 46.

²³¹ Cyprus University of Technology Website: <https://www.cut.ac.cy/faculties/?languageId=2>, accessed on 29 May 2015.

²³² Annual Report by the Ministry of Education and Culture 2013, The Republic of Cyprus, page 36.

²³³ Memorandum of Understanding on Specific Economic Policy Conditionality, *supra* n. 4, page 35.

²³⁴ National Action Plan For Youth Employment in Cyprus (2014- 2017) 11 December 2014, <http://www.structuralfunds.org.cy/>, accessed on 21 May 2015, page 17.

income support after the expiration of unemployment benefits.²³⁵ Thus, the Cabinet approved the National Action Plan for Youth Employment in December 2014 with an overall budget of EUR 47,230 million.²³⁶ The action plan focuses on seven priorities: the implementation of EU Youth Guarantee, monitoring and assessment on the employment market, enforcement of the effectiveness of the employment services, promotion of the small and medium enterprises, prevention measures against dropping out of school and policies to increase youth inclusion in the job market.²³⁷

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

The bail-in agreement provides for measures that have had an impact on education. For example, a provision requires a reduction in total outlays for social transfers by at least EUR 113 million through the abolition of schemes such as mother allowances, family allowances or educational allowances.²³⁸ These changes have been proposed by imposing stricter criteria for example in the *Law No.167(I)/2002 Law on Child Allowance*²³⁹ the changes that took place in 2012 with the Law No. 180(I)/2012 Law which ratifies the previous act by adding Article 2 which imposes specific income criteria.²⁴⁰

In addition to the above, a measure that was set out in the agreement was to provide a reduction in total outlays for social transfers by at least EUR 28.5 million to be achieved through streamlining and better targeting of child benefits and educational grants, and abolition of social cohesion benefits provided by the welfare services.²⁴¹ The bail-in agreement has had a harsh impact on government benefits as there was a large cutback on the government budget of child benefits and other social transfers by at least EUR 28.5 million and the social cohesion benefits by the welfare services were abolished²⁴² as mentioned above Law No,180(I)/2012 Law which

²³⁵ Memorandum of Understanding on Specific Economic Policy Conditionality, *supra* n. 4, page 25.

²³⁶ National Action Plan For Youth Employment in Cyprus (2014- 2017) 11 December 2014, <http://www.structuralfunds.org.cy/>, accessed on 25 May 2015.

²³⁷ *Ibid*, page 34.

²³⁸ Memorandum of Understanding on Specific Economic Policy Conditionality, *supra* n. 4, page 32.

²³⁹ Law No.167(I)/2002 Law on Child Allowance.

²⁴⁰ Law No.180(I)/2012 Law which ratifies Law on Child Allowance, Article 2.

²⁴¹ Memorandum of Understanding on Specific Economic Policy Conditionality, *supra* n. 4, page 36.

²⁴² Memorandum of Understanding on Specific Economic Policy Conditionality, *supra* n. 4, page 37.

ratifies the Law on Child Allowance²⁴³ and the Law No168(I)2012 Law which provides for the Reduction of Remuneration and of Pensions of Dignitaries, Employees and Pensioners of the Government Agency and the Broader Public Sector.²⁴⁴ As many Cypriots have lost their jobs because of the economic crisis, the state has tried to help with the amount available the families in need.

Further, another fiscal measure was to introduce a structural reform in the educational system, quoting:

The removal of 1:1.5 teaching time ratio from evening schools of general and technical and vocational education, the elimination of teaching time concession to teachers for being placed in two or more educational districts, the elimination of mentoring components for pre-service and in-service training for newly appointed teachers and the reduction of the cost of afternoon and evening programmes.²⁴⁵

This measure is to be implemented by the introduction of the new system of Appointment of Teachers as mentioned above.²⁴⁶

In addition, the Ministry of Education and Culture was included in the Public Administration review in the bail-in memorandum. The review is undertaken by the World Bank and the UK public administration, whose task is to review the appropriate system of remuneration and working conditions and the introduction of a new performance based appraisal system in the public sector which will link performance with the remuneration system.²⁴⁷ By October 2014 these reviews came to an end and the Ministry of Education has finalised a comprehensive proposal to be voted²⁴⁸.

Further, labour market reforms ought to take place to:

²⁴³ Law No.180(I)/2012 Law which ratifies Law on Child Allowance.

²⁴⁴ Law No168(I)2012 Law which provides for the Reduction of Remuneration and of Pensions of Dignitaries, Employees and Pensioners of the Government Agency and the Broader Public Sector.

²⁴⁵ *Ibid*, page 37.

²⁴⁶ New Appointment System in Education” Proposal by the Ministry of Education and Culture, March 2015. http://www.moec.gov.cy/archeia/2014_nees_protaseis_paideia/2014_11_07_protasi_neo_schedio_diorismon_ekpaidefsi.pdf , accessed 22 May 2015.

²⁴⁷ Memorandum of Understanding on Specific Economic Policy Conditionality, *supra* n. 4, page 21.

²⁴⁸ New Formation of the System of Evaluation of the Educational Work and the Educators, Proposal By the Ministry of Education and Culture, November 2014.

Mitigate the impact of the crisis on employment, limit the occurrence of long-term and youth unemployment, facilitate occupational mobility and contribute to improving the future resilience of the Cypriot economy in the face of adverse economic shocks.²⁴⁹

The agreement sets out three objectives: first the reform of the system of wage indexation in a way that it improves competitiveness and allows wage formation to better reflect productivity; second, to implement a comprehensive reform of public assistance with an aim of achieving the balance between public assistance and incentives to take up work, target income support to the most vulnerable and third to help attenuate adverse competitiveness and employment effects by linking any change in the minimum wage to economic conditions. According to the guidelines set in the bail-in agreement,²⁵⁰ the essence to combatting youth unemployment is the activation of policies and the instruments for income support after the expiration of unemployment benefits. The National Action Plan for Youth as noted above has been approved by the Cabinet in December 2014.²⁵¹

6. OTHER ISSUES

Are there any other relevant issues regarding the ESC, and not covered by the questions above, in your MS? Please describe the applicable legal framework and explain how it is not in compliance with the ESC

Based on the conclusions of the ESC on January 2013 a Cypriot law was contrary to article 26 of the ESC as it excluded from protection against dismissal employees who have not completed a continuous period of 26 weeks with their employer regardless of their qualifications.²⁵² According to article 3(1) of Law 24/1967 on termination of employment,²⁵³ the employee has

²⁴⁹ Memorandum of Understanding on Specific Economic Policy Conditionality, *supra* n. 4, page 24.

²⁵⁰ *Ibid*, page 25.

²⁵¹ National Action Plan For Youth Employment in Cyprus (2014- 2017) 11 December 2014, <http://www.structuralfunds.org.cy/>, accessed on 21 May 2015

²⁵² Council of Europe, European Social Charter (revised), European Committee of Social Rights Conclusions 2012 (CYPRUS), January 2013.

²⁵³ Law 24/1967 on termination of employment.

the right to be compensated for the termination of employment by the employer after 26 weeks of employment.²⁵⁴

Equally important is the landmark case of the Supreme Court of Cyprus regarding the rights of 52 depositors of Laiki Bank and the Bank of Cyprus and the effect of the 'bail-in' decrees issued by the Central Bank in its Capacity as Resolution Authority for credit institutions on March 29 2013.²⁵⁵ By a majority of seven to two, the Supreme Court of Cyprus issued on 7 June 2013 its judgment regarding the administrative recourses filed against the Banks' Resolution Decrees dismissing them as non-admissible. The Court considered that the Decrees did not regulate the relationship between the state and individuals but that it related to the Cyprus Popular Bank Public Co Ltd as such and the sale of certain assets of the Bank, an act which falls under private law principles. The administrative judicial review application was thus rejected.

Besides, the General Court rejected in October 2014 a case brought by Cypriot citizens claiming the annulment of the Eurogroup decision of March 2013 which included a haircut on bank deposits on the ground that it exceeded the powers conferred by the Treaty on European Union; but also that it breached the right to property.²⁵⁶ Another six applications are pending before the CJEU, requesting the annulment of the Eurogroup decision and the compensation of the loss of the applicants caused by the signing of the MoU in April 2014.²⁵⁷ Five more applications are pending which ask for compensation for the loss of money in the accounts because of the premature imposition of a bail-in tool on deposits.²⁵⁸

²⁵⁴ *Ibid*, Article 3.1: "Όταν, κατά ή μετά την έναρξιν της ισχύος του παρόντος άρθρου, ο εργοδότης τερματίζει δι' οιονδήποτε λόγον άλλον ή των εν τω άρθρω 5 εκτιθεμένων λόγων, την απασχόλησιν εργοδοτούμένου ο οποίος έχει απασχοληθή συνεχώς υπ' αυτού επί είκοσι εξ τουλάχιστον εβδομάδας, ο εργοδοτούμενος κέκτηται δικαίωμα εις αποζημίωσιν..."

²⁵⁵ Supreme Court of Cyprus, Joined Appeals No. 551/2013, 553/2013, 555/2013, 556/2013, 557/2013, 558/2013, 559/2013, 560/2013, 561/2013, 562/2013, 563/2013, 564 / 2013. 565/2013, 566/2013, 567/2013, 569/2013, 570/2013, 571/2013, 575/2013, 581/2013, 582/2013, 583/2013, 586/2013, 587/2013, 590 / 2013, 591/2013, 592/2013, 593/2013, 594/2013, 595/2013, 596/2013, 597/2013, 598/2013, 599/2013, 600/2013, 601/2013, 602/2013, 603/2013, 604/2013, 605/2013, 606/2013, 607/2013, 609/2013, 610/2013, 611/2013, 612/2013, 613/2013, 614/2013, 615/2013, 616 / 2013, 617/2013, 618/2013, 619/2013, 620/2013, 670/2013. The Decrees derived from the Law 17(1)/2013 passed on 22nd of March.

²⁵⁶ Case T-327/13, Konstantinos Mallis and Elli Konstantinou Malli v European Commission and European Central Bank.

²⁵⁷ Court of Justice of the European Union, T-289/13 - T-294/13.

²⁵⁸ Court of Justice of the European Union, T-149/14 - T-152/14.

Another dispute arose in October 2014, after Cyprus's Central Bank decided to place FBME's Cyprus branch under administration and sell off its assets.²⁵⁹ The bank is currently seeking damages as well as the withdrawal of the Special Resolution Decree of the Central Bank of Cyprus that brought FBME in this position.

7. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

The Republic of Cyprus has accepted the Additional Protocol providing for a system of collective complaints, but has not yet made a declaration enabling national NGOs to submit collective complaints. However, a complaint was made in February 2013²⁶⁰ but the Committee decided to strike out the case from the list of complaints in May 2014.²⁶¹

8. CONCLUSIONS

Despite the fact that the letter of the law in Cyprus robustly protects socio-economic rights, the situation on the ground is different. The series of austerity measures implemented, particularly as per March 2013, have led a large proportion of the Cypriot population to the brink of unemployment and poverty. While the institutional framework for the protection of the rights enshrined in the ESC exists in Cyprus, its implementation leaves a lot to be desired.

²⁵⁹ FBME Limited, website: <http://www.fbmeltd.com/icc-arbitration-panel-formed/>.

²⁶⁰ European Committee on Social Rights, Decision to strike out, 12 May 2014, Complaint 97/2013 Association for the Protection of All Children (APPROACH) Ltd v. Cyprus.

²⁶¹ Council of Europe, European Committee on Social Rights No. 97/2013 Association for the Protection of All Children (APPROACH) Ltd v. Cyprus.

9. TABLES OF CASE LAW AND LEGISLATION

9.1. Cases

- Association for the Protection of all Children (APPROACH) Ltd v. Cyprus Complaint No. 97/2013.
- Case T-327/13, Konstantinos Mallis and Elli Konstantinou Malli v European Commission and European Central Bank.
- Court of Justice of the European Union, T-289/13 - T-294/13.
- Court of Justice of the European Union, T-149/14 - T-152/14.
- Supreme Court of Cyprus, Joined Appeals No. 551/2013, 553/2013, 555/2013, 556/2013, 557/2013, 558/2013, 559/2013, 560/2013, 561/2013, 562/2013, 563/2013, 564 / 2013, 565/2013, 566/2013, 567/2013, 569/2013, 570/2013, 571/2013, 575/2013, 581/2013, 582/2013, 583/2013, 586/2013, 587/2013, 590 / 2013, 591/2013, 592/2013, 593/2013, 594/2013, 595/2013, 596/2013, 597/2013, 598/2013, 599/2013, 600/2013, 601/2013, 602/2013, 603/2013, 604/2013, 605/2013, 606/2013, 607/2013, 609/2013, 610/2013, 611/2013, 612/2013, 613/2013, 614/2013, 615/2013, 616 / 2013, 617/2013, 618/2013, 619/2013, 620/2013, 670/2013.

9.2. Legislation

- Act No. 63(I) of 1997 to amend the Act on compulsory insurance for employers liability in the event of occupational accidents; *Epissimos ephimeris tis Dimocratias, first supplement, 1997-07-18, No. 3168, pp. 1251-125.*
- Act on the obligatory insurance of employers in case of responsibility for an accident at work 1989. No. 174, *Episemos Ephemeris Tes Demokratias, 1989-11-10, No. 2456, pp. 3639-3648*
http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=CYP&p_classification=15.03&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY.
- The Law 168(I)/2012.

- The protection of Wages Law 35(I)/2007.
- Law on Minimum Wage (Chapter 183) and Decree 180/2012 on Minimum Wage.
- Law 109 (I) / 2014 on Guaranteed Minimum Income and generally on Social Benefits of 2014.
- Article 5(1) of Law 109 (I) / 2014 on Guaranteed Minimum Income and generally on Social Benefits of 2014.
- The Public Assistance and Services Law of 2006 (95 (I) / 2006).
- Article 2, The Public Assistance and Services Law of 2006 (95 (I) / 2006).
- Law 21(1)/2013 on the prohibition of filling vacancies in the public and greater public sector (Special Provisions).
- The Training and Education of Children with Special Needs' Law of 1999, Art.33.
- The Law providing for Persons with Disabilities L.127(I)/2000.
- Law No. 17 of 1988 regarding the Engagement of Trained Blind Telephone Operators.
- Law No. 1 of 1990, The Public Service Law.
- Public Assistance and Services Law of 2006, L. 95(I)/2006 section 8(ζ).
- Streets and Building (Amendment) Law No 97(I)/1992 section 8(1)(ε).
- Protection of Young Persons at Work Law No.48(I)/2001.
- Protection of Young Person during Employment Law as amended by Law No.15 (I) of 2012.
- ¹ Prevention and Combating of Sexual Abuse, Sexual Exploitation of Children and Child Pornography Act of 2014 Law 91(I)/2014.
- Law 24/1967 on termination of employment.
- European Committee on Social Rights, Decision to strike out, 12 May 2014, Complaint 97/2013 Association for the Protection of All Children (APPROACH) Ltd v. Cyprus.
- Council of Europe, European Committee on Social Rights No. 97/2013 Association for the Protection of All Children (APPROACH) Ltd v. Cyprus.

9.2.1. Secondary Legislation. Governmental Documents

- Cyprus: Pension System and Pension Projections.
- Department for Social Inclusion of Persons With Disabilities , Severe Motor Disability Allowance Scheme.
- Department for Social Inclusion of Persons With Disabilities Care allowance scheme provides for quadriplegic persons.
- Government of the Republic of Cyprus, Second Report on Article 7 of the Revised European Social Charter, 'The Right of Children and Young Persons to Protection, Ref.N.: 4.17.07.5.7.
- Ministry of Labour, Welfare and Social Insurance, 'Social Insurance Services: Social Insurance Law'.
- Regulation No. 285(III) of 2010 on Social Insurance (Occupational Diseases), *Episimi Efimeris*, 2010-07-09, Part III(I), No. 4437, pp. 1682-1685.
- Social Insurance Services, Cyprus.
- Social Pension Law, Republic of Cyprus.
- The Constitution of Cyprus.
- ESC, 11th National Report on the implementation of the European Social Charter submitted by the Government of Cyprus for the period 01/01/2009 – 31/12/2012, reported on 22/05/2014.
- Industrial Code Relations, Signed at the Ministry of Labour and Social Insurance, in Nicosia, on the 25th April 1977.
- The Role of Social Partners, 'The composition of the employers' and trade union organisations.
- The minimum wage order 180/ 2012 in Cyprus.
- Statistical Service of the Republic of Cyprus, Latest Figures: Registered Unemployed People, March 2013.

- Statistical Service of the Republic of Cyprus, Latest Figures: Registered Unemployed People, April 2013.
- Statistical Service of the Republic of Cyprus, Latest Figures: Registered Unemployed People, April 2012.
- Statistical Service of the Republic of Cyprus, Latest Figures: Registered Unemployed People, February 2015.
- The Government of Cyprus. 12th National Report on the Implementation of the European Social Charter, 27 February 2015 page1.
- Memorandum of Understanding on Specific Economic Policy Conditionality, available at <http://www.mof.gov.cy/mof/mof.nsf/final%20MOUf.pdf>.
- Survey on Income and Living Conditions 2010-2013, Ministry of Finance Statistical Service, General Social Statistics, Series II, Number 6, page 4.
- Survey on Income and Living Conditions 2010-2013, Ministry of Finance Statistical Service, General Social Statistics, Series II, Number 6.
- Labour Force Survey of 2002.
- The Government of Cyprus. 12th National Report on the Implementation of the European Social Charter, 27 February 2015 page 1.
- The Government of Cyprus. 12th National Report on the Implementation of the European Social Charter, 27 February 2015.
- The Safety and Health at Work (Protection of Young People) Regulations of 2012 (Reg.No. 77/2012) (APPENDIX 2) published in the Official Gazette of the Republic 9.3.2012.
- The Government of Cyprus. 11th National Report on the Implementation of the European Social Charter, January 2012.
- Page 5 GOVERNMENT OF THE REPUBLIC OF CYPRUS.
- Second Report on Article 7 of the Revised European Social Charter.

- THE RIGHT OF CHILDREN AND YOUNG PERSONS TO PROTECTION
(Reference Period: 1.1.2003 to 31.12.2004).

10. BIBLIOGRAPHY AND ONLINE RESOURCES

10.1. Websites

- Accepted Provisions of the Revised European Social Charter, 17 March 2015, http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ProvisionTableRevMarch2015_en.pdf.
- Department for Social Inclusion of Persons With Disabilities Care allowance scheme for paraplegic persons, http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd12_en/dsipd12_en?OpenDocument.
- Department for Social Inclusion of Persons With Disabilities Mobility Allowance, http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd14_en/dsipd14_en?OpenDocument.
- Department for Social Inclusion of Persons With Disabilities Special allowance for blind persons, http://www.mlsi.gov.cy/mlsi/dsid/dsid.nsf/dsipd13_en/dsipd13_en?OpenDocument
- All the historical review of those organisations can be found in the follow link of the ministry of Labour, http://www.mlsi.gov.cy/mlsi/dlr/dlr.nsf/page05_gr/page05_gr?OpenDocument&print, <accessed 20/03/2015>.
- Strike ringer in public and semi-public sector in Friday, <http://www.philenews.com/el-gr/koinonia-eidiseis/160/218281/apergiakos-kloios-se-dimosio-kai-imidimosio-tomea-tin-paraskevi>, <accessed 09/04/2015>.
- Strike ringer in public and semi-public sector in Friday, <http://www.philenews.com/el-gr/koinonia-eidiseis/160/218281/apergiakos-kloios-se-dimosio-kai-imidimosio-tomea-tin-paraskevi>, <accessed 09/04/2015>.

- Ministry of Labour, Welfare and Social Insurance, http://www.mlsi.gov.cy/mlsi/mlsi.nsf/faq_gr/faq_gr?OpenDocument, accessed on March 2015.
- Arhi Anaptiksis Anthropinou Dinamikou (ANAD): Cyprus Human Resources Development Authority, <http://www.anad.org.cy/>.
- Department of Labour of the Republic of Cyprus, <http://www.pescps.dl.mlsi.gov.cy/CPSWeb/f001w.jsp>, accessed on March 2015.
- Politis Online Newspaper, <http://www.politis-news.com/cgi-bin/hweb?-A=241736&-V=articles>, 26.7.2013, accessed on 7 April 2015.
- ¹Human Resource Development Authority of the Republic of Cyprus, available at: <http://www.hrdauth.org.cy/easyconsole.cfm?id=1>.
- <http://www.mlsi.gov.cy/mlsi/sws/sws.nsf/All/8ADFCE3C40B256B0C2256E5F002E83A8?OpenDocument> Memorandum of Understanding on Specific Economic Policy Conditionality, available at <http://www.mof.gov.cy/mof/mof.nsf/final%20MOUf.pdf>.
- To Vima Newspaper, <http://www.tovima.gr/finance/article/?aid=524224>.
- International Council for Education of People with Visual Impairment, European Region: National Page of Cyprus, available at: <http://www.icevi-europe.org/national/cy.html>.
- <http://eid-scholi-kofon-lef.schools.ac.cy/>.
- School of deaf: National Page of Cyprus, available at: <http://eid-scholi-kofon-lef.schools.ac.cy/data/uploads/scole-kopon-final-l.r..pdf#page=25>.
- The impact of the current financial crisis on the EBU member organisations: A report on the meeting of the EBU commission for liaising with the EU, 28th-30th of September 2012, Athens, available at: http://www.euroblind.org/newsletter/online/2012/november_december/newsletter/online/en/newsletter/feature/nr/1570/.

- Assessing the Impact of European Governments' Austerity plans on the Rights of People with Disabilities: Key Findings, available at: http://www.efc.be/programmes_services/resources/Documents/Austerity2012.PDF.
- FBME Limited, website: <http://www.fbmeltd.com/icc-arbitration-panel-formed/>.

10.2. Articles

- Golna C, Pashardes P, Allin S, Theodorou M, Merkur S, Mossialos E., Health care systems in transition: Cyprus, (Copenhagen, WHO Regional Office for Europe on behalf of the European Observatory on Health Systems and Policies, 2004).
- Panos Pashardes, 'Cyprus Minimum Income Schemes A Study of National Policies', (European Commission DG Employment, Social Affairs and Equal Opportunities, April 2009).
- K. Chrysostomides 'Cyprus bailout: the test of illegality', <http://cyprus-mail.com/2013/09/07/cyprus-bailout-the-test-of-illegality/>, <accessed 09/04/2015>.
- Niklas Bruun, 'Social Policy and Labour Law during Austerity in the European Union' SIEPS, JANUARY. ISSUE 2015, page 7.
- Sokratis Ioakim, <http://www.ant1iwo.com/news/oikonomia/article/53936/h-apokoph-misuoy-gia-kaue-ergazomeno-log/>, accessed 09/04/2015.
- All the types of taxation that have been adopted by Cyprus Government in the journal of Stelios A. Violaris 'The new tax data in view of the instruments of structural reforms and the final Memorandum of Understanding', <http://www.pwc.com.cy/en/articles/2013/new-regulations-under-mou.jhtml>, <accessed 09/04/2015>.
- Christos Stelios Ioannou Foundation, available at: <http://www.ioannoufoundation.org/main/8,0,0,0-Philosophy-Principles.aspx>.
- H Hauben, M Coucheir, J Spooren, D McAnaney, C Delfosse, 'Assessing the impact of European governments' austerity plans on the rights of people with disabilities' European Foundation Centre, October 2012.

- Miguel Angel Cabra de Luna, Co-Chair of the European Consortium of Foundations on Human Rights and People with Disabilities.
- Adrienne Morley, “More Internet Safety for Children”, 09/02/2011 <<http://www.cyprusnewsreport.com/?q=node/3751>>.
- “Austerity measures may violate human rights” 2 November 2012 United Nations Human Rights, Office of the High Commissioner <http://www.ohchr.org/EN/NewsEvents/Pages/AusterityMeasures.aspx>.

10.3. European Union and International Documents

- Council of Europe, Cyprus and the European Social Charter.
- Council of Europe, Report of Government of Cyprus for Article 13.
- Economic Policy Committee and Directorate-General for Economic and Financial affairs, PensionsSchemesandProjectionModelsinEU-25MemberStates, Cyprus, 191, 195 (European Economy Occasional Papers, Number35 -November2007).
- European Commission, Cyprus: Pension System and Pension Projections, <http://ec.europa.eu/economy_finance/publications/publication7024_en.pdf>.
- European Commission, Employment, Social Affairs & Inclusion, Your social security rights in Cyprus, (European Union, July 2013) <http://ec.europa.eu/employment_social/empl_portal/SSRinEU/Your%20social%20security%20rights%20in%20Cyprus_en.pdf>.
- European Committee of Social Rights, European Social Charter (revised): Bulgaria, Cyprus, Estonia, France, Ireland, Council of Europe, 2004 Conclusions http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Cyprus2004_en.pdf.
- European Committee of Social Rights Conclusions, European Social Charter, Addendum to the 10th National Report on the implementation of the Revised.

- European Social Charter submitted by The Government of Cyprus, (Articles 13 and 14 for the period of 01/01/2008 – 31/12/2011) Cycle 2013 (European Committee of Social Rights Conclusions, 19/07/2013).
- European Social Charter (revised) European Committee of Social Rights Conclusions 2011, Articles 7, 8, 19 and 27 of the Revised Charter (CYPRUS), 8,(January 2012)
- European Social Charter (revised), European Committee of Social Rights Conclusions 2009 (CYPRUS) Articles 3, 11, 12, 13 and 14 of the Revised Charter, (January 2010)
- European Social Charter, European Committee of Social Rights Conclusions 2013 (CHYPRE), November 2014.
- National Activity Report Cyprus, Anti-Discrimination and Diversity Training, (2008).
- *Convention concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking* 1995, Article 5.
- Council of Europe, European Social Charter (Revised), 3 May 1996, ETS 163.
- Council of Europe, Acceptance of provisions of the Revised European Social Charter (1996), Updated: 17 March 2015.
- Statement of Interpretation on Article 30, see in particular Conclusions 2003, France, p. 214.
- Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, Official EN Journal of the European Union L 352/1 of 24.12.2013.
- Eurogroup Statement on Cyprus, 25 March 2013.
- UN Convention on the Rights of Persons with Disabilities (UNCRPD) Article 1.
- Council of Europe, “Rights of people with disabilities: Fact sheet on Article 15 of the Revised European Social Charter”.
- 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) 738 final of the 26th November 2007.

- Annual Report of ECRI's Activities 2011 (CRI(2012)23).
- Carmen Quintanilla Barba 'Committee on Equality and Non-Discrimination: Equality and inclusion for people with disabilities', draft resolution and draft recommendation adopted unanimously by the Committee on 3 December 2014 in Paris.
- The Safety and Health at Work (Protection of Young People) Regulations of 2012 (Reg.No. 77/2012).
- Report on the European Social Charter- January 2012 European Committee on Social Rights- conclusions on Cyprus, Article 7,8,17 and 27 of the Revised Charter.
- Protection of Young Persons Regulations 78/2012.
- Occupational Safety and Health Directive 94/33/EC.
- The Protection of Young Persons at Work Regulations of 2012, (No. 78/2012) (APPENDIX 3).
- Report on the European Social Charter- January 2012 European Committee on Social Rights- conclusions on Cyprus, Article 7,8,17 and 27 of the Revised Charter.
- Safety and Health at Work (Protection of Young People) Regulations of 2012 (Reg. No.77/2012).
- Report on austerity measures and economic and social rights" United Nations Human Rights, Office of the High Commissioner.
- Council of Europe, European Social Charter (revised), European Committee of Social Rights Conclusions 2012 (CYPRUS), January 2013.

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1. INTRODUCTION

Finland became member of the Council of Europe in 1989. It had initially ratified the European Social Charter (ESC) on 29.04.1991 and later ratified the Revised European Social Charter (RESC) on 21.06.2002, accepting 88 of the 98 paragraphs of the Revised Charter. In addition, Finland ratified the Additional Protocol providing for a system of Collective Complaints on 17.07.1998. So far, Finland is the only state that has made a declaration enabling national NGOs to submit collective complaints.¹

The European Social Charter provides for the protection of social rights as a single complex of indispensable rights. However, current report makes emphasis on those provisions being most vulnerable towards austerity measures taken to reply the financial crisis. The report aims to examine the extent of implementation of provisions provided by the Articles 3, 5, 6, 15, 17 and 30 of the RESC and the state of Collective Complaints in Finland. This report is specifically focused on the impact of financial crisis started in 2008 on the implementation of social rights protected by the RESC. Therefore, in this context emphasis is given to measures taken to tackle the financial crisis and their respective impact.

Taking into consideration the latest periodic reports on the respective above-mentioned Articles, the European Committee of Social Rights have found the situation in Finland to be in conformity with the most of them.

Even though the impact of financial crisis to Finland is to some extent less than to some other countries in Europe, it brought to appropriate changes. It is also worth mentioning that when 2008 financial crisis started Finland was just in position of recovering from 1990th crisis having more significant role.² Nevertheless, if in 2008 the budget and GDP indicators were equal to EUR 8,090 million and 4.2%, respectively, in 2013, the indicators were already EUR - 5,122 million and -2.1%.³

¹ Declaration contained in a letter from the President of Finland, dated 21 August 1998, registered at the Secretariat General on 26 August 1998.

² Mikael Nygård, Verity Campbell-Barr, Nicole Krüger The financial crisis and recent family policy reforms in Finland, Germany and the United Kingdom in *Journal of Comparative Social Work* 2013/2.

³ Statistics Finland, Government Finance.

The report is structured in a way that each of the above mentioned Articles is analysed in a separate chapter. Each chapter provides information on how the respective provision is incorporated in a national legislation, how their implementation is exercised and how these processes are monitored. Further, the observation of recent changes is provided with emphasis given to whether the changes are related to a financial crisis and what outcomes they have brought to so far.

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

2.1.1. Article 5 ESC Right to organise

In compliance with the Revised European Social Charter Article 5 it is enacted in the Finnish Employment Contracts Act (55/2001) Chapter 13 Section 1 that employers and employees have the right to belong to associations and to be active in them. They also have the right to establish lawful associations. Employers and employees are likewise free not to belong to any of the associations referred to above. Any prevention or restriction of this right or freedom is prohibited. Participating or not participating in the trade union activities or lawful industrial actions are therefore not acceptable grounds for dismissal or discrimination in the working life. The act also stipulates that any agreement contrary to the freedom of association is null and void.⁴ The provision complements the general freedom of assembly and freedom of association regulated in Section 13 of the Constitution of Finland (731/1999).⁵

2.1.1.1. Trade union activities

According to the Chapter 13 Section 2 of the Employment Contracts Act the employees and their organizations are allowed to use suitable facilities under the employer's control free of charge during breaks and outside working hours in order to arrange employment issues and

⁴ The breach against the freedom of association provided by the concept of the social dialogue can lead to liability for compensation provided in the Employment Contracts Act Chapter 12 Section 1.

⁵ The breach against the general freedom of association is criminalized in the Finnish Criminal Code (39/1889) Chapter 47 Section 5.

matters forming part of trade unions. The access to the workplace for a trade union does not include obligations for the employer to provide facilities for the political or leisure activities of the employees. Exercise of the right of assembly must not have any negative impact on the employer's operations.⁶

The trade union density in Finland is high; three-quarters of employees belong to unions.⁷ Individual unions, which have considerable autonomy, are organised in three confederations, broadly along occupational and educational lines. These are the Central Organisation of Finnish Trade Unions SAK, the Finnish Confederation of Salaried Employees STTK and the Confederation of Unions for Academic Professionals in Finland AKAVA.⁸ The private sector employers' organisation in Finland is the Confederation of Finnish Industries EK.⁹ The public sector's employers' organisations are Local Government Employers KT, Office for the Government as Employer VTML and Church of Finland Negotiating Commission KiT.¹⁰

2.1.1.2. Representativeness

Employee representation at the working places in Finland is provided through the trade unions and their high level of membership. According to Section 8 of the Act on Co-operation within Undertakings (334/2007), the representatives of the personnel groups are either shop stewards elected in accordance with the relevant collective agreement or elected representatives as referred to in the Employment Contracts Act.¹¹ The status of the representatives is laid down in the relevant collective agreement. According to Chapter 13 Section 3 of Employment Contract Act the representatives are entitled to any information they require to perform their functions and to sufficient release from work obligations as well as to be compensated by their employer for any loss of earnings resulting from their position.

⁶ Tiitinen, Kari-Pekka – Kröger Tarja: Työsopimussoikeus. Talentum. Helsinki 2012 p.80.

⁷ Figure: Membership in trade unions and employment funds 2002-2013: Ministry of Employment and the Economy: Working Life barometers (<http://www.findikaattori.fi/en/36>) (access: 12.03.2015).

⁸ SAK has 21, STTK has 17 and AKAVA has 35 member federations according to their homepages 12.04.2015

⁹ EK has 27 member federations, which mostly negotiate their own collective agreements (<http://ek.fi/en/>) 12.04.2015.

¹⁰ Saloheimo Jorma: Työ- ja virkaehtosopimussoikeus. Talentum. Helsinki 2012 p.13.

¹¹ Section 3 of Chapter 13 of the Employment Contracts Act stipulates that employees who, in their place of employment, do not have a trade union representative (a shop steward) referred to in a collective agreement applicable to the employer under the Collective Agreements Act may elect their own representative.

2.1.2. Article 6 ESC Right to bargain collectively

2.1.2.1. *Joint consultation*

At the enterprise level the employer in Finland has an obligation to negotiate with the employees before making decisions affecting the personnel. Joint consultation as a form of the co-operation negotiation procedure regulated in the collective agreements or in the Act on Co-operation within Undertakings¹² takes place between the employee, whom the matter handled in the co-operation negotiations concerns and his superior or the representative of the personnel group as well as the employer's representative competent in the matter handled.¹³ When affecting a group of employees in general, the issue must be handled between the employer and the representative of the said group. When affecting several groups of employees, the issue must be handled in a joint meeting where all groups are represented.¹⁴ The most important matters that fall within the scope of the negotiation obligation are collective redundancies, lay-offs or reductions in working time. The obligation to negotiate applies to undertakings normally employing at least 20 persons. The Co-operation Act stipulates that some issues, such as questions considering co-operation training, work rules, suggestion schemes, company housing and social issues should be solved with a view of concluding a written agreement. These agreements may be fixed-term or open-ended and they are binding on the employer as well as on those employees whose personnel group representative has concluded the agreement.¹⁵

2.1.2.2. *Negotiation procedures*

The collective agreement system is a built on principle of the freedom to organize and form trade unions regulated in the Employment Contracts Act as well as the negotiation relationship established by the exercise of this freedom.¹⁶ The rights and obligations of the parties bound by

¹² The Act on Co-operation within Undertaking regulates the joint consultation in the private sector while the participation in the public sector is regulated in the Act on Co-operation in Civil Service Departments and Government Institutions (Laki yhteistoiminnasta valtion virastoissa ja laitoksissa 1233/2013 (free translation)).

¹³ Act on Co-operation within Undertakings Section 7.

¹⁴ Äimälä Markus, Åström Johan, Nyssölä Mikko: Finnish Labour Law in Practise, Talentum. Helsinki 2012 p. 128-129.

¹⁵ Act on Co-operation within Undertakings Chapter 5 Sections 27-29.

¹⁶ ECSR Written Submissions from the Government of Finland on the Merits for the Collective Complaint No. 35/2006 Federation of Finnish enterprises v. Finland.

collective agreements in the private sector are regulated in the Collective Agreements Act (436/1946).

There is no universal statutory minimum wage in Finland while the minimum terms and conditions for employment relationships are largely defined by collective agreements *generally applicable*¹⁷ in the given sector meaning that also the employers who do not belong to the employers' associations are bound by the generally applicable collective agreements.¹⁸

There are over 150 generally applicable collective agreements in Finland.¹⁹ Together with the normally applicable agreements the collective bargaining coverage is more than 90% of the workforce.²⁰ An independent board set up by the Ministry of Social Affairs and Health confirms the general applicability of a collective agreement.²¹ The collective agreement is generally applicable when it is nationwide, meaning that its scope of application covers all of Finland. It also has to be representative in the sector, which is the case when the agreement on its own covers more than half of the employment relationships in the sector.²²

The Finnish collective bargaining system takes place at three levels. At national level, the trade unions and employer organisations conduct discussion, both bilaterally and often with government taking part in the negotiations. The social parties attempt to reach a common understanding on the best choices for the issues covering national economy, such as salaries, taxation, pensions and unemployment benefits. Even though the Finnish government is not directly involved in centralised collective bargaining, it does however function as a background-force supporting moderate pay-settings by facilitating the bargaining process and offering incentives for moderation by using tax and social policy instrument. The national settlement

¹⁷ According to the Collective Agreements Act Section 1 the collective agreement is any agreement concluded by one or more employers or registered associations of employers and one or more registered associations of employees, concerning the conditions to be complied with in employment.

¹⁸ The general applicability of collective agreements is regulated in the Employment Contract Act Chapter 2 Section 7: "The employer shall observe at least the provisions of a national collective agreement considered *representative in the sector* in question on the terms and working conditions of the employment relationship that concern the work the employee performs or nearest comparable work."

¹⁹ The ninth periodic report by the Government of Finland on the European Social Charter covering the period from 1 January 2009 to 31 December 2012 RAP/RChA/FIN/9.

²⁰ EurWORK European Observatory of Working Life 2014 Finland: Industrial relations profile <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/national-contributions/finland/finland-industrial-relations-profile> (access: 21.03.2015).

²¹ Web page of the board confirming the general applicability of collective agreements <http://www.tyoehtosopimuksenyhteistovuudenvahvistamislautakunta.fi/fi> (Finnish only).

²² Äimälä – Åström – Nyssölä 2012, p.20.

labour market agreements have been usually valid for a two-year period. When a national agreement emerges, it provides a framework for the individual trade unions that negotiate their collective agreements for specific industries in both the private and the public sector.²³

The provisions on the terms of employment in the collective agreements at the industry level concern issues such as time wages, incentive wages, different increments, regular working hours, overtime, Sunday work, annual holidays, sick pay and travel costs. Collective agreements also contain provisions on working conditions at the workplace. These include facilities, tools, matters related to health and safety as well as issues related to the management of the collective agreement such as the rights of the shop steward.²⁴ The collective agreements containing minimum working conditions for each industry are fixed-term agreements, the most common term being one or two years.²⁵

The industry-level collective agreements are applied locally. If the local application of collective agreement does not transpire, the employees represented by a shop steward or elected representative and the employer may conduct discussions at company level. In addition, any individual arrangements between an employer and an employee can be agreed, provided the requirements of the collective agreement are met.²⁶ An individual labour contract can therefore deviate from the collective agreement but only in favour of the employee.²⁷

2.1.2.3. Conciliation and arbitration

In Finland an arbitration procedure provided by the Act on Mediation in Labour Disputes (42/1962) has been created for the conflicts of interest disputes arising from working life. The purpose of the arbitration procedure is to help the labour market organisations to reach a collective agreement when the negotiations have stilled. It is compulsory to participate in the

²³ Eurofound 2013: <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/national-contributions/finland/finland-changes-to-wage-setting-mechanisms-in-the-context-of-the-crisis-and-the-eus-new-economic>.

²⁴ Äimälä – Åström – Nyssölä 2012, p. 18-19.

²⁵ Collective Agreements Act Section 3 stipulates that any collective agreement concluded for a period of more than four years shall be treated on the expiration of the four years as a collective agreement for an indefinite period.

²⁶ Eurofound 2013.

²⁷ Mikkola, Matti: Social Human Rights of Europe. Karelactio Legisactio, Helsinki 2010, p.259.

mediation of labour disputes but the proposal made by the National Conciliator or part-time regional conciliators is not binding on the parties.²⁸

The collective agreements contain provisions on the settlement of disputes relating to the application, interpretation or breach of the agreements.²⁹ The procedure regarding legal disputes provided by the typical industry-wide collective agreement is usually two-phased. On the local negotiations level, any dispute arising from the application of the collective agreement at the workplace is handled between the employer and the employee. Negotiations should take place as soon as possible, no later than a week after the dispute arose. In case a disagreement between the employee and employer cannot be settled between them, the employee can refer the case to negotiations between the shop steward representing the trade union and the employer.³⁰

If the negotiations still do not produce a solution, both parties can refer the case to negotiations between the employers' associations and trade unions. At the association negotiation level, an agreement may be reached, the matter may be remitted to new negotiations at local level, or the negotiations may fail. In some cases, the sector-level associations can submit the dispute to their central organisations. If the dispute cannot be settled between the associations, the case can be brought before the Labour Court.

2.1.2.4. Collective actions

At a time when a collective agreement is in force, the Collective Agreements Act Section 8 provides the duty to maintain industrial peace in regard to the issues settled by a collective agreement. The duty to maintain industrial peace obligation means that all the parties bound by the agreement must refrain from any hostile action directed against the collective agreement as a whole or against any particular provision therefore. The legal assessment of the strike does not have any direct consequences to the assessment of the individual employee's participation. Employee's participation in the industrial action arranged by an employee organisation is not a lawful reason for termination.³¹ When a collective agreement is not in force, lawful collective

²⁸ Brochure of the Ministry of Employment and Economy 2012: Finnish Labour Legislation and Industrial Relations (https://www.tem.fi/files/31813/Finnish_Labour_Legislation.pdf) p.29 (access: 21.03.2015).

²⁹ Äimälä – Åström – Nyssölä 2012, p.21.

³⁰ Brochure of the Ministry of Employment and Economy 2012 p.29.

³¹ Saloheimo 2012 p.183.

actions meaning strikes or lock-outs may occur. Political strikes and sympathy strikes are also permitted in Finland. The number of industrial actions in 2013 was 121.³²

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

The right to collective bargaining and the respect of social dialogue between employers and employees have not been directly affected by austerity measures taken by the government due to the economic crisis in Finland. There have not been amendments made in the national legislation as austerity measures considering the rights regulated in the Articles 5 and 6 ESC.³³ The adverse economic conditions however have affected the social dialogue at national level. The collective bargaining system, decentralised in 2007 was recentralised in 2011 due to the deepening economic crisis by offering stability and predictability. The strong political will of the Finnish government had its influence on this change.³⁴ In 2013, the worsening economic situation forced the social parties again to achieve a moderate centralised agreement.³⁵ The settlement agreement concluded in August 2013 included aims to reform the current bargaining system based on the Collective Agreements Act and Act on Mediation in Labour Disputes in the future. Focus was to be given to example on the binding character of collective agreements and the sanction system when breaches against collective agreements occur. Also assessments were planned to make of improving the conciliation system and dispute resolution procedure as well as of implementing wage increases in industries that are not covered by collective agreement.³⁶ No amendments or real actions were concluded after over one year of negotiations between the social parties.³⁷

³² Official Statistic Finland: Statistic on labour disputes [e-publication]. Helsinki: Statistic Finland [referred 12.04.2015] (<http://www.stat.fi/til/tta/index.html>)

³³ The plan for legislative actions of the Ministry of Employment and Economy for the period of 2012-2014 (Finnish only) (http://www.tem.fi/files/32680/TEM-lainsaadantosunnitelma_2012-2014.pdf) (access: 14.03.2015)

³⁴ Eurofound 2013

³⁵ EurWORK 2014: Finland: Industrial relations profile

³⁶ Settlement on a National Labour Market Agreement on 30th August 2013: Pact for Employment and Growth

³⁷ Article in Helsingin Sanomat (16 February 2015): Akava pettyi: ”Työnantaja ei edes yritä sopia asioista neuvottelemalla” <http://www.hs.fi/talous/a1424056682294> (Finnish only) (Access: 15.04.2015)

In 2014, the European Committee of Social Rights has concluded the situation in Finland in conformity with Articles 5, 6(1), 6(2) and 6(3) of the ESC. In respect of Article 6(4), the Committee asked for more information to examine the situation.³⁸

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by their own efforts or from other sources?

3.1.1.1. What does Social Assistance cover in Finland?

Finland is well-known for its Nordic-style welfare system.³⁹ The Constitution of Finland guarantees *everyone* incapable of securing adequate income the right to immediate financial support and care.⁴⁰ The right to social assistance became a fundamental right in 1995 when the Constitution underwent a modernization. As a fundamental right it applies equally to Finnish citizens and every person within the jurisdiction of Finland alike.⁴¹ For example, a refugee is eligible for social assistance.⁴² Having been in force for twenty years, it is safe to assume that the provision governing the right to social assistance has become an established part of the Finnish legal system.⁴³ The provision closely parallels Article 13(1)⁴⁴ of ESC and Article 11(1)⁴⁵ of ICESCR.⁴⁶

³⁸ The ninth periodic report by the Government of Finland on the European Social Charter covering the period from 1 January 2009 to 31 December 2012 RAP/RCha/FIN/9.

³⁹ Hallberg in Hallberg, Pekka (ed.) *Perusoikeudet* 2011. WSOY Pro. Helsinki, 2011., p. 53.

⁴⁰ Constitution of Finland (731/1999), 19(1).

⁴¹ Arajärvi, Pentti: *Johdatus sosiaalioikeuteen*. Talentum. Helsinki 2011., p. 243.

⁴² Decision of the State Council on the reception of refugees and asylum seekers (1607/1992).

⁴³ Hänninen, Sakari (ed): *Muuttuva sosiaalioikeus*. Suomalainen lakimiesyhdistys. Helsinki 2013., p. 218.

⁴⁴ "With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake: 1) to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition."

⁴⁵ "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. ... "

⁴⁶ Arajärvi 2011, p. 74.

The right to social assistance is a particularly obliging right from the State's point of view. Unlike other social benefits, the right to social assistance has been established directly by the provision of the Constitution. The wording "everyone incapable of securing the resources necessary for a life fit for a human being shall have the right to immediate financial support and care" strongly implies that the right is subjective, there being no need for further implementing measures for the right to be effective.⁴⁷ This interpretation has been endorsed by legislative documents relating to Social Assistance Act albeit in practice there is delegated legislation, Social Assistance Act that actually implements the right.⁴⁸

Although Finland has provided some form of social assistance for people living in poverty for more than a hundred years, the modern form of social assistance was adopted only in 1984.⁴⁹ Social offices of municipalities are responsible for the implementation of social assistance⁵⁰ although the funding of social assistance scheme comes partly from the State.⁵¹ Municipalities in Finland are autonomous and have the right to levy taxes.⁵² The Ministry of Finance supervises the economies of municipalities.⁵³ Part of the funding for basic services that municipalities are responsible comes from the State, for which purpose there exists coordination mechanism between the State and the municipalities.⁵⁴ Municipalities are required to allocate enough funds to fulfil their legal obligations, whether from tax revenues, credit or other sources.⁵⁵

Social assistance is intended to secure *necessary* income for persons that are unable to gain income required to lead a life fit for a human being by their own efforts and are also unable to benefit from any other form of social security intended to secure necessary income.⁵⁶ The inability to secure necessary income has not been interpreted as objective inability, such as serious illness. The fact that a person lacks necessary income is enough to qualify him or her for social

⁴⁷ Muuttuva sosiaalioikeus 2013, p. 220.

⁴⁸ Government Proposal on the Amendment of Social Assistance Act and Child Protection Act (HE 61/2013), p. 3.

⁴⁹ Kuivalainen, Susan (toim.): Toimeentulotuki 2010-luvulla. Tutkimus toimeentulotuen asiakkuudesta ja myöntämiskäytännöistä. Terveiden ja hyvinvoinnin laitos. Tampere 2013., p. 15.

⁵⁰ Social Assistance Act (1412/1997), Section 4.

⁵¹ Ibid, Section 5 – Section 5c.

⁵² Constitution of Finland, Section 121.

⁵³ Local Government Act (365/1999), Section 8.

⁵⁴ Local Government Act, Section 8a – 8b.

⁵⁵ Ibid, Section 65.

⁵⁶ Social Assistance Act, Section 1 – 2.

assistance.⁵⁷ This interpretation is in line with the case law of ECSR according to which the sole ground of being in need of assistance suffices to trigger the applicability of Article 13(1).⁵⁸

What is meant by necessary income is always determined casuistically.⁵⁹ It is, however, more than what is required to sustain existence. Recipients of social assistance are entitled to resources required to actively participate in society, one of the aims of social assistance being the prevention of social exclusion. The amount of social assistance is intended to reflect the socially acceptable minimum standard of life.⁶⁰

Social assistance is comprised of two parts: the basic part and the additional part. According to Social Assistance Act, the basic part covers expenses related to food, clothing, health care, personal and household hygiene, local traffic, newspaper subscription, television license, telephone use, hobbies and refreshment activities and other similar daily expenses. Housing expenses, including electricity and home insurance are also covered. The additional part covers expenses related to daycare of children, certain special housing expenses and special needs of the recipient or family, such as children's hobbies, long-term illness or long-term dependence on social assistance.⁶¹

Social assistance is the last resort of income. According to Social Assistance Act a person may be entitled to social assistance if and only if he or she is unable to secure necessary income through his or her work, entrepreneurial activities, social security, maintenance, other income, savings or sale of property.⁶² The concept of property that preempts social assistance is wide by European standards.⁶³ Only permanent residence and residential personal property (such as furniture), necessary work and study tools, property of a children under the age of 18 and other resources

⁵⁷ Arajärvi 2011, p. 244.

⁵⁸ European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint 86/2012. Decision on merits, 10.11.2014. (FEANTSA v. The Netherlands), Point 170.

⁵⁹ Mattila, Yrjö (ed): Toimeentuloturva. Finanssi- ja vakuutuskustannus Oy. Helsinki 2014, p. 281.

⁶⁰ Ibid, p. 280.

⁶¹ Social Assistance, Section 7 – Section 7c.

⁶² Ibid, Section 2.

⁶³ Ruoppila, Sampo – Lamminmäki, Sara: Vähimmäistoimeentulojärjestelmät. Kansallista toimintapolitiikkaa koskeva selvitys (Suomi) 2009.. European Commission DG Employment, Social Affairs and Equal Opportunities., p. 9.

deemed necessary for securing continued income are not considered as property that a person could use to secure his or her income.⁶⁴

Unemployment benefits, sickness insurance, pension, student allowance, parental benefits and maintenance are all prioritized with regard to social assistance.⁶⁵ Before social assistance may be paid, the total wealth and income of the prospective recipient has to be assessed first. Almost every source of income and wealth is taken into account.⁶⁶ In the light of recent case law of the Supreme Administrative Court loans are also taken into account.⁶⁷ Unless certain exceptions apply⁶⁸, the applicant also has to register with his or her local employment office as an unemployed job seeker.⁶⁹ The nature of social assistance as a last resort income is further underscored by the fact that an applicant is usually granted social assistance for no longer period of time than a month at a time, although social assistance may be paid for an indefinite period⁷⁰.

The amount of social assistance paid may also be cut in certain situations in which the applicant or recipient of social assistance has contributed to the state of not being able to provide for him- or herself. If the recipient refuses to accept a work offer that would guarantee his or her income for a reasonably long period of time or follow a plan designed to promote the functionality of the recipient without justification, the basic part of social assistance may be lowered by 20%. The same applies to situations in which the recipient refuses to attend labour market training program, education or rehabilitation plan. Continuous refusal may result in a reduction of 40%. Reductions may never be unreasonable or jeopardize the right to a life fit for a human being.⁷¹ In this respect Finnish legislation appears to be in full conformity with ESC.⁷²

⁶⁴ Social Assistance Act, Section 12.

⁶⁵ Arajärvi 2011, p. 246.

⁶⁶ Social Assistance Act, Section 11.

⁶⁷ Supreme Administrative Court of Finland (KHO) 2014:196. In its previous case law the Supreme Administrative Court did not, however, regard loan as income of the recipient of social assistance (see KHO 2011:6). Whether the fact that the loan in the former case came from the mother of the recipient and in the latter case from a bank played a role in the Supreme Administrative Court's interpretation was not answered in the decisions.

⁶⁸ These exceptions are the following: 1) the age of younger than 17 or older than 64, 2) the applicant is a worker or an entrepreneur, 3) the applicant is disabled or otherwise unable to work and 4) there is another comparable acceptable reason that renders the applicant unable to work.

⁶⁹ Social Assistance Act, Section 2a.

⁷⁰ Arajärvi 2011, p. 251.

⁷¹ Social Assistance Act, Section 10.

⁷² ECSR, Conclusions 2009 – Finland – Article 13(1).

In its recent case law ECSR has also assessed labour market subsidy under Article 13(1)⁷³, although in its 2009 and 2013 conclusions regarding Finland labour market subsidy was examined solely under Article 12.⁷⁴ Labour market subsidy is a minimum level benefit which is paid to jobseekers with little or no previous employment history⁷⁵ and persons who have received employment allowance for more than 500 days. Its purpose is to facilitate entrance and return after lengthy period of absence to job market.⁷⁶ The benefit is also means-tested, although to a lesser extent compared to social assistance.⁷⁷ For example, prospective recipients of labour market subsidy need not realize their property before eligibility.⁷⁸ Neither does the income of spouse affect the eligibility conditions for labour market subsidy.⁷⁹ Labour market subsidy is paid by the National Social Insurance Institution (KELA).⁸⁰ KELA is an independent public institution whose governance and conduct is monitored by a board of trustees selected by the Parliament.⁸¹ The benefit is funded from the general social security fund which is maintained by state budget, i.e. taxation and other social security payments.⁸²

3.1.1.2. Austerity measures and conformity with ESC

The economic crisis initially forced more and more people to resort to social assistance in Finland. Moreover, the recipients of social assistance are receiving it for longer periods than before.⁸³ So far there have been no indications that the economic crisis would have had a negative effect on the right to social assistance or labour market subsidy.⁸⁴ On the contrary, the amount of the basic part of social assistance was increased in 2012 from EUR 419.11 to EUR

⁷³ Finnish Society of Social Rights v. Finland, Complaint No. 88/2012. Decision on merits, 11.2.2015. (FSSR v. Finland), Point 34.

⁷⁴ ECSR, Conclusions 2009 and 2013 – Finland – Articles 12(1) and 13(1).

⁷⁵ If a person has worked for at least 26 weeks during the preceding 28 months, he or she is eligible for unemployment allowance and therefore ineligible for labour market subsidy. (Unemployment Security Act (1290/2002), 5(3))

⁷⁶ Government Proposal on the Amendment of Unemployment Security Act and Certain Related Acts (HE 115/2002), p. 15.

⁷⁷ Unemployment Security Act, 7(1).

⁷⁸ HE 115/2002 vp, p. 15.

⁷⁹ Act on Amendment and Temporary Amendment of Unemployment Security Act (1005/2012).

⁸⁰ Unemployment Security Act, 1(4).

⁸¹ National Social Security Institution Act (731/2001), Section 1.

⁸² Ibid, Section 12d.

⁸³ Toimeentulotuki 2010-luvulla 2013, pp. 43 – 44.

⁸⁴ Perusturvan riittävyden arviointi 2015, pp. 30 – 32.

461.05 and an additional increase of 10% was given to single parents, both increases being independent of rising living cost index.⁸⁵ Moreover, the right of the recipients of social assistance to earn the maximum of EUR 150 a month without losing any part of social assistance was made permanent in 2015.⁸⁶ At the same time an increase of 1.1% was made to the basic part.⁸⁷ The increases were part of the government program of Prime Minister Jyrki Katainen which entered into force in 2011.⁸⁸

Some tightening of the conditions has taken place, however. Since 2011 it has been possible to lower the basic part of social assistance by 20% or 40% if a person of at least 18 years of age but under the age of 25 and lacking professional or vocational education has quit or refused such education and the refusal has resulted in him or her being ineligible for an unemployment benefit. A reduction of 40% should be reserved for exceptional situations.⁸⁹ These new rules are not austerity measures. In its preparatory documentation the Government indicated that the rationale was to incentivize young people to educate themselves and prevent social exclusion.⁹⁰ However, the level of social assistance has not kept up with general income level. The purchasing power of social assistance continuously decreased since the 1990s until 2011 and is still below what it was in the beginning of 1990s.⁹¹

In its recent case law ECSR has found the level of social assistance to be insufficient as it fell below 50% of the median income. The Finnish Government had argued that the relative level of the basic part of social assistance to median income should not be the sole determining factor since other important subsidies exist. For example, medicines and other costs related to health care are heavily subsidized, and some of the charges may be completely abolished in the case of persons with inadequate resources.⁹² ECSR did not accept the arguments put forward by the Government. Although it acknowledged that there exist other forms of assistance, it nevertheless found the overall system inadequate since it contains so many discretionary elements. The fact

⁸⁵ Toimeentulotuki 2010-luvulla 2013, p. 35.

⁸⁶ Social Assistance Act, Section 11.

⁸⁷ Government Proposal on the Index Checks of Pensions and Certain Other Benefits And on the Amendment of Social Assistance Act (HE 153/2014)

⁸⁸ Government Program of prime minister Jyrki Katainen 2011 – 15, p. 55.

⁸⁹ HE 138/2010 vp, p. 6.

⁹⁰ Ibid, pp. 6 – 8.

⁹¹ Toimeentulotuki 2010-luvulla, p. 75.

⁹² FSSR v. Finland, Points 101 – 4.

that the basic part of social assistance remained so much below the median equivalised income (less than 25%) appears to have been the determining factor.⁹³ Similarly the net amount of labour market subsidy (EUR 558 corresponding to 29% of median equivalised income in Finland) was found manifestly inadequate.⁹⁴ Moreover, ECSR has considered the requirement of permanent residence in a municipality set forth in Article 14 of Social Assistance Act to be out of line with Article 13(1) of ESC since the requirement puts nationals of the Members of State of the Council of Europe on an unequal footing.⁹⁵ A recent working paper of National Institute for Health and Welfare also concluded that the level of social assistance in Finland is inadequate. According to the report, basic social assistance and labour market subsidy cover no more than 71% of reasonable minimum consumption.⁹⁶

3.1.2. Persons who are unable to secure adequate resources either by their own efforts or from other sources due to illness?

3.1.2.1 Access to health care

Health care has been defined in Health Care Act (1326/2010) Section 1 as the promotion of health and well-being, basic health care and special health care. The most important laws governing access to health care are Act on the Status and Rights of Patients (785/1992), Health Care Act, Special Health Care Act (1062/1989) and National Health Act (66/1972).⁹⁷ Services of health care are provided by both the public and private sector. Provision of public health care is generally the responsibility of municipalities.⁹⁸

Access to health care is recognized as a fundamental right in the Constitution of Finland in Article 19(3). The Article stipulates that the State guarantee adequate health and social services to its citizens and promote the health of the people. But according to the wording of the Article there is no guarantee of access to free health care. Article 19(1) on the other hand could establish a more direct right to health care. The right to immediate care mentioned in the Article appears

⁹³ Ibid, Points 116 – 20.

⁹⁴ Ibid, Point 121.

⁹⁵ ECSR, Conclusions 2013 – Finland – Article 13(1).

⁹⁶ Perusturvan riittävyden arviointi 2015, pp. 110 – 11.

⁹⁷ Tuori, Kaarlo – Kotkas, Toomas: Sosiaalioikeus. WSOYpro. Helsinki 2008., p. 25.

⁹⁸ Ibid, p. 276.

to refer to social and health services.⁹⁹ In its proposal for the modernization of fundamental rights the Finnish government interpreted the right to immediate care as including health care in acute cases.¹⁰⁰ Similar interpretation has been adopted in social law literature.¹⁰¹ Therefore everyone within the jurisdiction of Finland is entitled to acute health care. However, both access to acute and non-acute health care is regulated at normal legislative level by acts.

According to Act on the Status and Rights of Patients Section 3 every permanent resident of Finland is entitled to health care required by his or her state of health without discrimination *within the boundaries of available resources*. The right to non-acute health care is not therefore clearly a subjective right.¹⁰² On the other hand, municipalities are required to allocate sufficient amount of resources for the provision of health care according to Health Care Act Section 4. Part of the funding comes from the State.¹⁰³

Access to acute health care is governed by Article 50 of the Health Care Act. In addition to regular health care, it also includes dental health care, mental health care, care for drug abusers and psychosocial help. Acute health care is defined as the assessment and care for illnesses or disabilities of sudden onset and the deterioration of long-term illnesses requiring immediate medical attention. Immediate care has to be provided to a patient regardless of his or her place of residence, which usually determines the responsible health care unit. Municipalities or groups of municipalities are required to provide an around-the-clock duty for the purpose of acute health care. Access to acute health care is not limited to citizens or permanent residents of Finland. Nationals of the Member States of the Council of Europe are also entitled to acute health care.¹⁰⁴

There is no data indicating austerity measures having had a negative impact on access to health care. Access to non-acute specialized health care has actually improved in terms of queuing times

⁹⁹ Ibid, p. 220 and Arajärvi 2011, p. 52.

¹⁰⁰ Government Proposal on the Amendment of Fundamental Rights Provisions of the Constitution (HE 309/1993), p. 69.

¹⁰¹ Ellilä, Kalevi: Terveyskantelun oikeusperusteet. Pilot-kustannus. Helsinki 2007., p. 104.

¹⁰² Arajärvi 2011, p. 355.

¹⁰³ Act on Government Financing of Municipalities' Basic Services (1704/2009), Section 5.

¹⁰⁴ Government Proposal on the Adoption of the Modified European Social Charter (HE 229/2001), p. 27.

during the economic crisis.¹⁰⁵ Queuing times for basic health care have remained stable.¹⁰⁶ Overall significant problems exist in access to basic as well as special health care. But the problems cannot be attributed to austerity measures or even solely to lack of resources. Poor organization and lack of medical professionals willing to work in public sector have been identified as the major challenges facing the Finnish health care system.¹⁰⁷

Public health care has been traditionally characterized as free or at least heavily subsidized. If no charges were levied, the question whether Finland provides care for persons unable to afford health care could be answered just by examining access to public health care. However, this notion appears to be outdated. According to Act on Customer Payments for Social and Health Services (734/1992) (Customer Payment Act later) Section 1 public health care providers have been allowed, but not obliged, to levy charges on health services provided since 1993, including on services for which there is a subjective right.¹⁰⁸ The preparatory works for the Act that introduced health care charges indicate that charges levied on health services were meant to allow municipalities to more effectively direct the use of health services in order to make the system more efficient.¹⁰⁹

The autonomy of municipalities in charging levies has been curtailed to some extent in order to preserve the actual possibility of using health services. Firstly, the amount that can be charged may not exceed the actual cost of providing the service. Other expenses of municipalities cannot therefore be covered by charges levied on patients.¹¹⁰ But this rule alone hardly helps those that are unable to afford any kind of health care in the first place. Furthermore, per Article 13 of Customer Payment Act, such limitation does not exist with regard to persons that are not residents of Finland unless Finland's international obligations otherwise provide. Article 6 of Customer Payment Act stipulates that charges levied may not exceed certain annual amount. In

¹⁰⁵ Statistics of National Institute for Health and Welfare. Available at <http://www.thl.fi/fi/tilastot/tiedonkeruut/hoitopaasy-erikoissairaanhoidossa>.

¹⁰⁶ Statistics of National Institute for Health and Welfare. Available at <http://www.thl.fi/fi/tilastot/tiedonkeruut/hoitopaasy-perusterveydenhuollossa>.

¹⁰⁷ Kaila, Minna – Peltari, Hanna: Kireettömään hoitoon pääsyn selvitys. Sosiaali- ja terveysministeriön raportteja ja muistioita 2014:27. pp. 30 – 33.

¹⁰⁸ Tuori – Kotkas 2008, p. 283.

¹⁰⁹ Government Proposal on Modification of the Planning And Financing of Social And Health Services (HE 216/1991), p. 10.

¹¹⁰ Ibid, p. 38.

2015 the amount is EUR 679.¹¹¹ Per Article 11 in situations where the normal charge would jeopardize the financial survival or maintenance obligation of a person or a family, the municipality or group of municipalities may decide that a charge be lowered or abolished. An important rationale behind this rule was to avoid situations in which patients would have to apply for social assistance to pay for their health care.¹¹² Certain health services are always free per Articles 4 and 5.¹¹³

In its conclusions in 2013 ECSR did not highlight any fault in Finland's implementation of Article 13(1) with regard to the right to medical assistance. However, the right to non-acute public health care is contingent upon residence in a municipality for third country nationals.¹¹⁴ Residence right in a municipality may be acquired only if a third country national holds a residence permit for at least a year and is planning to stay permanently in Finland.¹¹⁵ Therefore non-acute public health care is not available for third country nationals. However, ECSR has interpreted the right to medical assistance as covering non-acute health care as well.¹¹⁶ Moreover, similar residence requirement regarding social assistance was found to be incompatible with Article 13(1) of ESC in ECSR's 2013 conclusions.¹¹⁷

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

N/A.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

¹¹¹ http://www.stm.fi/sosiaali_ja_terveyspalvelut/asiakasmaksut/terveydenhuollon_maksukatto.

¹¹² HE 216/1991 vp, p. 42.

¹¹³ These services include both social and health services.

¹¹⁴ Act on the Status and Rights of Patients, Section 3.

¹¹⁵ Home Municipality Act (201/1994), Section 4.

¹¹⁶ European Roma Rights Center v. Bulgaria, Complaint No. 46/2007, 17.4.2009. (ERRC v. Bulgaria), Points 43 – 44.

¹¹⁷ ECSR, Conclusions 2013 – Finland – Article 13(1).

Article 13(3) of ESC imposes the obligation to provide everyone with advice and personal help as may be required to prevent, remove, or alleviate personal or family want for the Member States. It overlaps with Article 14 that covers social welfare services to some extent.¹¹⁸ The key content of Article 13(3) appears to be the obligation to offer guidance on how those eligible for social assistance or other important social services may exercise their rights. Consequently such guidance should especially be directed at those without adequate resources or at risk of becoming so.¹¹⁹ The advice and help meant in Article 13(3) are not meant to cover situations in which a person is or will most likely be dependent on social services or other people for an indefinite period of time. For example, services for highly dependent persons are covered by other provisions of ESC. The very purpose of help and advice per Article 13(3) is to make it possible to eventually reintegrate into social life through one's own efforts and means.¹²⁰

It is not clear-cut which exact provisions of Finnish law implement this part of the Article 13. In its preparatory documentation to the implementation of the modified ESC¹²¹ the Government did not specify which services would implement Article 13(3) of ESC (unlike it did for (1) and (2)). However, ECSR has examined Finland's compliance with its obligations pursuant to Article 13(3). In its conclusions the Committee has identified preventive social assistance, access to counseling by a social worker for recipients of social assistance and the obligation of authorities to decide applications for social assistance within a comparatively short period of time as implementing measures of Article 13(3).¹²²

General principles of Finnish administrative law require public authorities to offer advice to all users of administrative services. The 'guidance principle' is laid down in Article 8 of Administrative Law: authorities must offer advice to any customer of administrative services and answer to inquiries related to the customer's case within their jurisdiction free of charge. If the case doesn't fall within its jurisdiction, the authority must guide the customer to the appropriate authority. The obligation covers instructions how to initiate procedures with authorities and what are the steps included in the procedure. Such information typically consists of deadlines,

¹¹⁸ International Federation of Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, 18.03.2013 (FIDH v. Belgium), Point 158.

¹¹⁹ Ibid, Point 159.

¹²⁰ Ibid, Points 163 – 64.

¹²¹ HE 229/2001.

¹²² ECSR, Conclusions 2013 – Finland – Article 13(3).

required documentation, available services, processing times, established practices and common judicial interpretations. The guidance obligation covers every step of an administrative procedure.

The obligation to advise prevents authorities from denying applications when the applicant is incapable of drafting a proper application him- or herself. For example, if an application for a social benefit is deemed clearly insufficient and the insufficiency has likely resulted from the applicant's inability to comprehend the legal requirements of the application process, the authority must not deny the benefit. It has to offer the applicant the possibility to modify his or her application and help with the process if need be.¹²³ The position of an applicant also affects the obligation of authorities. The greater the need for assistance is the more comprehensive the guidance has to be. Attention must be given to the actual ability of an applicant to take care of his or her matter independently and the importance of the matter to the applicant.¹²⁴ Therefore the obligation to offer guidance would be pronounced in the case of application for social assistance given that people in such position have very scarce or non-existent resources, social assistance being indispensable for their subsistence.

As remarked above, there are certain forms of services and rules related to social assistance that are especially relevant in the meaning of Article 13(3) of ESC. Some of them will be examined here. Firstly, social assistance itself may be paid preventively in order to promote social inclusion, employment, management of over-indebtedness or sudden deterioration of financial situation and housing. The promotion of independence from the social assistance system and normal functioning in society has been particularly important factors in grant practices.¹²⁵ Preventive social assistance may be paid regardless of whether the requirements for regular social assistance are fulfilled.¹²⁶ Nevertheless the decision to grant preventive social assistance is an exception to the rule and municipal authorities have considerable discretion in grant practices.¹²⁷ There is no

¹²³ Mäenpää, Olli: *Hallintolaki ja hyvän hallinnon takeet*. Edita. Helsinki 2008., pp. 154 – 55.

¹²⁴ *Ibid*, pp. 156 – 57.

¹²⁵ *Toimeentulotuki 2010-luvulla*, p. 155.

¹²⁶ *Ibid*, p. 152.

¹²⁷ *Ibid*, pp. 137 – 38.

subjective right to preventive social assistance as there is to the basic and additional part of social assistance.¹²⁸

There are also other forms of social services that overlap with preventive social assistance and are therefore relevant in the meaning of Article 13(3). Social credit system is one example. Social credit is a voluntary scheme in which municipalities may participate within the boundaries of their budget.¹²⁹ Social credit may be granted to a person who is unable receive regular credit from markets due to his or her low income. Furthermore, social credit may be granted only for a justifiable reason and to a person deemed able to pay the credit back. An annual interest rate may be attached to the credit but it must not exceed the reference rate.¹³⁰ The purpose of the scheme is to prevent economic exclusion and over-indebtedness and promote independent functioning of the recipients.¹³¹ The aims are noticeably similar with those of preventive social assistance. However, before social credit may be granted, the applicant's right to social assistance has to be examined first. Right to social assistance may not be limited on the grounds that a person may be entitled to social credit.¹³² Economic advice and guidance must be available for an applicant or recipient of social credit.¹³³

Certain safeguards and services relating social assistance applications also exist. Applications for social assistance must be examined faster than applications for other forms of social security. The examination has to be done without undue delay and it may not take longer than seven days. If the application is insufficient, the applicant has to be given the opportunity to modify the application no later than seven days after its lodging. In urgent cases the decision has to be issued on the following business day after the lodging of the application at the latest. The decision to grant social assistance has to be implemented immediately. The observance of the time limits by municipal authorities is monitored by the National Institute for Health and Welfare twice every year. An applicant or recipient of social assistance also has to be given the

¹²⁸ Tuori – Kotkas 2008, p. 259.

¹²⁹ Social Credit Act (1133/2002), Section 2.

¹³⁰ Ibid, Section 6.

¹³¹ Ibid, Section 1.

¹³² Ibid, Section 10.

¹³³ Ibid, Section 9.

opportunity to personally speak with a social worker or coordinator on the seventh day after the request at the latest.¹³⁴

Finland's legislation appears to be in conformity with the requirements of Article 13(3). In its 2013 conclusions ECSR did not highlight any shortcoming regarding said Article.¹³⁵ There is also no data indicating significant effects of austerity measures on social services in the meaning of Article 13(3). Enquiries addressed to two leading social workers regarding grant practices of relevant social services revealed no changes attributable to austerity measures.

4. SOCIAL EXCLUSION

4.1. What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)?

Under Article 30 (a) of the ESC the Parties have undertaken to take measures within the framework of an overall and coordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance. In Finland the ESC has been ratified and it has entered into force 1 August 2002.¹³⁶

The legislative history of the ratification process elaborates the measures which have been taken to promote the effective access to social rights and to reduce social exclusion in the society. Many of these concepts were part of the Finnish legislative and social security system already before the entry into force of the Revised European Social Charter.¹³⁷ This is mainly because the

¹³⁴ Social Assistance Act, Section 14a – 14b.

¹³⁵ ECSR, Conclusions 2013 – Finland – Article 13(3).

¹³⁶ Tasavallan presidentin asetus uudistetun Euroopan sosiaalisen peruskirjan voimaansaattamisesta ja uudistetun Euroopan sosiaalisen peruskirjan lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta annetun lain voimaantulosta sekä Euroopan sosiaalisen peruskirjan ja siihen liittyvän lisäpöytäkirjan eräiden määräysten hyväksymisestä annetun lain kumoamisesta annetun lain voimaantulosta, Finnish Treaty Series 80/2002.

¹³⁷ Hallituksen esitys Eduskunnalle uudistetun Euroopan sosiaalisen peruskirjan hyväksymisestä ja laiksi sopimuksen lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta sekä laiksi Euroopan sosiaalisen peruskirjan ja siihen liittyvän lisäpöytäkirjan eräiden määräysten hyväksymisestä annetun lain kumoamisesta (HE 2001/229).

Finnish Constitution expressly provides for the right to social security. Pursuant to Article 19 of the Finnish Constitution those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care. Everyone shall be guaranteed by an act the right to basic subsistence in the event of unemployment, illness, and disability and during old age as well as at the birth of a child or the loss of a provider. The public authorities shall guarantee for everyone, as provided in more detail by an act, adequate social, health and medical services and promote the health of the population. Moreover, the public authorities shall support families and others responsible for providing for children so that they have the ability to ensure the wellbeing and personal development of the children. The public authorities shall promote the right of everyone to housing and the opportunity to arrange their own housing. Also, according to Article 18 of the Finnish Constitution the public authorities shall promote employment and work towards guaranteeing for everyone the right to work.¹³⁸

Article 30 is closely linked with the other articles of the Charter, in particular with Articles 7 (the right of children and young persons to protection), 10 (the right to vocational training), 11 (the right to protection of health), 12 (the right to social security), 13 (the right to social and medical assistance), 14 (the right to benefit from social welfare services), 17 (the right of children and young persons to social, legal and economic protection), 23 (the right of elderly persons to social protection) and 31 (the right to housing). In the Government Proposal ('HE') 2001/229 the Finnish Government has noted that the right to social protection against poverty and social exclusion is an integral part of the Finnish legislative system and is implemented through the principle of penetrability: the more effectively one can implement the above mentioned substantive rights, the less there appears poverty and social exclusion.¹³⁹ What are then those cross-sectoral measures through which the rights guaranteed both in the European Social Charter and the Finnish Constitution have been implemented?

According to the HE 2001/229 several factors of the Finnish social security system are aimed at reducing social exclusion. The day care for children, free basic education and vocational education, financial aid to students and access to social and health care for all are these kinds of measures. Furthermore, Finland has sought to reduce income differences by lightening the

¹³⁸ Finnish Constitution (11 June 1999, 731/1999).

¹³⁹ HE 2001/229, the commentary regarding art 30.

taxation of the most disadvantaged groups.¹⁴⁰ The Act on Social Assistance contains certain activating elements through which the legislator has sought to reduce unemployment.

As a conclusion the Finnish Government found in 2001 that the Finnish legislation met the conditions deriving from the Revised European Social Charter of 1996. The Committee has noted in its 2013 conclusions that 18.3% of the population in Finland was at risk of poverty and social exclusion, which rate stands below the average indicator of the EU countries (23.4%).¹⁴¹

It must be noted that under the International Covenant on Economic, Social and Cultural Rights the parties are under an obligation to progressively realise the rights recognised in that Covenant.¹⁴² This means that a State Party may not take regressive steps with regard to the implementation of the rights under the ICESCR unless certain conditions are met. Those conditions would be that the regressive measures must be temporary, proportionate and necessary, they cannot be discriminatory, and the minimum core obligation of the rights in question must always be identified and protected.¹⁴³ It is a responsibility of a democratic constitutional state to ensure that the effects of the austerity measures do not impair the effective enjoyment of the rights of the most vulnerable groups.¹⁴⁴ This principle of progressive development can be derived also from the substantive articles of the European Social Charter.¹⁴⁵

4.2. Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

4.2.1. General Information

Article 30 requires States Parties to adopt an overall and coordinated approach, which should consist of an analytical framework, a set of priorities as well as measures to prevent and remove obstacles to the access to fundamental social rights. There should also be monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty

¹⁴⁰ HE 2001/229, the commentary regarding art 30.

¹⁴¹ European Committee of Social Rights, Conclusions 2013 (Finland) ('ECSR Finland 2013'), 37.

¹⁴² International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 ('ICESCR') art 2(1).

¹⁴³ Committee on Economic, Social and Cultural Rights: Letter to States Parties dated 16 May 2012, CESCR/48th/SP/MAB/SW.

¹⁴⁴ Pauli Rautiainen 'Perusoikeuden heikennyskielto' [2013] Oikeus 261, 272.

¹⁴⁵ See art 12(3) of the ESC.

and exclusion.¹⁴⁶ The European Committee of Social Rights noted in their conclusions concerning Finland in 2013 that Finland uses multiple approaches combined and compared for analysing the extent of poverty.¹⁴⁷ The Ministry of Social Affairs and Health is the responsible institution for monitoring the trends in health and welfare in Finland. The indicators used for this purpose are social, economic and ecological sustainability; economic and welfare growth; implementation of the Government Programme, policy programmes and action plans and effectiveness and efficiency of social protection.¹⁴⁸

After the ratification of the Revised European Social Charter the European Committee of Social Rights has not found that Finland would have violated Article 30. With that said, one must consider that the effective implementation of Article 30 requires that the state must comply also with other substantive articles of the European Social Charter. If an austerity measure has affected on the effective implementation of the other substantive rights, it can also increase the income differences, levels of poverty and social exclusion. While European welfare states generally succeed relatively well in preventing certain social problems of the elderly, less progress has been made in improving the situation of the unemployed, families with many children, single-parent families and young people in vulnerable situations.¹⁴⁹ We will next examine whether the measures that have affected the youth unemployment, social security system and rights of the elderly have had an impact also on the realisation of Article 30. Finally we will elaborate on the structural reform programme in Finland and evaluate its impact on the rights under Article 30.

4.2.2. Social Security

As noted in section 3 of this report, the ECSR found in its decision concerning the complaint No. 88/2012 that Finland had violated Articles 12(1) and 13(1) of the Charter. The Committee did not find Finland to be in violation of Article 12(3) of the Charter, meaning that it did not hold there to have been a failure to progressively raise the system of social security to higher level.¹⁵⁰ However, President Quesada in his separate concurring opinion expressed his critical

¹⁴⁶ Council of Europe, *Digest of the case law of the European Committee of Social Rights* (2008), 167.

¹⁴⁷ ECSR Finland 2013, 37.

¹⁴⁸ Eight periodic report on the implementation of the Revised European Social Charter, Submitted by the Government of Finland ('8th report by Finland'), September 2012, 60.

¹⁴⁹ Mikkola Matti, *Social Human Rights of Europe* (Karelactio 2010), 590.

¹⁵⁰ ECSR, Complaint No 88/2012, Decision on Merits ('ECSR 88/2012'), 24.

view on the Committee's latter finding. He found it very difficult to reconcile the principle of progressiveness which is explicitly established by Article 12(3) with a situation where the finding of a violation of Article 12(1) of the Charter is based on components such as the "manifestly inadequate" level of the minimum sickness benefit, maternity benefit and rehabilitation benefit, the basic unemployment allowance or the amount of guaranteed pension.¹⁵¹ Nevertheless the Committee reached the conclusion of no violation of Article 12(3) after taking note of "a series of improvements to social security made during the reference period (2008-2011), including in respect of disability pensions, unemployment benefits and part-time sickness benefits".¹⁵²

Under Article 12(1) benefits provided within the different branches of social security should be adequate and in particular income-substituting benefits should not be so low as to result in the beneficiaries falling into poverty.¹⁵³ According to the Finnish Ministry of Social Affairs and Health, the other elements of the social security provisions are paid, almost without exception, as part of income support allowance.¹⁵⁴ With that said, Pauli Rautiainen has noted that a minimum level of separate social assistance benefits is of particular importance when a person, for some reason, cannot get access to more than one of the different forms of those benefits.¹⁵⁵ In that sense the risk of falling into poverty and social exclusion exists as long as the granting of supplementary forms of social assistance is mostly discretionary and dependent upon the budgetary decisions of the municipalities.¹⁵⁶

The other thing that might affect the effective enforcement of the right to social security is the fact that the time limits within which the social assistance applications are examined vary between the municipalities. According to the domestic legislation in Finland the examination has to be done without undue delay and it may not take longer than seven days.¹⁵⁷ However, not all municipalities have been able to comply with this requirement and in 2010 the examination has

¹⁵¹ ECSR, Complaint No 88/2012, Dissenting Concurring Opinion of Luis Jimena Quesada.

¹⁵² See ECSR Finland 2013, article 12(3), para 92.

¹⁵³ ECSR No 88/2012 para 59.

¹⁵⁴ Joint press release (34/2015) of the Ministry of Social Affairs and Health and the Ministry for Foreign Affairs <http://formin.finland.fi/public/default.aspx?contentid=321111&nodeid=15145&contentlan=2&culture=en-US> (accessed 23 April 2015).

¹⁵⁵ Pauli Rautiainen 'Oikeus sosiaaliturvaan ei toteudu Suomessa' (Perustuslakiblogi, 11 February 2015) (<https://perustuslakiblogi.wordpress.com/2015/02/11/pauli-rautiainen-oikeus-sosiaaliturvaan-ei-toteudu-suomessa/> accessed 29 March 2015).

¹⁵⁶ ESCR 88/2012 para 46.

¹⁵⁷ Social Assistance Act (1412/1997), Section 14.

often taken 8-14 days in most of the municipalities; in some cases the examination has taken more than 14 days.¹⁵⁸ The municipalities have reported that the main reasons for these delays have been insufficient applications, the high turnover of employees and the lack of sufficient resources.¹⁵⁹

4.2.3. Children And Young People

According to a UNICEF report Finland has reduced the child poverty levels by approximately 30 per cent during the recession.¹⁶⁰ The child benefits in Finland have been reduced by 8.1% per child with effect from 1 January 2015.¹⁶¹

As for the education in Finland, the number of all educational institutions has fallen by 13 per cent in five years.¹⁶² There is a risk that the decrease of the number of comprehensive schools in Finland may cause inequality between municipalities, in particular between urban and rural areas. The risk of social exclusion due to this decrease remains still low.

Finland has implemented the social guarantee for young people in full from 2013 onwards. Every young person under 25 years of age and recently graduated people under 30 years will be offered a job, on-the-job training, a period in a workshop, or rehabilitation within three months of becoming unemployed.¹⁶³ The number of youth aged 15 to 24 not in education, employment or training has increased in Finland with 1.5 percentage point during the economic crisis.¹⁶⁴ Finland has noted in the most recent periodic report that the government will allocate an additional EUR 60 million to implementing the social guarantee and to the reform of education, guidance and employment services intended for young people.¹⁶⁵

The financial aid to students has been linked with an index. The education in Finland is free, which reduces the risk of unequal access to education and consequent social exclusion. As will

¹⁵⁸ Valvira: Toimeentulotuen määräaikaisten noudattaminen, Valvontaohjelma 3:2012 (Dnro 8206/05.00.04/2011), 19.

¹⁵⁹ Ibid 20.

¹⁶⁰ UNICEF, 'Innocenti Report Card 12, Children of the Recession' (2014) ("UNICEF 2014"), 8-9.

¹⁶¹ GP 165/2014; see also the amendment 12.12.2014/1111 to Child Benefit Act (1992/796).

¹⁶² Official Statistics of Finland: Providers of education and educational institutions (Statistics Finland, Helsinki 2013) http://www.stat.fi/til/kjarj/2014/kjarj_2014_2015-02-12_en.pdf (accessed 29 March 2015).

¹⁶³ TEM raportteja 8/2012, 'Nuorten yhteiskuntatakuu 2013' http://www.tem.fi/files/32290/TEMrap_8_2012.pdf (accessed 23 April 2015).

¹⁶⁴ UNICEF 2014, 10.

¹⁶⁵ 8th report by Finland, 60.

be elaborated in the chapter 5 of this report, the Government has launched programs aimed at providing social guarantee and employment for young people.

4.2.4. Impacts on the Elderly

In the 2012 periodic report Finland has noted that the guarantee pension introduced in March 2011 has increased the income level of poor elderly people. 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.¹⁶⁶

As will be further discussed in Chapter 6 of this report, the Committee found a violation of Article 23 when examining complaints 70/2011 and 71/2011 in 2012.¹⁶⁷ The violations were partly due to the insufficient supply of care in service housing or institutional care in certain municipalities. After these decisions Finland has taken measures in order to improve the situation and decrease the inequalities between different parts of the country. In particular, Finland is seeking to unify the social and health care practices in Finland through the Act on the Arrangement of Social Welfare and Health Care Services¹⁶⁸. However, this Act is yet to be passed.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

The principles of disability policy in Finland are equality, inclusion and sufficient services with support.¹⁶⁹ The prohibition of discrimination is regulated in the Constitution of Finland (731/1999) Chapter 2 Section 6¹⁷⁰ and in the Finnish Non-Discrimination Act (1325/2014)

¹⁶⁶ Sopimus vuoden 2017 työeläkeuudistuksesta (<http://www.elakeuudistus.fi/media/linkkitiedostot/sopimus-vuoden-2017-tyoelakeuudistukseksi.pdf>).

¹⁶⁷ ECSR, Complaint 70/2011, Decision on the merits (4 December 2012) para 60; ECSR, Complaint 71/2011, Decision on the merits (4 December 2012) para 53.

¹⁶⁸ See Hallituksen esitys eduskunnalle laiksi lapsilisälain 7 §:n muuttamisesta (HE 324/2014).

¹⁶⁹ Government Report on Disability Policy 2006, p. 3

¹⁷⁰ The Constitution of Finland Chapter 2 Section 6: "No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person."

Section 8. Nobody may be discriminated directly or non-directly against on the basis of disability. The Non-Discrimination Act does not prevent specific measures aimed at the achievement of genuine equity in order to prevent or reduce the disadvantages caused by the types of discrimination.¹⁷¹ Finland has signed the UN Convention of the Rights of Persons with Disabilities in 2007.

The Ministry of social affairs and health in Finland is responsible for coordinating the disability policy by developing and providing social and health services as well as income security. The implementation of this policy is the responsibility of all administrative sectors in their respective areas.¹⁷² Finland's Disability Policy Programme VAMPO was concluded in 2006 to set out specific measures for the period 2010-2015 to break structural barriers that restrict the independent living and coping, participation, self-determination and social inclusion of people with disabilities.¹⁷³ The large programme contains directions of development both in the areas of education and employment. The National Council on Disability VANE is a statement-making institution and a co-operative organ for authorities and disability organisations that monitors the implementation of VAMPO with together with the Trade Union for the Public Health and Welfare Sectors JHL.¹⁷⁴ There are also many national organisations that are significantly working for the rights of people with disabilities. Such national organisations are such as the Finnish Disability Forum, Finnish association of People with Disabilities, The Threshold Association, The Finnish Federation of Visually Impaired and The Finnish Association for People with Intellectual Disabilities.

In Finland the disability services are mainly the responsibility of municipalities. All people with disabilities are provided with a personal service plan on the services and support they require. These services may include assistive devices, personal assistant, transport services, service accommodation and institutional care, adaptation and rehabilitation guidance, financial support,

¹⁷¹ The Non-Discrimination Act Section 9

¹⁷² Web page of the Ministry of Social Affairs and Health
http://www.stm.fi/en/social_and_health_services/disability_services (Access 22.04.2015).

¹⁷³ Publications of the Ministry of Social Affairs and Health 2012/7: Finland's Disability Policy Programme VAMPO 2010-2015: A Strong Basis for Inclusion and Equality, p. 3.

¹⁷⁴ Web page of the National Council on Disability VANE
http://www.vane.to/index.php?option=com_content&view=article&id=129&Itemid=13.

interpretation services¹⁷⁵ and activities to support employment.¹⁷⁶ Private providers and non-governmental organizations complement public services. Municipalities usually buy some of the services from the private sector.¹⁷⁷

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

Educational policy based on the strong principle of community schooling regulated in the Basic Education Act (628/199), is the main form of action in Finland. According to this principle all students attend the school in their own residential area, which means that children with disabilities are integrated into the general mainstream education while attending compulsory school.¹⁷⁸ Children in a special need are supported individually. Support for learning is shaped into different categories where the most special needs of support are based on careful assessment and long-span planning in multi-professional teams. The education provider makes the decision concerning special support.¹⁷⁹

The local authority may arrange schooling also by purchasing the education services from a basic education provider that can be a private or public authorised service provider for special-needs education.¹⁸⁰ The schools for children with special needs provide education especially for individuals who cannot easily be integrated into the general education scheme. Also the local authority on whose area a hospital is located shall be responsible for arranging teaching to a pupil who is a patient to the extent that his or her health and other circumstances allow.¹⁸¹ The municipalities regardless of the location arrange the transport services to and from school or

¹⁷⁵ Interpretation services for people who are deaf, deaf-blind, hard-of-hearing or have a speech disability have been organised by the Social Insurance Institution of Finland since 2010.

¹⁷⁶ Social Welfare Act (710/1982).

¹⁷⁷ Report: Personal Assistance in Finland – legislation, implementation, statistics and challenges for the future: Ministry of Social Affairs and Health.

¹⁷⁸ VAMPO 2010-2015, p. 41.

¹⁷⁹ Web page of the Finnish National Board of Education

http://www.oph.fi/english/education_system/support_for_pupils_and_students/support_in_basic_education (Access 23.04.2015).

¹⁸⁰ Basic Education Act (628/199) Section 7.

¹⁸¹ Ibid Section 4a.

place of study. In 2013, the number of special schools at the comprehensive school level was 105.¹⁸²

After the comprehensive school, the access to education for young people with disabilities is not equal in all respects compared with the other young people of the same age.¹⁸³ The training for young persons with disabilities is mostly focused on the vocational training, which is arranged in the general educational institutions or, for the most severely disabled people, in the vocational institutions of special education.¹⁸⁴ In 2013, the number of special needs vocational institutes was 6.¹⁸⁵

The vocational training in Finland provided in the Ministry of Education and Culture sector is intended for young people as well as for adults already in working life. The vocational education and training provider may be a local authority, a municipal training consortium, a foundation or the state. The Social Industry Institution covers the costs of adjustments made during the vocational training of a person with disabilities. The Public Employment Service is the main contributor to the mainstream forms of vocational rehabilitation training. Work try-outs are another form of vocational training for persons with disabilities. They offer on-the-job training and experience in ordinary working places or in work clinics, often run by non-governmental organizations.¹⁸⁶

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

¹⁸² Official Statistics of Finland: Providers of education and educational institutions [e-publikations] 2013 Helsinki Statistics Finland [Referred 23.4.2015].

¹⁸³ Finland's Disability Policy Programme VAMPO 2010-2015 p. 41.

¹⁸⁴ The act on Vocational Education (630/1998).

¹⁸⁵ Official Statistics of Finland: Providers of education and educational institutions [e-publikations] 2013 Helsinki Statistics Finland [Referred 23.4.2015].

¹⁸⁶ Employment for all – Resource Centre on Employment for Persons with Disabilities: Finland <http://www.employmentforall.eu/LABOr/KnowledgeCenter/ADMINArticlesKnowledgeCentre/ProgrammesandWelfareBenefitSystems/tabid/4211/Default.aspx> (Access 23.04.2015).

Discrimination on the basis of disability within employment is prohibited in the Finnish Employment Contracts Act (55/2001) Chapter 2 Section 2 that provides the equal treatment of employees. According to the act, the employer shall not exercise any unjustified discrimination against employees on several bases, one being disability.

Municipalities in Finland are responsible to carry out activities to support the employment of people with disabilities. Employment in the open labour market either directly or with some labour market support materials for persons with disabilities in different age groups has been more difficult than for non-disabled persons.¹⁸⁷ The employment rate of people with limitation in work caused by a health condition or difficulty in a basic activity is 50.6%.¹⁸⁸

In Finland there are many different forms to support the access to the employment of a person with disabilities when he or she has made the decision of seeking assistance in finding and keeping a job. The local services of the Public Employment Service provide counselling and assessment.¹⁸⁹ Pay subsidy is a traditional policy measure in Finland when promoting the access of persons with disabilities to employment. The employer in the private sector may be eligible for a monthly pay subsidy granted by the Public Employment Service when hiring a person with disabilities. The employer entitled to the pay subsidy must pay the employee the salary indicated in the applicable collective agreement.¹⁹⁰

Other options promoted for the employment of people with disabilities in addition to vocational rehabilitation referred earlier are supported employment and provisions of aids and adjustments in the workplace. The supported employment involves a continued job coaching with the assessments of working ability and service guidance. The financial support does not end when an individual has found employment unlike other vocational rehabilitation systems.¹⁹¹

¹⁸⁷ VAMPO, p.45

¹⁸⁸ Eurostat 2011 Employment rate of people by type of disability, sex and age <https://datamarket.com/data/set/4n3d/employment-rate-of-people-by-type-of-disability-sex-and-age#!ds=4n3d!7z58=4:7z59=1:7z5a=3:7z5b=b.2.o.q.j.3.4.k.d.7.5.p.t.g.l.8.r.s.9.u.a.c.m.v.w.n.6.e.h.i.f&display=choropleth&map=europe&classifier=natural&numclasses=5>

¹⁸⁹ Web page of the Public Employment Service http://te-palvelut.fi/te/fi/tyonhakijalle/tukea_tyollistymiseen/vamma_tai_sairaus/index.html (partly only in Finnish)(Access: 10.04.2015).

¹⁹⁰ Web page of the Public Employment Service http://www.te-services.fi/te/en/employers/find_an_employee/support_recruitment/pay_subsidy/index.html#Amountanddurationofpaysubsidy (Access: 10.04.2015).

¹⁹¹ Employment for all: Resource center on employment for persons with disabilities: Finland.

The social enterprises providing employment opportunities particularly for the disabled unemployed function as one form of helping the people with disabilities to access the working life. According to the Act on Social Enterprises (1351/2003) Section 4 a social enterprise may be accepted into the register of social enterprises maintained by the Ministry of Labour when fulfilling the criteria stated in the act. One criterion is that at least 30% of the personnel are persons with disabilities or a mix of those and long-term unemployed persons. Municipality-funded sheltered workshops provide work for persons with disabilities who cannot be integrated into the open labour market. The workshops produce different products and services that contribute to the running costs of the organisation. The sheltered workshops are criticised for the low pay.¹⁹²

There are also the mainstream options such as labour market training, maintenance of work ability courses and employment subsidy for practical training. Employment subsidy for practical training allows people who are entitled to benefits, other than basic unemployment benefits, to gain practical job experience with labour market support where the basic unemployment allowance is paid during the on-the-job training.¹⁹³

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

Several measures affecting the situation of the people with disabilities have been occurring during the time of the economic crisis. Many decisions of development in different administrative sectors provided in the Disability Policy Programme VAMPO for 2010-2015 have been completed with positive results.¹⁹⁴ Also the Youth Guarantee Programme discussed later in the section 5.2.4 should have positive effects on the education and working possibilities of young persons with disabilities in all respects compared with the other young people.¹⁹⁵ Still, the employment rate of people with disabilities is quite low in comparison with the overall employment rate in Finland. Many people capable of working would like to participate in the open labour market but the benefit systems in Finland create incentive traps while the social

¹⁹² *ibid.*

¹⁹³ *ibid.*

¹⁹⁴ Report: VAMPO seurantaraportti 18.6.2014 by the Trade Union for the Public Health and Welfare Sectors JHL.

¹⁹⁵ The Social Guarantee for Young People Working Group http://www.nuorisotakuu.fi/en/youth_guarantee.

benefits are lost when taking a job. There have been some actions attempting to remedy this issue and some positive impacts are already shown.¹⁹⁶

Few legal measures might result in negative effects in the future considering the equal right for the access of persons with disabilities to employment. The Finnish Disability Forum raised concerns over a government bill (HE 198/2014)¹⁹⁷ that concerned pay subsidies granted for the employer.¹⁹⁸ The amendments in the legislation entered in force in January 2015 decreasing the total amount of pay subsidies. The aims of these amendments were to benefit the jobseekers that have been unemployed for a long period of time. The Finnish Disability Forum stated that the decrease would dramatically deteriorate the access to employment for the people with disabilities. The situation may have real negative effects on the right of the persons with disabilities accessing and keeping employment provided in the Article 15 ESC. However, together with all different measures tending to promote opportunities for persons with disabilities to participate in working life in respect for the Article 15 ESC, there should not be concerns for the situation in Finland to be noncompliant with the ESC.

5.2. Children and Young Persons (Article 17 ESC)

The European Committee of Social Rights last examined the situation in Finland in respect of Article 17 in 2011 based on the periodic report covering the period 2003-2009. The Committee deferred its conclusion in respect of Article 17(1) due to the lack of information and concluded the conformity of the Article 17(2).¹⁹⁹ Due to introduction of simplified reporting procedure for the State Parties to the ESC which have ratified the collective complaints procedure²⁰⁰ Finland has not reported on the situation in respect of Article 17 in its latest periodic report. Finland will

¹⁹⁶ Since 2014 it has been possible to receive employment-related earnings for EUR 300 per month without any impact on the unemployment benefit. European Commission Country report Finland{COM(2015)85 final}, p.48 http://ec.europa.eu/europe2020/pdf/csr2015/cr2015_finland_en.pdf.

¹⁹⁷ HE eduskunnalle laeiksi julkisesta työvoima- ja yrityspalvelusta annetun lain muuttamisesta ja väliaikaisesta muuttamisesta, työsopimuslain 13 luvun 6 §:n väliaikaisesta muuttamisesta ja työttömyysturvalain 7 luvun 3 §:n 3 momentin kumoamisesta (198/2014) (Finnish only).

¹⁹⁸ Statement: Finnish Disability Forum 22.10.2014 on the Government Bill HE 198/2014.

¹⁹⁹ European Committee of Social Rights Conclusions 2011.

²⁰⁰ Department of the European Social Charter, Strasbourg, 12 May 2014, GC(2014)12.

report on Article 17 in its 2018 periodic report and the Committee will make its respective Conclusion in 2019 Conclusions cycle²⁰¹.

The rights of children in Finland are primarily protected by the National Constitution. The Constitution of Finland calls that:

Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development.²⁰²

Moreover, it obliges the public authorities to:

Support families and others responsible for providing for children so that they have the ability to ensure the wellbeing and personal development of the children.²⁰³

In addition, the key national legislation sources protecting the rights of the children and youth include the following Acts: Child Custody and Rights of Access Act (361/1983), Child Welfare Act (417/2007), Youth Act (72/2006), Basic Education Act (628/1998), and also Social Welfare Act (710/1982).

Office of the Ombudsman for Children has been established by the parliamentary act on 21 December 2004, which entered into force on 1 September 2005. The scope of duties of the Ombudsman is to promote the interests and rights of the child.²⁰⁴ In 2010, The Ombudsman for Children launched a campaign lasting for several years to improve the legal protection and security of children and young people and to enhance the awareness of authorities on the legal protection needs of children and youth.²⁰⁵

The Appendix to the Revised European Social Charter specifies the scope where the provisions of Article 17 to be applied. It emphasizes that the provision under Article 17 “covers all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier” and “does not imply an obligation to provide compulsory education up to the above-mentioned age”. However, the Finnish Children Welfare Act specifies that it refers to anyone under 18 years

²⁰¹ http://www.coe.int/t/dghl/monitoring/socialcharter/ReportCalendar/CalendarNRS_en.asp.

²⁰² The Constitution of Finland adopted on 11 June 1999, section 6.

²⁰³ *ibid* Section 19.

²⁰⁴ Act on the Ombudsman for Children. (1221/2004) Section 2.

²⁰⁵ Office of the Ombudsman for Children's Action Plan for 2013, Publication 2013:4, p.8.

old as a child and to one aged between 18-20 as a young person²⁰⁶ and protects the rights of the both groups respectively. Youth Act interprets young people as all under 29 years old.²⁰⁷

Before starting the analyses of the specific issues related to the protection of right of children and youth in Finland it is worth mentioning that Finland together with other Nordic states is considered a welfare state and therefore social rights have a special significance in the overall view of the governance.

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

In Finland the national administration of education and training is distributed between two governmental institutions: the Ministry of Education and Culture (the Ministry) and the National Board of Education (the Board). The Ministry is the highest authority and is responsible for all publicly funded education in Finland. The Ministry is responsible for preparing educational legislation, for all necessary decisions and for its share of the state budget for the Government. The Board is the national development agency responsible for primary and secondary education as well as for adult education and training. Higher education is the responsibility of the Ministry. Finnish Basic Education Act provides for basic education and compulsory schooling²⁰⁸. The Basic Education Act also provides for pre-primary education, which is primarily given during the year preceding compulsory schooling.²⁰⁹ Under the latest amendment to the Basic Education Act, the pre-school education has become compulsory in Finland²¹⁰.

Child Welfare Act also emphasizes the significance of establishment educational services for the purposes of upbringing children as:

When arranging and developing social and health-care services, education services and other services intended for children, young people and families with children, the municipalities must ensure that these services provide support in

²⁰⁶ Children Welfare Act Section 6.

²⁰⁷ Youth Act 72/2006, Section 2(1).

²⁰⁸ Basic Education Act Section 1.

²⁰⁹ Ibid.

²¹⁰ Amendment from 12 December 2014, 1040/2014, entered into force on 1 January 2015.

child upbringing for parents, custodians and other persons responsible for child care and upbringing, and that the special support needs of children, young people and families with children are investigated. Where necessary, the municipalities must arrange activities to assist children and young people in need of special support.²¹¹

The local authorities have an obligation to arrange basic education for children of compulsory school age residing in its area and pre-primary education during the year preceding compulsory schooling.²¹² In addition, the local authorities should arrange appropriate schooling for children allocated temporarily in the hospital.²¹³ The comprehensive view of the provisions for the arrangement of education for children with special needs is addressed in the Section 17 of the Basic Education Act. Finland's practice on working with at-risk students has been found the most effective in the study among six European countries; the success has been reached through the teacher's frequent application of the specialist consultation.²¹⁴

Section 10 of the Basic Education Act provides for the language of instruction, which shall be either Finnish or Swedish and also Saami, Roma or sign language. In the sixth periodic report by the Government of Finland on the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR)²¹⁵ covering the period from 1 June 2005 to 31 May 2010, it has been reported that:

The Ministry of Education grants state financial aid to municipalities for measures to improve and stabilize the understanding in school communities of the Roma culture and to costs related to such programmes. The amount of the available aid in 2008-2009 was EUR 300,000. A total of 14 municipalities received such aid. In 2010-2011, the amount of the aid will be increased to EUR 650,000. More municipalities are encouraged to take advantage of the aid, and the ones already involved are encouraged to expand their programmes. Approximately 75 per cent of all Roma children in compulsory school are included in the scope of these measures.²¹⁶

²¹¹ Child Welfare Act Section 8.

²¹² Basic Education Act Section 4.

²¹³ Ibid.

²¹⁴ Ise, E., et al (2011), Support Systems for Poor Readers: Empirical Data From Six EU Member States, *Journal of Learning Disabilities* 44.3: pp. 228–245.

²¹⁵ International Covenant on Economic, Social and Cultural Rights, adopted on 16 December 1966.

²¹⁶ The sixth periodic report by the Government of Finland on the implementation of the International Covenant on Economic, Social and Cultural Rights covers the period from 1 June 2005 to 31 May 2010, E/C.12/FIN/6,

It has also been reported on the plans to adopt a programme to promote the revitalization of the Sámi language and setting up the working group under the Ministry of Education and Culture to work over the matter.²¹⁷ Also for children with an immigrant background, whose Finnish or Swedish language skills are not at native level, the authorities arrange additional language courses.²¹⁸ Schools may also arrange courses in the native language of the pupil while it is possible. As of 2010, the State has allocated funds to municipalities to provide two hours a week of such education for each group of four. In 2008, some 12,200 pupils were studying their native language, showing an increase of 10.9 per cent from 2007.²¹⁹ The Ministry of Education and Culture development plan for 2011–2016 aimed to increase the enrollment in schools of students with immigrant background in preparatory education in order to improve their opportunity to finish upper secondary education.²²⁰

Also, in the fourth periodic report on implementation of the Convention on the Rights of the Child²²¹ it has been reported on the measures taken towards assurance of Roma children participation at all levels of education, provision of teachers and parents with the necessary information and facilitation of teaching Roma language for teachers and other school staff.²²²

Nevertheless, in light of taken measures, the number of early school leavers in the 18 to 24 years age has been average 9% between 2008 and 2014, being the highest in 2010 equal to 10.3%.²²³ The data indicates the percentage of population not enrolled in education at post compulsory level. The UN Committee on Economic, Social and Cultural Rights as well as the UN Committee on the Rights of the Child in their Concluding observations on the respective periodic reports expressed concern about the difficulties faced by children of immigrant

par. 332.

²¹⁷ Ibid par. 334.

²¹⁸ Ibid par. 337.

²¹⁹ Ibid par. 338.

²²⁰ Education and Research 2011–2016 A development plan Reports of the Ministry of Education and Culture, Finland 2012:3.

²²¹ Convention on the Rights of the Child, adopted on 20 November 1989.

²²² The fourth periodic report of the Government of Finland on the implementation of the Convention on the Rights of the Child covers the period of time July 2003–July 2008, CRC/C/FIN/4, par. 331.

²²³ Eurostat statistics accessed on 3.3.2015

<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tsdsc410&plugin=1>.

background and Roma children in the education system, the high number of children in special education and the high drop-out rate.²²⁴

The breakdown of comprehensive schools and comprehensive level special education schools in towns, densely populated areas and rural areas in 2014 has been as following:²²⁵

	Comprehensive schools		Comprehensive level special education schools	
	No. of educational institutions	%	No. of educational institutions	%
Towns	1246	49.2	66	66.7
Densely populated areas	576	22.7	22	22.2
Rural areas	712	28.1	11	11.1

Figure 1.

The figures reflect a decrease in number of schools compared to those reported by Finland in the 6th National Report on the implementation of the European Social Charter in 2009. The reduction in the number of schools is mainly caused due to their abolition or combination. From 2010 to 2013, there were 246 schools abolished and 126 merged to another school.²²⁶

According to statistical data for 2014, there were 2 498 comprehensive schools and 99 special education schools on comprehensive school level operating in Finland.²²⁷ The both indicators reflect the drop from the previous year, as of 78 and 6, respectively.

In Finland, the ratio of students to teaching staff in 2012 was 9 for lower and 16 for upper secondary education.²²⁸

²²⁴ Committee on the Rights of the Child Concluding observations 17 June 2011, CRC/C/FIN/CO/4, par. 51; Committee Economic, Social and Cultural Rights Concluding observations on the sixth periodic report of Finland, 17 December 2014, E/C.12/FIN/CO/6, par. 28

²²⁵ The data received on 20.4.2015 from Statistics Finland upon request for the purposes of current report.

²²⁶ Educational statistics yearbook 2014, Finnish National Board of Education, 2014:10, pp. 40-41

²²⁷ Official Statistics of Finland (OSF): Providers of education and educational institutions [e-publication]. ISSN=1799-5825. 2014. Helsinki: Statistics Finland [referred: 3.3.2015]. Access method: http://www.stat.fi/til/kjarj/2014/kjarj_2014_2015-02-12_tie_001_en.html.

The adopted general education model and educational path that may be taken by students in Finland is presented in the chart below:²²⁹

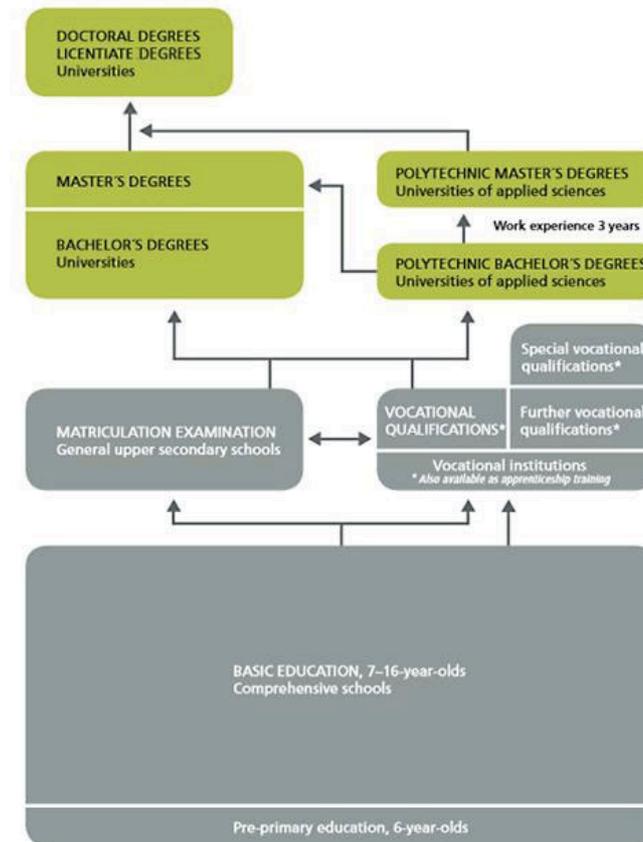


Figure 2.

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

Children and young persons temporarily or definitively deprived of family's support are protected by the Child Welfare Act.²³⁰ The arrangement of child specific and family specific child welfare environment is the responsibility of municipalities.²³¹

²²⁸ OECD (2014), "Indicator D2: What is the student-teacher ratio and how big are classes?", in Education at a Glance 2014: OECD Indicators, OECD Publishing.

²²⁹ http://www.studyinfinland.fi/destination_finland/education_system accessed 05.04.2015;
<http://www.okm.fi/OPM/Koulutus/koulutusjaerjestelmae/?lang=en> accessed 05.04.2015.

²³⁰ Child Welfare Act 417/2007.

Substitute care, that is the care and upbringing of a child that has been taken into care, placed urgently or placed on the basis of an interlocutory order away from the child's own home,²³² may be arranged in the form of family care, institutional care or in some other way required by the child's needs.²³³

Unless there is something threatening the best interests of the child, the allocation of a child to a substitute care may last for a maximum period of six months.²³⁴ During the allocation period the child should be guaranteed the possibility to meet family members.²³⁵

Child Welfare Act establishes requirements for the qualifications of social workers involved into work with children in substitute care. The ECSR has established a standard of a maximum 10 children or young persons to be allocated in a same institution to resemble home environment.²³⁶ Under the Child Welfare Act seven children or young people to be cared for in a residential unit and 24 children or young people may be placed in one building.²³⁷

Regional State Administrative Agencies must monitor the operation of child welfare institutions through inspections carried out on their own initiative and specifically supervise the application of restrictive measures carried out in child welfare institutions. The psychological and other medical examinations of the child are provided before, during and after being allocated to foster care.²³⁸

According to the information provided by the National Institute for Health and Welfare²³⁹ in its Child Welfare Statistics Report for 2013²⁴⁰ “all in all 18 022 children and young people were placed outside the home in 2013, which was just under one per cent more than the previous year. (...) *In addition*, 4 202 children were placed in emergency placement in 2013, showing an increase of 6.6 per cent on 2012. (...) More than half of the children in care at the end of 2013 were placed in foster families.”

²³¹ Ibid Sections 11, 16.

²³² Ibid Section 49.

²³³ Ibid.

²³⁴ Ibid.

²³⁵ Ibid Section 54.

²³⁶ Digest of the Case law of the European Committee of Social Rights, 1 September 2008, p.121.

²³⁷ Child Welfare Act Section 59.

²³⁸ Bardy Marjatta, Lastensuojelun ytimissä, 2013, p.103.

²³⁹ <http://www.thl.fi>.

²⁴⁰ Child welfare 2013, Statistical report 26/2014, 13th November 2014.

The Committee on the Rights of the Child considering the fourth periodic report of Finland²⁴¹ welcomed “the Child Welfare Act providing more precise provisions for, inter alia, taking a child into care and urgent placement of children, and requires that alternative care is provided primarily in small and family-like units”, expressed its concern about “the number of children placed in institutions, including successive placements, is increasing.”²⁴² The Committee of the Rights of the Child has also emphasized that “children in institutions are not always integrated into mainstream education, and do not always receive the necessary mental health services”.²⁴³

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

In Finland education is free at all levels, from basic to higher.²⁴⁴ The attendance of basic and secondary school is compulsory for all permanently residing in Finland. The compulsory schooling starts in the year when the child turns seven years old and ends when the basic syllabus has been completed which normally should take ten years.²⁴⁵ Pupils are provided with textbooks and other study materials as well as daily meals.²⁴⁶ Besides the fact that education is free of tuition fees in Finland, the social security institution KELA provides for the monthly child benefit for the families with children under 17 years old.²⁴⁷ Moreover, students enrolled in post-compulsory education are provided with financial support in form of study grant, housing supplement or government guarantees on student loan.²⁴⁸

Measures are also taken to support regular attendance, such as free transport is provided to pupils at basic education when the distance between home and school, as well as alternative school, exceeds five kilometres or overall the way is considered to be too difficult or dangerous.²⁴⁹

²⁴¹ CRC/C/FIN/4, 26.05.2010.

²⁴² CRC Concluding observations: Finland 3 August 2011, CRC/C/FIN/CO/4, par. 33.

²⁴³ Ibid Section 32.

²⁴⁴ Basic Education Act Section 31.

²⁴⁵ Ibid Section 24.

²⁴⁶ Ibid Section 31.

²⁴⁷ [Child Benefits Act 21.8.1994/796, last amended 12.12.2014.](#)

²⁴⁸ [Student Financial Aid Act 21.2.1994/65, last amended 20.3.2015.](#)

²⁴⁹ Basic Education Act Section 32.

UNICEF statistics for the period 2008-2012 on net enrolment ratio in primary and secondary school by gender in Finland states provides for the following indicators:²⁵⁰

	Net enrolment ratio (%)
Primary school participation, 2008-2012*, male	97.9
Primary school participation, 2008-2012*, female	98
Secondary school participation, 2008-2012*, male	93.1
Secondary school participation, 2008-2012*, female	93.7

Figure 3.

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue

According to Statistics Finland's Labour Force Survey, as of December 2014, the number of unemployed persons was 232,000, which was 27,000 higher than a year before. The unemployment rate was 8.8 per cent, while being 7.9 per cent in December of the year before. The unemployment rate for young people aged 15 to 24, that is, the proportion of the unemployed among the labour force, stood at 19.8 per cent, which was 3.2 percentage points higher than one year previously. The share of unemployed young people aged 15 to 24 among the population in the same age group was 9.0 per cent.²⁵¹

According to the Eurostat statistics the average unemployment rate in Finland between 2008 and 2013 raised from 6.4% to 8.2%, while same indicators for EU 28 average were 7% and 10.8%, respectively.²⁵² As for the Eurostat youth statistics, between 2010 and 2013 the percentage of the youth unemployment at the age from 15 to 19 years old in Finland increased from 9.3% to 9.6%, respectively. The average rate of youth unemployment of the same age group in the EU 28 for

²⁵⁰ http://www.unicef.org/infobycountry/finland_statistics.html accessed on 05.03.2015.

²⁵¹ Official Statistics of Finland (OSF): Labour force survey [e-publication]. ISSN=1798-7857. December 2014. Helsinki: Statistics Finland [referred: 20.2.2015]. Access method: http://www.stat.fi/til/tyti/2014/12/tyti_2014_12_2015-01-20_tie_001_en.html.

²⁵² <http://ec.europa.eu/eurostat/data/database> unemployment rate by sex and age groups.

2013 was 5.8%.²⁵³ For the age group between 15 to 24 years old, the rate of unemployed in Finland was 10.3% in 2013, which is 1.5% higher than in 2008. The average rate of youth unemployment of the same age group in the EU 28 for 2013 was 9.9%.²⁵⁴

There is number of measures taken towards improvement of the situation and addressing the issues. The working group for the Governmental Programme Youth Guarantee was formed on 22 June 2011 and it started the programme implementation at the beginning of 2013. The aim of the programme is to provide social guarantee for people younger than 25 years and recent graduates under 30 years. They are to be offered work, a traineeship, or a study, workshop or labour market rehabilitation place within three months of becoming unemployed.²⁵⁵ The programme is being implemented in cooperation between the Ministry of Employment and the Economy, the Ministry of Education and Culture, the Ministry of Social Affairs and Health, the Social Insurance Institution Kela, the Association of Finnish Local and Regional Authorities, Finnish Youth Cooperation – Allianssi and labour market organisations. The program includes different schemes for youth with different types and levels of education.

Being earlier initiated by the Ministry of Employment and Economy, Sanssi card subsidy project has become a part of the Youth Guarantee program. The Sanssi card is an employment voucher issued by the Public Employment Services to young unemployed jobseekers under 30 years old. Up to 700 euro of monthly salary entitled to a young person under the collective agreement is subsidised by the Public Employment Services. The subsidy may be applied both to full or part time employment. Each young person is eligible for 10 months of subsidy.²⁵⁶ According to statistics from *ELY-keskus* (Centre for Economic Development, Transport and the Environment) during the period from January 2013 to April 2014, 54 870 young people under 30 years old got a Sanssi card.

²⁵³ <http://ec.europa.eu/eurostat/data/database> youth unemployment rate by sex and age, accessed 20.02.2015

²⁵⁴ *ibid.*

²⁵⁵ https://www.tem.fi/en/current_issues/pending_projects/strategic_programmes_and_flagship_projects/social_guarantee_for_young_people_working_group; Report by the Social Guarantee for Young People Working Group (in Finnish); http://www.nuorisotakuu.fi/en/youth_guarantee; http://www.tem.fi/files/33973/English_version.pdf.

²⁵⁶ http://www.te-services.fi/te/en/employers/find_an_employee/support_recruitment/recruiting_sanssi_card/index.html.

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

Even though Finland entered the global crisis in 2008 from a relatively strong position, having built up a substantial surplus in the current account and in the government finances, in 2009 its GDP declined by 7.8%.²⁵⁷ Recession in Finland has been observed mainly since 2012.²⁵⁸

Among the measures taken to tackle the financial crisis and having direct impact on children it is worth mentioning that following the amendment²⁵⁹ of the Child Benefits Act²⁶⁰, child benefits will be reduced by 8.1% per child with effect from 1 January 2015.

As to the measures concerning education, the statistics from 2014 states that there has been decrease by 67 comprehensive schools from previous year.²⁶¹ The research findings indicate a high rate of school closures in Finnish rural areas.²⁶² At the same time, at the municipal level it is planned to cut the number of high and professional schools.²⁶³ In the latest Country Report to the European Commission it has been outlined as following:

The structural policy programme adopted in late 2013 reduces government expenditure on education by a significant amount (approximately 280 million euros, about 5 % of the education budget) over the period 2014-17. The tighter budgetary restrictions might make it necessary to reorganize the upper-secondary school network or the provision of pre-school education (or both) by local authorities. There is a risk that this will have an impact on the quality of educational outcomes.²⁶⁴

²⁵⁷ European Economic Forecast 2010.

²⁵⁸ European Economic Forecast 2015.

²⁵⁹ HE 165/2014, 12,12, 2014/1111.

²⁶⁰ Child Benefits Act 21.8.1992/796, Section 7.

²⁶¹ Official Statistics of Finland (OSF): Providers of education and educational institutions [e-publication]. ISSN=1799-5825. 2013. Helsinki: Statistics Finland [referred: 13.2.2015].
Access method: http://www.stat.fi/til/kjarj/2013/kjarj_2013_2014-02-13_tie_001_en.html.

²⁶² Autti, O., & Hyry-Beihammer, E. K. (2014). School closures in rural Finnish communities. *Journal of Research in Rural Education*, 29(1), 1-17 Retrieved from <http://jrre.psu.edu/articles/29-1.pdf>.

²⁶³ <http://www.kunnat.net/fi/asiantuntijapalvelut/opeku/opetus/rakuudistus/Sivut/default.aspx>.

²⁶⁴ Country Report Finland 2015 Including an In-Depth Review on the prevention and correction of macroeconomic Imbalances Brussels, 26.2.2015, p.51.

The budget allocation of the Ministry of Education and Culture to General Education shows significant decrease during the last few years, so that from 964 mil. euro in 2012²⁶⁵ to EUR 792 mil. in 2015.²⁶⁶

Being at the risk of aging population it is extremely important for Finland to take measures towards maintenance and to improve social policies, with the emphasis given to the access to education for the children and youth and the improvement of the level of youth employment. The European Commission has advised Finland to:

Improve the use of the full labour force potential in the labour market (...)
Improve the labour-market prospects of young people and the long-term unemployed, with a particular focus on vocational education and targeted activation measures.²⁶⁷

Finland experiences the impact of the financial crisis in many aspects. It is reflected in a number of measures that have been taken towards the reduction of cost allocations. However, considering precisely the situation of the children and youth, we could observe some reductions, but not the complete abolishment of benefits or other support programs. Therefore, measures taken in response to the financial crisis still allow Finland to protect rights of the children and youth in conformity with the RESC.

6. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

6.1. General Information

²⁶⁵ http://www.okm.fi/OPM/Linjaukset_ja_rahoytus/tilastoja_ja_taulukoita_taloudesta/toimialat.html?lang=en
accessed on 13.02.2015.

²⁶⁶ http://www.okm.fi/OPM/Linjaukset_ja_rahoytus/tilastoja_ja_taulukoita_taloudesta/toimialat.html?lang=fi
accessed on 13.02.2015.

²⁶⁷ Official Journal of the European Union COUNCIL RECOMMENDATION of 8 July 2014 on the National Reform Programme 2014 of Finland and delivering a Council opinion on the Stability Programme of Finland, 2014 (2014/C 247/24).

Finland ratified the collective complaint system of the European Social Charter on 17 July 1998.²⁶⁸ The system was statutorily implemented in Finland on 1 September 1998.²⁶⁹ After that, Finland has been the respondent of a total of eight collective complaints, six of which have been lodged in the 2010's.²⁷⁰ In the first one of the two cases preceding the financial crisis, *Teby ry and STTK v. Finland* (No. 10/2000) a violation was found and later remedied by Finland.²⁷¹ The second one, *Federation of Finnish Enterprises v. Finland* (No. 35/2006) resulted in a finding of a non-violation.²⁷²

Naturally, the sole focus of this chapter will be in the six complaints lodged after the financial crisis that erupted in 2008. It is striking that all of the complaints are in substance related to the level of social protection in Finland and are thus relevant for the purposes of this study. The two first ones, complaints numbers 71 and 72, were lodged in 2011 by *The Central Association of Carers in Finland*. Both complaints concerned the lack of uniformity in the services of elderly persons in Finland. The European Committee of Social Rights ("the Committee") found a violation of Article 23 in both cases in its decisions adopted on 4 December 2012.²⁷³ After the decisions, the Committee requested information from the Finnish government on improvements made regarding the services of the elderly.²⁷⁴ Finland provided its response to these inquiries in its recent 10th National Report on the implementation of the European Social Charter, registered in 4 November 2014.²⁷⁵ While, according to the report, Finland seems to have made significant efforts to improve the services of the elderly, the Committee will provide its own assessment of the matter in January 2016.²⁷⁶

²⁶⁸ ECSR, Factsheet (Finland), p.1.

²⁶⁹ The implementing act and regulation of the revised European Social Charter (SopS 75-76/1998) (available only in Finnish and Swedish).

²⁷⁰ List of complaints and state of procedure, available in the RESC webpage: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp.

²⁷¹ Factsheet (Finland), p. 6.

²⁷² Ibid.

²⁷³ *The Central Association of Carers in Finland v. Finland*, Complaint no. 70, Decision on the merits 4 December 2012, para. 53.

²⁷⁴ ECSR, Conclusions 2013 (Finland), p. 35.

²⁷⁵ 10th National Report on the implementation of the revised European Social Charter (Finland), submitted to the ECSR in October 2014, p. 12-17.

²⁷⁶ Factsheet (Finland), p. 1.

The remaining four complaints, numbers 88 and 106–108 were lodged by the *Finnish Society of Social Rights*. The first one of them was lodged in 2012 and the three later ones in April 2014.²⁷⁷ In the complaint number 88, the complainant organization alleged that Finland has neither maintained the social security system at a satisfactory level, nor raised the system to a higher level in violation of Articles 12(1) to (3) of the Charter.²⁷⁸ Its primary concern was that the minimum level of several social security benefits is below the requirements of the Charter.²⁷⁹ In its decision on the merits, adopted on 9 September 2014 and made public on 11 February 2015, the Committee found violations of Articles 12(1) and 13(1) of the charter. The conclusions therein are largely the same as the Committee made in its 2013 Conclusions regarding Finland.²⁸⁰ In its initial comments to the decision, the government of Finland has maintained its position that the social system in Finland should, instead of individual scrutiny of different benefits, be regarded as a whole where the level of income support cash benefits is supplemented with targeted benefits such as housing benefits as well as payment caps on numerous health services and prescription drugs.²⁸¹

The research question of this chapter regarding the collective complaint system is limited to the effects the said system has had in alleviating the impact of austerity measures.²⁸² Therefore, as the Committee has not yet provided decisions on the admissibility of the most recent complaints regarding Finland²⁸³, the said complaints will not be discussed in this section. What follows now is an analysis of the regulatory reforms that took place in Finland after the decisions on complaints 70 and 71. It will be shown that said decisions have been taken into account in the relevant regulatory reforms.

6.2. The Regulatory Landscape after Complaints 70 and 71

6.2.1. The Decisions on the Merits

²⁷⁷ List of complaints and state of procedure.

²⁷⁸ *Finnish Society of Social Rights v. Finland*, Complaint no. 88, Decision on the merits 9 September 2014, para. 2.

²⁷⁹ *Ibid.*

²⁸⁰ Conclusions 2013 (Finland), p. 16 and 22.

²⁸¹ Joint press release (34/2015) of the Ministry of Social Affairs and Health and the Ministry for Foreign Affairs, available in English here: <http://formin.finland.fi/public/default.aspx?contentid=321111&nodeid=15145&contentlan=2&culture=en-US>.

²⁸² ELSA LRG on Social Rights, Academic Framework, p. 4.

²⁸³ List of complaints and state of procedure.

As mentioned above, complaints numbers 70 and 71 concerned the lack of uniformity in the services of elderly persons in Finland. More specifically, complaint number 70 concerned the unequal treatment in different parts of the country of informal carers looking after elderly persons.²⁸⁴ The complaint also alleged that the lack of funding in some parts of the country leads to unequal treatment in the delivery of services to elderly persons.²⁸⁵ In its decision, the Committee took note that the provision of social welfare in Finland rests largely with the municipalities, which have significant discretion regarding the means of establishing the required social welfare services.²⁸⁶ While the minimum allowances for informal carers are set in the relevant legislation²⁸⁷, the Committee stressed that this applies only when said fees are paid.²⁸⁸ In addition, it was not disputed that the treatment of informal carers nonetheless varied in different parts of Finland, leading to an unsatisfactory situation in certain municipalities.²⁸⁹ As part of the evidence accepted by the Committee, the complainant organization provided information on Finnish municipalities which had ceased the payment of allowances or tightened their criteria to due to economic constraints.²⁹⁰ Moreover, according to the Committee, the government had failed to provide evidence that any alternative care was ever organized.²⁹¹ Interestingly, the complainant organization claimed that the economic depression of 2009 was one of the contributing factors to these negative developments.²⁹² In its conclusion, the Committee found that the fact that the legislation allowed practices which led to a part of the elderly population being denied access to informal care allowances or other alternative support constituted a violation of Article 23.²⁹³

Complaint number 71 concerned another development in the Finnish system of social protection of the elderly. Since the 1990's there has been a trend where former institutional care facilities (elderly homes and long-term health care wards) are being replaced by service housing

²⁸⁴ Complaint no. 70, Decision on the merits para. 48.

²⁸⁵ Ibid.

²⁸⁶ Ibid., para. 49.

²⁸⁷ Act on Informal Care Support (937/2005) (available only in Finnish and Swedish).

²⁸⁸ Complaint no. 70, Decision on the merits para. 52.

²⁸⁹ Ibid., para. 59.

²⁹⁰ Ibid., para. 53.

²⁹¹ Ibid.

²⁹² Ibid., para. 32.

²⁹³ Ibid., para. 60.

in the context where the pricing systems of the two types of services are significantly different.²⁹⁴ This trend, according to the complainant organization, started in the 1990's as the municipalities, having wide discretion in matters related to the organization of elderly care, opted for the service housing system to save costs.²⁹⁵ In its decision, the Committee stressed that no regulation determining the fees of service housing existed.²⁹⁶ It is a well-known fact in Finland that service housing is often costly, with monthly fees up to thousands of Euros.²⁹⁷ The Committee also noted that the government had acknowledged that the supply of care in service housing or institutional care does not meet the demands in certain municipalities. Therefore, the Committee concluded that these two facts together amount to a violation of Article 23 by creating lack of safeguards and legal uncertainties to elderly persons in need of care. The Committee also concluded that the state of affairs also amounted to a violation of Article 23 b by constituting an obstacle to the provision of information about services and facilities available for elderly persons and their opportunities to make use of them.²⁹⁸

6.2.2. Legal Developments after the Decisions

It is noteworthy that the initial response of the government of Finland seemed to more or less accept the outcome of the decisions.²⁹⁹ This attitude could have arisen from the fact that measures for improving the situation were already being implemented in Finland at the time the decisions were communicated.³⁰⁰ These measures were according to the press release: a working group for creating a national development program for informal care (established in February 2012) and a permanent increase of ten million euros in state subsidies for support services of informal carers. The working group released its final report in March 2014.³⁰¹ Another relevant

²⁹⁴ The Central Association of Carers in Finland v. Finland, Complaint no. 71, Decision on the merits 4 December 2012, para. 43.

²⁹⁵ The Central Association of Carers in Finland v. Finland, Complaint no. 71, Initial Complaint 6 July 2011, p. 4.

²⁹⁶ Complaint no. 71, Decision on the merits para. 48.

²⁹⁷ For recent discussion of this matter please see the article in Helsingin Sanomat (12 February 2014), a leading Finnish newspaper: <http://www.hs.fi/kuluttaja/a1392615187786> (available only in Finnish).

²⁹⁸ Complaint no. 71, Decision on the merits para. 53.

²⁹⁹ 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> (available only in Finnish and Swedish).

³⁰⁰ Some of these measures were also to some extent discussed in the decisions themselves. See, for example, Complaint no. 71, Decision on the merits para. 51.

³⁰¹ The report of the Ministry of Social Affairs and Health (2014:2) is available on the webpage of the Ministry of Social Affairs and Health: <http://www.stm.fi/julkaisut/nayta/-/julkaisu/1877786> (available only in Finnish).

development mentioned in the press release was the adoption of the Act on Services for Older Persons, which, *inter alia*, establishes a duty for municipalities to draw up a plan on measures to support the wellbeing, health, functional capacity and independent living of the older population as well as to organize and develop the services and informal care needed by older persons.³⁰² It is noteworthy that the full implementation of this act, taking place amidst economic stagnation, was estimated to increase yearly expenses by some EUR 250 million, a sum to be divided in half between the state and the municipalities.³⁰³ Based on the information included in the government budget proposal of 2015, the estimated sums have been followed for 2015 despite a general aspiration to save costs to tackle the budget deficit.³⁰⁴ Of future measures not yet implemented at the time, the press release mentioned a working group for developing proposals for the unification of the fees of service housing clients. The working group was established on 7 January 2013 and it published its final report on 30 January 2015.³⁰⁵

In its 2013 Conclusions regarding Finland, the Committee requested that in its next periodic report, the government of Finland has to provide full information on the implementation of legal and other relevant measures undertaken to remedy the shortcomings indicated in the decisions 70 and 71.³⁰⁶ The 10th periodic report of Finland was registered at the Committee on 4 November 2014. In the section concerning the follow-up to the decisions 70 and 71, the government provided information regarding adopted measures.³⁰⁷ First it summarized the Act on Services for Older Persons, discussed above. Secondly it provided information about the report of the abovementioned working group on informal care. According to the report, the full implementation of the proposed amendments to informal care, including a new act on contractual informal care, would increase yearly expenditures by EUR 468 million while

³⁰² See 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). The act entered into force on 1 July 2013.

³⁰³ See the government proposal (HE 160/2012), section on Economic impact (available only in Finnish and Swedish).

³⁰⁴ The government budget proposal for 2015 (HE 131/2014), p. Y49. (available only in Finnish and Swedish).

³⁰⁵ The report of the Ministry of Social Affairs and Health (2015:7) is available on the webpage of the Ministry of Social Affairs and Health: http://www.stm.fi/julkaisut/nayta/-/_julkaisu/1902635#fi (available only in Finnish).

³⁰⁶ See Conclusions 2013 (Finland), p. 34.

³⁰⁷ 10th periodic report (Finland), pp. 13-17.

incurring savings of EUR 1.5 billion when compared to alternative care methods.³⁰⁸ Interestingly, it is mentioned in the report that the national development program included therein forms part of the measures taken to ensure compliance with the requirements of decisions 70 and 71.³⁰⁹ The preparation of the draft legislation has already begun with *inter alia* two round-table discussions of experts.³¹⁰ However, due to the upcoming change of government in 2015 it remains to be seen whether there remains political will to see it through as planned.

The second development mentioned in the government's report was the Act on the Arrangement of Social Welfare and Health Care Services.³¹¹ The principal aim of this legislation is to unify the now fragmented social and health care practices in Finland.³¹² The original planned model of 5 regional parties responsible for the arrangement of said services, also discussed in the report, was hastily amended to 19 regions in February 2015, because the parliamentary Committee for Constitutional Law expressed concerns about the system's effects on local democracy.³¹³ The act, expected in the report to come to force in January 2015, was abandoned in March after the Committee declared the amended proposals as impossible to review from a constitutional perspective due to inadequate motivation.³¹⁴ It will be seen whether this act will return to the parliament after the upcoming parliamentary elections and subsequent government change.

The third development mentioned was the so called structural policy programme, which aims to alleviate the sustainability gap of government finance.³¹⁵ This is in part done by altering the service structure of elderly care so that the amount of older persons receiving outpatient and informal care is increased.³¹⁶ This is estimated to halt the growth of government and municipal

³⁰⁸ The report of the Ministry of Social Affairs and Health (2014:2), p. 11. The figures presented were largely based on findings made in Sari Kehusmaa's doctoral thesis "Containing the costs for care. Use of services, informal care and rehabilitation of frail elderly living at home", available here: <https://helda.helsinki.fi/bitstream/handle/10138/135650/Tutkimuksia131.pdf?sequence=4> (includes English language abstract & summary).

³⁰⁹ Ibid., p. 35.

³¹⁰ Press release 31/2015 of the Ministry of Social Affairs and Health, available here: <http://www.stm.fi/tiedotteet/tiedote/-/view/1902663#fi> (available only in Finnish).

³¹¹ 10th periodic report (Finland), p. 15.

³¹² See the government proposal (HE 324/2014) (available only in Finnish and Swedish).

³¹³ See the statement of the Committee for Constitutional Law (PevL 67/2014) (available only in Finnish).

³¹⁴ See the statement of the Committee for Constitutional Law (PevL 75/2014) (available only in Finnish).

³¹⁵ 10th periodic report (Finland), p. 16.

³¹⁶ Ibid.

expenditures by EUR 272 million.³¹⁷ As a part of this programme, an amendment to the Act on Services for Older Persons was recently enacted in the parliament.³¹⁸ The implemented new section limits acceptance to long-term institutional care for cases where there is medical grounds or grounds based on customer and patient safety. The government proposal reassures that amendment will not limit access to institutional care for patients who are in need of those services.³¹⁹ Critical views have however been expressed as it is clear that the demand for all kinds of services to the elderly will inevitably rise in the future. For example, an editorial in Helsingin Sanomat (14 November 2014) expresses concerns that the alternative methods of care would not always suffice if available places in institutional care are reduced significantly.³²⁰

The final development mentioned in the report was the progress made by the abovementioned working group preparing proposals for the regulation of user charges in service housing and home services.³²¹ As mentioned in the report, a draft government proposal was circulated in the municipalities, and, as mentioned above, the working group's final report was published on 30 January 2015.³²² The proposal, included in the report, amends the existing Act on Customer Charges of Social and Health Care Services³²³ by including, *inter alia*, a statutory requirement of minimum available funds available for personal use of the customer of service housing and home services.³²⁴ While this amendment would be a significant development to the better regarding service housing charges, the total cost of this reform to the municipalities remains a problem.³²⁵ Therefore, it remains to be seen whether the government proposal will be finished and delivered to the parliament in spring 2015 as originally planned.

6.2.3. Evaluation of the Developments

Based on the analysis in the previous chapter, it is safe to say that relevant developments have taken place after the decisions on the merits of complaints 70 and 71. The abovementioned two

³¹⁷ Government proposal (HE 240/2014)(available in Finnish and Swedish)

³¹⁸ See section 14a of the Act on Supporting the Functional Capacity of the Older Population and on Social and Health Services for Older Persons (980/2012).

³¹⁹ Government proposal (HE 240/2014).

³²⁰ The article is available here <http://www.hs.fi/paakirjoitukset/a1415854878496>.

³²¹ 10th periodic report (Finland), p. 17.

³²² The report of the Ministry of Social Affairs and Health (2015:7) (available only in Finnish).

³²³ Act on Customer Charges of Social and Health Care Services (734/1992) (available only in Finnish or Swedish).

³²⁴ The report of the Ministry of Social Affairs and Health (2015:7), p. 19 (available only in Finnish).

³²⁵ *Ibid.*, p. 70 (statement of the representative of the Ministry of Finance).

working groups, more or less established following the decisions 70 and 71, have produced their final reports and the work on proposals for legislation has been undertaken. Illustrative of this development is also the fact that the complainant organization was given a vital role in the working group for developing informal care.³²⁶ In addition, while already planned before the decisions and therefore not a result of the decisions *per se*, the Act on Services for Older Persons continues to improve the quality of elderly care in the municipalities.

However, it is evident that the progress has been slower than expected.³²⁷ In addition, there have been some setbacks as well, one of them being the abandoning of the Act on the Arrangement of Social Welfare and Health Care Services. In addition, the Act on Services for Older Persons still lacks provisions on a binding carer-to-patient ratio. The inclusion of such a ratio continues to be a hot topic and opinions about its effectiveness and the political will to implement it varies across the parliament.³²⁸ Also, the ongoing structural policy change reducing reliance on institutional care continues to divide opinions. While some argue that it might worsen the situation of the elderly, the government proposal regards it as an ally to the developments made regarding informal care policies.

If the message of the Committee is divided into three open questions, namely the situation of informal care, the general availability of elderly care and the pricing of service housing, it can be said that relevant first steps have been made regarding all three, but none of them have been completely addressed yet. A lot will depend on the commitment level of the future government, which is too early to be speculated at this point. As for the effect the decisions 70 and 71 had in the process, it is naturally impossible to state any exact answer. Still, as progress has been made despite nationwide economic problems, and the decisions were more or less followed by two working groups, it is safe to say that they were a contributing factor to the favorable progress in Finland.

³²⁶ 10th periodic report (Finland), p. 14.

³²⁷ The initial press release (70/2013) of the Ministry of Social Affairs and Health estimated finished reports towards the end of 2013.

³²⁸ For a recent discussion, see the recent article in Helsingin Sanomat (7 March 2015): <http://www.hs.fi/paivanlehti/kotimaa/Hoitajamitoitus+hiert%C3%A4%C3%A4+hallituksessa/a1425623929131?src=haku&ref=arkisto%2F>.

6.3. Responses to Complaint 88

6.3.1. Decision on the Merits of Complaint 88

On 9 September 2014 the Committee decided the complaint no. 88 lodged by the Finnish Society of Social Rights.³²⁹ The case concerned the alleged inadequacy of several Finnish income substituting social security benefits, such as basic unemployment allowance and sickness benefit. The Committee began its analysis by stating the applicable standard, namely the minimum benefit available for a full-time beneficiary of a given type of social security benefit.³³⁰ Next in its analysis, the Committee compared these minimum benefits to certain threshold values of median equivalised disposable income.³³¹ After using the latest available and undisputed data on the benefits, the Committee came to the conclusion that all three benefit types discussed in the case (sickness benefit, maternity benefit, rehabilitation benefit, basic unemployment allowance and guarantee pension) fell below 40 per cent of the Finnish median equivalised disposable income.³³² In such a situation the Committee declared the benefits manifestly inadequate, and in accordance with its judicial practice it did not need to proceed assess the impact of possible other supplementary benefits such as social assistance and housing allowance. This resulted in a finding of violation of Article 12(1).³³³

The complainant organization also alleged that Finland had violated RESC Article 12(3) by failing to raise progressively the system of social security to a higher level. Firstly, the Committee pointed out that the finding of a violation of Article 12(1) does not automatically lead to a finding of violation of Article 12(3).³³⁴ Secondly, it emphasized certain positive developments that had recently taken place in Finland, such as the introduction of guarantee pension and increases

³²⁹ Finnish Society of Social Rights v. Finland, Complaint no. 88, Decision on the merits 9 September 2014. The decision was made public 11 February 2015.

³³⁰ Complaint no. 88, Decision on the merits 9 September 2014, para. 60.

³³¹ *Ibid.*, para. 62. In this case, the parties did not dispute the amounts of the relevant benefits.

³³² *Ibid.*, para. 74. According to the Committee 40 per cent of the median equivalised income was 776 euros in 2013.

³³³ *Ibid.*

³³⁴ *Ibid.*, para. 87.

made in the amounts of several benefits.³³⁵ Consequently, the Committee made a finding of non-violation regarding Article 12(3)³³⁶.

Finally, the complainant organization alleged that Finland violated RESC Article 13. Article 13 concerns social assistance and labor market subsidy which both act as final safeguards ensuring adequate living to those with no other source of income. The analysis of the Committee was similar to its analysis of the income substituting benefits discussed above.³³⁷ Firstly, the Committee noted that both social assistance and labor market subsidy fell below the manifestly inadequate 40 per cent of the Finnish median equivalised disposable income.³³⁸ The Committee acknowledged that there were numerous discretionary and cumulative elements payable in addition to the basic amount of social assistance and labor market subsidy, such as housing allowance³³⁹. According to the Committee, however, the government had not shown that everyone is entitled to these additional subsidies and accordingly it found a violation of Article 13.³⁴⁰ In this regard, the decision acted as a follow up to the Committee's 2013 conclusions regarding Finland. In the 2013 conclusions, the Committee reserved its findings on social assistance pending further information regarding the effects of housing allowance and additional benefits.³⁴¹ This further information was not communicated to a sufficient degree by Finland in its submissions to complaint 88 which led the Committee to find a violation.

6.3.2. Initial Responses and Surrounding Developments

After the publication of the decision the government issued a press release discussing the Committee's findings.³⁴² In the press release, the government criticized the analysis of the Committee for failing to take into account the cumulative nature of the Finnish social security benefits. In addition, according to the government, additional benefits are paid almost without exception to the receivers of the basic amount of social assistance. The press release also

³³⁵ Ibid., paras. 91 & 92.

³³⁶ Complaint no. 88, Decision on the merits 9 September 2014, para. 93.

³³⁷ Complaint no. 88, Decision on the merits 9 September 2014, para. 112.

³³⁸ Ibid., paras. 115 & 121.

³³⁹ Ibid., para. 117.

³⁴⁰ Ibid., paras. 119 & 122.

³⁴¹ Conclusions 2013 (Finland), p. 22.

³⁴² Joint press release (34/2015) of the Ministry of Social Affairs and Health and the Ministry for Foreign Affairs.

mentions payment caps placed on health care and prescription drugs which according to the government play an important role in minimizing the costs for those in need of assistance.

There is indeed a stark contrast with the reception of the decisions of complaint 88 and complaints 70 and 71 which were discussed above. In this context, it is important to note that the Committee had as early as in its 2006 conclusions found certain Finnish social security benefits as manifestly inadequate.³⁴³ At that point, however, the basic unemployment benefit, for example, did not fall below 40 per cent of the median equalized income and therefore the Committee requested information about the effect of additional cumulative benefits, possibly countering the apparent inadequacy. In response to the information provided by the government, the Committee declared the basic unemployment allowance as adequate in January 2010.³⁴⁴ Therefore, the present inadequacies are not the result of direct austerity measures attributable to the economic crisis of 2008. Rather, they are the result of the modest increases made to the amounts social security benefits, as was discussed in chapter 3 of this paper. It seems that the amounts of different social security benefits have not kept up with the increasing Finnish median income and this in the end resulted in the Committee finding a violation concerning Articles 12 and 13.³⁴⁵

To conclude this section a recent study³⁴⁶ conducted by the Finnish National Institute for Health and Welfare is shortly discussed. The study analyzed recent developments in the level of social security in Finland and is therefore useful in evaluating the position of both the government and the Committee.³⁴⁷ It concluded that while the amounts of the benefits had gone up when compared to average wages, the benefits are still too low to cover up reference living expenses, which at the lowest case (single person living in a rented apartment) were set at EUR 675 per month per person, excluding rent.³⁴⁸ In reality, the net amount of income after rent for that same category of persons (regardless of the type of benefit received) was EUR 486, which equals the

³⁴³ Conclusions 2006 (Finland), p. 13. These benefits were the maternity benefit, sickness allowance and minimum pension.

³⁴⁴ Conclusions 2009 (Finland), p. 15.

³⁴⁵ In the 2006 conclusions, 50 per cent of the median income (the so-called poverty level) was deemed 776 euros. In the decision for complaint no. 88 it stood at 970 euros.

³⁴⁶ Working paper 1/2015 of the Finnish National Institute for Health and Wellbeing, available here: <http://www.julkari.fi/handle/10024/125703> (available only in Finnish).

³⁴⁷ *Ibid.*, p. 3. The timeframe of the study was 2011-2015.

³⁴⁸ *Ibid.*, p. 86.

net sum available to customers of social assistance.³⁴⁹ When the possible housing allowance and applicable residual social assistance were summed together, the net total income before rent expenses was around EUR 905 minimum.³⁵⁰ This amount is still below the threshold poverty level (50% of equalized median income i.e. 970 euros) set by the Committee in its decision to complaint 88.³⁵¹ Concerning social assistance it has to be mentioned that according to the study 94 per cent of those entitled to social assistance also received some other form of benefit, such as housing allowance or labor market subsidy. In general, the study concludes that the net income of customers of social security in Finland is average in comparison with other European countries, and in line with those of Sweden and Germany, for example.³⁵²

What is clear from the considerations above is that there certainly is merit in the government's argument that the majority of customers to social security receive more than one type of benefit and they indeed benefit from subsidized medicine and health care. What is crucial, however, is that not everyone does that, which was the focal part of the Committee's reasoning behind the finding of violation of Article 12(1). The overt rejection of the decision is also quite surprising as the government usually strives to maintain Finland's reputation as a model country in human rights issues. Another worrisome fact is that the amount of people depending on social security benefits is on the rise in Finland.³⁵³ Despite this not one of the key Finnish political parties seems to have the increasing of social security on their platforms for the upcoming parliamentary elections.³⁵⁴ This seems to be the result of a general aspiration towards cutting costs to address the growing budget deficit of government finance. Therefore, even though the Committee's decision was noted in the main media, its future effect may remain rather limited. In this regard, it is also interesting to follow what happens regarding complaints 106-108, the admissibility of which has not yet been ruled on by the Committee.

³⁴⁹ See the income tables for respective benefit classes in chapter 4 of the study. The only exception was receivers of guarantee pension, whose available net income after rent was around EUR 600.

³⁵⁰ Ibid.

³⁵¹ Complaint no. 88, Decision on the merits 9 September 2014, para. 67.

³⁵² Working paper (1/2015) of the Finnish National Institute for Health and Wellbeing, p. 94.

³⁵³ Currently 250 000 people are dependent on social security benefits in Finland. See the recent article in Helsingin Sanomat (26 February 2015): <http://www.hs.fi/kotimaa/a1424919958095> (available only in Finnish).

³⁵⁴ See the recent article in Helsingin Sanomat discussing the platforms of several key parties: <http://www.hs.fi/kotimaa/a1426915371870> (available only in Finnish).

7. CONCLUSIONS

The five chapters of this research paper discussed four thematic areas which are covered by RESC Articles 3, 5, 6, 15, 17 and 30. Each chapter began by presenting the relevant Finnish legislation incorporating the requirements set forth by the articles in question. In addition, the writers sought for current developments and trends in Finnish legislation that could be attributable to the 2008 financial crisis or the subsequent recession. A common finding in all chapters was that such austerity measures have been either limited in scope or nonexistent. What follows now is a brief summary of the findings made in each chapter. Findings made in chapter six regarding the effectiveness of RESC collective complaint system are merged into the corresponding thematic area.

Concerning labour rights, the research indicated no direct austerity measures that targeted the right to collective bargaining and the respect of social dialogue between employers and employees. The most relevant change in this regard took place in 2011 when the collective agreement system was again centralized due to increased concerns over the stability and predictability of the decentralized system during the financial crisis. After that efforts were made to further improve certain key aspects of the collective agreements, but the negotiations between the social parties have not brought change as of spring 2015.

The level of social protection in Finland was recently under investigation by the ECSR in the context of the RESC collective complaint system's complaint number 88. The level of several income-substituting benefits such as social assistance and labour market subsidy were found manifestly inadequate as they are clearly below the poverty threshold set at 50 per cent of equivalised median income. However, this trend is not a result of austerity measures. Instead, research indicated that the amounts of several benefits were increased in 2012 and the limited tightening of some of their conditions was done for other purposes such as to provide incentives to work. The fact is, however, that the amount of unemployed people is on the rise in Finland, and the income-substituting benefits are not always sufficient for modest living. In addition, it is clear that the increases in the benefit amounts have not kept up with the Finnish general income level. Currently it is not clear if the government will address these problems as it expressed criticism towards the ECSR's decision on the merits. Concerning health care and the provision

of social services in general, no austerity measures or significant changes were identified. Problems still exist, such as long waiting lines in public hospitals, but they are not solely based on lack of resources.

Concerning the problem of social exclusion, research identified that structural problems inherent in the Finnish municipality system might increase the risk of social exclusion. The available funds of the municipalities vary significantly and this negatively affects the distribution of discretionary elements of social assistance. These discretionary elements are very important because the basic amount of social assistance is low, as was indicated in the ECSR's decision discussed above. Another factor that might affect the enforcement of the right social security is the fact that time limits within which the social assistance applications are examined vary between municipalities. Reasons for this include both the increasing amount of applicants and limited resources. In the context of elderly care the ECSR found in its 2012 decisions to complaints 70 and 71 a violation regarding Article 23 which covers the social protection of the elderly. Significant problems were identified regarding informal care and housing services. These problems were mostly due to differences in the level of care between municipalities. As was discussed in chapter six of this paper, the government seemed to accept the outcome of the decision and has taken tangible measures to improve the situation. However, research indicated that while progress has been made regarding both issues, only limited relevant legislation has been produced as of spring 2015. A significant setback in this regard was the recent failure to implement the Act on the Arrangement of Social Welfare and Health Care Services.

The situation of persons with disabilities, children and young persons was discussed in the fifth chapter. Concerning the rights of people with disabilities many government programs ensuring the improvement of the inclusion and integration have been implemented. Still, the employment rate of people with disabilities, being quite low in comparison with the overall employment rate in Finland indicates that more efforts towards the employment of people with disability could be made. Regarding the situation of children and young persons, research identified government programs and financial aid aiming to improve the educational situation of *inter alia* at-risk students, Sami and Roma people and sign language users. However, the UN Committee on the Rights of the Child has expressed concerns about the difficulties faced by children of immigrant background and Roma children in the education system, the high number of children in special

education and the high drop-out rate. Other developments noted in the chapter were the nationwide reduction of the amount of schools and the situation of institutionalized children, of which the European Committee on the Rights of the Child has expressed concerns and requires further clarification. While these difficulties do not result from austerity measures, there are other developments that could be identified as such. These include the recent 8.1 per cent reduction in child benefits and a general education budget allocation cut of nearly 200 million euros. These developments do not however cause any drastic reduction in the level of protection and the situation Finland will continue to be in conformity with the requirements set forth in RESC. The situation could however escalate rather quickly, if problems such as youth employment and general education are not properly accounted for.

To conclude, only a limited amount of austerity measures were identified in the research concerning Finland. The problems identified are usually instead a result of slower developments, such as stagnation or small cuts in budget allocations. It remains to be seen if these small cuts grow larger as the not yet formed new government starts to tackle the growing government budget deficit. What is certain is that the level of social rights protection in Finland requires watchful monitoring in the coming years.

8. TABLES OF CASE LAW AND LEGISLATION

8.1. Legislation

- Act of Collective Agreement for State Civil Servants (1203/1987).
- Act on Amendment and Temporary Amendment of Unemployment Security Act (1005/2012).
- Act on Co-operation in Civil Service Departments and Government Institutions (1233/2013) (free translation for Laki yhteistoiminnasta valtion virastoissa ja laitoksissa (1233/2013)).
- Act on Co-operation within Undertakings (334/2007).
- Act on Customer Charges of Social and Health Care Services (734/1992).
- Act on Government Financing of Municipalities' Basic Services (1704/2009).
- Act on Informal Care Support (937/2005).
- Act on Mediation in Labour Disputes (42/1962).
- Act on Supporting the Functional Capacity of the Older Population and on Social and Health Services for Older Persons (980/2012).
- Act on the Status and Rights of Patients (785/1992).
- Act on Vocational Education (630/1998).
- Act on the Ombudsman for Children. (1221/2004).
- Basic Education Act (628/1998).
- Child Benefits Act (796/1994).
- Children Welfare Act (417/2007).
- Collective Agreements Act (436/1946).
- Constitution of Finland (731/1999).
- Convention on the Rights of the Child, adopted on 20 November 1989.

- Decision of the State Council on the reception of refugees and asylum seekers (1607/1992).
- Finnish Constitution (11 June 1999, 731/1999).
- Employment Contracts Act (55/2001).
- Finnish Criminal Code (39/1889).
- Government budget proposal (HE 131/2014).
- Government proposal (HE 165/2014).
- Government proposal (HE 240/2014).
- Government proposal (HE 324/2014) (available only in Finnish and Swedish).
- Government Proposal on Modification of the Planning And Financing of Social And Health Services (HE 216/1991).
- Government Proposal on the Adoption of the Modified European Social Charter (HE 229/2001) (HE 229/2001).
- Government Proposal on the Amendment of Fundamental Rights Provisions of the Constitution (HE 309/1993).
- Government Proposal on the Amendment of Social Assistance Act (HE 138/2010).
- Government Proposal on the Amendment of Social Assistance Act and Child Protection Act (HE 61/2013).
- Government Proposal on the Amendment of Unemployment Security Act and Certain Related Acts (HE 115/2002).
- Government Proposal on the Index Checks of Pensions and Certain Other Benefits And on the Amendment of Social Assistance Act (HE 153/2014).
- Home Municipality Act (201/1994).
- International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

- International Covenant on Economic, Social and Cultural Rights, adopted on 16 December 1966.
- Local Government Act (365/1999).
- National Health Act (66/1972).
- National Social Security Institution Act (731/2001).
- Non-Discrimination Act (21/2004).
- Settlement on a National Labour Market Agreement on 30th August 2013: Pact for Employment and Growth
- Social Assistance Act (1412/1997).
- Social Credit Act (1133/2002).
- Special Health Care Act (1062/1989).
- Social Welfare Act (710/1982).
- Student Financial Aid Act (65/1994).
- Tasavallan presidentin asetus uudistetun Euroopan sosiaalisen peruskirjan voimaansaattamisesta ja uudistetun Euroopan sosiaalisen peruskirjan lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta annetun lain voimaantulosta sekä Euroopan sosiaalisen peruskirjan ja siihen liittyvän lisäpöytäkirjan eräiden määräysten hyväksymisestä annetun lain kumoamisesta annetun lain voimaantulosta, Finnish Treaty Series 80/2002 (Finnish).
- The Implementing Act and Regulation of the Revised European Social Charter (SopS 75-76/1998).
- Unemployment Security Act (1290/2002).
- Youth Act (72/2006).

8.2. Case Law

- Finnish Society of Social Rights v. Finland, Complaint no. 88, Decision on the merits 9 September 2014.

- The Central Association of Carers in Finland v. Finland, Complaint no. 71, Decision on the merits 4 December 2012.
- The Central Association of Carers in Finland v. Finland, Complaint no. 71, Initial Complaint 6 July 2011.
- The Central Association of Carers in Finland v. Finland, Complaint no. 70, Decision on the merits 4 December 2012.
- KHO 2011:6.
- KHO 2014:196.
- ECSR, Complaint 70/2011, Decision on the merits (4 December 2012).
- ECSR, Complaint 71/2011, Decision on the merits (4 December 2012).
- ECSR, Complaint 88/2012, Decision on Merits.
- ECSR, Complaint 88/2012, Dissenting Concurring Opinion of Luis Jimena Quesada
- ECSR, Conclusions 2009 – Finland, Article 13(1).
- ECSR, Conclusions 2013 – Finland, Article 13(3).
- European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint 86/2012. Decision on merits, 10.11.2014. (FEANTSA v. The Netherlands).
- European Roma Rights Center v. Bulgaria, Complaint No. 46/2007, 17.4.2009. (ERRC v. Bulgaria).
- Finnish Society of Social Rights v. Finland, Complaint No. 88/2012. Decision on merits, 11.2.2015. (FSSR v. Finland).
- International Federation of Human Rights (FIDH) v. Belgium, Collective Complaint No. 75/2011, 18.03.2013 (FIDH v. Belgium).

9. BIBLIOGRAPHY AND ONLINE RESOURCES

9.1. Books

- Äimälä M., Åström J., Nyssölä M.: Finnish Labour Law in Practise, Talentum. Helsinki 2012.
- Arajärvi, P.: Johdatus sosiaalioikeuteen. Talentum. Helsinki 2011.
- Autti, O., & Hyry-Beihammer, E. K. (2014). School closures in rural Finnish communities. *Journal of Research in Rural Education*, 29(1), pp. 1-17.
- Bardy M.: Lastensuojelun ytimissä, 2013.
- Council of Europe, *Digest of the case law of the European Committee of Social Rights* (2008).
- Ellilä, K.: Terveyskantelun oikeusperusteet. Pilot-kustannus. Helsinki 2007., p. 104.
- Hallberg et al.: Perusoikeudet. WSOYPro. Helsinki, 2011.
- Hänninen, S.: Muuttuva sosiaalioikeus. Suomalainen lakimiesyhdistys. Helsinki 2013.
- Ise, E., et al (2011), 'Support Systems for Poor Readers: Empirical Data From Six EU Member States', *Journal of Learning Disabilities* 44.3: pp. 228–245.
- Mäenpää, O.: Hallintolaki ja hyvän hallinnon takeet. Edita. Helsinki 2008.
- Mattila, Y. (ed.): Toimeentuloturva. Finanssi- ja vakuutuskustannus Oy. Helsinki 2014.
- Mikkola M., *Social Human Rights of Europe* (Karelactio 2010).
- Mikkola, M: Social Human Rights of Europe. Karelactio Legisactio, Helsinki 2010.
- Rautiainen P.: 'Oikeus sosiaaliturvaan ei toteudu Suomessa' (Perustuslakiblogi, 11 February 2015) (<https://perustuslakiblogi.wordpress.com/2015/02/11/pauli-rautiainen-oikeus-sosiaaliturvaan-ei-toteudu-suomessa/>) accessed 29 March 2015 (Finnish).
- Rautiainen, P. 'Perusoikeuden heikennyskielto' [2013] Oikeus 261.
- Saloheimo J.: Työ- ja virkaehtosopimusoikeus. Talentum. Helsinki 2012.
- Tiitinen, K.-P. – Kröger T.: Työsopimusoikeus. Talentum. Helsinki 2012.
- Tuori, K. – Kotkas, T.: Sosiaalioikeus. WSOYpro. Helsinki 2008.

9.2. Reports

- European Committee of Social Rights Conclusions 2011.
- The sixth periodic report by the Government of Finland on the implementation of the International Covenant on Economic, Social and Cultural Rights covers the period from 1 June 2005 to 31 May 2010, E/C.12/FIN/6.
- The fourth periodic report of the Government of Finland on the implementation of the Convention on the Rights of the Child covers the period of time July 2003–July 2008, CRC/C/FIN/4.
- Committee of the Rights of the Child Concluding observations 17 June 2011, CRC/C/FIN/CO/4.
- Committee on Economic, Social and Cultural Rights Concluding observations on the sixth periodic report of Finland, 17 December 2014, E/C.12/FIN/CO/6.
- Education and Research 2011–2016 A development plan Reports of the Ministry of Education and Culture, Finland 2012:3.
- Child welfare 2013, Statistical report 26/2014, 13th November 2014.
- Country Report Finland 2015 Including an In-Depth Review on the prevention and correction of macroeconomic Imbalances Brussels, 26.2.2015.
- Official Journal of the European Union COUNCIL RECOMMENDATION of 8 July 2014 on the National Reform Programme 2014 of Finland and delivering a Council opinion on the Stability Programme of Finland, 2014 (2014/C 247/24)
- Report by the Social Guarantee for Young People Working Group (in Finnish).
- Perusturvan riittävyyden arviointiraportti 2011 – 2015. Työpaperi 1/2015. Terveyden ja hyvinvoinnin laitos.
- Kaila, M. – Pelttari, H.: Kiireettömään hoitoon pääsyn selvitys. Sosiaali- ja terveysministeriön raportteja ja muistioita 2014:27.

- Toimeentulotuki 2010-luvulla. Tutkimus toimeentulotuen asiakkuudesta ja myöntämiskäytännöistä. Kuivalainen, S. (toim.). Terveiden ja hyvinvoinnin laitos. Tampere 2013.
- Ruoppila, S. – Lamminmäki, S.: Vähimmäistoimeentulojärjestelmät. Kansallista toimintapolitiikkaa koskeva selvitys (Finland) 2009. European Commission DG Employment, Social Affairs and Equal Opportunities.
- Report of the Ministry of Social Affairs and Health (2015:7) is available on the webpage of the Ministry of Social Affairs and Health: http://www.stm.fi/julkaisut/nayta/_/julkaisu/1902635#fi (available only in Finnish).
- Report of the Ministry of Social Affairs and Health (2014:2) is available on the webpage of the Ministry of Social Affairs and Health: http://www.stm.fi/julkaisut/nayta/_/julkaisu/1877786 (available only in Finnish).
- Working paper (1/2015) of the Finnish National Institute for Health and Wellbeing, available here: <http://www.julkari.fi/handle/10024/125703> (available only in Finnish).

9.3. Official Documents

- Amendment 12.12.2014/1111 to Child Benefit Act (1992/796).
- Committee on Economic, Social and Cultural Rights: Letter to States Parties dated 16 May 2012, CESCR/48th/SP/MAB/SW.
- Eight Periodic Report on the Implementation of the Revised European Social Charter, Submitted by the Government of Finland ('8th report by Finland'), September 2012.
- European Committee of Social Rights, Conclusions 2013 (Finland).
- Valvira: Toimeentulotuen määräaikojen noudattaminen, Valvontaohjelma 3:2012 (Dnro 8206/05.00.04/2011).
- 10th National Report on the implementation of the revised European Social Charter (Finland), submitted to the ECSR in October 2014.
- ECSR, Conclusions 2013 (Finland).
- ECSR, Conclusions 2009 (Finland).

- ECSR, Conclusions 2006 (Finland).
- ECSR, Factsheet (Finland).
- Statement of the Committee for Constitutional Law (PevL 67/2014) (available only in Finnish).
- Statement of the Committee for Constitutional Law (PevL 75/2014) (available only in Finnish).

9.4. Other

- Article in Helsingin Sanomat (12 February 2014):
<http://www.hs.fi/kuluttaja/a1392615187786> (available only in Finnish).
- Article in Helsingin Sanomat (14 November 2014):
<http://www.hs.fi/paakirjoitukset/a1415854878496> (available only in Finnish)
- Article in Helsingin Sanomat (16 February 2015): Akava pettyi: ”Työnantaja ei edes yritä sopia asioista neuvottelemalla” <http://www.hs.fi/talous/a1424056682294> (only in Finnish) (Access: 15.04.2015)(Finnish)
- Article in Helsingin Sanomat (24 March 2015):
- Article in Helsingin Sanomat (26 February 2015):
<http://www.hs.fi/kotimaa/a1424919958095> (available only in Finnish).
- Article in Helsingin Sanomat (7 March 2015):
<http://www.hs.fi/paivanlehti/kotimaa/Hoitajamitoitus+hiert%C3%A4%C3%A4+hallituksessa/a1425623929131?src=haku&ref=arkisto%2F> (available only in Finnish).
- Brochure of the Ministry of Employment and Economy 2012: Finnish Labour Legislation and Industrial Relations
(https://www.tem.fi/files/31813/Finnish_Labour_Legislation.pdf)
- Department of the European Social Charter, Strasbourg, 12 May 2014, GC(2014)
- ECSR, Conclusions 2014 (Finland)
- ELSA LRG on Social Rights, Academic Framework.

- Government program of Prime Minister Jyrki Katainen 2011 – 15. Council of State, 2011
- <http://www.hs.fi/kotimaa/a1426915371870> (available only in Finnish)
- Joint press release (34/2015) of the Ministry of Social Affairs and Health and the Ministry for Foreign Affairs, available in English here:
<http://formin.finland.fi/public/default.aspx?contentid=321111&nodeid=15145&contentlan=2&culture=en-US>.
- List of complaints and state of procedure, available in the RESC webpage:
http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp.
- Office of the Ombudsman for Children's Action Plan for 2013, Publication 2013:4
- Press release (31/2015) of the Ministry of Social Affairs and Health, available here:
<http://www.stm.fi/tiedotteet/tiedote/-/view/1902663#fi> (available only in Finnish)
- 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> (available only in Finnish and Swedish).

9.5. Statistics

- Eurostat 2011 Employment rate of people by type of disability, sex and age
<https://datamarket.com/data/set/4n3d/employment-rate-of-people-by-type-of-disability-sex-and-age#lds=4n3d!7z58=4:7z59=1:7z5a=3:7z5b=b.2.o.q.j.3.4.k.d.7.5.p.t.g.l.8.r.s.9.u.a.c.m.v.w.n.6.e.h.i.f&display=choropleth&map=europe&classifier=natural&numclasses=5>.
- Figure: Membership in trade unions and employment funds 2002-2013: Ministry of Employment and the Economy/Working Life barometers
<http://www.findikaattori.fi/en/36>.
- Official Statistics of Finland: Providers of education and educational institutions [e-publications] 2013 Helsinki Statistics Finland [Referred 23.4.2015] (English).
- Official Statistics of Finland: Providers of education and educational institutions [e-publications] 2013 Helsinki Statistics Finland [Referred 23.4.2015] (English).

- Official Statistics of Finland: Statistic on labour disputes [e-publication] Helsinki Statistics Finland [referred 12.04.2015] (<http://www.stat.fi/til/tta/index.html>) (English).

9.6. Miscellaneous

- http://www.tem.fi/files/32290/TEMrap_8_2012.pdf (accessed 23 April 2015) (Finnish).
- Joint press release (34/2015) of the Ministry of Social Affairs and Health and the Ministry for Foreign Affairs
<http://formin.finland.fi/public/default.aspx?contentid=321111&nodeid=15145&contentlan=2&culture=en-US> (accessed 23 April 2015) (English).
- Sopimus vuoden 2017 työeläkeuudistuksesta
(<http://www.eläkeuudistus.fi/media/linkkitiedostot/sopimus-vuoden-2017-tyoeläkeuudistukseksi.pdf>) (Finnish).
- TEM raportteja 8/2012, 'Nuorten yhteiskuntatakuu 2013'.
- UNICEF, 'Innocenti Report Card 12, Children of the Recession' (2014) ("UNICEF 2014") (Finnish).

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

France ratified both the 1961 ESC in 1973 and the revised 1996 ESC in 1999, accepting all the 98 paragraphs. For now, the ESC is not directly applicable in France and we have to go through the complaint system.

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

France has been hit by the economic crisis. For instance the unemployment increased from 7.1% in 2008 to 10.4% in late 2014. Furthermore the public debt has increased from 68.2% in 2008 to 82.3% in 2010. However no austerity measures have effectively been taken. In fact, if the political class has not used the term “austerity”, some measures applying budget cut have more or less had the same impact.

The main difficulty about the lack of a general austerity plan is that the global appreciation of it cannot be operated. For this reason, this report will analyse for each matter related to the ESC the measures that have had an impact on those topics. A special attention will be given to the most significant measures such as the law of June 14th 2013 regarding collective bargaining, the social security fund bill of 2008, 2010 and 2015, that has had a particular importance on the social security law of March 5th 2015 which in turn changed laws on labour conditions, representativeness but also had an impact on social inclusion. We will also be able to notice that austerity measures will appear by the lack of action of the government on particular issues such as the disabled people rights who do not benefit from the same attention they used to a few years back.

In other words, no austerity measure has been taken and no global plan aiming to process budget cuts has really been set up. To understand France through the post-crisis area, measures

related to each matter must be analysed in the perspective of the other measures that occurred on the same topic the past few years.

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

The most accurate way to understand the French bargaining system is to understand the dualism of social and collective bargaining that occurs in different aspects of the economic and social life.

2.1.1. The social and collective bargaining inside the company

The fundamental legal source regarding labour legislation and collective bargaining in France is the law n° 2004-391 of May 2004 on professional training and social dialogue. This previous system was modified six times between 2008 and 2014, and is about to be amended with the predicted vote of the Macron law.

The actual collective bargaining system has two aspects: the Collective Agreement and the Employees' Representative Authorities.

2.1.1.1. The Collective Agreement

Such agreements can be defined as agreements concluded between trade unions and employers or employers' federations that adapt the labour legislation to particular situations of national circumstances, industries' specifications or company policies. An employee cannot renounce to the rights offered by the agreement, and it is priming on his work contract every time it gives more protective terms.

Moreover, collective agreements can provide better working conditions than labour legislations in various ways (security, health, pay rate, holidays...).

The legal basis of these agreements results from the Labour Code¹.

Collective Agreements appear on different levels:

¹ Articles L2221-1 to L2222-4 of the Labour Code

Accords Nationaux Interprofessionnels (National or Cross-Sectorial Agreements). They are voted by social partners with advice of the government and are applied in all economic entities.

Convention de Branche (Sectorial Agreements). These agreements are also voted by social partners but have a restrained field as they are limited by the type of industry concerned or due to geographic situation.

Convention d'Entreprise (Company Agreements). These are the smallest level of agreements. They are voted in each company by the workers and executive unions on one side and the employer on the other. In larger companies, each establishment may have its own agreement.

Article L2223-1 of the Labour Code names the parties that can sign collective agreements: employers' federations or individual employers on one side and trade unions on the other.

Since the law of August 20th 2008, the conditions have changed: the unions involved in agreement signatures must be 'representatives of the workers'. This means that unions must respect the republican values, be independent, be financially clear, be at least two years old, have experience and influence in the industry concerned, have members and obtain a certain percentage during the last Employees' Representative Authorities election (10% for National agreement, 8% for Sectorial and Cross-sectorial agreement as said by articles L2122-1 to L2122-9 of the Labour Code).

Since the law of 2008, the rightful ability to sign such agreements that the major and historical unions had is no longer applied.

The 2004 law changes the previous system, introducing the possibility for company agreements to diverge from the sectorial agreements as long as it is not strictly prohibited by the sectorial agreement. There are still some issues such as minimum pay rates that cannot diverge.

The 2008 law gave primacy to company level agreements in the field of work time. The 2013 legislation allows companies in difficulties to reduce some pay rates (except the lowest ones) and to proceed to work time changes. These agreements will eventually need to be concluded with the unions representing the majority of employees, and cannot exceed two years.

2.1.1.2. The Employees' Representative Authorities

To ensure the respect of both collective agreements and labour rights, article L2311-1 of the Labour Code has created and set up different authorities in private companies.

The *Délégué du Personnel* (Staff Delegate) is in charge of the dialogue between employees and employers. He can address any personal or collective claim regarding work conditions, working time or holidays. He is also competent to seize the Labour Inspection if he suspects any violation of labour legislation included the collective agreements. According to article R2314-1 of the Labour Code, one delegate and one substitute must be elected in every company with at least eleven employees (up to 5 delegates and 5 substitutes for companies with 125 to 174 employees).

A *Comité d'Entreprise* (Company Committee) must be set in every company that has at least 50 employees. It is composed of the staff delegate, the employer and trade unions representatives. It is in charge of the collective bargaining about specific topics (retirement programs, employee saving plan, employee training plan...) and every three-year, major issues must be discussed (company governance, job loss plan...).

The *Comité d'Hygiène, de Sécurité et des Conditions de Travail* (Hygiene, Security and Working Conditions Committee) must be set up in every company with at least 50 employees. It is composed of the employer, a group of staff delegates and members of the Company Committee. The Labour Code² fixes the number of representatives according to the total number of employees in the company. The main prerogatives of the HSWCC are to control and analyse the work related risks, to inform the employer of those risks, and to create prevention measures.

2.1.2. The social and collective bargaining outside the company

Not only do trade unions have an influence inside the company life, but their role is also to participate in the social dialogue. The major unions that have been recognized as being representatives of the workers are the CGT (*Confédération générale des travailleurs*), the CFDT (*Confédération française démocratique du travail*), FO (*Force ouvrière*), the CFE-CGC (*Confédération française de l'encadrement - Confédération générale des cadres*) and the CFTC (*Confédération française des travailleurs chrétiens*). It must be noted that employers' unions are also involved in the social dialogue, and along with the CFE-CGC, the MEDEF and the FSU are known to be privileged

² Article R4613-1 of the Labour Code.

speakers. Even if the French trade union density is one of the lowest in Europe (7.7%³), these social partners influence the public opinion with the media coverage of which they benefit. Moreover there is a legal obligation to consult them. For instance, article L1⁴ of the Labour Code institutes an obligation for the government to concert with the representative unions of both workers and employers before every project of law regarding individual and collective relations at work, employment and professional training that may have a national or inter-professional impact. In fact, unions have the right to schedule meetings. There is however an emergency procedure that allows the government to bypass this obligation but it must be motivated and signified to the unions.

Lastly, the social partners discussed with the Prime Minister ways to improve representativeness⁵. These negotiations ended on the 21st of January 2015 and they did not managed to create a strong reform plan. It happens that these discussions succeed in creating new bills. For instance, in 2013, a law⁶ on employment security was voted after the social partners and the government met.

Article L1 of the Labour Code emphasises the importance of social partners on social and collective bargaining outside the company area, and it demonstrates the importance given to the trade unions. Concerning the Macron Law, Unions have had an important role to play during the negotiations⁷. This last example highlights the importance of Unions outside companies.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

³ <http://stats.oecd.org/Index.aspx?lang=en&SubSessionId=504ffdfc-e88f-4db5-94f6-ed0851804dd4&themetreid=13>.

⁴ Law n. 2008-67 (Law ratifying the act of March 12th 2007 n° 2007-329 related to labour legislation) 2008 [Loi ratifiant l'ordonnance n° 2007-329 du 12 mars 2007 relative au code du travail (partie législative)].

⁵ http://travail-emploi.gouv.fr/IMG/pdf/document_d_orientation_dialogue_social_29_07_2014.pdf

⁶ National agreement of January 13th 2013 http://direccte.gouv.fr/IMG/pdf/ANI_securisation_de_l_emploi-2.pdf

⁷ http://www.lemonde.fr/economie/article/2014/12/10/notaires-avocats-et-huissiers-defilent-a-paris-contre-la-loi-macron_4538039_3234.html

Since 2008, France has not adopted a large plan of austerity. Most of the measures were taken to respond to the unemployment rate. In fact, the unemployment increased from 7.1% in 2008⁸ to 10.4% in late 2014⁹. France did not choose austerity measures at first as an answer to the crisis, but instead adopted a reflation policy¹⁰. However, different measures that had an impact on collective bargaining and social dialogue were taken.

2.2.1. Representativeness in private sector

The law of August 20th 2008 mentioned in the previous paragraph, changing the thresholds and criteria needed for a trade union to be considered representative, has deeply modified the right to collective bargaining. For the pre-existent unions, and especially the five biggest mentioned above, a presumption of representativeness ran from 2008 to 2013, before the end of the last elections. The Ministry of Labour writes the list of the representative unions who will make sure that all the criteria are respected.

Despite the creation of new conditions, the *Cour de Cassation* (French supreme court for private law) confirmed in a judgment (April, 14th 2010) that this legislation does not interfere with article 5 of the ESC regarding representativeness. This position was confirmed by the European Committee of Social Rights, considering that it may be conform 'as long as the criteria of representativeness are reasonable, clear, predetermined, objective and laid down in law and may be subject to judicial scrutiny' (Conclusions XV-I, 2010). However, as voices rose to express the strictness of these criteria, and even if the *Cour de Cassation* judged the 10% threshold as reasonable, the ECSR reserved its position on those new conditions of representativeness.

In fact, as France has one of the lowest rates of representativeness in Europe (less than 8% of workers have joined a trade union), a gap may appear due to the actual percentages between the representativeness of a union in sight of the law and the reality of the force of such a union in the company life. A non-representative union may have enough influence in a particular company or sector, and might not be considered as being representative.

⁸ Insee, enquêtes Emploi 1975-2013, séries longues, http://www.insee.fr/fr/themes/tableau.asp?reg_id=0&ref_id=NATnon03337

⁹ Insee, enquête Emploi <http://www.insee.fr/fr/themes/info-rapide.asp?id=14>

¹⁰ Laws of October 16th n° 2008-1061, December 27th n° 2008-1425 and December 30th n° 2008-1443 of 2008 rectifying the national budget law

The Law of October 15th 2010 on social democracy put an end to the rightful representativeness of the historic unions. The irrefutable presumption they used to benefit from is no longer in force. Thus, for the smaller companies (less than 11 employees, except for farming businesses), there is no obligation to join or create a trade union related organ. As a consequence, to favour representativeness in these smaller companies, a law to promote unions was voted in 2010; a ballot will be organized every 4 year in each region. However, the results of these elections only 'might' influence the composition of the committees created in 2004, in charge of the creation, vote and application of the local collective agreements. Even if the aim was to promote representativeness, there is no guarantee that these elections will have a real influence on social dialogue.

The law of June 14th 2013 on employment security was voted after discussion with the social partners that had ended on 11th of January of the same year. This act has influenced both collective bargaining and labour legislations. On the security of the social dialogue, two major modifications occurred. Concerning collective termination of employment, companies employing at least 50 employees must negotiate an employment saving plan with the employer and representative trade unions, with the agreement of the Company Committee to ensure employment solutions¹¹. However, ever since this law, in case of unsuccessful negotiations, the employer can present a unilateral plan to the administration who will be in charge of validating it and authorizing the terminations. In other words, the law created an obligation of negotiation, but there is no obligation for the employer to respect the will of the representative unions¹². The administration reviews it and gives or not its approval. Moreover, the employer must inform the administration if the Company Committee asked for an independent expert to review the document. This procedure gives a better protection for the employment as the administration review is strict, but it can paralyze the procedures of termination, re-creating the system that was abolished in 1987¹³. The opportunity to override the collective negotiation, even if it is not as simple as it seems, is a reality that can deny the right of collective bargaining in any case the employer finds a saving plan that appears to be sufficient for the administration.

¹¹ Articles L.1233-61 al 2 and L. 1233-62 of the Labour Code.

¹² Article L. 1233-24-4 of the Labour Code.

¹³ Law n. 87-558 (Law modifying the election process of the city councillors in New Caledonia and dependencies) 1987 [loi modifiant le mode d'élection des conseillers municipaux en Nouvelle-Calédonie et dépendances].

This law also put an end to the civil jurisdiction competence regarding collective termination of employment. All litigations regarding employment saving plans must now be submitted to the administration jurisdiction. The first consequence is that the debate on the right or wrong of the plan must only consider legal issues. The economic aspects cannot be a valid argument. Moreover, the second consequence is that the law created new time limits for a court to rule the litigation: a court has 3 months to give its decision on a case. If the time limit is passed, a court of appeal will rule the case. The same time limit is applied when the *Conseil d'Etat* (Supreme jurisdiction of the administrative justice) will judge the case. Consequently, litigation on a saving plan may only be judged by the Supreme Court, meaning the end of the security of double-degree of jurisdiction.

The law of March 5th 2014 gave details on the new representativeness criteria that have been established (especially regarding the conditions of nomination of a deputy for the union, who must be elected with at least 10% of the voting college¹⁴ and new accounting obligations for unions¹⁵).

The main contribution of this law regarding collective bargaining is the extension of the representativeness criteria to the employer unions. The main goal remains to promote a strong and legit representation among the unions. The article L2151-1 of the Labour Code dictates the same cumulative conditions for employers and employees. However, there is no condition of percentage for the employers, but the need of a good level of influence in the sector. This can be measured by the number of companies that have joined a particular union. The first audience will be set in 2017, thus we cannot consider the consequence of this measure for now.

2.2.2. Evolution of collective bargaining in public sector

The public sector has seen fewer measures than the private sector. However, two major measures were taken to optimize the funding of the public sector that involves a modification of the collective bargaining process.

The Law of July 2009 regarding Hospital, Patients, Health and Territories (*Hôpital, Patients, Santé et Territoires* or HPST) put an end to the inter-hospital unions. This previous system made able

¹⁴ Article 2143-3 of the Labour Code.

¹⁵ Article 2325-1 of the Labour Code.

for health professionals and for hospitals to gather behind a unique voice to discuss different matters and concerns. Since 2010, hospitals must gather in local hospital communities. The consequence of this new system is the end of choice to join a specific union, the subscription is only allowed to the community that the hospital is geographically depending of. The main goal was to optimize the financial support to the health system by improving the self-governance of hospitals united within this new kind of union. However, it appears that there is no option for the health professionals to choose the unions they want to deal with.

The act of July 5th 2010 introduced a proportional financing of unions regarding election results. This measure was taken despite the decisions issued from the social dialogue conference that ended in January of the same year. Moreover, the law creates a unique national council for the public servant that implies less valorisation of the specificity of each sector just the way the previous system had established a national council for each of public service: state officers, local officers and public health officers. The decree of January 30th 2012 effectively created the unique council. The voting rules of the council follow a collegial model. Consequently, there is a separation between state officers, local employers and hospital staff: each one is voting in its own college without a chance to collectively discuss.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

As for the development on social dialogue and collective bargaining, the French system dictates we should analyse on private and public sectors on different levels, even regarding labour rights.

2.3.1. Labour rights evolution in private sector

The major act taken in response of the economic crisis was the law of June 14th 2013 on *sécurisation de l'emploi* (employment security). This measure has changed different labour rights: part time job, compensation of termination of employment, limitations of legal actions, conditions of economic and collective termination and the conditions of employment sustain agreements.

Regarding part time jobs, the law created a new amount of minimum working hours of 24 hours per week¹⁶. This minimum duration must be considered only for one employer, in case a person has different activities in different companies. The employee can ask for a lower duration but he must address a written and motivated request. If a collective agreement (national or extended sectorial agreement) authorizes a lower amount of hours per week, guaranties must exist to ensure regular schedules or to allow the employee to do different activities for the same amount of hours per week than a full time job. This law is ruling against the previous agreements that decided to fix the minimum amount of working hours per week, violating articles 2 and 4 of the ESC as the amount of working hours was increased without any consideration for the productivity or other relevant factors and the collective agreements that established this amount were put back in consideration without any justification.

Regarding the compensation due for dismissal, there is since this act the possibility for the employer to suggest a fixed amount to settle any litigation related to the termination of the labour contract¹⁷. A scale was created by a decree¹⁸, and if the former employee accepts the conciliation, he cannot introduce his case to the competent court (*Conseil des Prud'hommes*). The article D1235-21 of the Labour Code, that introduced the decree, fixes a compensation depending of the length of service inside the company. Even if it appears to be a security measure for the employee, in fact, it does not take any consideration of the case as the length of service may not always remain a relevant element.

Moreover, regarding mobility agreements, the negotiation of the agreement must define a geographic area, protection of personal and family life, and the need to prepare solutions for employees that may not accept the agreement. However, in case an employee refuses the mobility agreement, he may be submitted to an individual economic termination of his employment contract. This termination implies for the employer the obligation to negotiate the condition of the modification of the employment contract of the employee. Even if protective measures remain compulsory¹⁹, the procedure is lighter than in other cases of economic

¹⁶ Article L3123-14-1 of the Labour Code.

¹⁷ Article L1235-1 Labour Code.

¹⁸ Law of August 2nd 2013 no 2013-721.

¹⁹ Information obligations regarding the procedure of article L1222-6 of the Labour Code.

unemployment²⁰. The point is that employer and employee must find a common ground. The employer do not have the same obligations as if he was under a collective procedure, and the control on his offer is not defined as the highest court has not already ruled such a case : there is no guarantee that employers will be reasonable while offering an alternative solution to the mobility. The *Cour d'appel* (second degree jurisdiction) of Versailles has sanctioned the violation of international convention regarding the respect to private and family life in a labour related case²¹.

The same lack of guarantee can be observed regarding the employment retainer agreement. This kind of agreement allows the employer to change the condition of working hours or remuneration in exchange of the guarantee to not reduce the number of employees. In fact, if an employee refuses the agreement (that have previously been concluded with the agreement of the majority of the representative unions), he may submit himself to an individual economic termination of his employment contract in the same conditions.

2.3.2. Labour rights evolution in public sector

The law of March 12th 2012 was discussed from 2010 to 2011. They made an agreement despite the contestation of trade unions. To ensure employment, the main purpose was to stabilise the situation of contractual workers of the public service. This term refers to the workers that do not benefit from the privileged status of the public service. They are employed as private workers because their service is considered not essential or might depends on the political orientation of the service that may change due to elections. However, the financial situation of the state²² was considered a priority, changing the security purpose into a closed system: the conditions to obtain a stable contract are more rigorous than the conditions for being a contractual worker. To benefit from a permanent and stable work contract, the workers must have been recruited on the basis of an exceptional need of a local authority²³ or because of the sector they are working on²⁴.

²⁰ Articles L1223-4 and L1223-4-1 for the detailed measures.

²¹ Court of Appeal of Versailles, 09/05/12, n°11-00637 : violation of the International Labour Organization convention n°156.

²² The public debt was of -5.1% Insee, DGFIP, DGTrésor, notification de mars 2015 / The public service employment was representing 5.9% of the GDP http://www.fonction-publique.gouv.fr/files/files/statistiques/chiffres_cles/pdf/chiffres-cles-2012.pdf.

²³ Article 3 of the law of January, 26th 1984 n° 84-53.

²⁴ Article 35 of the law of April, 12th 2000 n° 2000-321.

Moreover, they must have a full time job or a part time job that represent at least 50% of the full working time. However, the seasonal contracts are non concerned by this law and remain submitted to the previous system.

The law applies to the workers with a valid contract on the date of March 31st 2011, with a special derogation if the unemployment was established after December 31st 2010 if it is not due to a personal misconduct or deficiency.

Article 21 of the law established a minimum of four years of service of full time employment in the service they are working for on March 31st 2011, with derogation if it was an administrative mission with a transfer to another service with the same prerogative.

Finally, the last condition to access the same statute as a public worker is to be granted an equivalent of skills by an administrative authority or to succeed in a special competitive examination, different from the general one organized for the public service.

3. SOCIAL PROTECTION

Social protection refers to the mechanism of group protection that helps people who are struggling with financial consequences of social risks such as lower resources or higher spending.

3.1. Has the social security scheme in your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by their own efforts or from other sources?

The French social security scheme provides assistance to persons who are unable to secure adequate resources only in certain circumstances. These people may be subject to four types of risks:

- Illness (*Caisse Nationale d'Assurance Maladie des Travailleurs Salariés*);
- Work accident and professional illness risks (*Union de recouvrement des cotisations de sécurité sociale et d'allocations familiales*);
- Family (*Caisse Nationale des Allocations Familiales*);
- Retreat (*Caisse nationale d'assurance vieillesse*);

- Unemployment (*Union de recouvrement des cotisations de sécurité sociale et d'allocations familiales*).

The general regime of social protection is mainly financed by wages' contributions and taxes (80%). The universal security tax and the contribution for the refund of the social debt are taken on wages, patrimony resources, saving resources and games.

3.1.2. Persons who are unable to secure adequate resources either by their own efforts or from other sources due to illness?

Those persons are protected by the French system but it depends on the illness. The illness department of social security takes care of the spending of sick insurances and guarantees access to care. Three main regimes organise illness insurance (gathered under the National Union of Illness Insurance Fund):

- The agricultural regime;
- The independent social regime;
- The general regime.

3.1.2.1. Reimbursement of cares with benefits in kind

i. Employees

Employees get the right to be reimbursed if they have paid the contribution hanging:

- A month or thirty consecutive days + sixty hours;
- Three months + hundred twenty hours;
- A year + thousand two hundreds hours,

Paid leaves, partial unemployment, occupational accidents and disease are considered as working time.

If someone doesn't respect any one of these conditions, that person keeps being protected for twelve months after the last day of work.

ii. Unemployed people

They are protected by *Pole Emploi*. They only keep the right to repayment of the care. They keep the social welfare during one year after the loss of their insurance.

iii. Retired people

All people getting a basic old-age pension are affiliated by rights and their care is refunded.

iv. Young people

Young people can subscribe to the student social security system if:

- They attend courses at university;
- They are French or national from a country having signed a convention with France;
- They are under 28 (exceptions for certain students as for medical studies),

v. Free affiliation

Some people benefit from the repayment of the medical care for free (allowance for disabled adult, mother, single parent and war widow; disability pension, pension of industrial disablement correspond to an incapacity of 2/3; parental leave; vacation to create a company).

3.1.2.2. Payment of daily allowances with cash benefits

The daily allowances are the sums paid in case of interruption in working days. It is necessary to pass on the notice of sick leave (from the doctor) and a certificate of working cessation (from the employer). Conditions of work time:

- Daily allowances for six months are delivered if the person has worked for the past six months or for two hundred hours for the last three months;
- Daily allowances over six months are delivered if the person has worked at least eight hundred hours for the last twelve months and two hundred for the last three months.

The amount of reimbursement varies according to the duration of the working cessation and the family situation. The compensations are paid from the fourth working day of detention. In the general case, from the fourth day to the sixth month, the social security reimburses fifty per cent of the basic wage. If the insured person has three children, fifty per cent of the wage is reimbursed the first month, and sixty six per cent of the wage is reimbursed after the first month.

For chronic or long-term diseases, the insurant can be reimbursed during not more than three years. A new extension of three years can be opened provided the insurant gets back to work during at least one year in a continuous way between two periods of compensation.

For other diseases, there can be no more than three hundred sixty daily allowances within three years.

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

Since the beginning of the crisis in 2007, former and present French governments have refused the use of the expression 'austerity measures'. Nevertheless, the cut in social fund and social spending may be considered, in a way, as a part of these austerity measures. As a consequence we may study all measures adopted since 2007, which still impact the French social security scheme.

The direct effect of the European Social Charter isn't recognized by the *Conseil d'Etat* (The French Supreme Court of Justice in Public Law), which is responsible of social security litigation. As a consequence, the respect of article 13(1) of the ESC is not guaranteed. Yet, in this paperwork, we will consider that the ESC would have a direct effect in France. According to article 13(1) of the European Social Charter²⁵:

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

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

From the most recent measure to the oldest measure, here is the current situation of the French social security system after the implementation of these measures.

3.2.1. In 2008

Le Projet de Loi de Financement de la Sécurité Sociale (PLFSS) ie. the Social Security fund bill for 2008 (voted in December 2007) has created a *franchise médicale* (a medical deductible). Insurants have to pay a little part (0,50 euros in a threshold of 50 euros) of their medicine, sanitary transport and paramedical acts insured by the *Assurance Maladie*. This arrangement was contested in front of the *Conseil Constitutionnel* (The Supreme Court of Justice) on the basis of an incompatibility with the

²⁵ The right to social and medical assistance.

constitutional principles guaranteeing the right to health and the equality in solidarity. The *Conseil Constitutionnel* rejected this argument. Considering the *franchise* “answers to constitutional requirement linked to the Social Security financial balance”. The *Conseil Constitutionnel* adds that the decree implementing the law should not be in contradiction with the 1946 Constitution preamble, which assures health protection for everyone. Thus, the *franchise* is legal as far as it is not going to threaten the right to health for the poorest people.

3.2.2. In 2010

The Woerth law²⁶ reforms the schema of retreat. From 2018, the legal age of retirement is 62 years. An employee having no duration of required contribution can benefit from a full pension if he retires at 67 years. The people having begun to work before being 18 years old can retire two years early on the condition of having the duration of required contribution. The law plans special regimes for the workers having undergone the professional physical hardness. Moreover, the daily allowances of the pregnant women are going to enter the reference salary.

3.2.3. In 2015

The Social Security fund bill of 2015 has proposed the most consequent budgetary cut since the beginning of the crisis.

To start with, the Social Security fund will cost EUR 476,600 million. The general regime by itself will cost EUR 348,600 million. The law foresaw a cut of EUR 9, 600 millions in social security system, unemployment insurance, retreat and obligatory complement. Out of those EUR 9, 600 million, EUR 3,200 million are relative to health insurance and EUR 6,400 million are relative to social protection.

In concrete terms, these cuts lead to the reduction of social and financial benefits to the citizens.

- From now on, the threshold of welfare’s modulation is EUR 6,000. It avoids the effects of threshold. Any euro gained beyond the threshold decreases the social assistance by a euro.
- The law changes the way of calculating the universal social security tax. It will lower for 700,000 people who are concerned by the tax cut in 2014. In return the rate of the

²⁶ November 9th 2010.

universal social security tax for 460,000 retired people increases. These concerns especially retired people from the middle and upper social class who won't benefit from reduced rate of 3.8% any longer. They are all going to be under the normal rate of 6.6%. The loss represents an average of EUR 51.

- The familial aspect of the law triggers a reduction in the budget of parental leave by EUR 70 million through the new sharing of parental leave. The parental leave is reduced for women to 24 months. Indeed, since men can also take a parental leave, they can together get a 3 years parental leave but none of them could take a complete 3 years parental leave. One of them should take at least the last year for him/herself.

Furthermore concerning the familial aspect of the law, the family allowances will be reduced. Presently, allowances are paid on the condition of resources from the second child. The amount is variable according exclusively to the number of child. From now on, the allowances are divided by two from EUR 6,000 for a home with two children (nearly EUR 65 per month) and by four from EUR 8,000 (nearly EUR 32 per month). Thresholds are been up by EUR 500 per additional child.

The main austerity measures taken in France have not clearly impacted the social security scheme under article 13 (1) of the ESC. Indeed, the *Conseil Constitutionnel* is still protecting the right to health. Only the *PLFSS* for 2015 has clearly changed the social security scheme against the insurant. If the governments took austerity measures moderated at the level of the Social Security, they did not take measures to support insurants. In a context of economic difficulty, the beneficiaries of the Social Security do not receive much support. This explains the increase of poverty (single parent family; young unemployed under 25 years; foreigners unemployed), students refusing to look after themselves and appearance of the profiles of working poor.²⁷

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

²⁷ www.drees.sante.gouv.fr/les-phenomenes-emergents-de-pauvrete-entre-2010-et-2013,11424.html.

Three main public services provide advice and personal help to prevent, remove or alleviate personal or family needs:

- *La Caisse Primaire d'Assurance Maladie* (the service in charge of illness insurance);
- *La Caisse des Allocations Familiales* (the service in charge of family help for rent or unemployment insurance);
- *La Caisse de Retraite* (the service in charge of retirements).

One service, neither public nor private, is in charge of employment, people training and orientation help: *Pôle Emploi*.

One private service completes the personal help of these public services: *la Mutuelle Santé* (the complementary health insurance).

The three public services have been impacted by budgetary restrictions. Thus, the *PLFSS* for 2014 had forecasted a reduction of EUR 500 millions. Concretely, one out of two retirements will not be replaced.²⁸ From 2005 to 2011, the number of employees decreased by 13.6%²⁹. As a consequence, the processing time of files lengthened. Employees, less numerous, have more cases to treat with the same means. The risk that files be incomplete or badly manages, thus increases.²

Pôle Emploi is not concerned by budgetary restrictions. In 2013, Jean Marc Ayrault the former French Prime Minister announced that the number of employees will increase from 29,000 to 35,000.³⁰

La Mutuelle Santé, as a private service, should not be influenced by austerity measures (since the legislation is focused on public sector). Nevertheless, in 2014, the French Senate decided to reform the student health insurance scheme. The French system was particular in several ways:

- Student were connected to the regime of their parents until 18 years (with opposition to the European average of 25 years);
- Several insurances competed for a compulsory national insurance scheme;

²⁸ www.filpac.cgt.fr/spip.php?article6803

²⁹ www.securite-sociale.fr/Evolution-des-effectifs-dde-cadres-et-d-employes

³⁰ http://lexpansion.lexpress.fr/actualite-economique/jean-marc-ayrault-annonce-2000-nouveaux-cdi-a-pole-emploi_1368658.html

- This system did not allow students working to cover themselves completely.

The reform proposed by senator Procaccia joins in a budgetary rigorous context that is why she declared that each had to 'do better with less'.

The reform forecasts that:

- Students will still be connected, but independently, to their parents' security social regime;
- Students are always going to pay the contribution at the beginning of the academic year with the exception of bursary and scholarship students;
- The students' *mutuelle* will disappear;
- Students working will be exempted of paying the contribution as studying.

Another service helping families in kind rather than in a monetary way has been impacted by austerity measures: the hospital. The reform of 2008 of pricing in the activity established a logic of performance appropriate to companies. To reduce the cost of hospitalization, the remuneration for the practitioners is based on criteria of performance of activity. The durations of hospitalization are reduced to welcome more patients. Unfortunately it infers a clear increase of rates of readmission.³¹

4. SOCIAL EXCLUSION

4.1. Measures taken for social inclusion

France has taken several different measures to promote social inclusion in the past years. The few main laws and programs trying to fight against social exclusion can be categorized in different categories that we are going to detail.

4.1.1. Poverty

³¹ 4% of augmentation for the vascular accidents myocardia for example
<http://www.irdes.fr/Publications/Qes2013/Qes186.pdf>.

In October 2014, the *Revenu de Solidarité Active* (Active Solidarity Income) was raised by 2%³². On April 1st and October 1st 2014, the *Allocation de Solidarité pour les Personnes Agées* (welfare for retired people) was also increased³³. The goal of these welfares has not changed since their creation: the promotion of an effective access for everyone to basic and everyday needs.

If the *ASPA* and the *Allocation Adulte Handicapé* (welfare for disabled people) were re-valorised by 25% between 2008 and 2012³⁴, the *RSA*, which used to be indexed on the minimum salary rate, lost its value by 6 points between 1990 and 2011³⁵. Moreover, it has been extended to a new category of people. It used to be accessible by the age of 26, but in 2010, an extension was decided³⁶ for younger workers between the ages of 18 and 25.

In March 2014, France ratified the European regulation³⁷ regarding the Fund for European Aid to the Most Deprived (FEAD). France will receive EUR 499 millions for the period 2014-2020 from the FEAD, to which a supplement of EUR 88 millions will be provided by the national resources of France. This program will allow more security and food distribution to the most deprived through associations that have received a special agreement as well as those who benefit from this fund.

4.1.2. Family

To prevent poverty for the most deprived families with children, different welfares provide help in different ways. *Allocation de Soutien Familial* (family support allowance) has been increased by 5% on April 1st 2014 and the *Complément familial* (Family Complement) has been increased by 10%³⁸.

³² 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].

³³ 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].

³⁴ <http://www.social-sante.gouv.fr/IMG/pdf/DP-PAUVRETE.pdf>

³⁵ <http://www.social-sante.gouv.fr/IMG/pdf/DP-PAUVRETE.pdf>

³⁶ Decree n. 2010-961 (Decree on the extension of the RSA to young people below the age of 25) 2010 [Decret relatif à l'extension du revenu de solidarité active aux jeunes de moins de vingt-cinq ans].

³⁷ 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

³⁸ 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].

Moreover, a program was set to give more security to mono-parental families. In fact, the law of August 4th 2014 created an insurance concerning the failure to pay alimony. The *Caisse d'Allocation Familiale*, a special administration in charge of all social welfares, will provide maintenance allowance even in case the other parent does not honour the due payment. This law also created a minimum allowance for all families, the GIPA system (*Garantie Individuelle du Pouvoir d'Achat*, Personal Guarantee of Purchasing Power). For all children, there is a minimum allowance of EUR 92.52. In case the alimony granted by a judge is below this minimum allowance the *Caisse d'Allocation Familiale* will provide the difference. These two systems aim to a better protection for mono-parental families, which appear to increase each year³⁹.

Since February 2014, the government has decided to set up a large plan of accessibility to social and familial structures all over the territory. Different schemes have been decided out of which 13 are already set up. The main goal is to promote solutions for the most deprived families family reception centers (*centres d'accueil familiaux*) and to provide at least 10% of poor children with housing facilities. The last decision was a ministerial circular⁴⁰ that established an objective of 100,000 housing solutions, 100,000 special maternal assistants and 75,000 places in kindergarten.

4.1.3. Employment

The law of June 14th 2013 for employment security previously evoked in the labour section of this report has changed different aspects of employment rules. Even if it does not seem relevant to discuss more specifically this law, the part time job reform can be analysed as an improvement of social inclusion by employment. In fact, this law represents an increase of the working time for those particular contracts (at least 24 hours per week), implying a better remuneration.

The law of March 5th 2014, which has also been mentioned, created different measures to promote social inclusion through employment and labour.

The *Validation des Acquis de l'Expérience* or *VAE* (Accreditation for Work Experience) have been extended. This system allows employees or former employees to graduate from a degree not by passing the required exam, but through the sole approval of a jury who considers their work

³⁹ Insee, recensements de la population de 1962 à 1999, enquêtes annuelles de recensement de 2004 à 2007.

⁴⁰ Circular n. DGCS/SD2C/2015/8 (Circular related to the application of local outline of familial services) 2015 [Circulaire relative à la mise en œuvre de schémas départementaux des services aux familles].

experience is enough to give them the same diploma as any other student. Since 2014, this accreditation can be given to all employees who can justify of a three-year experience related to the diploma they claim. Furthermore, this system is now open to everyone. In other terms, this system provides a security for all workers. It allows them to have their qualifications recognized through their working experiences and to be able to make it opposable to other employers by a degree. The enhancement of employability was also an important aspect of this law. Every worker, employed or not, registered in an employment agency is able to discover an activity, confirm a professional project or start an employment program within a particular company.

Other aspects of this law related to professional training will be exposed under title 4.1.5 Training.

The law of October 26th 2012 created the *Emplois Avenir* (Job Futures). These work placement contracts are directed to young workers who did not benefit from a full education or who are geographically far from the main labour pools. This is a private contract between a young employee and an employer for a period of 1 year to 3 years. The deal is for the employee to benefit from a proper training within the company thanks to a local professional, and the employer receives a public financial aid to help him support the cost of this contract. This contract is an alternative to classic contracts for workers between 16 and 25 years of age who did not reach level IV (high school diploma). The jobs are in priority non-market position, and a special contract was created for professors, which provided a welfare and a study support for students who want to be professors in the national education system. The goal is to create 18,000 teaching posts by 2015⁴¹

4.1.4. Housing

Even if this measure was taken a year before the economic crisis, it seems relevant to signal the creation in 2007⁴² of the *Droit Au Logement Opposable* (Opposable Housing Right). In 1982⁴³ and 1990⁴⁴ the right for a decent housing was proclaimed, however following the social movement of

⁴¹ <http://www.education.gouv.fr/cid61330/les-emplois-d-avenir-professeur.html>.

⁴² Law n. 2007-290 (Law instituting housing rights and supporting various measures in favour of social cohesion) 2007 [Loi instituant le droit au logement opposable et portant diverses mesures en faveur de la cohésion sociale].

⁴³ Law n. 82-526 (Law on the rights and obligations of tenants and lessors) 1982 [Loi relative aux droits et obligations des locataires et des bailleurs].

⁴⁴ Law n. 90-449 (Law setting up the right to housing) 1990 [Loi visant à la mise en oeuvre du droit au logement].

winter 2006, it was voted a change in the way this right can be exercised. The State guarantees this right, and the procedure can be out of court or contentious.

The first way it can be exercised is in front of a departmental mediation committee. If it judges the request as urgent and a priority, the prefect is asked to find a housing solution. If no reaction or solution appears, the request can be exercised in front of an administrative court and the State might be condemned to a penalty. This second type of request was open from 2008 to 2012 for urgent situation (homeless people, people under eviction risk, temporary housing) but it has been extended to all situations since January 1st 2012, if no answer is given or is given after an abnormally long time. The law also recognized a right for people living in an emergency facility to stay in as long as no stable housing solution is found. The other aspect of this law was to promote the construction of social housing.

The government has created⁴⁵ in 2013, and generalized it in 2014, a system of rental deposit for student housing that allows any student under 28 years old to ask the State to become his guarantor for the rent. This is an evolution of the Loca-Pass system, created in 1998, which was a caution plan for student in "sandwich education".

A domiciliation reform was launched in 2008⁴⁶ and found an effective system in 2014⁴⁷. This reform allows homeless people to ask for a domiciliation, an effective address. The request must be addressed to a Municipality Centre for Social Action (*Centre Communal d'Action Sociale*, a local actor of social action) that grants or not after a brief interview an address into a social centre for as long as it is needed. The domiciliation is in fact the first step to being able to ask for social aids or to finding a job, the social issues behind it are important.

4.1.5. Training

The law of March 5th 2014, mentioned in the Labour Rights section of this report, opened the possibilities of professional training. This law created the *Compte Personnel de Formation*⁴⁸

⁴⁵ <http://www.enseignementsup-recherche.gouv.fr/cid82047/la-caution-locative-etudiante-cle-une-garantie-de-l-etat-pour-faciliter-l-acces-des-etudiants-au-logement.html>.

⁴⁶ Circular n. DGAS/MAS/2008/70 (Circular on the housing of homeless people) 2008 [Circulaire relative à la domiciliation des personnes sans domicile stable].

⁴⁷ Law n. 2014-366 (Law for access to renovated housing and urbanism) 2014 [Loi pour l'accès au logement et un urbanisme rénové] in articles L264-1 and following of the Social Action and Families Code.

⁴⁸ Articles L6323-1 and following of the Labour Code

(Professional Training Account). This account will be opened for every worker, employed or not, over 16 years old for as long as he is not retired.

Furthermore, a previous system, the *Droit Individuel à la Formation* (Individual Right of Training) allowed a certain amount of time of professional training for every worker. The new system reduces the time allocated to training (150 hours for every 8 years against 120 hours against 6 years for the previous system). The training opened to this system will give a professional qualification on the working time. Moreover, this new system can be transferred, meaning that a change in professional situation does not imply the resolution of the accumulated hours.

This system is partly financed by every company with the creation of a new unique tax for professional training. It represents 1% of the salaries of the whole company, with two special rates for companies with less than 10 employees (0.55%) and companies that have taken a special commitment to personally finance the Professional Training Account (0.8%).

The *VAE* system that has been mentioned in the Employment section (4.1.3) is also a measure taken in favour of professional training.

The law also reformed the apprenticeship contract. Since 2014, articles L6221-2 and L6233-1-1 of the Labour code made these contracts free of charge. There is also a program for people of 15 years of age to access apprenticeship in high school⁴⁹. Article L6222-7 now recognizes the validity of an open-ended contract of apprenticeship.

4.1.6. Education

The law setting up education as a social inclusion priority for disabled student is the law of February 11th 2005⁵⁰. This law is the subject of a development under the title 5.1.1.1 below.

Since 1981, France has created a complex network for an inclusive education. The former *Zones d'Education Prioritaire* (Priority Education Zones) have been progressively replaced by different networks. These networks have a more important budget and staff mobilization (for each, about 10 to 20% more). Other specific networks have also been set up to respond to specific needs.

⁴⁹ Article L6222-1 of the Labour Code.

⁵⁰ Law n. 2005-102 (Law for equal opportunities and the integration of disabled people) 2005 [Loi pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées].

The REP (*Réseau d'Education Prioritaire*, Prior education network), in 1997, includes both former ZEP schools and out of the network schools that expressed certain needs regarding school results. The REP+ (*Réseau d'Education Prioritaire +*) system created in 2014 will be effective in September 2015. The main goal of the REP+ is to target schools with difficulties and make them as close as possible to other schools in terms of global success. In 2006, the RAR (*Réseau Ambition Réussite*, Ambition/Success Network) and RRS (*Réseau Réussite Scolaire*, Scholar Success Network) networks were created between the REP and REP+ to distinguish different levels of needs between prior education schools. The RAR network is controlled by the Minister of Education, and the RRS is controlled on an academic basis to create a network between local schools. Other specific programs have been created to promote equality of opportunities. In 2010, the CLAIR program was created⁵¹ to prevent violence in middle-schools and high schools. It was spread through elementary schools by the ECLAIR program in 2011. In September 2015, 350 establishments will be in the REP+ program and 781 in the REP program⁵².

The general idea is to give better working conditions to children who are more prone to school failure. This objective is satisfied by a better orientation on language skills with more staff mobilized. On a bigger scale, the objective of the Prior Education Politic is to reduce by 10% the gap of success between Priori Education Schools and regular schools⁵³.

4.1.7. Medical and Health

In 1999, the *Couverture Maladie Universelle* (Universal Medical Coverage act) was voted. The same year, the creation of the CMU-C, standing for *Couverture Maladie Universelle Complémentaire* (Supplemental Universal Medical Coverage), allowed 10% of the French population, about 5 million people, to benefit from free medical coverage, which is now about 4.3 million people⁵⁴. An evolution of this system was made possible by a law in 2004⁵⁵. It is a help program for people in need of a supplemental health insurance, the *Acquisition d'une Complémentaire Santé*

⁵¹ Circular n. 2010-096 (Circular related to the experimental "Clair" program for 2010-2011) 2010 [Circular relative à l'expérimentation du programme "Clair" pour l'année scolaire 2010-2011].

⁵² http://www.education.gouv.fr/cid187/l-education-prioritaire.html#L_education_prioritaire_a_la_rentree_2014-2015.

⁵³ http://cache.media.education.gouv.fr/file/2013/62/4/DEPP_NI_2013_07_education_prioritaire_etat_des_lieux_251624.pdf.

⁵⁴ http://www.lemonde.fr/societe/article/2009/09/09/en-dix-ans-la-cmu-a-reduit-les-inegalites-dans-l-acces-a-la-sante_1238143_3224.html.

⁵⁵ Law n. 2004-810 (Law related to health insurance) 2004 [Loi relative à l'assurance maladie].

(Supplemental Health Insurance Acquisition program or ACS). Two measures have been taken to develop these two programs. In June 2013, the government decided⁵⁶ to increase the eligibility threshold of the CMU-C and of the ACS by 7%, allowing 600,000 new citizens to access these programs. In June 2014, a decree⁵⁷ extended the benefit of the CMU-C to isolated students in family breakdown situation.

The Medicare basket of the CMU-C was modified in 2014⁵⁸ to include dental treatment, prosthetic treatment and orthodontia, increasing the coverage of the Universal Medical Coverage. The ACS amount was increased in 2013 by 10% for patients over 60 years of age. This last measure was taken to compensate the postponement of the re-evaluation of the pensions that was decided previously the same year⁵⁹.

The *Permanences d'Accès aux Soins de Santé* (Offices for Health Care Accessibility or PASS) have been promoted through a decree of 2007⁶⁰ and a circular of 2014⁶¹. The government decided to open 10 more offices between 2015 and 2017⁶². These offices provide a health care service for everyone, and especially the most deprived patients who cannot afford any kind of healthcare.

The law of June 13th 2014 that has been mentioned several times created an obligation and generalization out of supplemental health insurance within the context of companies. The objective is to provide for every employee a medical coverage with a Medicare basket fixed by the law⁶³. Negotiations must take place in every professional branch of activity to determine the level of guarantee and the content of the coverage.

⁵⁶ Decree n. 2013-507 (Decree uprising the resources taken in consideration for the supplementary health insurance) 2013 [Decret relevant le plafond des ressources prises en compte pour l'attribution de la protection complémentaire en matière de santé].

⁵⁷ Decree of May 16th 2014 ; JORF n°0127 of June 3rd 2014, page 9239.

⁵⁸ Decree of May 28th 2014 ; JORF n°0125 of May 31st 2014, page 9085.

⁵⁹ http://www.lemonde.fr/politique/article/2013/11/26/report-de-la-revalorisation-des-retraites-touraine-presente-des-mesures-compensatoires_3520161_823448.html.

⁶⁰ Decree n. 2007-399 (Decree relative to centers for asylum seekers, financial provisions applicable to institutions and social services and medical services, modifying the social action and family code (regulations)) 2007 [Décret relatif aux centres d'accueil pour demandeurs d'asile, aux dispositions financières applicables aux établissements et services sociaux et médico-sociaux, et modifiant le code de l'action sociale et des familles (partie réglementaire)].

⁶¹ Circular n. DGOS/R4/2013/246 (Circular on the organisation and functioning of offices granting access to medical care) 2013 [Circulaire relative à l'organisation et le fonctionnement des permanences d'accès aux soins de santé (PASS)].

⁶² Multiannual Plan against poverty and for social inclusion - Roadmap 2015-2017.

⁶³ Law 2014-2015.

4.2. Consequences of austerity measures

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.

Most of the public welfares have been increased between 2007 and 2014:⁶⁴ 7.90% for the familial aid, 21.08% for the old age and incapacity aid and 11.71% for the Integration Minimum Income then the Active Solidarity Income (RMI and RSA).

Not only is there a global increase of the amount in each social welfare, but there is also a general increase in the number of beneficiaries of those aids:⁶⁵ 9.65% for the general retirement welfare, 22.16% for the unemployment aid or 18.46% for the disabled people welfare.

Some special welfares have less beneficiaries but can be explained by the budget cuts that aim to de-specialization public aids to reduce the global cost. These decreases are compensated by the increases in general systems.

Moreover, the macroeconomic ratios show that the percentage of GDP allocated to social welfares is stable every year: from 2009 to 2011, the expenses in social aids represented 30.7% of the GDP, with an increase in 2012 with a 31.2% ratio⁶⁶.

It does not seem accurate to conclude that **measures** taken by the governments has had a negative impact on social protection and therefore on social inclusion.

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⁶⁴ http://www.insee.fr/fr/themes/tableau.asp?reg_id=0&ref_id=NATTEF04602.

⁶⁵ http://www.insee.fr/fr/themes/tableau.asp?reg_id=0&ref_id=NATFPS04611.

⁶⁶ Drees ; Insee, comptes nationaux - base 2010.

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5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

5.1.1.1. The guidance and education provided to disabled children

In French Law disabled people are endowed with the right to benefit from education. This important right was implemented by the Law for equal opportunities and the integration of disabled people passed on February 11 2005⁷⁰: it introduces in French Law the obligation for schools to integrate children in the mainstream school system at every level of education. Disabled children benefit from personalised project established by the Commission for the rights

⁶⁷ http://www.insee.fr/fr/themes/tableau.asp?reg_id=0&ref_id=NATTEF04602.

⁶⁸ http://www.insee.fr/fr/themes/tableau.asp?reg_id=0&ref_id=NATFPS04611

⁶⁹ Drees ; Insee, comptes nationaux - base 2010

⁷⁰ Law n. 2005-102 (Law for equal opportunities and the integration of disabled people) 2005 [Loi pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées].

and the autonomy of disabled Persons (*Commission des droits et de l'autonomie des personnes*) created by the Decree of December 19 2005.⁷¹

The importance of this right was reiterated in case law. The French Administrative Supreme Court, the *Conseil d'Etat*, ruled on December 15 2010 that an adapted access to education for disabled children at preschool level is a fundamental freedom.⁷² According to a ruling of the Administrative Tribunal of Lyon in September 2005 the State must be held liable for violating this right regardless of whether it is its fault or not.⁷³ The *Conseil d'Etat* even recognised on April 20 2011 that the duty is also related to activities outside of school and it must be respected without delay, despite budgetary issues.⁷⁴ The parents themselves can benefit from the article L521-2 of the Code of administrative justice, which allows injunctions ordering that required measures be taken to respect the right of their child.

Other legal measures taken by the French State through the Law passed in 2005 aim at providing disabled children with adapted mainstream schools: examination processes are adapted (article L112-4 of the Code of Education), municipal authorities are burdened with the cost of transportation to an ordinary school when the local one is not accessible and the French sign language is recognised. Financial and human resources were also given to mainstream school in the first place: according to the conclusions of the European Committee of Social Rights for France in 2012, the number of school life assistants and the budget doubled between 2007 and 2010.⁷⁵ Many specific disabilities were also taken into account, such as with the Autism plan launched in 2008 for two years and the Hearing impaired plan started in 2010 for two years. For instance the Autism plan aimed at improving scientific knowledge, professional training, assistance to disabled children and individualised processes.

The figures provided by the Ministry of Education mentioned in the Conclusions of the Committee show that out of more than 12 million students in primary and secondary mainstream schools in 2010, 200,000 were facing disabilities. 76% of the 17,000 autistic children schooled in 2008 were also schooled in mainstream facilities. But according to the European

⁷¹ Decree n. 2005-1587 (Decree about the Departmental Houses for Disabled People) 2005 [Décret relatif à la maison départementale des personnes handicapées].

⁷² Case n. 344729 [2010] Administrative Supreme Court Lebon Vol. V [2011] [French].

⁷³ Case n. 0403829 [2005] Administrative Tribunal of Lyon [French].

⁷⁴ Case n. 345434 [2011] Administrative Supreme Court [French].

⁷⁵ European Committee of Social Rights, *Conclusions 2012 (France)*, January 2013.

Committee of Social Rights in its decision *Action européenne des handicapés v France* adopted on September 11 2013 64% of all autistic children were deprived of formal education.⁷⁶ Nevertheless, as the Conclusions themselves stated, the figures are not clear enough due to variable statistic approaches. The Academic Network of European Disability Experts published in 2010 a report on equality of education and training opportunities for young disabled people underlining that there were schooled disabled children who did not claim for any support, that there still were more than 20,000 disabled children out of school and that others were assisted in Belgium.⁷⁷ The High Authority for the fight against discrimination and for the equality (HALDE) held a survey in 2011 showing that parents complain about the complex procedures enabling their child to benefit from help and about their feeling of isolation.⁷⁸

Along with these measures aiming at integrating disabled children in mainstream education, the French State also took measures to create specialised bodies to provide some children with adequate education. There are specialised classes: there are classes for scholar integration (*classes pour l'inclusion scolaire*) at the primary level and local units for scholar inclusion (*unités localisées pour l'inclusion scolaire*) at the secondary level. These classes are meant for children whose disability prevents them from attending ordinary classes. The ordinary schooling system is adapted within those classes. There also are specialised institutions such as medico-social organisations which can be private or public.

5.1.1.2. *The vocational training provided to disabled people*

According to the Academic Network of European Disability Experts (ANED) in its report on equality of education and training opportunities for young disabled people which was published in 2010, vocational training in France is provided by public schools but also by semi-public organisations which work along with employers.

There are many mainstream vocational training schools. They are professional high schools (*Lycées professionnels*), which aim at providing vocational training to disabled children. But according to

⁷⁶ *Action européenne des handicapés v France* [2013] European Committee of Social Rights.

⁷⁷ Academic Network of European Disability experts, *ANED country report on equality of educational and training opportunities for young disabled people (France)*, May 2011.

⁷⁸ Institut CSA, '*Sondage sur la scolarisation en milieu ordinaire des enfants en situation de handicap en élémentaire et au collège*' (February 2011) <<http://www.csa.eu/dataset/data2011/opi20110220-sondage-sur-la-scolarisation-en-milieu-ordinaire-des-enfants-en-situation-de-handicap-en-elementaire-et-au-college.pdf>> [French].

the ANED they are not really accessible to children who suffer from intellectual or mental disabilities. There also are mainstream institutions focusing on apprenticeship, which is considered to be adapted to disabled children: it is provided by the training centres for apprentices (*CFA*). There then are the mainstream institutions for adults in the National association of vocational training for adults (*AFP*): it helps adults acquire professional skills when they leave school. According to the ANED report these institutions provide an increasing number of disabled people with vocational training.

Specialised institutions were also implemented: along with private centres there are public training centres for specialised apprentices (*CFAS*) which are even more adapted to disabled trainees. The mainstream diplomas are prepared in these institutions.

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

5.1.2.1. The peculiar definition of disabled workers

First of all, it seems useful to focus on the French definition of a disabled worker: this definition is meant to provide such workers with an adapted legislation and can thus be considered as the ultimate base of the issue studied in this part of the Report. The Law for equal opportunities and integration of disabled persons of February 11 2005 modified the legal definition⁷⁹: it is now stated at article L114 of the Social Action and Family Code that disabled people suffer from the limitation of their activity or from the restriction of their participation to social life because of substantial, lasting or definitive alteration of one or many physical, sensory, mental, cognitive or psychological abilities, because of many disabilities or because of a disabling illness.

But when it comes to disabilities suffered by workers, the definition is more restrictive. According to the article L5213-2 of the Labour Code, disabled workers are people whose

⁷⁹ Law n. 2005-102 (Law for equal opportunities and the integration of disabled people) 2005 [Loi pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées].

chances of getting or conserving a job are effectively reduced by reason of the alteration of one or many physical, sensory, mental or psychological faculties. The article L5213-2 of the Labour Code then states that the status of disabled worker is granted by the Commission for the rights and the autonomy of disabled people. The specific legislation also applies to employees who suffered from a professional accident causing a disability superior to 10%, to people who benefit from disability pensions and to disabled veterans.

Nevertheless it remains that the legislation from which disabled workers benefit does not apply to all disabled workers: there can be workers who do not register themselves as such or who do not ask the Commission to grant them this status. It is important since it is not compulsory for an employee to reveal to his/her employer he/she is disabled. And yet, there are other legal tools which can be used in order to provide those employees with a peculiar legislation: on the ground of health and through the classic scheme they can benefit from specific accommodation. Furthermore, self-employed workers or people working in the professions do not benefit from this legislation either. Case law has tried to make up for this restriction of the legislation: for example the Bleitrach case ruled on October 22 2010 by the *Conseil d'Etat* shows that the State must take measures to enable people working in the professions as legal workers to have an access to court houses even if they are disabled.⁸⁰ It is now clearer what a disabled worker is in French Law: it is possible to explain which specific measures were taken.

5.1.2.2. Favouring the integration of disabled workers in the ordinary working environment

The first measure the French State aims at taking is to enable disabled workers to work in ordinary conditions when it is possible. Such a position is by the way entailed in the European Social Charter, at its article 15(2). The measures taken can be gathered in three main measures.

i. Anti-discrimination legislation

There first is anti-discrimination legislation, which is meant to enable disabled workers to access to employment without suffering discrimination and to enable them remain employed. French Law has many provisions which fight against discrimination, such as in the Labour Code with its article L1132-1 or with the European Union Law and its major principle of non-discrimination. The role of the EU Directive 2000/78 establishing a general framework for equal treatment in

⁸⁰ Case n. 301572 [2010] Administrative Supreme Court Lebon Vol. IV [2011] [French].

employment and occupation must be underlined⁸¹: it was implemented in French Law especially with the Law of May 27 2008 enforcing the EU legislation on fight against discriminations.⁸²

It introduced a definition of discrimination, which can be direct or indirect: on the basis of one's disability one is treated less favourably than another in a comparable situation, or despite the neutrality of a practice or criterion one is burdened with a particular disadvantage in comparison to others. It is significant that the first case in which this definition was used by the *Conseil d'Etat* is related to discrimination based on disability: it ruled in the case Volot-Pfiser on July 11 2012 there was an indirect discrimination against a public prosecutor who had become deaf and had benefited from new functions but also lost part of his salary as a consequence.⁸³ So the fight against discrimination on the ground of disability is large.

However the transposition of the general provisions against discrimination was not completed, such as for Magistrates or public agents working within Parliament, who do not benefit from the protective legislation, also when it comes to discrimination based on disability. The *Conseil d'Etat* yet decided with its ruling Perreux on Octobre 30 2009 that this EU Directive could be directly applied in France because of the failure of the French State to enforce it, since the Directive is judged to be sufficiently precise, which consisted in a major evolution of the French administrative Case law on that topic.⁸⁴

But there also are provisions about discrimination based on disability. The Law of February 11 2005 for equal opportunities and the integration of disabled persons is here important. It introduced in the Labour Code through its articles 23, 24 and 25 provisions taking into account disability as an illegal ground of discrimination. It also widened the measures implemented to fight against discrimination: for example it makes it compulsory for trade unions to discuss matters taking into account the necessity of providing disabled workers with work.

When it comes to fighting against discrimination based on disability many legal provisions can also be useful. The Defender of Rights is an important constitutional body created by the

⁸¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation 2000.

⁸² Law n. 2008-496 (Law enforcing the European Union legislation on fight against discriminations) 2008 [Loi portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations].

⁸³ Case n. 347703 [2012] Administrative Supreme Court Lebon Vol. VI [2013] [French].

⁸⁴ Case n. 298348 [2009] Administrative Supreme Court Lebon Vol. IV [2010] [French].

Constitutional Law modernising the institutions of July 23 2008⁸⁵: it replaces independent bodies such as the High Authority for the fight against discrimination and for equality (*HALDE*) created by the Law of December 30 2004.⁸⁶ It aims at enabling a systematic sanction of discrimination by promoting legal training on discrimination issues for labour judges who are elected professionals or by giving observations that judges often follow according to the Report on measures to combat discrimination about France published in 2013 by the European network of legal experts in the non-discrimination field and written by Sophie Latraverse.⁸⁷ The shift in the burden of the proof must be mentioned too.

ii. Affirmative action measures

There is another kind of measures that have been taken by the French State: affirmative action. It is not easily conceivable in the French legal system, which is traditionally based on an abstract vision of equality according to the Declaration of the Rights of Man and Citizen written in 1789⁸⁸. The law equally applies to all citizens, who have the right to access to 'employment' solely according to 'their capacity, virtue and talent' as written in the sixth article of the above-mentioned Declaration. It is hard to recognize a category of people who can benefit from a differential treatment unless it is based on neutral criteria: otherwise it would be discrimination. However there has been a trend to enforce affirmative action. The Law of February 11 2005 for equal opportunities and the integration of disabled people introduced in French Law a provision which can be found at article L1133-5 of the Labour Code: 'the measures taken in favour of disabled people and promoting equal opportunity cannot be considered as discrimination'.

The French Law introduced long ago affirmative action measures to help disabled workers access to employment. The Disabled Persons Employment Act passed on July 10 1987 created an obligation of employment for the State and private employers: there is a quota since these organisations have to employ at least 6% of disabled employees if they are currently employing

⁸⁵ Law n. 2008-724 (Constitutional Law modernising the Institutions of the 5th Republic) 2008 [Loi constitutionnelle de modernisation des institutions de la Ve République].

⁸⁶ Law n. 2004-1486 (Law creating the High Authority for the fight against discrimination and for equality) 2004 [Loi portant création de la haute autorité de lutte contre les discriminations et pour l'égalité].

⁸⁷ European Network of legal experts in the non-discrimination field, *Country report 2013 on measures to combat discrimination (France)*.

⁸⁸ Declaration of the Rights of Man and Citizen 1789 [Déclaration des Droits de l'Homme et du Citoyen].

20 or more full time salaried workers (now stated at article L5212-2 of the Labour Code).⁸⁹ In case these organisations do not comply with their obligation, they have to contribute financially to the Association managing the fund for the professional insertion of disabled workers (*AGEFIPH*). Penalties are also possible: they can amount to 1.500 times the French minimum wage and usually consist in the contribution which had to be given increased by 25% (article L5212-12 of the Labour Code).

Along with this quota system there also are financial helps which can be granted by the State and the Association which was previously mentioned: they are granted to employers who need support to employ disabled workers in ordinary working conditions (article L5213-10 of the Labour Code) and to self-employed disabled workers (article L5213-12 of the Labour Code).

Other affirmative action measures were taken by the French State. For example a professionalisation contract was created by the Act reforming vocational training throughout life of May 4 2004.⁹⁰ It helps young job seekers who are aged under 25 years old and adults who are aged 26 years old or more to acquire professional qualifications and integrate the working environment. It is granted to disabled people, who are important beneficiaries of this legal tool. Measures were also taken as for civil servants, who are selected through competitive examinations: a Decree adopted on December 21 2005 enable disabled applicants to benefit from adapted processes taking into account their disability⁹¹.

iii. Adapted working structures

The French State also implemented measures enabling disabled people to access employment through adapted structures. The first measure is not tightly linked to employment but is a necessary measure to enable disabled workers access ordinary working environments: it is the accessibility for disabled persons in buildings, streets or public transport. The Law of February 11 2015 for equal opportunities and the integration of disabled persons stated that in 2015 the whole mobility chain should be accessible for disabled people. There is an obligation to make new and old buildings be accessible.

⁸⁹ Law n. 87-517 (Law in favour of disabled workers) 1987 [Loi en faveur de l'emploi des travailleurs handicapés].

⁹⁰ Law n. 2004-391 (Law reforming vocational training throughout life) 2004 [Loi relative à la formation professionnelle tout au long de la vie et au dialogue social].

⁹¹ Decree n. 2005-1617 (Decree adapting exams and competitive examinations for elementary and higher education for disabled applicants) 2005 [Décret relatif aux aménagements des examens et concours de l'enseignement scolaire et de l'enseignement supérieur pour les candidats présentant un handicap].

This obligation was introduced in the legislation on disabled workers since they have the right to move within the buildings in which they work (articles R4214-26 and following ones of the Labour Code). The failure to comply to those obligations could lead to discrimination on the grounds of disability: the prohibition of such a discrimination was thus interpreted as creating this obligation of accessibility by the Criminal division of the French Judiciary Supreme Court, on June 20 2006.⁹² The Bleitrach case ruled by the *Conseil d'Etat* on October 22 2010 above mentioned gives a relevant example of this obligation which was here incumbent upon the State.

The most important measure which aims at enabling disabled workers keep on working in an ordinary environment is the fact that employers must provide their disabled employees with reasonable accommodation. These are the terms of the European Directive adopted on November 27 2000 establishing a general framework for equal treatment in employment and occupation. They were replaced in French Law with the Law for equal opportunities and the integration of disabled people as 'all appropriate measures to enable disabled workers to access to a job corresponding to their qualification or to keep it.' It stands at the article L5213-6 of the Labour Code. This means that the employer has the obligation to change the environment in which disabled people work to make it suitable for them regarding the importance of the disability. However it can be expensive, that is why there are financial helps granted by the State or by the Association for the management of the fund for integration of disabled people (*AGEFIPH*): they can amount to 80% of the cost of the change (article R5213-33 and following ones of the Labour Code). This support depends on the importance of the disability which is estimated since the Law passed on December 29 2010 by Association itself.⁹³

If the employer refuses to change the working conditions, thus leading the disabled worker to be deprived of suitable working conditions or even of his/her job, it can be considered as discrimination on the ground of disability. This way disabled workers have the right to keep a position of employment. However, an important limit is allowed by legislation: the article L5213-6 paragraph 2 of the Labour Code states that this obligation no longer exists if complying with the legal duty it burdens the employer with 'disproportionate costs' even with the financial help which can be provided. It must be underlined that the terms of 'disproportionate costs' and

⁹² Case n. 05-85888 [2006] Criminal division of the Court of cassation.

⁹³ Law n. 2010-1657 (Finance Law for 2011) 2010 [Loi de finances pour 2011].

‘appropriate measures’ are not precisely defined in the French legislation, and yet they seem to be the base of French Law for disabled workers.

5.1.2.3. *Sheltered employment enabling disabled workers to work*

Sometimes it is not possible to enable disabled workers to have access to ordinary working conditions. It appeared thus necessary to the French State to implement sheltered employment structures which provide disabled workers with organisations in which they can work. The Law passed on February 11 2005 deeply reformed French law on this issue: the article L5213-15 allows the creation of sheltered businesses by public or private organisations with the agreement of the administration. There are Work aid centres (*Centres d'aide par le travail*) or Vocational rehabilitation centres for disabled workers (*ESAT*).

This raised legal issues. Indeed the Labour Code does not apply to the disabled workers who work there: the Social Action and Family Code applies instead, with its article L344-1 and the following articles. The *Cour de cassation* ruled on May 29 2013 the case Gérard Fenoll vs Centre d'aide par le travail La Jouvène in which a worker benefiting from a sheltered position of employment claimed he had the right to benefit from the protective provisions of the Labour Code.⁹⁴ The French Judiciary Supreme Court referred to the Court of Justice of the European Union a question on the interpretation of the term ‘worker’ in EU Law. The CJEU ruled on March 26 2015 that workers in such sheltered employment structures were considered as workers according to the EU Law.⁹⁵ This raises questions that will certainly have to be answered.

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

The austerity measures implemented in France are shown in Finance Laws, which are passed each year to organise public spending during the following year. Policies in terms of disability are enforced by local communities, social institutions and the State, the participation of which in such policies amounted to 23% of the global amount of money involved in 2010, according to the Report established by French Senator Eric Bocquet about the solidarity, insertion and equal opportunities aspects of the Finance Law for 2013.⁹⁶ Even though Finance laws only reflect public spending made by the State, it is relevant to analyse them, since austerity measures have been implemented by the State.

The emphasis must be laid on an important trend: even though even more funds are still granted for policies helping disabled workers and students, the increase in these funds is not significant.

⁹⁴ Case n. 11-22376 [2013] Social division of the Court of cassation.

⁹⁵ Case n. C-316/13 [2015] First Chamber of the Court of Justice of the European Union.

⁹⁶ Eric Bocquet, *Project of Finance Law for 2013: Solidarity, insertion and equal opportunities*.

Between 2014 and 2015 those funds increased by 1.4%. It must be stated that this augmentation can be largely explained by the growing number of disabled people who benefit from the allocation granted for disabled adults (more than a million in 2012 whereas there were 809,000 b in 2007). Public spending even decreases when it comes to some policies enforced by the State: for example, the funds granted for the action in terms of guidance of disabled people decreased by 13.3% between 2014 and 2015.

Furthermore, Senator Eric Bocquet underlines in his Report about the Finance Law for 2015 that there is less investment in 2015 for Vocational rehabilitation centres for disabled workers (*ESAT*), all the more since the State has stopped since 2013 creating places in these centres.⁹⁷ While there are even more disabled adults who want to benefit from them, these centres are not granting further help. It was foreseen in 2007 that until 2017 10,000 places would be created: however the figures show that the importance of this goal lowered. In 2008 2,000 workers were given the opportunity to benefit from them, whereas in 2009 they were only 1,400. In 2010, 2011 and 2012 they were only 1,000. Since 2013 there has been no creation of job positions for disabled workers.

So the public focus on the rights of disabled people is not as important as it was years ago. This trend can be noticed with a simple statement: the legislation on the rights of disabled people is based on a Law which was passed ten years ago, and since then there has not been such an important Law.

5.2. Children and Young Persons (Article 17 ESC)

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

Article L.111-1 §4 and L.111-2 of the French Education Code (hereafter F.E.C.) provide the right to education and to instruction in school. Furthermore, paragraph 1 of this article states that:

Education is the first national priority. The public service of education is designed and organized according to pupils and students. It helps improving equal opportunity and fighting against social and territorial inequality regarding school and educative success. It recognizes that all children share the capability to

⁹⁷ Eric Bocquet, *Project of Finance Law for 2015: Solidarity, insertion and equal opportunities*.

learn and progress. It ensures the school inclusion of every child without disparities. It also ensures social mix of children enrolled within public schools.

The implementation of such purposes allows most of the children to have the education and training they need. Therefore, special measures were taken concerning children coming from non-sedentary Travellers' Communities, low-income children and children with disabilities.

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

Article L.112-3 of the French Social Action and Family Code (F.S.A.F.C.) states that the goal of childcare actions is

To prevent difficulties that parents may confront in the exercise of their educative responsibility, accompany the families and ensure, as the case may be, partial or full care of minors. [...] Childcare also aims at preventing difficulties that children temporarily or definitively deprived of their family support may encounter.

These objectives are achieved at a decentralized level through the child welfare service, which is a service of the *département* (French administrative division) placed under the authority of the President of the department council.

Three groups of children can be seen as 'temporarily or definitively deprived of their family support' and therefore put under the protection of the competent child welfare service. Firstly, the **judicial authority** can entrust children to child welfare services in various situations. It mainly concerns children for which educative assistance measures, as provided for in article 375 of the Civil Code, were set up, minors having been subjected to a delegation of parental authority provided for in article 377 of the Civil Code or a declaration of abandonment laid down by article 350 of the Civil Code, or whenever the guardianship of a minor is declared vacant according to article 411 of the Civil Code. Then, children can be entrusted by the **person having parental rights** over them. This situation concerns minors who cannot be maintained in their family setting (article 222-5 of the F.S.A.F.C.), children at risk and circumstances requiring an urgent action. Subsequently, minors admitted as **wards of the State** also are entrusted by children welfare services by decision of the President of the Departmental Council according to

article 222-5 of the F.S.A.F.C..⁹⁸ As such, interventions of the child welfare services aimed at providing material, educative and psychological support to children (article 221-1 of the F.S.A.F.C.). The services particularly take over children in authorized establishments. Besides, an accommodation of 72 hours can be offered to minors who are at odds with their family according to article L.223-2 al. 5 of the F.S.A.F.C.. This special provision only concerns children in case of immediate danger having left their family setting. The service must inform the parents or the person exercising the parent authority without delay.

Moreover, special attention must be granted to ‘the best interest of the child, the taking into account of its fundamental, physical, intellectual, social and affective needs as well as the respect of its rights’ (article 112-4 of the F.S.A.F.C.). Likewise, article 371-5 §1 of the Civil Code reads: ‘a child may not be separated from its brothers and sisters, unless this is not possible or where his welfare dictates a different solution’.

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

5.2.3.1. Free Primary and Secondary Education

The principle of free education was set out in paragraph 13 of the Preamble to the Constitution of October 27 1946 which provides that: ‘the Nation guarantees equal access for children and adults to instruction, vocational training and culture. The provision of free, public and secular education at all levels is a duty of the State’. More specifically, free primary education arises from the first set of the Jules Ferry Laws: the Law of June 16 1881 establishing absolute gratuity of primary education in public schools. Gratuitousness was then progressively extended to secondary education between 1930 and 1933. Finally, the first article of the Haby Law reasserted the gratuity of education during the period of compulsory school in 1975.

Nowadays, free education is set out in articles L.132-1 and 132-2 of the F.E.C. which provide for the gratuity of schooling ‘given in nursery schools and pre-schools classes and during the period of compulsory school attendance’ (article L.132-1 F.E.C.) and ‘for pupils of public college and high schools in which secondary education is given’ (article L.132-2 F.E.C.).

⁹⁸ Pierre Murat, *Droit de la famille* (Paris Dalloz 2013) 1053-1056 [French].

Strictly understood, this principle only covers registration fees. That's why two types of compulsory costs traditionally remained: photocopy costs and costs regarding the *carnet de correspondance* (notebook that is used as official mean of communication between teachers and parents regarding absences or punishment for example) and postage. However, the judicial power has brought changes towards the end of the 90's: since then families shall not be solicited to pay **mandatory contributions** covering photocopy⁹⁹ and/or pedagogical expenditures such as postage costs.¹⁰⁰ Moreover, the practical scope of free education was broadened by **limiting the furniture costs** remaining at the expense of families¹⁰¹ and ensuring the **gratuity of textbooks**. Despite this, the principle of free education is neither general nor absolute.¹⁰² Accordingly, the *Conseil d'Etat* (French Supreme Court for Administrative Justice) authorized the collection of registration fees in two situations:

- Higher education;¹⁰³
- French educational establishments abroad.¹⁰⁴

5.2.3.2. *Encouragement of Regular School Attendance*

As emphasized before, in France, the right to education is a fundamental right provided for in par. 13 of the Preamble to the Constitution of October 27 1946; this right is defined by article L.122-1 of the F.E.C. and generated compulsory education which include two separated obligations: the obligation to enrol or educate children at home and the obligation of attendance to school.¹⁰⁵

⁹⁹ *Tabej* [1994] Administrative Tribunal of Paris [French].

¹⁰⁰ *Solana* [1999] Administrative Tribunal of Bordeaux [French].

¹⁰¹ Circular n°83-254 (limitation of furniture costs) 1983 [Circulaire relative à la limitation des prescriptions d'achat de fournitures scolaires]; Circular n°88-201 (limitation of furniture costs) 1988 [Circulaire relative à la limitation des prescriptions d'achat de fournitures scolaires]; Circular n°90-121 (limitation of furniture costs) 1990 [Circulaire relative à la limitation des prescriptions d'achat de fournitures scolaires].

¹⁰² Bernard Toulemonde, *La gratuité de l'enseignement. Passé, présent, avenir* (Paris 2002) 6 [French].

¹⁰³ *Conseil Transitoire de la Faculté des lettres et sciences humaines de Paris* [1972] French Supreme Court for Administrative Justice JCP [1973] Vol. II 17296 [French].

¹⁰⁴ *Conseil des parents d'élèves des écoles publiques de la mission culturelle française au Maroc* [1976] French Supreme Court for Administrative Justice Recueil Lebon [1976] 192 [French].

¹⁰⁵ Luc Marchand, *Les manquements à l'obligation scolaire* (Paris 2003) 42-43 [French].

i. The Enrolment Obligation

Article L.131-1 of the F.E.C. provides for compulsory education 'for French and foreign children of both sexes aged between 6 and 16'. This obligation arises from the second set of the Jules Ferry Laws adopted in March 28 1882. According to article 131-2 of the same Code, this 'compulsory instruction can be conducted either in a school, public or private, or within the families by the parents, or one of them, or any other person of their choice'. Subsequently, article 131-5 set forth that 'the guardian of a child has to register him in a school or declare to the mayor and the competent authority of the State that he will be giving him education within the family'. **Control** of this obligation is given to the mayor by articles L.131-6 and R.131-3 of the F.E.C. that foresee that he 'shall draw up a list of children submitted to compulsory education in his municipality'. Head teachers then have to declare to the mayor, within eight days after the school opening, the name of children attending school in their institution (article R.131-3 F.E.C.). Failures to the obligation of enrolment of children place upon guardian by article L.131-5 of the F.E.C. are reported to the academic director of the Ministry of National Education by the mayor or any person mentioned in article R.131-3 of the F.E.C. i.e. town councilors, departmental delegates of the national educational service, social workers, education staff, representatives of the public authorities, the regional school inspector, the director of the Ministry of Education's departmental services or its delegate. Furthermore, a home-educated child is subject to an enquiry of the competent municipality in the first year, and every two years, pursuant to article 131-10 of the F.E.C. The **sanction** for non-compliance with compulsory education is provided by article L.227-17-1 of the French Penal Code, which states:

'Failure by the parents of a child, or any other person exercising parental authority or de facto authority over him, on a continuous basis to register him in an educational institution, without a valid reason, despite receiving an official warning by the Inspector of the Academy, is punished by six months' imprisonment and a fine of EUR 7,500'.

Moreover, article L.131-3 of the F.E.C. in conjunction with article L.552-4 of the French Social Security Code subordinates **family allowances** relating to a child under compulsory education to submission of a certificate of enrolment in a school or a certificate of the competent authority attesting that the child is educated within his family or a medical statement attesting that he cannot attend school due to his medical condition.

ii. The Obligation of School Attendance

The second obligation generated by article L.122-1 of the F.E.C. is school attendance. To be more specific, this obligation is set forth in article L.511-1 of the F.E.C. which relates to pupils duties. On another hand, guardians shall make known the reason of every absence without any delay to the school director pursuant to article L.131-8 of the above-mentioned Code. Precisely, article L.131-8 foresees the following scheme regarding the detection and treatment of absenteeism. First,

The school director shall refer to the competent authority of the State so as a warning to be sent to the guardian of a child [...] (1) when, in spite of the solicitation of the school director, he did not notice the reason of the absence of the child or if he noticed inexact reasons; (2) when the child missed more than for half-day of school, without legitimate reason or valid excuse.

If the situation persists, the inspector responsible of the school district can gather the concerned members of the educative community in order to offer support and assistance to the family or offer the signature of a parental responsibility contract.¹⁰⁶ A referent teacher shall also be designated to follow the implementation of the measure within the school.

The **failure** by one of the parents or any other person exercising legal authority over a child to impose him the obligation of school attendance is sanctioned by two set of rules. On one hand, the French Penal Code punishes it as a *contravention* (non-criminal offense similar to an infraction in common law countries) by a EUR 750 fine according to article R.624-7; on the other hand, article 552-3 of the French Social Security Code allow the suspension or suppression of family allowances in such cases. However, article R.624-7 has fallen into disuse and was in practice replaced by article L.227-17 of the French Penal Code by prosecutor willing to combat school absenteeism.¹⁰⁷ This article provides that:

Failure by the father or mother, without a legitimate reason, to comply with their legal obligations to the point of endangering the [...] education of their minor child is punished by two years' imprisonment and a fine of EUR 30,000. The offence referred to in the present article is assimilated to abandoning the family for the purposes of 3° of article 373 of the Civil Code.

¹⁰⁶ French Social Action and Family Code article L.262-3.

¹⁰⁷ Luc Marchand, *Les manquements à l'obligation scolaire* (Paris 2003) 47 [French].

Regarding the sanctions some inconsistencies can be outlined. There is indeed a distinction between sanctions for non-compliance to the obligation of enrolment at school or declaration that the child is educated within his family which is a *délit* (offense) and failure to impose the obligation of school attendance which is a mere *contravention*. Moreover, the interpretation and organisation of the sanction of failure to impose the obligation of school attendance has been judged as unsuitable to the modern society. For instance, thresholds for alerts are interpreted differently in each academy.¹⁰⁸

5.2.3.3. Measures to Provide Free, or at least Access, to Tertiary Education

In France, tertiary education can be provided either in public high schools or in higher education institutions. Article 132-2 of the F.E.C. provides for the gratuity of education 'for students of preparatory classes and higher education provided in **public high schools**'. However, according to article L.719-4 of the F.E.C. '**public institutions** serving scientific, cultural and professional purposes [...] receive **registration fees** paid by students and hearers'. The level of fees to be paid by students in preparation of a national degree is defined upon each degree by ministerial ruling. The registration fee for a Bachelor student amounted for example to 184€ for the current academic year as provided for in the ministerial ruling of August 12 2014 defining the level of registration fees in public higher education institutions related to the Ministry of Higher Education and Research. Furthermore, French Administrative Courts systematically condemned the practice of requesting **additional fees** to students. Indeed, higher education institutions are only allowed to be remunerated for rendered services, in addition to registration fees to be paid for the preparation of a national degree.¹⁰⁹ However, according to article R.719-49 of the F.E.C. 'beneficiaries of student aid granted by the State and ward of the State shall be **exonerated** of registration fees' in such institutions. Likewise, students may be granted such exoneration upon personal situation particularly if they are refugees or unemployed on the basis of article R.719-50 of the same Code.

¹⁰⁸ Op. cit. 48-49

¹⁰⁹ *Université Pierre Mendès France de Grenoble* [1993] French Supreme Court for Administrative Justice Recueil Dalloz [1993] 533 [French]; *Université Jean Moulin Lyon III v. Chabinian* [1993] French Supreme Court for Administrative Justice Recueil Lebon [1993] [French]; *Université Paris Sud* [2004] Administrative Tribunal of Paris A.J.D.A. [2004] 1615 [French].

According to article L.821-1 of the F.E.C., 'the national collectivity grants social benefits to students [...] it gives priority aid served to student subject resources conditions'. The later also apply to student of private institutions as stated in article L.821-2. Conditions and amounts of this aid are fixed each year by decree.

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue

From 2007 and until 2014 the unemployment rate amongst people under 25 years have been between 17.3 and 25.7% which is more than two times more than for the rest of the population. In order to address this issue, the French Government set up mechanisms aiming at facilitating the transition between school and work world, notably due to work linked trainings. Specific contracts were also dedicated to youth as well as assisted hiring measures¹¹⁰.

As such, several measures were set up in order to provide for the **professional insertion** of youth in France namely: the second chances schools, the Youth Guarantee and the EPIDe. Second chances schools are dedicated to youth under 26 years who dropout school without any professional qualifications. They are based on a different pedagogy and aimed at including youth at a social and professional level without any other criteria than motivation. There are more than under second chances school in France distributed in 46 departments. They suggest a training career that includes acquisition of knowledge in fundamental subject, such as French, Mathematics or Informatics, acquisition of social and civics values, construction of a professional career plan and work-linked trainings. The training normally last 6 to 7 months at the end of which the youth received an attestation of acquired skills. The Youth Guarantee shall allow the lasting inclusion in a job or education. This dispositive is currently being tested in order to define the best conditions for its application. It is a targeted and contractualised accompaniment program which is composed by the guarantee for a professional experience through the combination of an accompaniment in a dynamic path and the multiplication of employment or training session and by a guarantee of resources during the time of the accompaniment. Finally, the EPIDe is a voluntary contract that allows the youth to receive a behavioral, general and professional training. The training is delivered in center functioning

¹¹⁰ <http://www.emploi.gouv.fr/thematiques/mesures-jeunes>.

under a boarding school regime and managed by the EPIDe, an agency of the French armed forces.

Moreover, two types of **assisted contracts** were set up in order to help young facing particular difficulties in finding a job, due to their lack of adequate education or their geographical origins, to integrate the job market: the first type is called '*emploi d'avenir*' (Job for future) and the second 'CIE-Starter'. Both of them are concerning youth - between 16 and 25 years old for the first and under 30 years for the second- that are jobless and facing difficulties to find a job. They are however concerning youth with different profiles. The Job for future device concerns youth that have an education level lower than the *baccalauréat* (French Baccalaureate diploma), are facing serious difficulties to insert in the active life despite a first support of the public authorities and totalized at least 6 month of job search over the last 12 months. Youth coming from 'Sensitive Urban Area' or 'Rural Development Zone' are the priority. This contract can last up to three years and presents several specificities. The concerned youth is accompanied by a tutor within his or her employment structure and by an advisor outside the structure; he or she also has the capability to validate a training certificate and some academics credits due to experience. Finally, the employer perceives financial support from the State ranging from EUR 500 to EUR 1,000 per month. The CIE-Starter device concerns youth living in a priority neighbourhood of the city policy or benefiting from the Income of Active Solidarity or recognized as disabled employee or who are follow-up in the frame of a second chance device as the second chances school, the Youth Guarantee or the EPIDe. The contract can be temporary or permanent; however the support of the State will only last up to two years. The employee can benefit from an accompaniment or training. He or she will have an attestation of the work experience at the end of the contract. The employer perceives a specific aid from the State and is exonerated from social charges which fixes the total amount of the support around EUR 1,000 per month.

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

The austerity measures taken by France had no impact on the above-mentioned measures. There is on the contrary a political will to improve the buying power and the insertion of youth people. For instance, there was an increase of the number of student aided by the

State and of the amount of the aid as the accordance of a tenth month of aid or the increase of resources ceiling in 2011¹¹¹.

6. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

The Collective Complaint system, which was actually implemented in 1999, has an important potential to influence national legislations such as the French one. Olivier de Schutter, a Belgian legal scholar, stated such an idea in one of his books¹¹²: he mentions the European Committee of Social Rights' decision adopted on November 4 2003 in which French legislation was considered as breaching the right for autistic children and adults to benefit from education, since in practice this right was not fully enforced.¹¹³

Such a decision resulting from a collective complaint was important: on the one hand, the definition of indirect discrimination which was given was introduced in French law through the Law which was passed on May 27 2008¹¹⁴; on the other hand, the French Government implemented many measures to enhance the situation of autistic people when it comes to education, for example with the Autism plan launched between 2008 and 2010. Even though it is not certain that this measures were implemented as a result of the Committee's decision, its influence can not be denied.

This valuable potential of the Collective Complaint mechanism could have been used to alleviate the consequences of the crisis on social rights. Even if in France the austerity measures were not as tough as in other countries and even if many refused to say that there indeed were austerity measures, the French legislation and public action were of course influenced by the economic

¹¹¹ Opinion n° 160 (2013-2014) of M. Jean-Pierre PLANCADE et Mme Dominique GILLOT, in the name of the culture, education and communication commission, deposited on November 21 2013, 36

¹¹² Olivier de Shutter, *The European Social Charter: A Social Constitution for Europe* (Bruylant 2010) 41.

¹¹³ *Autism-Europe v France* (No. 13/2002) [2003] European Committee of Social Rights.

¹¹⁴ Law n. 2008-496 (Law enforcing the European Union legislation on fight against discriminations) 2008 [Loi portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations].

crisis. However, the Collective Complaint system does not seem to have contributed to alleviate the potential harm caused to social rights. Such a statement can be made statistically.

According to the Country factsheets provided by the Council of Europe for France¹¹⁵, out of the 26 Collective Complaints for which the proceedings ended before April 2014, 2 were found inadmissible by the Committee, 6 led the Committee to state there was no violation of the Charter and 18 led the Committee to underline that there was such a violation.

The emphasis must be laid on the distinction made in the factsheets between the violations that have been remedied (2 out to 18), the ones where progress has been made (6 out of 18) and the ones that have not been remedied yet (10 out of 18). The violations that have already been remedied were stated in 2004 and 2005. Out of the 10 violations where no progress seems to have been done, 9 were stated after 2007.

This figures show that the Collective Complaints are even more used in France. Along with the 26 complaints mentioned, the factsheets report that 4 Collective Complaints were under examination. They all were fully examined and two out of them stated that there was a violation of the Charter. Two other complaints are now under examination.

However, the figures also highlight that the French State tends to not remedy the violations which were stated after 2007 that is to say after the beginning of the crisis. Even if it must be said yet again that there is no evidence that this is a result from the crisis, one has to notice that along with the crisis and potential austerity measures, the influence of the Committee's decisions on French Law seems to have decreased, if such an influence actually existed before.

It is difficult to assess whether the Collective Complaint system has effectively contributed to lower the impact of austerity measures in France or not. Nevertheless, it seems that is has not and that the impact of the Charter even has decreased. And yet, more organisations now require the Committee's help by submitting a complaint.

¹¹⁵ Department of the European Social Charter, Directorate General of Human Rights and the Rule of Law, *France and the European Social Charter*, April 2014.

7. CONCLUSIONS

As said in the introduction, no actual austerity measure has been taken in France. If budget cuts occurred, it seems that somehow social rights, on a global scale, did not suffer too much of it.

In fact, since 2008 and the beginning of the economic crisis, social rights in France have been partially reinforced.

Regarding collective bargaining and labour rights, the measures taken are not going in the direction of a better consideration of those rights. However, the need of a reform of labour related legislation in the crisis context led to those measures. And even if a legal analysis predicts negative aspects, no data can confirm those statements as not enough time has passed. For instance, the impact of the new conditions of representativeness can hardly be considered as having an impact on collective bargaining with such a low percentage of union memberships.

Regarding social protection, the French system was already set up. The complex scheme forbids a global reform program. The social security post has known a slight decrease; the austerity took place in the lack of re-valorisation of certain posts. The beneficiaries of social security, and especially the more deprived, suffers from this non-active policy. It appears to be difficult to distinguish between the actual measures' consequences and the structural consequences of the crisis on a system that needs a high social contribution. In other words, the budget cuts on social protection are almost meaningless confronted with a global state budget; how can these down sides be explained? The lack of measures seems more blameworthy than the actual measures.

Regarding social exclusion, France has taken several measures that did not follow any austerity logic. The main consequences remain positive. As shown, the amount of beneficiaries and the amount of the aids have increased. The de-specialization of certain aids led by financial issues that might have a negative impact on long-term can be analysed as negative austerity measures.

Persons with disabilities have not been a priority since the act of 2005. Since then, no important program has been set up. The de-specialization of aids is showing on this post some downsides. The low increase that these persons' aids benefited from barely counterbalances the increase of beneficiaries, implying a decrease on special post (such as the action for guidance of disabled people).

For the children and the young persons, numerous measures were taken. The guarantee of a proper schooling has been increased. An important movement to promote higher education programs was also reinforced. However, unemployment among young persons is higher than the rest of the population. Professional insertion and young persons are a priority for the government¹¹⁶. In fact, different measures were or are taken to promote the success of this policy based on the youth, as seen in this report. The first positive results of this policy are actually appearing.

As a final word, even if France has suffered from the economic crisis, the general policy was to boost the nation rather than limiting the damages. As a consequence, social rights did not suffer more than usual from policy decisions. In fact, they globally improved.

¹¹⁶ http://www.lepoint.fr/societe/hollande-reaffirme-que-la-jeunesse-est-la-priorite-du-quinquennat-23-01-2013-1619454_23.php, see also http://www.lemonde.fr/societe/article/2014/03/04/la-priorite-jeunesse-du-gouvernement-a-la-recherche-d-un-deuxieme-souffle_4377207_3224.html.

8. TABLES OF CASE LAW AND LEGISLATION

8.1. Case Law

8.1.1. European Case Law

- *Autism-Europe v France* (No. 13/2002) [2003] European Committee of Social Rights.
- *Action européenne des handicapés v France* [2013] European Committee of Social Rights.

8.1.2. French Case Law

- *Conseil Transitoire de la Faculté des lettres et sciences humaines de Paris* [1972] French Supreme Court for Administrative Justice JCP [1973] Vol. II 17296 [French].
- *Conseil des parents d'élèves des écoles publiques de la mission culturelle française au Maroc* [1976] French Supreme Court for Administrative Justice Recueil Lebon [1976] 192 [French].
- *Université Pierre Mendès France de Grenoble* [1993] French Supreme Court for Administrative Justice Recueil Dalloz [1993] 533 [French].
- *Université Jean Moulin Lyon III v. Chabinian* [1993] French Supreme Court for Administrative Justice Recueil Lebon [1993] [French].
- *Université Paris Sud* [2004] Administrative Tribunal of Paris A.J.D.A. [2004] 1615 [French].
- *Tabej* [1994] Administrative Tribunal of Paris [French].
- *Solana* [1999] Administrative Tribunal of Bordeaux [French].
- Case n. 0403829 [2005] Administrative Tribunal of Lyon [French].
- Case n. 05-85888 [2006] Criminal division of the Court of cassation.
- Case n. 2007-558 [2007] French Constitutional Court [French].
- Case n. 298348 [2009] Administrative Supreme Court Lebon Vol. IV [2010] [French].
- Case n. 2009-596 [2009] French Constitutional Court [French].
- Case n. 301572 [2010] Administrative Supreme Court Lebon Vol. IV [2011] [French].
- Case n. 344729 [2010] Administrative Supreme Court Lebon Vol. V [2011] [French].

- Case n. 345434 [2011] Administrative Supreme Court <<http://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000023897748&fastReqId=62933386&fastPos=1>> [French].
- Case n. 2011-642 [20011] French Constitutional Court [French].
- Case n. 347703 [2012] Administrative Supreme Court Lebon Vol. VI [2013] [French].
- Case n. 2012-659 [20012] French Constitutional Court [French].
- Case n. 11-22376 [2013] Social division of the Court of cassation.
- Case n. 2012-659 [20012] French Constitutional Court [French].

8.2. Legislation

8.2.1. French Legislation

8.2.1.4. Law

- Declaration of the Rights of Man and Citizen 1789 [Déclaration des Droits de l'Homme et du Citoyen].
- Law n. 82-526 (Law on the rights and obligations of tenants and lessors) 1982 [Loi relative aux droits et obligations des locataires et des bailleurs].
- Law n. 87-517 (Law in favour of disabled workers) 1987 [Loi en faveur de l'emploi des travailleurs handicapés].
- Law n. 87-558 (Law modifying the election process of the city councillors in New Caledonia and dependencies) 1987 [loi modifiant le mode d'élection des conseillers municipaux en Nouvelle-Calédonie et dépendances].
- Law n. 90-449 (Law setting up the right to housing) 1990 [Loi visant à la mise en oeuvre du droit au logement].
- Law n. 2004-391 (Law reforming vocational training throughout life) 2004 [Loi relative à la formation professionnelle tout au long de la vie et au dialogue social].
- Law n. 2004-810 (Law related to health insurance) 2004 [Loi relative à l'assurance maladie].

- Law n. 2004-1486 (Law creating the High Authority for the fight against discrimination and for equality) 2004 [Loi portant création de la haute autorité de lutte contre les discriminations et pour l'égalité].
- Law n. 2005-102 (Law for equal opportunities and the integration of disabled people) 2005 [Loi pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées].
- Law n. 2006-1640 (Law for the Social security funding for 2007) 2006 [de financement de la sécurité sociale pour 2007].
- Law n. 2007-290 (Law instituting housing rights and supporting various measures in favour of social cohesion) 2007 [Loi instituant le droit au logement opposable et portant diverses mesures en faveur de la cohésion sociale].
- Law n. 2007-1786 (Law for the Social security funding for 2008) 2007 [loi de financement de la sécurité sociale pour 2008].
- Law n. 2008-67 (Law ratifying the act of March 12th 2007 n° 2007-329 related to labour legislation) 2008 [Loi ratifiant l'ordonnance n° 2007-329 du 12 mars 2007 relative au code du travail (partie législative)].
- Law n. 2008-496 (Law enforcing the European Union legislation on fight against discriminations) 2008 [Loi portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations].
- Law n. 2008-724 (Constitutional Law modernising the Institutions of the 5th Republic) 2008 [Loi constitutionnelle de modernisation des institutions de la Ve République].
- Law n. 2008-1330 (Law for the Social security funding for 2009) 2008 [loi de financement de la sécurité sociale pour 2009].
- Law n. 2009-135 (Law on the national finance program for the years 2009 to 2012) 2009 [Loi de programmation des finances publiques pour les années 2009 à 2012].
- Law n. 2009-179 (Law for the acceleration of the construction and private-public investment program) 2009 [Loi pour l'accélération des programmes de construction et d'investissement publics et privés].

- Law n. 2009-1646 (Law for the Social security funding for 2010) 2009 [Loi de financement de la sécurité sociale pour 2010].
- Law n. 2010-1657 (Finance Law for 2011) 2010 [Loi de finances pour 2011].
- Law n. 2010 (Law for the Social security funding for 2011) 2010 [Loi de financement de la sécurité sociale pour 2011].
- Law n. 2011-1906 (Law for the Social security funding for 2012) 2011 [Loi de financement de la sécurité sociale pour 2012].
- Law n. 2012-1404 (Law for the Social security funding for 2013) 2012 [Loi de financement de la sécurité sociale pour 2013].
- Law n. 2013-721 (law determining the amount of the scale of the lump sum provided for in Article L. 1235-1 of the Labour Code) 2013 [loi portant fixation du montant du barème de l'indemnité forfaitaire prévue à l'article L. 1235-1 du code du travail].
- Law n. 2013-1203 (Law for the Social security funding for 2014) 2013 [Loi de financement de la sécurité sociale pour 2014].
- Law n. 2014-366 (Law for access to renovated housing and urbanism) 2014 [Loi pour l'accès au logement et un urbanisme rénové] in articles L264-1 and following of the Social Action and Families Code.
- Law n. 2014-1554 (Law for the Social security funding for 2015) 2014 [Loi de financement de la sécurité sociale pour 2015].

8.2.1.3. Decree

- Decree n. 2005-1587 (Decree about the Departmental Houses for Disabled People) 2005 [Décret relatif à la maison départementale des personnes handicapées].
- Decree n. 2005-1617 (Decree adapting exams and competitive examinations for elementary and higher education for disabled applicants) 2005 [Décret relatif aux aménagements des examens et concours de l'enseignement scolaire et de l'enseignement supérieur pour les candidats présentant un handicap].

- Decree n. 2007-399 (Decree relative to centers for asylum seekers, financial provisions applicable to institutions and social services and medical services, modifying the social action and family code (regulations)) 2007 [Décret relatif aux centres d'accueil pour demandeurs d'asile, aux dispositions financières applicables aux établissements et services sociaux et médico-sociaux, et modifiant le code de l'action sociale et des familles (partie réglementaire)].
- Decree n. 2010-961 (Decree on the extension of the *RSA* to young people below the age of 25) 2010 [Decret relatif à l'extension du revenu de solidarité active aux jeunes de moins de vingt-cinq ans].
- Decree n. 2013-507 (Decree uprising the resources taken in consideration for the supplementary health insurance) 2013 [Decret relevant le plafond des ressources prises en compte pour l'attribution de la protection complémentaire en matière de santé].
- 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].
- Decree n. 2014-1215 (Decree on the revalorisation of the welfare for retired people)[Decret portant revalorisation de l'allocation de solidarité aux personnes âgées].

8.2.1.3. *Circulars*

- Circular n. 83-254 (Circular on limitation of furniture costs) 1983 [Circulaire relative à la limitation des prescriptions d'achat de fournitures scolaires].
- Circular n. 88-201 (Circular on limitation of furniture costs) 1988 [Circulaire relative à la limitation des prescriptions d'achat de fournitures scolaires].
- Circular n. 90-121 (Circular on limitation of furniture costs) 1990 [Circulaire relative à la limitation des prescriptions d'achat de fournitures scolaires].
- Circular n. DGAS/MAS/2008/70 (Circular on the housing of homeless people) 2008 [Circulaire relative à la domiciliation des personnes sans domicile stable].

- Circular n. 2010-096 (Circular related to the experimental “Clair” program for 2010-2011) 2010 [Circulaire relative à l’experimentation du programme “Clair” pour l’anne scolaire 2010-2011].
- Circular n. DGOS/R4/2013/246 (Circular on the organisation and functioning of offices granting access to medical care) 2013 [Circulaire relative à l’organisation et le fonctionnement des permanences d’accès aux soins de santé (PASS)].
- 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 departements d’outre-mer et à Mayotte au 1er Avril 2014].
- Circular n. DGCS/SD2C/2015/8 (Circular related to the application of local outline of familial services) 2015 [Circulaire relative à la mise en œuvre de schémas départementaux des services aux familles].

8.2.2. European Legislation

- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation 2000.

9. BIBLIOGRAPHY AND ONLINE RESOURCES

9.1. English Titles

9.1.1. Books

- De Shutter O., *The European Social Charter: A Social Constitution for Europe* (Bruylant 2010) 41.

9.1.2. Reports

- Academic Network of European Disability experts, *ANED country report on equality of educational and training opportunities for young disabled people (France)*, May 2011.
- Eric Bocquet, *Project of Finance Law for 2013: Solidarity, insertion and equal opportunities*.

- European Committee of Social Rights, *Conclusions 2012 (France)*, January 2013.
- European Network of legal experts in the non-discrimination field, *Country report 2013 on measures to combat discrimination (France)*.
- Department of the European Social Charter, Directorate General of Human Rights and the Rule of Law, *France and the European Social Charter*, April 2014.
- Eric Bocquet, *Project of Finance Law for 2015: Solidarity, insertion and equal opportunities*.

9.1.3. Websites

- OECD annual statistics
<http://stats.oecd.org/Index.aspx?lang=en&SubSessionId=504ffdfc-e88f-4db5-94f6-ed0851804dd4&themetreeid=13> accessed 1st April 2015.

9.2. French Titles

9.2.1. Books

- Nadia Kesteman, *Le non-recours, entre accès aux droits... et restriction des droits*, [2013] Colloque 12 mars 2012 à l'Université Paris 2 par le Centre d'études et de recherches de sciences administratives et politiques 70 [French].
- Antoine Loubet, *Les phénomènes émergents de la pauvreté entre 2010 et 2013*, [2015] Dossiers Solidarité et Santé n° 61 [French].
- Luc Marchand, *Les manquements à l'obligation scolaire* (Paris 2003) 168 [French].
- Pierre Murat, *Droit de la famille* (Paris Dalloz 2013) 1800 [French].
- Carole Nivard, *L'effet direct de la Charte Sociale Européenne devant les juridictions suprêmes françaises*, [2012] Revue de Droits et Libertés Fondamentaux, chron. N° 28 [French].
- Bernard Toulemonde, *La gratuité de l'enseignement. Passé, présent, avenir* (Paris 2002) 39 [French].

9.2.2. Articles

- Kessler F., *Droit européen, handicap et intégration à l'emploi* (Revue de droit sanitaire et social, 2011, page 806).

9.2.3. Reports

- Institut CSA, '*Sondage sur la scolarisation en milieu ordinaire des enfants en situation de handicap en élémentaire et au collège*' (February 2011)
<<http://www.csa.eu/dataset/data2011/opi20110220-sondage-sur-la-scolarisation-en-milieu-ordinaire-des-enfants-en-situation-de-handicap-en-elementaire-et-au-college.pdf>> [French].
- Union des Caisses Nationales de Sécurité Sociale, '*Evolution des effectifs de cadres et d'employés dans le Régime général de la Sécurité sociale*' (2012) Rapport sur l'emploi 11 [French].

9.2.4. Websites

- French Education Ministry, Schooling of disabled children (2012)
<<http://eduscol.education.fr/cid47660/scolarite-et-handicap.html>> accessed 11th April 2015 [French].
- Labour Ministry, orientation document <http://travail-emploi.gouv.fr/IMG/pdf/document_d_orientation_dialogue_social_29_07_2014.pdf> accessed 23rd March 2015 [French].
- DIRECCTE, recognizing the agreement of the social partners
<http://directe.gouv.fr/IMG/pdf/ANI_securisation_de_l_emploi-2.pdf> Accessed 6th May 2015 [French].
- Le Monde with AFP, Over 30,000 civil notaries, lawyer and bailiffs protest against Macron Law <http://www.lemonde.fr/economie/article/2014/12/10/notaires-avocats-et-huissiers-defilent-a-paris-contre-la-loi-macron_4538039_3234.html> Accessed 1st April 2015 [French].
- Insee, Unemployment Rate since 1975
<http://www.insee.fr/fr/themes/tableau.asp?reg_id=0&ref_id=NATnon03337> Accessed 1st April 2015 [French].
- Insee, <http://www.insee.fr/fr/themes/info-rapide.asp?id=14>) April 1st 2015.
- Safon M-O, Research and Documentation Institute in Health Economy, '*Historique des Lois de financement de la Sécurité sociale en France*', (2013)

- <http://www.irdes.fr/EspaceDoc/DossiersBiblios/LoisFinancementSecu.pdf>],
Accessed 15th march 2015 [French].
- National Museum of Health Insurance, '*L'évolution du système français de la Sécurité sociale*' <http://www.musee-assurance-maladie.fr/histoire/reperes-chrologiques/les-evolutions-du-systeme-de-securite-sociale-francais>], Accessed 1st march 2015 [French].
 - Public Life Archive, '*Les réformes des retraites de 1993 à 2012*' <http://www.vie-publique.fr/actualite/dossier/retraites-2013-debat/reformes-retraites-1993-2012.html>], Accessed 12th march 2015 [French].
 - Alexandra Chignon, '*La Sécu malade du manque de moyens – La CGT tire la sonnette d'alarme*' (L'Humanité, march 13th 2014) www.filpac.cgt.fr/spip.php?article6803], Accessed 15th march 2015 [French].
 - Julia Bonastre, Florence Journeau, Clément Nestrigue, Zeynep Or, '*Activité, productivité et qualité des soins des hôpitaux avant et après la T2A*', (Questions d'économie de la santé, IRDS, avril 2013) <http://www.irdes.fr/Publications/Qes2013/Qes186.pdf>], Accessed 15th march 2015 [French].
 - Lionel Bonaventure, '*Ayrault annonce 2000 CDI à Pôle Emploi*', (L'Express, 25 mars 2013) http://lexpansion.lexpress.fr/actualite-economique/jean-marc-ayrault-annonce-2000-nouveaux-cdi-a-pole-emploi_1368658.html], Accessed 19th march 2015 [French].

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

The European Social Charter which was adopted in 1961 and revised in 1996 was signed by Georgia in 2000. In 2005, the revised European Social Charter was ratified by the Georgian parliament.

Georgia professing obligations under the Charter of the following articles and Points: Article 1, paragraph 1, of the 2nd, 3rd and 4th paragraphs; Article 2 of the 1st, 2nd, 5th and Article 7 of the paragraphs; Article 4 of the 2nd, 3rd and 4th paragraphs; Article 5 § 1 Points; Article 6 of the 1st, 2nd, 3rd and 4th paragraphs; Article 7 of the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th and 10th paragraphs; Article 8 of the 3rd, 4th and Article 5 of the paragraphs; Article 10 paragraphs 2 and 4; Article 11 of the 1st, 2nd and Article 3 of the paragraphs; 1 and 3 of Article 12; Article 14, paragraph 1 and paragraph 2 points; Article 15, paragraph 3; Article 17 Paragraph 1; 18th Article 1st, 2nd, 3rd and 4th paragraphs; Article 19 of the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th and 12th paragraphs; Article 20, paragraph 1 Points; Article 26 of the 1st and 2nd paragraphs; Article 27 of the 1st, 2nd and 3rd Points; Article 29 Paragraph 1.

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

Georgia has addressed credit expansion notwithstanding regulatory policies false but the country's own index of free trade and the fight against corruption as a result was improved by Heritage Foundation-'s¹.

General Index of Economic Freedom in the years 2008-2009 world average is high: according to Heritage Foundation, Georgia's score is above (70.4) the world average (59.4) by 11 points.

¹ Heritage Foundation - The Heritage Foundation is a research and educational institution—a think tank—whose mission is to formulate and promote conservative public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense.

According to Fraser Institute-'s² findings, Georgia's score (7.47) is higher than the world average (6.67) by 0.8 points.

The fact is important for attracting investment. It is a serious collapse to escape from the country after the war in 2008, thanks to the assistance of the allocated by donors. Without that the rate of economic growth in Georgia that year might have declined vastly. EBRD is the largest investor in Georgia. In August 2008 there was the conflict situation and in response to the global financial crisis, EBRD has invested USD 300 million in the country - mainly in the financial sector. This of course had a positive impact on the country's economic situation.

It must be denoted, that the joint declaration was signed on January 20, 2009 between European Commission and the Georgian government for the scope of the EC increased financial assistance during 2008-2010.

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

First of all, it should be noted that in Georgia on December 11, 1997 was set up to regulation for this issue, Georgian law "About Collective Contracts and agreements"³. Present law included the right to organize and bargain collectively. (Articles 5 and 6 of the Charter) In accordance to the law, employer and employee enjoy adequate protection, separated from any interference with their rights. It should be noted that the law directly, clearly and vividly was reflected Article 6 of the Convention, which is expressed in the fact that these factors include the obligation to promote it, the law thoroughly checked out and was directly involved in all the accident. On May 25, 2006 the above-mentioned law has been cancelled by the Georgian Labour Code. Georgian Labour Code in force (after GLC) III goal of "collective labour relations", the rules are set out in chapter X of the collective agreement. According to Article 3 of the Labour Code: "collective

² Fraser Institute - The Fraser Institute is an independent Canadian public policy research and educational organization with active research ties with similar independent organizations in more than 80 countries around the world.

³ <https://matsne.gov.ge/ka/document/view/29998> accessed March 15/2015.

employment relations are one or more employers or one or more employers' union and one or more associations of employees".

The provisions of this agreement is a collective agreement of employees under individual labour an integral part of the contracts. GLC 41, paragraph 2 of the spelled out that:

The collective agreement: A) defines labour conditions; B) deal between employers and employees relationships; C) regulates one or more employers or one or more regulated Employers' associations and one or more associations of employees relations.

The parties shall determine in accordance with paragraph 3, the conditions will be set out in the collective agreement. It should be noted that the existence of a collective agreement in accordance with paragraph 5 above do not limit the employer or the employee's right to terminate labour relations, which does not cause the other employees to quit according to the labour contract Agreement.⁴

As for the implementation of Article 5 and 6 of the ESC is more or less successfully. Developing states against the background of some shortcomings, in particular to be met, small gaps in the realization of the right, which is clearly indicated by the claims which employers and employees present, the judiciary.⁵

With respect to collective bargaining of interest the Georgian Law on Trade Unions Collective treaty provisions. Aforementioned Article 3.14 referred to as: "Collective agreement – agreement of the employer, enterprise, institution, organization or professional union organization, which regulates labour, social and professional relationships". Defined in Article 12 of the collective bargaining, and collective contracts and agreements, and implementation control right.⁶

It should be also noted, that Georgia has ratified the 1949 years 'Association and the right to collective bargaining on "(# 98) and 1948 years "Freedom of Association and Protection of the Right of Association About "(# 87) conventions.

⁴ <https://matsne.gov.ge/ka/document/view/1155567> accessed March 15 /2015.

⁵ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_226313.pdf accessed March 15 /2015.

⁶ <https://matsne.gov.ge/ka/document/view/33376#> accessed March 15 /2015.

2.2. Has the right to collective bargaining and respect of social dialogues been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

After the implementation of the Charter, there was added issues for internal legislative level:

In today's reality, we have not implementation of collective bargaining and in such cases we use ss "Georgian Labour Code," which thoroughly covers all of those obligations, which we took to the Convention as a result of ratification.

In Georgia, the most comprehensive are rights and responsibilities of regulated employer and employee, which is expressed, arbitration mechanism, the right to strike the use and so on.⁷ Georgian Labour Code carried out the important changes, the latter one of the main goals for employees was to create an objective environment.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

Necessary measures were taken on the impact of labour Rights. It is worth mentioning Georgia in the Tripartite Commission for Social Partnership, which is an advisory body and is accountable to the Trilateral Commission - the Prime Minister. The parties are in the Georgian government, employers' associations and employees operating in various industries across the country unions. The above and other important issues around the topic of the regulated GLC: the door to IV1-XIII1.

Social partnership is a system of dialogue and interaction about issues of social and labour relations partners - employers (employers' association), employee (Workers' union) and the representatives of the state institution. Tripartite Commission functions defined GLC -article 523's and it is: "a) the social partnership development, as well as employees, employers and the Georgian government of the social dialogue at all level; B) labour and its accompanying proposals and recommendations on various issues." Tripartite Commission of the following: "A)

⁷ <https://matsne.gov.ge/ka/document/view/1155567> accessed March 15/2015.

equality and independence; B) the interests of the social partners respect; C) coordination and responsibility; D) Awareness; E) obligations; F) consensus".⁸

The two-day international conference held under the initiative of promoting the employment of disabled persons. In addition, the employment of persons with special needs. At the same time, in order to promote the employment of persons with special needs in cooperation with the American Chamber of Commerce held an information meeting with employers; IPM Research Company conducted a survey by the Ministry of Education and Science to study the employer's attitude towards persons with limited opportunities.

It should be noted that the provision of equal opportunities for people with disabilities was approved by the National Action Plan for 2014-2016.⁹

3. SOCIAL SECURITY

3.1. Has the social security scheme in your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by his/her own efforts or from other sources?

Law of Georgia on social support shall be mentioned, which is aimed to provide system of social support to guarantee effective and just help. Law of social assistance's subjects are various type, namely persons with disabilities (different categories), homeless persons, those families who have problems in deprivation, poverty and persons with special needs. There is Georgian Government's' strategy which enhance to solve problems with poverty, deprivation and other social problems. For e.g. #214/n Order of Ministry of labour health and social affairs of Georgia stipulates following issues, which are proposed by Georgian government:

Financial support and temporary employment programs for jobless persons, financing of entrepreneurial activities, preferential issuing credits, arranging business appointments (job offers)

⁸ <https://matsne.gov.ge/ka/document/view/1155567> accessed March 15 /2015.

⁹ http://government.gov.ge/files/381_40157_501181_76200114.pdf - "Equal opportunities for people with disabilities suzrunvelqopis over the 2014-2016 National Action Plan".

Georgian fund of common social insurance, provides to supervision on fulfilling above-mentioned measures.

Since 2011, Ministry of internally displaced persons from the occupied territories, accommodation and refugees of Georgia's project has been launched for emigrants, it ensures vocational and psycho-social training, internship and legal aid for today. Georgian Government has raised pension packet, imposed compulsory insurance and enhanced labour code.

3.1.2. Persons who are unable to secure adequate resources either by his/her own efforts or from other sources due to illness?

Social Security is considered one of the most important issues. Inadequate social environment, disability to practice one's rights and the stereotypes make up a chain of problems that leads persons, who are unable to secure adequate resources by his/her own efforts to social isolation and furthermore, extreme poverty.

UN Convention on the Rights of Persons with Disabilities (UNCPRD) that Georgia has ratified, connects state's obligation with social support, which shall focus on improvement of living and social security. However, Social Security policy of Georgia does not fully ensure social security and poverty prevention notwithstanding that social level of Georgia is higher now than it was before.

The role of state in realizing social rights properly is extremely important that shall be fulfilled by scheduled events. Undoubtedly, social security means social support from state or qualified administrative services, but it also represents medical, economic and political spheres, that upgrade the level of living.

The most important of this is that existent medical model on conferring the status of a Person with Disabilities is changing into a social model. Medical model depended on the possibility of concurrence with the list of diagnosis, but social model relies on the specific disabilities that certain person has. This means the possibility of drafting an action plan for every single person with disabilities how to fully integrate with society. The only source of knowledge about above-mentioned persons is that 125,000 people get social pension packet, out of which 9,000 are children with disabilities and the rest have severe disabilities.

Article 3, part 1 of Law of Georgia on Social Protection of Persons with Disabilities implies that: "The State shall provide social protection to persons with disabilities and create necessary conditions for their individual development, and realization of their creative and production capabilities."

Article 4, part 1 "b" of Order of the Minister of Labour, Health and Social Affairs of Georgia implies that person with disabilities may get the social pension.

The state provides material help to socially vulnerable persons. Starting 2015, new methodology of conferring such status has been adapted. Social Service Agency along with UNICEF started working on abovementioned project in September, 2013. The most important aspect of this change is that while conferring the status to a family, the actual needs of that specific family will be considered.

If we check the budget of Tbilisi for 2015, the following plans are drawn up:

- GEL 800,000 is allocated for the program of helping underage socially vulnerable persons with severe disabilities;
- GEL 1,000,000 is allocated for the program of helping blind socially vulnerable with severe disabilities. The aim of the program is to provide material support to the socially vulnerable persons with severe disabilities having 150,000 or less points.

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

Article 13(1) of the Charter states the right of social and medical support. Practicing this right is very important, as it is connected to the future and life security of a person. The program of Universal Health Care started in 2013 and is aimed to financially support citizens of Georgian not having health insurance.

Social Protection and Social Security are considered synonyms in some countries and it is difficult to differentiate them distinctly (International Labour Organization, 2010).

We may agree that Social Protection is broader term and includes Social Security, which means the part of Social Protection of obligatory nature. (Peas, et al., 2004). This is stated in the definition provided by international social security association:

Social security may be defined as any programme of social protection established by legislation, or any other mandatory arrangement, that provide individuals with a degree of income security when faced with the contingencies of old age, survivorship, incapacity, disability, unemployment or rearing children. It may also offer access to curative or preventive medical care.

Based on the data provided by parts 3.1.1. and 3.1.2, it shall be mentioned that carrying out necessary events had a positive influence on the plan of social support.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

For the purpose of social and economic development and moreover, protection and realization of basic human rights, European Social Charter guarantees the right of social and medical aid to every person. States shall regulate this issue and make it in concordance with Charter. Article 13, part 3 states.

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

- To ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
- To ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
- To provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
- To apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other contracting parties lawfully within their

territories, in accordance with their obligations under the European Convention On Social And Medical Assistance, signed at Paris on 11th December 1953.

The abovementioned provision of the Charter is extremely important, as it provides 2 basic rights for a person and 2 obligations of a state. Not only does it refer to social and medical assistance, but obliges the state to create state or private services to help person to solve personal or family problems. As those are extremely sensitive subject, state should act very carefully and delicately, as no mistakes may be made in these cases.

Notwithstanding, Georgia has not recognized Article 13 of the Charter, thus the obligation of fulfilling it does not exist, which is sad. We could not find any specific services oriented on consulting persons with their personal of family problems or providing any other kind of help. However, there are couple programs of Social Service Agency as:

- Pecuniary social assistance (subsistence allowance);
- Day Centres;
- Provision of supporting equipment;
- Community organizations;
- Support for rehabilitation of War Veterans;
- Support for communication of the deaf;
- Provision of people with mental disorders with asylums;
- Program of improving demographic situation;
- Other health programs.

There is also a project called “Provision of free legal aid to indigent population of Georgia” which is implemented by the organizations of Human Rights House Tbilisi- Article 42 of the Constitution and Human Rights Centre. Social services, like Day Centres, are financed by the state. There are approximately 10 Day Centres, where persons with several disabilities can spend some time of the day. They serve the development of social, communicative and everyday skills.

Parents and families mostly get support by their relatives. Though the support of NGOs is effective, it is not easily available.

There are several national or regional NGOs focused on protecting human right. One part of organizations is aimed to work on several directions and free consultations, for example "GYLA", "TIG", "Abrogation", "Borjghali" and etc. in Batumi. Another part of NGOs aims development, protection and realization of rights: "Changes for equal rights", "Ghvtisshvilebi", "Step-forward", medical association "TANA", inclusive and integrated education "Tanadgoma", "For the rights of persons with disabilities", "Art Way" and etc. Creating, working directions and programs of abovementioned organizations depend on the will of persons working in these NGOs.

4. SOCIAL EXCLUSION

What measure has your MS taken to promote the effective access of person who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (article 30 (a) ESC)? Have austerity measure had an impact on the poverty level, deprivation or social exclusion in your country (article 30 ESC)?

The 30 article of Charter is not recognized as mandatory to be performed by Georgia. In this issue we want to mention that:

The realization of labour rights for persons with disabilities is one of the significant challenges for today. The complex problem is the issue of proper using of labour rights and diversity of difficulties which are connected with it. The considerable obstacles for the persons with disabilities to participate on the open labour market is inappropriate and ineffective legislative base as well as obstacles in practice and circumstance, also enshrined stereotypes and attitudes in society. Their access to the education system and rehabilitation is mentioned as low quality. By the law people with disabilities have right to be employed on the variety of workplaces but it doesn't includes legislative guarantees and mechanisms which will give the viability to the legislation. Therefore absence of important articles make this legislation as declaratory nature.

Incentive event which includes this legislation is promise of exemption from the income taxes and it covers just people with disabilities from childhood, also persons who has dramatically and vividly disabilities.

As for other vulnerable groups, like homeless persons, families and it members who have problems in deprivation, poverty and persons with special needs, have the same social problems, they are not enable to use relevant support and opportunity as they needed. But other hand, Government of Georgia ensures different activities in the field of culture, sport, and education and vocational advanced. Government also promotes to create proper programs for vulnerable groups, for instance to arrange various type holidays, medical support as they need. It should be noted that part of the economic policy is advanced. Additionally, according to 2014-20 action plan, growth diagnostic method is launched. Despite of aforesaid fact, poverty index within children is high, particularly in that families, who have three children. In Georgia resources are limited because social support is financed by tax revenues.

Georgia attempts to ensure social support for the scarcest groups, that has special purpose. Pension packet is issuing immediately after achieving 65 year within men and 60 year within women. It is remarkable, that amount of the pension is growing as necessary. Today, there are 680,000 beneficiaries who enjoy by pension.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

By the article 15th of Social Charter of Europe sets out issues to give independent, healthy and available education, social integration and labour environment for the people with disabilities.

As it shown to the 15th article of charter at once it adjusts the main issues as education, leisure, employment. Therefore charter sets out that it's necessary not only to support and planning of education and special programs systems also if it is impossible then it is appropriate to create private organizations, which will supervises mentioned issues.

From the reasons we can suppose that this article covers as private as public institutions and agencies because without it there are big amount of probabilities that the rights of people with disabilities will be violated.

Persons with disabilities have the right to work in the normal conditions of enterprises, institutions and organizations, irrespective of their legal form (Article 21).

Private sector workers have the right of compensation for persons with disabilities in social package in parallel. As for the public activities of the right to social assistance, the right to have originated and terminated by a person of a right arising from the implementation of activities, except pronounced visual disabilities and persons with significant disability.

Also, the actions taken as a result of legislation: the Georgian Labour Code, Article 2, Section 3 of the law, labour relations prohibits discrimination on grounds of disability.

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialized bodies, public or private?

The 15th article of charter touches the rights of independence, social integration and participation in the social life people with disabilities. According to the first point the country members of charter among them Georgia assumed responsibility to take necessary measures for orientation and professional preparation of peoples with disabilities.

In this context it is necessary reforms in the education system and the quality of the interest of Government. The issue 5.1.1 covers integration of peoples with disabilities in the average education system and includes how is adapted educational plan, educational program, the infrastructure of educational institution for peoples with disabilities.

Georgian educational system is divided into four main levels: preschool, middle, high and professional education.

On the middle education level the government provides the integration of children with disabilities and in every public school there are integrated lessons and children with disabilities are involved in the teaching process. By the ministry of education there are developed inclusive education principles and programs. The big amount of public schools are performing inclusive education. Since 2011 year educational and since ministry actively supports inclusive education.

In particular it was investigated selected public schools for the adaptation of educational environment also they investigated public schools for encouraging of inclusive education.

Notable, that for the children with special educational necessity (cwsen) teachers are making individual plans, which are fitted to these children and to their abilities and necessities. It has to be mentioned that by the government will be created special professional institution where cwsen will be able after the school teach and find a job with his/her profession.

There are special teachers in the public schools, whose main function and responsibility is to making regulation and giving recommendations to the teachers, but there are some problems which are connected with their trainings and it is not enough disposable and short period trainings which are organized by government. Also it is necessary to staffed special teachers with professional teachers.

Except of public schools there are “Day centres” in the Georgia, which are integrated to the main educational plans. “Day centres” in the big amount are not special buildings with necessary equipment and infrastructure.

Georgian legislation more or less provides the demand of the 15th article of charter. According the Georgian Constitution 35 (1) it is recognized the rights of every person get an education despite of their physical and mental abilities also it is recognized prohibition of any kind of discriminations. On the 2nd of May of 2014 year was accepted “Georgian legislation about prohibition of any kind of discriminations ” by Georgian parliament. According of the first point of this legislation it is also for disabilities too. According of the 6th point of this legislation Georgian public defender is the person who provides supervision about eliminate discrimination and equality.

At the same law provides person's right to appeal with statement or complaint to the Georgian public defender if he/she thinks that his/her rights are violated and he/she is victim of discrimination. Person has to indicate appropriate facts which will be base of assumption of discriminative activities after that the burden of proof that discrimination was not existed in that situation will be on the person who perpetrated the discrimination. According to this law person has right appeal to the court about this issue.

Although on the legislative level there is provided the prohibition of discrimination in any field to the people with disabilities but it is necessary more initiatives and support from the government for making proper environment, fulfilment and introduction in life of the 15th article of the European social Charter.

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

Georgia's current Domestic Law and the ratification fact of international regulations governing the labour rights of people with disabilities shows State will and guaranties the labour rights.

Non-discrimination provision established by Constitution is equally applicable to Country's basic law system. Of course in the provision is considered labour rights of people with disabilities and their equal protection against discrimination in the labour market.

Georgian Constitution¹⁰ along with Labour Rights¹¹, Article 2, paragraph 3 provides the prohibition of Discrimination and is indicated prohibition of discrimination by disabilities as well.

Analysing Domestic legislation we have to highlight "the law of Social protection of disabled people" which is mentioned in 5th chapter proves the rights of people with disabilities and is protected according to State's high standards.¹²

Participant countries of "Rights with disabled people according to UN Convention 2006" recognize the right of people with disabilities to work on an equal basis with others. This includes opportunity to gain the right to life of their own labour, while the labour market is open and accessible for inclusive and people with disabilities. Participant countries protect and promote the realization of labour rights through taking appropriate steps, including on legislation level.

¹⁰ <https://matsne.gov.ge/ka/document/view/30346> accessed March 17 /2015.

¹¹ <https://matsne.gov.ge/ka/document/view/1155567> accessed March 17 /2015.

¹² <https://matsne.gov.ge/ka/document/view/1155567> accessed March 17 /2015.

One of the request towards the member states is to declare the employment of disabled people in the public sector.¹³

National Action plan 2014-2016 declares the employment of people with disabilities, their professional training and increasing the development of competitiveness level.

Georgian Law about the “Social protection of the rights of people with disabilities” Article 24, paragraph 2 provides with pension blind people and people with significant disabilities.

The Public Registry was the first around the government agencies who started employment of disabled people in 2008. This initiative implemented a successful precedent to integrate people with disabilities in public life and give them opportunity to demonstrate their own intellectual abilities. Today 15 people with disabilities are employed in the Public registry and provide citizens with qualified service. The agency is constantly trying to create equal conditions for disabled employees. All of them have gone through a special training course. They are equipped with computers and office materials, working conditions are created even in their house so they can work remotely without living home. At the same time the ministry of Justice and Public registry is creating adaptive environment for them – like parking lots, ramps, etc. which enables them to perform their duties and responsibilities at work.¹⁴

On Mar 18th 2015 the Ministry of Georgia of Sport and Youth affairs hosted a project presentation about distance employment of people with disabilities. Distant employment project is organized by the Ministry of Georgia of Sport and Youth affairs, non-governmental organizations “Sibiji” and “Geo portal”. During the project the Ministry of Georgia of Sport and Youth affairs hold the competition from the database of people disabilities and select 50 people who were employed according to distance employment rules. Geo Portal hold a specific training courses for the beneficiaries.¹⁵

On March 26th 2015 The Ministry of Georgia of Sport and Youth affair hosted the event: Handicraft exhibition by people with disabilities. Events like that is hosted every month by the Ministry affairs. Crafts may be purchased on money and the exhibition is free of charge. This

¹³ http://disability.ge/index.php?option=com_content&task=view&id=8743&Itemid=58 accessed March 17 /2015.

¹⁴ <http://napr.gov.ge/p/171> accessed March 19/2015.

¹⁵ http://msy.gov.ge/index.php?lang_id=GEO&sec_id=321&info_id=12728 accessed March 19 /2015.

event gives opportunity to talented people with disabilities to share their work to big audience and have the courage of integration in the society.¹⁶

The pilot Project about equal access of education and employment within disabled people is implemented in Kutaisi and is aimed to employ people with disabilities accordance to their skills and knowledge. The result of this project has been already proved the aim and as a project manager says for April 2nd 2014 two beneficiaries are employed. They are Asmat J. who is employed for a month in L.T.D. “MBm-poligrafi” as a bookbinder of printed materials and Ketevan B. who is employed at printing-house “Khomlieni” as a text printing operator. Besides in different NGO sectors some people with disabilities were employed as an intern.¹⁷

The government has taken huge responsibility upon itself and is committed to protect the rights of disabled people with domestic and foreign legislation. This obligation is long-term process that needs constant and dynamic monitoring.

5.1.3 What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

Consider compatibility of article 15 of the European Social Charter and Georgian reality, and also the impact of the reforms taken.

It is worth to note that the integration of disabled people with the community for a slight, but significant steps have been taken by the Georgian Government. For instance, 20 disabled persons has been employed by the Revenue Department within 2012 year in the various departments, namely disputes, human resources and information technology.

Social enterprise is the one of the common means of employment in the private sector. USAID's financial supporting, Coalition for Independent Living founded such enterprise. In these enterprises are employed: 8 disabled person in Tbilisi, 4 in Gori and 4 in Zugdidi. There is prepared in the enterprise: wheelchairs, wheelchair ramps, manual control transports and cane for one-year warranty.

As regards third part of the European Social Charter, improvement of an infrastructure of our Member -state (Georgia) is an actual issue, but this should be taken over the scale. Unfortunately

¹⁶ http://msy.gov.ge/index.php?lang_id=GEO&sec_id=321&info_id=12743 accessed March 19 /2015.

¹⁷ <http://kedec.ge/index.php/dasaqmeba-3/mimdinare/item/48-ssm-pirta-ganatilebis-da-dasaqmebis-tanabari-xelmisawvdomobis-advokatirebis-sapilote-programa> accessed March 19 /2015.

adapted environment is only parts of the various institutions but we hope that a necessary infrastructure will be advanced as the result of different reforms.

It is noteworthy, that there are installed 29 traffic light facilities and 30 loudspeaker devices, which provides information about crossing the carriageway in Tbilisi. Pavements near the pedestrian crossing were adapted and reduced the level of safer islands for people with disabilities during road renovation and capital reparation. Also, 34,790 vehicles from parking place has been allocated for 315 disabled persons, however from these, 179 places are equipped with road signs about possession of people with disabilities and 146 of them are marked on the road marking. The activities enumerated above does not enough for disabled persons for society integration, it is essential to develop infrastructure intensively and widely.

There are inclusive public or private schools in our Member-state (Georgia), in which inclusive education programs are implemented. Teachers assist disabilities persons to receive proper education, after the pass relevant trainings. The Ministry of Education and Science of Georgia actively involved in the process of inclusive education development. Implementation of individual and/or modified academic plans, promotes to create equal conditions within educational institutions.

5.2. Children and Young Persons (Article 17 ESC)

In accordance with article 17 of the European Social Charter, children and young should be grow up in such environment, in which persons physical and mental abilities will be advanced. The parties undertake obligations, to take all necessary and suitable measures for protection rights and duties of children, young persons and their parents, directly or in partnership with public and private organizations. Namely, creation and maintenance adequate institution and jobs.

5.2.1 Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

Georgia actively cares and uses maximum of its resources about the quality of education for people with disabilities.

According to the new amendments in the 12th article, 5th part of Georgian Civil Code, condition of the disabled persons are advanced: from on 1 April of 2015 normative act, is validated. This statute provides that „mentally disabled person” is regarded as disabled person without taking into account the individual's mental capacity. In addition from 1 April of 2015 normative act is inoperative, which prescribes, that, person of unsound mind” is regarded as disabled person without taking into account the individual's mental capacity. As you can see, our member- state (Georgia) ensures as development of the political / economic issues, as well in particular part of the society who needs it most. We should realize that, this is a diversity reflection of the people. It should be remarked that people with disabilities are the significant members of our society, they should be involved actively not only examination of their problems, but also other issues. They have the same variety political beliefs as others. We have to realize that all of us is individual, we have an individual ambitions, and if they have some interruptions or delays integration in the social environment then we should enhance, and do not try to change. Our state fulfilled miscellaneous activities in order to improve disabled persons conditions and situations and at the same time to become as full members of the society.

Education right is an universal this is enshrined in Georgian constitution (1995 24 August), constitutional agreement and international or other legislative acts.

By Georgian law on general education, Georgian educational system is consists of three main levels: primary education (six years), basic education (three years), secondary education (tree years) a complete general education in Georgia comprises 12 year of schooling. Studies at a general education institution shall be funded by the state through an appropriate school voucher compatible with fiscal standards per pupil. However state is responsible for supplying the needed equipment. There are Economic council, Ministry of education and science of Georgia and if required audit service whose are in charge of overseeing on educational system.

Georgian parliament specifies states policy on fundamental directions of governance within general education.

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

Children, besides of having/not having a family, should be protected by the government and must have equal rights among other people, they should not be discriminated and have everything they need for normal upbringing.

The majority of homeless children are not orphans. Poverty is the main factor, which encourages families to place children in orphanages. In many cases, the family is not able to take care of children, cannot provide them with adequate living conditions and development. In addition, it should be noted that the children have the right to receive appropriate support and care for all children separated from their families and the state. Reforms need to be addressed to make children feel like full members of society and not be marginalized. In accordance with Article 20 of "Convention on the Rights of the Child": A child who is temporarily or permanently deprived of a family environment, cannot remain in that environment and has right to be entitled for special care and support. Alternatives include small children's homes and foster care, which is of course acceptable and desirable, both for the state and the children who are deprived of their families temporarily or for a specified period.

The Government of Georgia achieved significant progress in child care system reform in 2008-2011 years, the Ministry of Health and Social Welfare organized by the Ministry, which was aimed for strong campaign deinstitutionalization, under which the foster care system started and set up a small group homes, also introduced the Child services aimed at preventing family separation.

For implementation of Deinstitutionalization process, the Ministry of Education and Science of Georgia, set in motion, subprogram "orphanage and prevention of child abandonment and deinstitutionalization" under the Georgian law on Orphan and orphans children's foster parent, by supported by UN Children's Fund and the British organization "Everchild", currently this is represented as governmental program and its implemented to the following directions: educational institutions to their biological families and supporting their families (below mentioned as reintegration); Residential care facility is under risk of being a child to grow up in a family environment, prevention and promotion, (hereinafter referred to as prevention) and the agreement with the temporary care of children in foster families, foster placement (the foster parents). They also receive monetary compensation for the growth of interest in this program.

Georgia was merged to European prison education association (EPEA) in 2011. By supporting above mentions organization and recommendation of European council, Ministry of corrections of Georgia guarantees psycho-social, professional and educational trainings. In particular, underage persons are able to prepare for certifying or state exams. There is also clubs for readers and debaters, individual approach systems is elaborated and Georgian Government actively cares for disabled persons whose are accused/sentenced.

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

Today, there are a variety of services for persons with disabilities, encouraging them to adapt to the ordinary world. But this is not enough, certainly. We must remember that they are ordinary with their feelings and emotions. Each one has the right to carry out an action, one of the most significant element is education, because future employment, private and professional development depend on it.

The right to education is a fundamental right. Article 35, part 2 of the Georgian Constitution, (chapter II - human rights and fundamental freedoms) clearly and precisely defines that everybody has the right for education and what kind of education it should be. "Everybody" includes unlimited access to all the features of a person with independent status. Persons with disabilities should not be an exception, the government does not allow exceptions and exemptions are not allowed by law. Law is rule and the rule of law can be achieved only when the law seeks justice. The idea is based on the equality of justice in itself.

Article 35 part 2 of the Constitution of Georgia, guarantees that educational programs conform to international educational space. The performance record not only mechanically, but also obliges the government to use its full range of domestic legislation and bring it into conformity with the requirements of the internationally. In the international system there have already existed critical and strict approaches and regulations with regard to the educational rights of persons with disabilities, these are shared and elaborated proper measures by our Member-state (Georgia). According to the above-mentioned process harmonization is accelerated.

Accordance with section 3 of the same article of the Georgian Constitution, primary education is compulsory and binding. General education is fully funded by the state as prescribed by the law. Under the law, citizens have the right established by the law, to receive the state-financed vocational and higher education.

It is obvious, that the Georgian Constitution does not make reservations, neither separate individuals among them persons with disabilities, and nor putting them in a differentiated state. It means that primary education is equally binding for individuals without disabilities. Any law that is inconsistent with the rule of the supreme law of the state, would be declared unconstitutional and be terminated.

The overall picture shows that children with disabilities do not feel like outsiders in an educational institution. Children with/without disabilities are in fairness, goodwill and friendship atmosphere. It is necessary to equip a child with the right vision / direction necessary to give proper education from his childhood age / education.

Any child should grow up to respect the principle of equality and moral principles, such as human rights, tolerance, justice, friendship, and so he begins the first steps in primary and secondary education, it is important to improve the system, the processes that are developing in our country is welcome and we consider that this will help us achieve tolerant society, without stereotypes.

As for higher education:

First of all, Georgia has contributed to the professional education in the country. Special educational needs (SEN) of applicants for enrolment in vocational education is based on the new mechanism, in 16 different vocational institutions in 2014, 31 different professional education program enrolled 109 persons with special needs. Out of the 68 intellectual cut and learning difficulties, 21 hearing limitation, 14 with restriction of vision and 5 with physical limitation.

Georgia has already taken another step in the process of access to education. In particular, certain faculties of state universities become free of charge. The Ministry of Education and Science of Georgia will fund Students studying fee. This exemption applies, of course, all students, including disabled people, if they pass the prescribed limits in the national exams.

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures has your MS taken to address this issue.

In general unemployment is very actual in Georgia. With the information of "National statistics office of Georgia", the overall employment rate to 25 years age group is about 2.5 times lower than in the older age groups in the same figure. (20-25 years). The age of the youth unemployment rate is more than 67% by the available data.

According to the Georgian Labour Code, a person 16 aged has an ability to work and his/her work on the adoption of adulthood should be provided that education would not prevent.

It should be noted that the last few years the state has been actively involved in youth employment. In recent years, the student employment program operated during the summer holidays (summer job), which is part of the undergraduate students at the Universities of Georgia with authorized access. Under the project, employed 25,000 students who were paid GEL 500 per month. Young people are employed in the state institutions, the private sector, law firms, museums, hospitals, etc. 70 different areas were proposed totally. Although all the students in the program have been given the opportunity to work in their own profession, they still got some experience, and in addition, the amount generated from the use of travel, leisure and other purposes.

Last November, the students were able to participate in a job program. This time they were involved in the census process. It was the joint project of Education and Science Ministry and the National Statistics Service, within which all faculties of the University of Georgia in all careers was employed. It is significant that all employees valid student missed due to the fact that they had a full work schedule. Descriptor remuneration salary was from GEL 400 up to GEL 500.

Also, the internship program was launched in March of this year. Memorandum of understanding has been created among Ministry of Government Administration, Civil Service Bureau and 28 Universities in Georgia, whose primary goal was for students and graduates for public institutions in the internship, and the profile of their academic performance was included.

Besides of this program, the universities signed a memorandum of understanding with the state and private agencies to take into account students' internship. Also, in many cases, students of the university departments and faculties have opportunities for employment in place where they get education.

Rarely, but still job forums are held. At this campaign, local and international companies are represented in the forum and their agents are talking to applicants face to face. Also employment agency "HR" creates resume database and delivers it to the companies, which later will be used in case of a new job.

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

Any state is obliged to care for disabled persons. In our country there are many types of services, which will help them to adapt to the world. We must remember that all of us are born free and equal before the law. Unfortunately, disabled persons do not have right to do everything, but it is inadmissible to take away it what they are able to do.

Following thesis deals with issues such as employment, education:

Article 35 part 2 of the Georgian Constitution, government guarantees that educational programs conform to international educational space. The record is not only mechanically performed, but also obliges the government to use its full range of domestic legislation and bring it into conformity with the international requirements. The international system has developed approaches and there are strict regulations with regard to the education of persons with disabilities, which is shared by Georgia and fulfils some measures.

General education is fully funded by the Member – state (Georgia). The majority of schools are ready to take a disabled person and create a flexible environment. Studies based on individual schools can say that: 1) Teachers do their best to give possibility to disabled people as it possible to take part in the learning process. The teachers develop them an adapted environment, also arrange a lot of interesting activities and so on 2) children with disabilities do not feel like an outsider in an educational institution, and not-for pupils with disabilities, fairness, goodwill and friendship in the atmosphere, which is very significant.

A situation about high education for persons with disabilities is positive, because the universities are equipped with appropriate standards and are ready to create a flexible environment for them. As for the employment of significant measures have been taken, which has become a prerequisite that there is an employment program for disabled people more than it was prior to the implementation of legislative changes. Regarding the initiative of the Public Registry: Since the reform was carried out by the Office of Technology and Electronic proceedings were introduced, the registration process has moved to the Internet. Consequently, it became possible to remotely perform certain work and employment to the people who had the knowledge, but the move for them was difficult.

However it is important for disabled people that in accordance with the Tax Code (article 82, part 2) prescribes that the income is not taxable to persons which are disabled from childhood, as well as by markedly and substantially expressed disabled people in taxable income from 6,000 within calendar year.

Finally it should be noted that changes in the implementation of which the government took over and began a massive legislative modification, continues to reach out to its logical end, the rights of persons with disabilities will be fully protected and guaranteed.

6. OTHER ISSUES

Are there any other relevant issues regarding the ESC, and not covered by the questions above, in your MS? Please describe the applicable legal framework and explain how it is not in compliance with the ESC

One of the important topics in the charter of the right to vocational guidance and training (9th and 10th Articles), which do not relate to the questions asked. According to those articles, the effective exercise of this right, the parties undertake duty, including persons with disabilities, every person (individual aptitude) to assist in the choice of employment and career-related problems; To contribute to the training of their technical and professional employment and workers organizations to provide counselling and access to higher technical and university education facilities, etc.

Unfortunately, these articles are not recognized by Georgia with regard to the personal and professional training opportunities for consideration and does not indicate directly.

It should be noted that the initiative of the Ministry of Education to work with schools to vocational guidance and career planning specialists. They in different measures, in cooperation with the parents and teachers, helping students to choose a profession for future. Most of them are psychologists.

7. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

Georgia (our Member-State) has not ratified the Additional Protocol to the European Social Charter for a system of collective Complaints.

By the legislation of Georgia (Civil Code) we have system of collective complaints. In the judiciary and the legal regulation space, collective right of appeal plays an important role. This mechanism promotes to recover an alleged infringement of citizens' rights and freedoms. It provides flexibility of the judiciary bodies, and simultaneously dispute resolution and satisfaction among citizens. Within one court process, it's possible to hear several cases at one time, they have the opportunity to express their opinion, and use all of the procedural right to submit requests, which they have by law.

Collective complaint system helps to establish the case of precedent and citizens' rights are recovered timely. Practice of the collective complaint procedure is mainly used for social rights violations, such as labour, education, social security rights, the right to social protection of older persons.

According to the Civil Process Code of Georgia, claim may be filed with the lawsuit by several plaintiffs or against several defendants if: the subject matter of the right to appeal, and claims arising out of the same reasons, claims homogeneous, regardless of whether their uniform basis and subject. Each plaintiff or defendant in the process comes out against other side in court independently.

According to the same Code, participants can use all the procedural rights of the parties that have been granted under the law. Abettors are able to entrust proceedings one of the complicit, except for the cases when the participant is a minor, and / or a guardian or custodian.

Georgian organic Law - The Labour Code prescribes that collective labour relations dispute shall be resolved through collective appeal.

It is also important to note that the Administrative Code of the employers 'representatives of the workers' demand of social and labour relations issues to participate in the procedures rejection, meeting (conference) to conduct a suitable place for the refusal or the conduct of obstruction, fined two hundred to four hundred Gel.

Article 13 of the Law on Trade Unions stipulates the right to participate in the collective labour dispute. A trade union has the right to take part in individual and collective labour disputes and the labour law and the collective agreement, in violation related issues, according to the law. Given the legal bases, it promotes to operate the collective appeal system, properly.

8. CONCLUSIONS

From the beginning it is significant to remark that one of the main part of the legal research is a conclusion, because all basic elements and key points of the research paper should be consisted in the last part.

Our thesis of International legal research on social rights is a very sensitive, as a disabled persons is much more susceptible than others, all of us should elaborate proper and individual approach for useful communication to disabled persons, also we should try not to invade their personal space otherwise they might be afraid or fully disappear contact desire. However the state is responsible for developing police and ensure disabled persons to have the right to independence, social integration and participation in the life of the community.

Within our legal research, on how develop disabled persons' rights throughout the Georgia, revealed that government have already taken sophisticated steps, developed some essential rights, raised the role of the European Social Charter in recent years, created the most important public program and project for better life of disabled persons.

In this regard a highlight point is that Georgian government give opportunity disabled persons and also deaf people to use emergency service by sending message or video call. This new program is launched from 27 March of 2015.

Some rights of European Social Charter are advanced and other partly developed in Georgia. Our Strong point is that legal basis of the social rights is fully outlined in legislation, Georgia is a part of the several European convention, namely Right to Organise and Collective Bargaining Convention (1949), Freedom of Association and Right to Organize (1948), European Social Charter (1961/1996), The Convention on the Rights of Persons with Disabilities and its Optional Protocol (UN-2006). Weak point is that low awareness of Georgian society in the field of social rights, namely labour rights, right to a fair remuneration, right to social security and so, as well people do not have ability tolerance of each other, culture not to shame disabled child/person, they are not generous with others within relations.

Labour Rights more or less are developed in the jurisdiction of our member state. There are several statute by which right of collective bargaining and organize are set out. But in other hand there is serious problems in the practice part of it. Practically the right to a fair remuneration is not applied by the public or private employers. In this regard Georgian government's approach is scare and limited.

Nowadays one of the major result after the ratification European Social Charter is that Georgian Parliament has passed „Georgian labour code”. This law is imposed appropriate responsibilities and duties to employer and employee. Further there is law of Social Protection of Disabled Persons, by which labour right for disabled persons is granted in usual conditions for enterprises, institutions and organizations regardless of legal form of it. In the private section disabled persons simultaneously have right to get social assistance (monetary support).

The right of social protection is developed by the Ministry of labour health and social affairs of Georgia. This public body has authority to get social package to Georgian citizens, elaborate social policy in the country, and ensure security of health within the society. By the Georgian legislation Ministry of labour health and social affairs of Georgia has power to pass legal act by it arrange various issue in the field of social protection.

In addition, is should be noted that there is public institution - Social Service Agency (legal entity of Ministry of labour health and social affairs of Georgia) which administers tens of state social

and health protection programs. The Agency is the service that disposes the multi-million expenses and directs them to provision of the beneficiaries - the various contingents which requires service or assistance, with social disbursements, state health and social programs maximally. State pension, social assistance, health insurance, appropriate provision of the persons with disabilities, guardianship and custody of children deprived of care. The territorial offices of the Social Service Agency are located on 68 addresses. It renders due service almost one third of the population residing in Georgia on monthly basis. So this service is accessible for whole Georgian society throughout the territory. Social Service Agency fulfilled numerous social support projects, which is granted by the Georgian budget or other internal or foreign sources.

Nevertheless, problems in deprivation, poverty and right to receive appropriate support and care for all children separated from their families and the state are existed in our Member-state. Due to the Georgian Social Policy, disabled persons do not have suitable medical insurance, which would be created social security and poverty prevention. It is preferably, to be existed individual medical approach for each person with disabilities, which will be much more useful than today.

The law of Social Protection of Disabled Persons set out specific provisions about person with disabilities' education, social integration, tolerance with them, promote to advanced special programs (individual program), professional trainings and orientation of disabled persons. Unfortunately, above mentioned provision is written only on the legal paper and in reality neither public entities nor private institutions had not taken any profitable steps or issued legal act for additional regulation above matters.

Georgian legislation spelled out precise regulations about the right of children and young persons protection. It must be stressed the Government of Georgia achieved serious progress in child care system reform in 2008-2011 years. By this program the foster care system started and set up a small group homes, also introduced the Child services aimed at preventing family separation.

Within our legal research revealed that unemployment in Georgia (Member-state) is the most widespread and unresolved problem in the recent years. According to the official statistics, number of unemployed people is increasing over the year. The Government of Georgia should change current employment policy and solve this terribly problem, which causes a lot health or psychological problems.

Finally, by this legal research, on social rights, can be said that Georgian Government maintain minimum social standards in its jurisdictional territory, undergoing austerity measures, but under the proper law, there is not arranged different and sensitive issues in the regard of social protection. It should be sophisticated to realize public entity and private institutions that existence of legal basis is legally required but more necessary is bound by law.

9. BIBLIOGRAPHY AND ONLINE RESOURCES

9.1. Researches

- <https://idfi.ge/en/statistics-of-persons-with-disabilities>.
- <http://emc.org.ge/2014/08/26/guidelines-on-the-implementation-of-the-un-convention-on-the-rights-of-persons-with-disabilities-uncrpd/>.
- <http://emc.org.ge/2013/12/31/1029/>.
- <http://emc.org.ge/2014/08/27/non-recognition-inactivity-and-repression-substituting-a-home/>.
- http://www.crrc.ge/uploads/files/publications/February_11_The_Economic_Condition_of_Households_in_Georgia_1.pdf.
- http://www.crrc.ge/uploads/files/publications/archive/Simon_Gabritchidze_and_Tamar_Trapaidze-Eng.pdf.
- http://www.crrc.ge/uploads/files/publications/archive/Ia_Svintradze_and_Grigol_Ubiaria-Eng.pdf.
- http://www.crrc.ge/uploads/files/publications/archive/Ani_Kitiashvili-Eng.pdf.
- <http://www.crrc.ge/uploads/files/publications/JOID.PDF>.
- <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=146653>.
- <http://www.humanrights.ge/admin/editor/uploads/pdf/annual-eng2015.pdf>.
- <http://www.humanrights.ge/admin/editor/uploads/pdf/inglisuri.pdf>.
- http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/GEO/INT_CCPR_CSS_GEO_17525_E.pdf.
- <http://www.ombudsman.ge/en/news/special-report-on-legal-rights-of-persons-with-disabilities.page>.

- <http://www.ombudsman.ge/en/specializirebuli-centrebi/shshm-pirebis-uflebata-dacvis-departamenti/siaxleebi-ssm/statement-of-the-public-defender-on-day-for-protection-of-rights-of-persons-with-disabilities.page>.
- <http://www.ombudsman.ge/en/specializirebuli-centrebi/bavshvis-uflebata-dacvis-centri/siaxleebi-ch/statement-of-the-public-defender-regarding-international-day-for-protection-of-children.page>.

9.2. Report

- <https://www.change.org/p/save-persons-with-disabilities-in-the-republic-of-georgia-2>.

9.3. Online Publications

- <http://mes.gov.ge/content.php?id=131&lang=eng> (Higher Education system of Georgia).
- <http://gcdd.org/>
- <http://onlinelibrary.wiley.com/doi/10.1002/jts.21949/abstract> (Mental Disorders and Their Association With Disability Among Internally Displaced Persons and Returnees in Georgia).
- <http://www.tbappeal.court.ge/?category=1&mc=&page=7&lang=eng>
- <http://www.tbappeal.court.ge/?news=167&lang=eng>
- <http://www.ipseng.techtone.info/index.php/bibliography/>
- http://www.ecmicaucasus.org/upload/publications/working_paper_46_en.pdf
- https://www.nafsa.org/_/File/_/ges/Georgia.pdf
- <http://www.euroeducation.net/prof/goergco.htm>
- <https://www.worldbank.org/en/country/georgia/publication/public-expenditures-review>
- <http://www.tbappeal.court.ge/?news=167&lang=eng>

- http://www.usicd.org/index.cfm/news_dri-releases-report-documenting-atrocious-human-rights-abuses-in-the-republic-of-georgias-orphanages-and-institutions-for-people-with-disabilities-
- http://ceas.europa.eu/delegations/georgia/documents/virtual_library/cooperation_sect_ors/georgia_in_transition-hammarberg.pdf
- http://humanrights.ge/files/ecososgeo_d.PDF
- <http://www.cog.ge/en/projge.html>
- <http://www.advocatesforyouth.org/publications/publications-a-z/479-sex-education-for-physically-emotionally-and-mentally-challenged-youth>

9.4. Books

- <http://www.state.nj.us/humanservices/documents/ChildrensBiblioDisabilityBooks.pdf>
- http://www.who.int/disabilities/world_report/2011/report.pdf
- <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008ebad>
- <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008db3a>
- <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008db4f>
- <http://www.coe.int/en/web/tbilisi/home>
- <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008be3d>
- <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680081270>
- <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800922ae>

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1. INTRODUCTION

1.1. Has your Member State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

Germany has ratified the 1961 ESC on January 27 1965. Although signed on June 29 2007, Germany did not ratify the 1996 revised ESC yet. For the purpose of this report, however, several questions are answered on the supposition that the MS not only signed the revised ESC of 2007 but also ratified it, so that it is binding for legislative decisions.

1.2. Please provide a brief overview of austerity measures that have been taken, or announced, in your MS, as response to the 2008 economic crisis or to address a budget deficit, if any

There have been no austerity measures taken or announced by Germany in this regard. However, theoretically, if there was a budget deficit, sanctions are provided by law that may be applied in case the deficit is longstanding and severe. Article 109 II of the German Constitution demands the budget deficit of the *State and Länder* to be compensated without revenue out of loans (“Schuldenbremse”- debt break). This requirement is fulfilled, when the deficit does not exceed 0.35% of the nominal gross domestic product (cf. Art. 115 II German Constitution), still being in accordance with Art. 126 of the Treaty on the Functioning of the European Union (TFEU) stating to avoid an excessive deficit.

The government, however, has stated that there has to be a realignment of social security benefits due to its huge share of state expenses.

Therefore, compulsory surcharges in the *unemployment benefit II law* (“Arbeitslosengeld”) were converted into discretionary benefits and the *pension contribution rates* (“Rentenversicherungsbeitragsätze”) for recipients of Book II of the *German Social Security Code* (Sozialgesetzbuch II - SGB II) was abandoned. Furthermore, the optimised placement and the backlashes of the demographic change were said to breathe life into the labour market which should lead to savings in the federal budget from 2013 on.

In respect to parental allowance the government was decreasing the *high earning replacement rate* (“Lohnersatzrate”) for recipients of parental allowance with a net income of more than EUR 1,240 per month from 67% to 65% to make sure the working population with low or middle income has guaranteed support. Similarly, there is no parental allowance provided for recipients of *unemployment benefit II* (“Arbeitslosengeld II”).

In addition, the fuel allowance for recipients of housing allowance was decreased to the former legislation.

2. LABOUR RIGHTS

2.1 Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

There are several social and collective bargaining rights in Germany. The collective bargaining autonomy is guaranteed by Article 9 (3) of the German Constitution. So employees are free to create trade unions. Employers can form up in employers' associations.

The umbrella association for the trade union is the *German Trade Union Federation* (DGB – Deutscher Gewerkschaftsbund) and the *Federal Federation of German Employers* (BDA - Bundesvereinigung der Deutschen Arbeitgeberverbände e.V.). The DGB is a member of the *European Trade Union Confederation* (ETUC). The BDA is a member of BUISNESSEUROPE, former Union des Confédérations de l'Industrie et des Employeurs d'Europe (UNICE). According to the *Tarifvertragsgesetz* (TVG - Collective Agreements Act) there are several ways that the Collective Agreement is binding. There can be a Collective Agreement between a trade union and an employers' association. But there can also be a Collective Agreement between a trade union and a single employer. According to § 5 (4) TVG a collective agreement can also be declared as „generally binding“. Of course the individual respective employment relationship has to fall into the scope of the collective agreement. In the year 2011, 59% of all employees in Germany were employed by companies bound by collective agreements.¹

¹ Government of Germany, 31st national report of the implementation 1961 European Social Charter, (23 December 2013), p. 16.

Only Trade Unions have the right to strike in an industrial dispute/labour conflict.² Strikes have to aim for a collective agreement goal.³ So it is unlawful to do „wild strikes“. Also a general strike is not allowed. Civil servants don't have the right to strike because acts of the legislative decide about their salary not contracts and there is no scope for collective agreements.

Employers have the restrictive right to lock out the employees during an industrial dispute/labour conflict. Also this has to be for achieving a collective agreement goal. Both sides have to keep “peace” as long as possible and to be fair.

Employees also have the right for a works council according to § 1 (1) *Betriebsverfassungsgesetz* (BetrVG - Works Constitutions Act) if in the enterprise over a period of time there are at least five voting employees and three electable employees. The works council always has to consider the interests of the employees and of the whole enterprise. The works council can create *work council agreements* (Betriebsvereinbarungen).

There is also the right of co-determination. So employees can have influence on the concern policies. According to the *Drittelbeteiligungsgesetz* (DrittlbG - Third Involvement Act) if a concern has in total more than 500 employees, the supervisory board has to have one third (1/3) of members which are employees.

According to the *Mitbestimmungsgesetz* (MitbestG - Co-Determination Act) if a concern has in total more than 2000 employees, 50% of the supervisory board have to be employees.

2.2 Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

The law is not directly affected by austerity measures so far. But because of economy problems many employees and trade unions understood that the salary could not be raised. After the crisis, many trade unions intended that the employees also receive something of the new profits. So there were several labour conflicts especially in the public transportation sector.

The *Gewerkschaft Deutscher Lokführer* (GDL - Trade Union for German Train Drivers) and the *Luftwansa Pilots Trade Union COCKPIT* have striked and have subsequently weakened the whole

² A. Juncker, *Grundkurs Arbeitsrecht*, 12th edition 2013, Munich, Rn. 607.

³ A. Juncker, *Grundkurs Arbeitsrecht*, 12th edition 2013, Munich, Rn. 605 following.

economy. Now the German government is planning a *Tarifeinheitsgesetz* (Collective Agreement Union Act).⁴

According to the draft act and the information of the Federal Ministry for Labour, this Act will regulate that in every enterprise only the trade union with the most members can agree on collective agreements.⁵ This would weaken small trade unions and could so be an infringement of the freedom of coalition.

2.3 Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

The short-time working laws have been partly updated to support the German economy in a better way.⁶ In Germany, the low-wage sector is growing constantly.

In 2010, 20.6% of German workers were paid low wages.⁷ Following the OECD definition, a worker receives a low pay wage if it is less than 2/3 of the average wage paid in the particular country. Facing the growth of the low-wage sector, the German government has introduced a minimum wage of EUR 8.50 for employees. This legislation has come into force from January 1 2015.

The minimum wage aims at protecting the low-wage sector from wage dumping. It is intended to reduce the number of social state transfers. In contrast to collective wage agreements in specific sectors, the recently introduced minimum wage is applicable nationally and across all sectors. The legislation, however, contains several exceptions and a transitional period extending till the end of 2016.

⁴ Bundesministerium für Arbeit und Soziales, *Entwurf eines Gesetzes zur Tarifeinheit*, access 6 April 2015, <http://www.bmas.de/SharedDocs/Downloads/DE/Thema-Arbeitsrecht/entwurf-gesetz-tarifeinheit.pdf?__blob=publicationFile> [German].

⁵ Bundesministerium für Arbeit und Soziales, *Tarifeinheit stärkt Sozialpartnerschaft*, access 6 April 2015, <<http://www.bmas.de/DE/Service/Presse/Pressemitteilungen/Tarifeinheit-staerkt-sozialpartnerschaft.html>> [German].

⁶ Arbeitnehmerkammer Bremen, *Die Änderungen der Kurzarbeit 2009*, accessed 6 April 2015, <http://www.arbeitnehmerkammer.de/cms/upload/Betriebsrte/Die_Aenderungen_in_der_Kurzarbeit_1_.pdf> [German].

⁷ Statistisches Bundesamt, *Anteil der Beschäftigten mit Niedriglohn gestiegen*, access: 5 April 2015, https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/2012/09/PD12_308_62.html [German].

Important for the low-wage sector is the term 'mini-job' which refers to marginal employment, meaning that a worker earns a monthly wage of EUR 450.01 and benefits from tax subsidies. Due to this marginal employment, the rate of social insurance contribution is reduced whereas the term 'midi-job' refers to a job from which a worker earns between EUR 450.01 and EUR 850. Generally, students, particularly migrants and people with lower educational attainment depend on mini- and midi-jobs.⁸

From January 1 2013, the threshold for earnings within the 'mini job' sector was raised by EUR 50 up to EUR 450 per month. This increase followed a general wage trend.

At the same time, the threshold for earnings within the 'midi jobs' sector was also raised by EUR 50 up to EUR 850 per month. As a consequence, the wage band relying on a linear increase of the employee's contribution to social insurance, now extends from EUR 450.01 to EUR 850.00 per month.

In 2012, women earned 22% less than men. The federal government agreed on a female quota act which shall be in force in 2016. According to the federal government the act will include regulations for market-listed companies that the supervisory board has to have 30% of female members.⁹

On March 06 2015 the *Bundestag* approved the law.¹⁰

3. SOCIAL PROTECTION

3.1. Has the social security scheme of your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by his/her own efforts or from other sources?

⁸ Ministerium für Arbeit, Integration und Soziales des Landes NRW, *Studie zur Analyse der geringfügig Beschäftigten*, access: 6 April 2015, http://mais.nrw.de/08_PDF/001/Studie-Minijobs.pdf [German].

⁹ Bundesministerium für Familie, Senioren, Frauen und Jugend, *Gesetz zur Gleichberechtigten Teilhabe von Frauen und Männern an Führungspositionen*, access: 6 April 2015, <<http://www.bmfsfj.de/BMFSFJ/gleichstellung.did=88098.html>> [German].

¹⁰ Bundesministerium für Familie, Senioren, Frauen und Jugend, *Bundestag beschließt Gesetz zur Quote*, last access: 6 April 2015, <<http://www.bmfsfj.de/BMFSFJ/gleichstellung.did=213364.html>> [German].

People who are not able to secure adequate resources by his or her own efforts might get support from the state when they fulfil the requirements set up in the relevant provisions of law for the different possibilities of support.

Generally decisive are the following factors: Whether they have earning capacity but are currently not employed, seeking for work or employed people with a low income between 15 and 65 years, and people living with an addressee (in the case of unemployment benefits); in the field of child supplements on the income of the parents and whether they already receive support of the state.¹¹

Concerning day care, this is further regulated by the *Länder* legislation. Parental benefits may be granted, however they are dependent on the revenue (non-self-employed work, revenue from agriculture or forestry, commercial enterprise and self-employed work).

Similarly requirements must be fulfilled when receiving housing benefit. Also social benefits are granted. They and the more specific requirements for receiving them are regulated separately in the *German Social Security Code* (Sozialgesetzbuch, SGB), namely support for health (5th Chapter SGB XII, §§ 47 -52), integration support for disabled people (6th Chapter SGB XII, §§ 53- 60), support for care (7th Chapter SGB XII, §§ 61- 66); support for overcoming special social difficulties (8th Chapter SGB XII, §§ 67-69) and support in other difficult circumstances (9th Chapter SGB XII, §§ 70-74).¹²

Also asylum seekers might receive financial support to cover the minimum living standard which is regulated in the *Asylum Seekers Benefits Act* (Asylbewerberleistungsgesetz, AsylBLG).

The minimum requirement is an at least 15 months lasting residence in the state.¹³

3.1.2. Persons who are unable to secure adequate resources either by his/her own efforts or from other sources due to illness.

¹¹ Bundesministerium für Familie, Senioren, Frauen und Jugend, *Hilfe und Beratung für Familien mit geringem Einkommen* <<http://www.familien-wegweiser.de/wegweiser/stichwortverzeichnis,did=133836.html>> accessed April 6 2015 [German].

¹² DeStatis- Statistisches Bundesamt, *Social benefits*, <<https://www.destatis.de/EN/FactsFigures/SocietyState/SocialStatistics/SocialStatistics.html>> accessed 6. April 2015.

¹³ Die Bundesregierung, *Bundesrat stimmt Gesetz zu Höhere Leistungen für Asylbewerber* (November 28 2014) <<http://www.bundesregierung.de/Content/DE/Artikel/2014/08/2014-08-27-asylbewerberleistungsgesetz-kabinett.html>> accessed April 6 2015 [German].

In Germany in general everybody has to be insured by a statutory health insurance. Only if one fulfils the requirements of § 6 of Book Five of the *German Social Security Code* (SGB V) one has the choice to change that and be insured by a private health insurance.

Children under 18 years are insured also without any fee at the same statutory health insurance as their parents if the parents are not in a private health insurance.¹⁴

The federal employment agency also pays the fees for the insurances for jobless people even if one is in a private insurance, although there is only paid a basic amount which is similar to the fees for statutory health insurances.¹⁵

In the event of illness, the employer has to further pay the employee his wage for the first six weeks if the employee is unable to work and it is not the employee's fault, § 3 *Entgeltfortzahlungsgesetz* (EntFG – Remuneration Continuation Act). After these six weeks, the employee have a claim for sickness pay, §§ 44 – 51 SGB V. The amount of the sickness pay is 70% of the employee's gross wage but not more than 90% of his net remuneration, § 47 SGB V.

However, the sickness pay will be only paid during 72 weeks in three years for the same illness. There can be a new claim for sickness pay after the three years have passed or in the case of another illness.

Besides of the health insurance system, there is also a nursing care insurance system. This system helps people who need nursing care. The current government want to improve the benefits of the statutory nursing care insurances by raising the fee for employers and employees. The first step of this program became into force on January 1 2015 with the Nursing Care Improvement Act I.¹⁶

¹⁴ Bundesministerium für Gesundheit, *Familienversicherte* (July 29 2014), <<http://www.bmg.bund.de/themen/krankenversicherung/versicherte/familienversicherte.html>> accessed April 6 2015 [German].

¹⁵ Bundesagentur für Arbeit, *M e r k b l a t t Übernahme und Erstattung von Beiträgen zur Kranken-, Pflege- oder Rentenversicherung bei Befreiung von der Versicherungspflicht bzw. bei Versicherungsfreiheit für Bezüher von Arbeitslosengeld* (January 2015), <<http://www.arbeitsagentur.de/web/wcm/idc/groups/public/documents/webdatei/mdaw/mdk2/~edisp/16019022dstbai380395.pdf>> accessed April 6 2015 [German].

¹⁶ Bundesministerium für Gesundheit, *Das Erste Pflegestärkungsgesetz* (January 1 2015), <<http://www.bmg.bund.de/themen/pflege/pflegestaerkungsgesetze/pflegestaerkungsgesetz-i.html>> accessed April 6 2015 [German].

3.2. If applicable, what impact has the austerity measures taken have on the social security scheme under 3.1 a) and b) (Article 13(1) ESC)?

There have no austerity measures been taken by Germany.

3.3. Are there any appropriate public or private services that provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

Pregnancy counselling institutions provide complementary information and advice concerning questions like sex education, sexual contraception and birth control, family-aware services of the state, the special rights in working life and diagnostic procedures during pregnancy. They further provide information for potential conflict resolutions concerning pregnancy, about assistance for children with health issues and also about possibilities for abortion.

The provided supply includes active help with asserting claims, looking for accommodation, care facilities and aftercare or help for the continuance of education. Pregnancy consulting institutions further conciliate material assistance for pregnant women in distress that are provided by the *Federal Foundation for Mother and Child* (“Mutter und Kind – Schutz des ungeborenen Lebens”) such as by *Länder* foundations.

State-approved pregnancy conflict advisory services further give advice *inter alia* about medical, social and legal information and states possible practical help, that may improve the mother’s and child’s situation. Those services confirm the pregnant woman’s occupation of the advisory service, which is necessary for the implementation of an abortion exempt from punishment.

Further help provide charity organizations, family associations, churches, the social services and health department or practitioners.

The realisation of the concrete measures are secured by the *Law on Conflict in Pregnancies* (Schwangerschaftskonfliktgesetz), the *Law on Foundation Formation* (Stiftungserrichtungsgesetz)

and *Book XII of the German Social Security Code- Social Assistance* (Sozialgesetzbuch, Zwölftes Buch – Sozialhilfe (SGB XII)).¹⁷

There have no austerity measures been undertaken. So there was no impact on those services.

4. SOCIAL EXCLUSION

What measures has your MS taken to promote effective access of persons who live or risk living in a situation of poverty, as well as their families, to in particular, employment, housing, training, education, culture and social and medical assistance (Art. 30 (a) ESC)? Have austerity measures taken had an impact on the poverty level, deprivation and social exclusion in your country (Art. 30 ESC)?

A revised version of the European Social Charter of 1961 was signed by Germany in 2007, though not been ratified yet. The provision of Art. 30 ESC is therefore not applicable. Consequently, the question at issue will be answered in the following way.

If Germany had ratified the ESC of 1996, would the measures adopted since 2008 have promoted effective access of persons who live or risk living in a situation of poverty, as well as their families, to in particular, employment, housing, training, education, culture and social and medical assistance according to Art. 30 (a) ESC)?

4.1. Social Welfare in Germany

In Germany, social welfare is deeply rooted in the Constitution (Grundgesetz) as well as in social legislation. Ever since the implementation of the Basic Law after the Second World War, social governance followed the model of the social market economy. Constitutionally guaranteed in Art. 20 (1) *Grundgesetz*, the welfare state principle ensures that competition and economic achievement are balanced with social equality alongside economic and social participation on a constitutional level.¹⁸ Social legislation derives from the principle of social welfare and aims at

¹⁷ Bundesministerium für Familie, Senioren, Frauen und Jugend, *„Staatliche Hilfen für Familien“* (July 1 2005), <<http://www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/PRM-18395-Broschure-Staatliche-Hilfen.property=pdf.pdf>> accessed April 6 2015 [German].

¹⁸ https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Publikationen-DinA4/a334-4-armuts-reichtumsbericht-2013.pdf?__blob=publicationFile

ensuring social welfare in Germany. Therefore, also state policy aims at ensuring social mobility and equal opportunities for all individuals in order to prevent social exclusion and poverty. Despite the high importance accorded to social welfare, inequality and differences in income and living standards still occur in Germany.¹⁹ To overcome existing social exclusion and inequality, it is necessary to base a society primarily on personal ability and individual achievement.²⁰

4.2. Measures for People Living in Poverty or Being at Risk of Living in Poverty

In order to identify measures adopted by German government to prevent 'poverty' and the 'risk of living in poverty', the terms 'people living in poverty' and 'people being at risk of living in poverty' have to be examined.

4.2.1. Definition of Poverty²¹

A crucial difference is prescribed by the definition of absolute and relative poverty. Absolute poverty occurs whenever people do not have access to adequate resources. It is thus equal to destitution. Absolute poverty mainly occurs in developing countries.

Relative poverty in contrast occurs in developing as well as developed countries. Determining relative poverty, living standards of different people within one country are to be compared by measuring the poverty rate and the poverty gap.²² Relative poverty exists, whenever people do not enjoy a certain minimum standard of living. In 2010, 15% of the German population was living in poverty.²³ This poverty rate is constantly rising and was only briefly declining in 2007.

4.2.2. Risk of Poverty

Following an EC-wide definition, the relative poverty line is drawn at 60% of the median national net equivalent income.²⁴ The definition already includes state social aid. The rate of people risking of living in poverty mainly shows the gap between rich and poor.

¹⁹ http://www.diw.de/documents/publikationen/73/diw_01.c.470126.de/wave_report_2013.pdf

²⁰ https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Publikationen-DinA4/a334-4-armuts-reichtumsbericht-2013.pdf?__blob=publicationFile

²¹ <http://www.businessdictionary.com/definition/poverty.html#ixzz3SBX2lpAc>

²² http://www.euro.centre.org/data/1295444473_73292.pdf

²³ <http://www.inequalitywatch.eu/spip.php?article113&lang=en>

²⁴ https://www.destatis.de/DE/Publikationen/WirtschaftStatistik/WirtschaftsZeitbudget/LEBENEUROPA2009122010.pdf?__blob=publicationFile

	2005	2006	2007	2008	2009	2010	2011
Single	736	746	764	787	801	826	849
Family (2 adults and 2 kids under 14 years)	1,545	1,567	1,605	1,652	1,683	1,735	1,840

Table 1. Illustrates the latest thresholds of the „risk of living in poverty“ (in EUR).²⁵

In contrast to many other European countries, the German household income has increased since 2007. However, despite employment growth and a drop in the unemployment rate, the income inequality and the risk of relative poverty as described above has increased.²⁶

Social groups as low skilled, individuals in non-regular employment and unemployed face a high risk of relative poverty. Their jobs tend to be unstable and their income mobility subdued.²⁷

While there has been an increase to put more workers into a job, poverty risk is high for workers in non-regular employment

4.2. Measures

4.2.1. Access to Employment

Employment is the basis for prosperity and is an essential prerequisite for social participation. Germany currently has the lowest level of unemployment within the European Union at a rate of 5.3% in 2013.²⁸ The growing economy in Germany and low rates of unemployment as well as an increase of labour market flexibility contribute to Germany's success in the employment sector.²⁹

²⁵ <http://www.amtliche-sozialberichterstattung.de/A2armutsgefahrdungsschwellen.html>.

²⁶ <http://stats.oecd.org/index.aspx?queryid=46022>; <http://www.oecd.org/social/income-distribution-database.htm>.

²⁷ http://www.keepeek.com/Digital-Asset-Management/oecd/economics/oecd-economic-surveys-germany-2014_eco_surveys-deu-2014-en#page5.

²⁸ <http://statistik.arbeitsagentur.de/Statistikdaten/Detail/201312/ama/heft-arbeitsmarkt/arbeitsmarkt-d-0-201312-pdf.pdf>.

²⁹ <http://statistik.arbeitsagentur.de/Statistikdaten/Detail/201312/ama/heft-arbeitsmarkt/arbeitsmarkt-d-0-201312-pdf.pdf>.

4.2.1.1. *Minimum Wage*³⁰

In Germany, the low-wage sector is growing constantly. In 2010, 20.6% of German workers were paid low wages.³¹ Following the OECD definition, a worker receives a low pay wage if it is less than 2/3 of the middle wage paid in the particular country. Facing the growth of the low-wage sector, the German government has introduced a minimum wage of EUR 8.50 for employees. The legislation has come into force from January 1 2015.

The minimum wage aims at protecting the low-wage sector from wage dumping. It is intended to reduce the number of social state transfers. In contrast to collective wage agreements in specific sectors, the recently introduced minimum wage is applicable nationally and across all sectors. The legislation however contains several exceptions and a transitional period extending in the end of 2016.

Following the measures introduced by the Agenda 2020 reforms, the labour market in Germany gained flexibility necessary to compete on the world market. Following this reform, the low-wage sector kept growing constantly and while the past labour market reforms have put more workers into employment, poverty risks are especially high for low skilled workers and woman in non-regular employment.³² The new government has therefore committed to phase in a national wide minimum wage of EUR 8.50 (see also Question 2.3.) It aims to ensure greater stability in the social security system and may be an effective instrument to reduce the dispersion of wages.

4.2.1.2. *Mini Jobs*³³

The increase of the mini- and the midi-job threshold aims at improving the financial situation of low paid workers in Germany (please see Question 2.3). However, workers in mini-jobs are still exposed to a rising risk of relative poverty once they retire or in case of losing their jobs due to low pension entitlement and as they are not entitled to unemployment insurance benefits.³⁴

³⁰ http://www.bmas.de/EN/Service/Press/recent-publications/minimum-wage-in-effect.html?cms_searchArchive=0&cms_sortString=-score_&cms_searchIssued=0&cms_templateQueryString=minimum+wage.

³¹ https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/2012/09/PD12_308_62.html.

³² <http://www.oecd.org/germany/Better-policies-germany.pdf>.

³³ <http://www.bmas.de/EN/Our-Topics/Social-Security/450-euro-mini-jobs-marginal-employment.html>.

³⁴ <http://www.oecd.org/germany/Better-policies-germany.pdf>.

As the tax subsidy is not targeted to low income individuals, many mini jobs are taken up by second earners, especially woman. On the one hand, the increase can be considered as improvement but on the other hand, this mode of employment will be even more attractive for employers.

4.2.1.3. *Act to Improve the Chances of Integration in the Labour Market*³⁵

The Act to Improve the Chances of Integration in the Labour Market (Gesetz zur Verbesserung der Eingliederungschancen am Arbeitsmarkt) was introduced in December 2011. It aims to improve the use of available resources and supports integration in employment - particularly in work with compulsory social insurance coverage. This act is one of the key instruments introduced by the government to promote effective integration in the labour market, especially for young people and the long-term unemployed.³⁶ As part of a wider national strategy, it aims at decentralising the decision making of the local employment offices, ensures greater transparency, focuses on more flexibility and finally tries to offer a better quality.

4.2.2. **Housing (Rent Control)**³⁷

Fearing a loss of money, the economic crisis has led to an increase of property investments. Landlords have invested in their houses and thereby the rents have increased. Another determinant factor is gentrification. Gentrification is defined as the restoration and upgrading of deteriorated urban property by middle-class or affluent people, often resulting in the displacement of people on lower-incomes. Facing this phenomenon, rents steadily increase which forces many families with lower incomes to move away from central areas. Fighting against this constant rise, the German government plans to introduce a rent control system. The main purpose of rent control is to protect tenants from unrestrained upward pressure on market rents, by limiting landlords' rent charges. Rent control is part of a 'package for affordable housing', which includes tax incentives for residential developers and legislation that allows states to cap rents in areas where significant increases have already occurred. Landlords will be

³⁵ <http://www.bmas.de/EN/Our-Topics/Labour-Market/employment-promotion.html>.<http://www.arbeitsagentur.de/web/wcm/idc/groups/public/documents/webdatei/mdaw/mtax/~edisp/l6019022dstbai406900.pdf>.

³⁶ <http://www.arbeitsagentur.de/web/wcm/idc/groups/public/documents/webdatei/mdaw/mtax/~edisp/l6019022dstbai406900.pdf>.

³⁷ http://www.bmjv.de/DE/Themen/BauenundWohnen/Mietpreisbremse/_node.html.

restricted from increasing the rent on a newly let apartment to higher than 10 per cent above the local price level. The measures are intended to protect low- and middle-income tenants from exploitation. Rent Controls will enter into force in June 2015.

4.2.3. Education and Training

For information regarding the educational system please see question 5.2.

4.2.3.1. Child Allowance and other benefits³⁸

Child benefit helps parents to pay for the upbringing and education of their children. Everybody living in Germany and having a child may claim child benefits. It is paid until 18th birthday of children or, if it is still educated, until the age of 25. For families with low-incomes, the level of child benefits depends on the parents' income. Since 1 January 2011, families receiving child benefit may also apply for benefits from the education and participation package (for more information please see question 5.2).

4.2.3.2. Parental allowance³⁹

Parental allowance aims at compensating the loss of income during the time parents raise a child. It may be paid to the mother and/or father. The amount of compensation is calculated on the basis of the average net income of the last 12 months and may range from EUR 300 to EUR 1,800 Euros per month. Since January 1 2013, there has been significant changes to simplify the determination of parental allowance, especially for unemployed parents and single parents, e.g. the income-related parental allowance provides parents with the opportunity to work part-time and still receive government support.

4.2.3.3. Legal entitlement to childcare for every child one year or older⁴⁰

Children from low-income homes or with a migrant background who are not in education do not attend a day care centre as often as, respectively as long as children from a non-migrant background.⁴¹ The educational qualification and employment status of parents, language barriers

³⁸ <http://www.bamf.de/EN/Willkommen/KinderFamilie/Kindergeld/kindergeld-node.html>.

³⁹ <http://www.bamf.de/EN/Willkommen/KinderFamilie/Elterngeld/elterngeld-node.html>;
<http://www.bmfsfj.de/familie,did=76746.html>.

⁴⁰ http://www.bildungsbericht.de/daten2014/bb_2014.pdf.

⁴¹ http://www.bmbf.de/pubRD/Education_in_Germany_2014.pdf.

and the lack of information regarding childcare options may affect the take-up of childcare services.⁴² The improvement of educational opportunities, particularly for children with migration backgrounds and low-income homes, is one of the central challenges that the German education system is facing.⁴³ Since August 2013, children in Germany, having reached their first birthday, have a legal right to a place in a childcare facility following § 24 des SGB VIII (Book VIII of the German Social Security Code).⁴⁴ The federal states in Germany have significantly expanded places in institutions and childcare facilities. Until its implementation, the requirement for places for children under three years of age was about 780,000.

Since March 2013, approximately 48,800 facilities for early childhood education are available. The total number has increased by almost 8% since 2006. With the introduction of the legal entitlement, particularly the number of children from non-working parents has increased. However, the demand of day care is significantly higher than the day care sector can provide and as a consequence, several claims have been filed.

4.2.3.4. *Language and integration*

Please see Question 5.2.2.

4.2.3.5. *Promotion of continuing education*⁴⁵

The promotion of continuing education is a key element for the increase of employment opportunities in Germany. Well-trained workers are vital if the country is to maintain its global competitiveness. Given these two reasons, maintaining and fostering a workforce is accorded high importance by the Federal Ministry of Labour and Social Affairs. Therefore, the German government has joined forces with leading industry organizations in the so-called *National Pact to Promote Training and Young Skilled Workers*. The National Pact promotes in-company vocational training and thereby tries to ensure that young people have access to safe jobs (see also Question 5.2.4).

⁴² https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Publikationen-DinA4/a334-4-armuts-reichtumsbericht-2013.pdf?__blob=publicationFile.

⁴³ <http://www.bmbf.de/en/15624.php>.

⁴⁴ http://europa.eu/epic/news/2013/20130827-germany-legal-right-child-day-care_en.htm.

⁴⁵ <http://www.bmas.de/EN/Our-Topics/Initial-and-Continuing-Training/start-initial-and-continuing-training.html>.

With regard to demographic change in Germany, the ministry also promotes the integration of workers aged over 50 by enhancing the programme “*Perspective 50plus*” which aims at increasing job perspectives for workers aged over 50.⁴⁶

Both, the National Pact as well as ‘*Perspective 50plus*’ are reasonable measures aiming at social integration of workers and the maintenance of flexibility within the working sector.

4.2.3.6. National Strategy for Literacy and Basic Education of Adults⁴⁷

In 2011, about 2 Million adults (about 4% of adults) were illiterate.⁴⁸ Literacy is a key factor for access to the labour market. Therefore, the Federal Ministry of Education and Research started a joint National Strategy for Literacy and Basic Education of Adults in 2012. Additionally, a new initiative was launched on workplace-oriented research and development in the area of literacy and basic education. This initiative has been funded with 20 million Euros from 2012 to 2015. The ministry supports 54 projects focusing on the development of new ways to attain literacy and basic education. In a nutshell, the ministry co-ordinates its national aim with CSOs.

4.2.3.7. Concept for Lifelong Learning

The realisation of lifelong learning can be considered as national strategy as it offers various opportunities for the personal development of citizens and enhances social welfare. According to empirical findings, the participation in continuing education in Germany is low, compared to other countries. Notably, people with low qualifications do not have access to continued education in Germany.

Thus, the Concept for Lifelong Learning was introduced in Germany in 2008. The Concept of Lifelong Learning combines newly introduced measures with measures of the government’s qualification initiative. The Concept of Lifelong Learning addresses several stages of education. Educational opportunities for children under six years of age are to be fostered as well as the improvement of the training situation. The concept promotes a facilitated transition from school to higher education. It encourages the creation of 90,000 additional places for first year students. Additionally the opportunities for women shall be improved.

⁴⁶ <http://www.perspektive50plus.de/>.

⁴⁷ <http://www.bmbf.de/en/426.php>.

⁴⁸ http://www.alphabetisierung.de/fileadmin/files/Dateien/Downloads_Texte/leo-Pressheft-web.pdf.

4.2.4. Social Assistance

4.2.4.1. National Anti Poverty Conference Germany⁴⁹

The *German Anti Poverty Conference* is a confederation consisting of national welfare associations, associations working on special social issues, self-help organizations and the *German Trade Union Confederation* (DGB). The Anti Poverty Conference was founded in 1991, unites influencing civil social organisations and is the German section of the *European Anti Poverty Network* (EAPN).

It aims to improve measures to eradicate poverty and prevent social exclusion by bringing together both public and private actors across all levels of the state. These include the federal states and local authorities, anti-poverty NGO's and other social organisations. EAPN includes the objectives of gender equality and non-discrimination in all its areas of work. In order to fulfil its aims, the National Poverty conference primarily works in the in the field of political lobbying and public relations. In addition to that, the National Poverty Conference also works as the advisory board to the poverty and wealth report of the federal government. Finally, they also comment on current initiatives and developments within the social sector. Due to the fact that the most influential CSO take part in the National Poverty Conference, it represents an important element for the protection of people living in poverty or people who risk of living in poverty.

4.2.4.2. Conference of Ministers of Labour and Social Affairs⁵⁰

The *Conference of Ministers, senators of Labour and Social Affairs* (Arbeits- und Sozialministerkonferenz) promotes co-operation and co-ordination of the states' interests (Länder) between the respective ministries and the cooperation with the federal government. Another function is the provision of an adequate forum that gives the *Länder* the opportunity to discuss relevant topics and conferencing the situation of the labour market as well as the social sector. Relevant topics are for example the integration of women, elderly people and other disadvantaged groups of the labour market. Furthermore, the conference aims at improving the co-ordination of work shared between the Federal Government and the *Länder*. The conference's work is an important element in the Labour and Social Sector, as the *Länder* have

⁴⁹ <http://nationalearmutskonferenz.de/index.php/ueber-uns>.

⁵⁰ <http://msagd.rlp.de/arbeits-und-sozialministerkonferenz-2014/ergebnisse/>.

autonomous rights and duties with regard to social The Conference is independent from the Federal council and does not have a constitutional function.

4.2.4.3. Pension for reduced earning capacity⁵¹

16% of elderly people in Germany are at risk of living in poverty.⁵² 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. It was first introduced in 2001, but improved in 2014. Most importantly, the calculation basis was changed.⁵³ The pension for reduced earning capacity is generally paid either as a full pension or as a partial pension. The pension may be added to the previous earnings or may substitute them. However, the “rehab-first“ rule applies meaning that applicants have to indicate how much of their earning capacity may be regained by medical aid or rehabilitation measures. Applicants are entitled to the reduced earning capacity pension if their capacity is wholly or partially reduced due to illness or invalidity. In addition to this first condition, applicants must have completed three years compulsory contributions out of the five years prior to the establishment of the work incapacity. Lastly, applicants are required to have fulfilled the qualifying period of five years or completed this by an earlier date.

The pension of reduced earning capacity is only payable until the applicant reaches the pensionable age (in Germany at the age of 65 years). However, the pension is limited in time, so that it is only payable for a maximum time of three years.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

Persons with disabilities and persons who are at risk of becoming disabled can claim the same social benefits and kinds of assistance available to other citizens according to the provisions of the various books of the *German Social Security Code*. Where assistance has to be claimed only as a

⁵¹ http://www.bmas.de/SharedDocs/Downloads/DE/PDF-Publikationen-DinA4/a721-soziale-sicherung-gesamt.pdf?__blob=publicationFile.

⁵² https://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/EinkommenKonsumLebensbedingungen/LebensbedingungenArmutgefahrdung/Tabellen/EUArmutsschwelleGefahrdung_SILC.html.

⁵³ <http://www.rentenpaket.de/rp/DE/Alle-Fakten/Die-Leistungen/Erwerbsminderungsrente/rente-bei-erwerbsminderung.html>.

result of a disability, the additional special provisions for people with disabilities or at risk of becoming disabled in *Book IX of the German Social Security Code* (SGB IX – Sozialgesetzbuch Neuntes Buch) are applicable.

SGB IX came into force on July 1 2001, aimed at the elimination of disability related discrimination, self-determination for people with disabilities and enhancement of their equal participation in society by providing targeted assistance (so called integration assistance).

These uniform regulations can only apply if the assistance legislation applicable to the individual rehabilitation funds does not provide otherwise. *SGB IX* is especially aimed at cross-sectional coordination of procedures.⁵⁴

Part I of *SGB IX* (sections 1-67) provides benefits under this legislation and under the assistance and benefit laws applicable to the various rehabilitation funds for disabled people and people at risk of becoming disabled. Provisions to deal with the special needs of disabled women and children are also included.

Under section 2 (1) *SGB IX*, 'people with disabilities' or 'disabled persons' are individuals whose bodily functions, mental abilities or mental health are highly likely to deviate for more than six months from the state which is typical for their age and whose participation in society is therefore impaired. A deviation from the 'typical condition' means the loss or impairment of physical, mental or psychological structures normally present at the respective age. A disability exists if this impairment restricts participation and thus affects one or several areas of life.

Severely disabled persons are disabled persons whose degree of disability is determined to be at least 50 percent (section 2 (2) SGB IX).

Part II of *SGB IX* (sections 68- 160) contains special provisions for severely disabled people.

At the moment the draft of a Federal Participation Law is elaborated by a working group formed by the current Federal Minister of Labour and Social Affairs.⁵⁵

⁵⁴ Kohte, in: Feldes/Kothe/Stevens-Bartol, *Sozialgesetzbuch Neuntes Buch, Rehabilitation und Teilhabe behinderter Menschen*, Introduction, recital 5-8 [German].

⁵⁵ http://www.gemeinsam-einfach-machen.de/BRK/DE/StdS/Bundesteilhabegesetz/bundesteilhabegesetz_node.html [German].

It shall be aimed at a further personalization of the benefits under the *German Social Security Code*, better coordination of the social funds and self-determined participation of disabled people in working life.

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

5.1.1.1. Guidance

The main source of information and advice for people with disability are the services of the social assistance funds.⁵⁶ Sections 13-15 of Book I of the *German Social Security Code* (SGB I – Sozialgesetzbuch Erstes Buch) contain the general obligation of the social assistance funds to provide information and advice.

Furthermore, sections 22 et seq. SGB IX name the various tasks of the rehabilitation funds' one-stop service centres in all regions and cities, inter alia to prepare documents for the competent rehabilitation fund, to guide and support the disabled person until the rehabilitation made a decision, to coordinate between the rehabilitation funds and to provide counselling for companies on the possibilities of workplace integration management.

In addition, Doctors – including doctors appointed at state level – are obliged to provide special advice to persons with disabilities in accordance with sections 61 and 62 SGB IX, section 92 (1), No. 8, and Section 112 (2), No. 4 of Book V of the *German Social Security Code* (SGB V – Sozialgesetzbuch Fünftes Buch). Social assistance services have the same obligation in accordance with section 10 of Book XII of the *German Social Security Code* (SGB XII – Sozialgesetzbuch Siebtes Buch).

Regarding the provision of career counselling, the Federal Employment Agency is generally obliged to cooperate with schools and other bodies in accordance with section 29 et seq. of Book III of the *German Social Security Code* (SGB III – Sozialgesetzbuch Drittes Buch), but the Agency is also required to offer professional career counselling for people with disabilities in

⁵⁶ Federal Ministry of Labour and Social Affairs, *Rehabilitation and Integration of People with Disabilities* (March 2014), recital 130.

accordance with section 104 (4) SGB IX. The career counselling service also provides information about the financial benefits aimed at integrating disabled people into working life.

Information is also available on the web portal *www.einfachteilhaben.de*. The portal is operated by the Federal Ministry of Labour and Social Affairs and offers information for people with disabilities, their relatives and employers.

5.1.1.2 Education

As far as possible, day-care centres for children should nurture disabled children together with non-disabled children in accordance with section 22a (4) of Book VIII of the *German Social Security Code* (SGB VIII – Sozialgesetzbuch Ahtes Buch).

School education is regulated in the education laws of the individual federal states, in implementing regulations and in various decrees.⁵⁷

Children with disabilities are subject to compulsory schooling like all other children. The objective is to educate as many disabled children and young people as possible in regular schools. Therefore additional special teaching aids and other suitable support can be claimed, but there is no legal entitlement to additional assistance for disabled children so far.

Special needs schools provide education for children and young people with disabilities who cannot receive assistance or adequate assistance in regular schools. These special needs schools try to fulfil the demands of different kinds of disability and therefore focus on different issues such as Learning, Seeing, physical and motor development. The Standing Committee of Ministers of Education and Cultural Affairs of the Federal States adopted a series of recommendations for education in different types of special schools and the recommendation *'Inclusive education of children and young persons in schools'* ('Inklusive Bildung von Kindern und Jugendlichen in Schulen') in 2011 that outlines the framework conditions of an increasingly inclusive educational practice in general and vocational schools.

Special needs schools are legally obliged to examine at the end of the school year whether the pupils might be able to attend a regular school.

⁵⁷ The following information refers to: Federal Ministry of Labour and Social Affairs, *Rehabilitation and Integration of People with Disabilities* (March 2014), recital 56-72.

Furthermore, the federal state legislation includes regulations governing the (often extended) duration of compulsory schooling for different kinds of disability, special forms of an initial year of vocational training in schools and the required vocational schooling. Preparatory classes in the final years of school (such as employment studies, technical skills/crafts, and commerce/economics) are aimed at conveying basic knowledge about working and professional life. For young people with disabilities who cannot attend special needs schools despite the assistance provided, the social assistance fund pays for training in practical everyday skills and to help them cope with day-to-day life. Regarding the amount of pupils at special needs schools there is great discrepancy among the German *Länder* and even on local level. The amount of pupils varies from 4% to nearly 12 % of the overall amount of pupils.⁵⁸

In total there were approximately 3,300 special needs schools in 2009/10, frequented by approximately 390,000 pupils.⁵⁹ It has been estimated that less than 16% of all disabled children have access to regular school settings and over 77% of all special school leavers do not have a school leaving qualification when finishing their education at school.⁶⁰

Universities are required to take account of the special needs of students with disabilities; they must provide equal access to university courses and facilities without discrimination. Additionally, special provisions in the Federal Education and Training Assistance Act guarantee compensation for disadvantages which arise due to disability. The *German National Association for Student Affairs* (Deutsches Studentenwerk) has set up an advice centre for disabled applicants and students with disabilities.

5.1.1.3. Training for People with Disabilities

According to Section 33 SGB IX, employment integration assistance should take in all forms of assistance needed to sustain, enhance, generate or restore the earning capacity of persons with disabilities or persons at risk of becoming disabled while taking account of their abilities. The primary objective of employment integration assistance is permanent participation in working

⁵⁸ <http://www.inklusion-online.net/index.php/inklusion-online/article/view/88/88> (Numbers of 2009/10).

⁵⁹ Federal Ministry of Labour and Social Affairs, *Rehabilitation and Integration of People with Disabilities* (March 2014), recital 58-72.

⁶⁰ Waldschmidt/Meinert, ANED country report on equality of educational and training opportunities for young disabled people – Germany (May 2010), 2.

life wherever possible.⁶¹ Vocational training measures are a crucial form of employment integration assistance and efforts are made to realize the participation of disabled persons at training in an officially recognised training occupation as defined under Section 65 of the *Vocational Training and Education Act*. Furthermore, on-the-job training is often possible by paying training subsidies to employers.⁶² It has to be said though that only half of the disabled applicants become integrated in standard vocational education and training whereas 90% of young people without disabilities get the chance to do their vocational training in regular in-company programmes.⁶³

Section 66 of the *Vocational Training and Education Act* (BBiG – Berufsbildungsgesetz) contains the obligation of the competent regional authorities to create regulations on training outside officially recognized training occupations for young people who cannot be trained in officially recognised training occupations because of the nature or severity of their disability. Where necessary, vocational training measures are provided in special centres for vocational rehabilitation (section 35 SGB IX), the centres for the initial vocational training of young people with disabilities (vocational training centres) and the retraining of adults with disabilities (vocational retraining centres).

Such rehabilitation measures are paid by the responsible rehabilitation funds. Young people with disabilities who are trained in a vocational training centre or another external education centre are encouraged to complete some parts of their training in a company or an administration. Once again, the rehabilitation funds bear the costs during this time.⁶⁴ The Federal Employment Agency also provides targeted pre-vocational training programmes for disabled juveniles who are not yet ready to undergo training after leaving school.⁶⁵

The Federal Employment Agency has to provide vocational guidance for and placement of persons with severe disabilities into training and employment in accordance with section 104 SGB IX as well as counselling employers in cases where persons with severe disabilities may be

⁶¹ Federal Ministry of Labour and Social Affairs, *Rehabilitation and Integration of People with Disabilities* (March 2014), recital 79.

⁶² Ibid, recital 84.

⁶³ Waldschmidt/Meinert, ANED country report on equality of educational and training opportunities for young disabled people – Germany (May 2010), 2.

⁶⁴ Federal Ministry of Labour and Social Affairs, *Rehabilitation and Integration of People with Disabilities* (March 2014), recital 86.

⁶⁵ Government of Germany, '29th National Report on the implementation of the 1961 European Social Charter' (2012), 70.

recruited to fill vacant jobs or training places. Local specialist integration services all over the country provide counselling for persons with severe disabilities before taking a job, when looking for a job, in application procedures and after they have taken a job, and assisting them in gaining mental and social stability (section 109 SGB IX). They also provide information, advice and support to companies and administrations while cooperating closely with the Federal Employment Agency.

Regarding the prohibition of discrimination on the basis of disability the provisions of the *Act on Equal Opportunities for Disabled People* (BGG -Behindertengleichstellungsgesetz) which entered into force on May 1 2002, are of special interest: those provisions shall implement the ban on discrimination in areas other than social law, help to realize equal rights for disabled persons in various areas of public and private life and put them into practice in everyday life. To this end, the Act includes general provisions on the ban on discrimination for public authorities, target agreements to establish barrier-free environments and the right of associations to take legal action (inter alia). It is also legal basis for the office of the Federal Government Commissioner for Matters relating to Disabled Persons. Detailed provisions can be found in the Regulation on Communication Aids, the Regulation on Barrier-Free Documents in the Federal Administration, both dated July 17 2002, and the Regulation on Barrier-Free Information Technology of July 17 2002. The BGG also introduced provisions in other laws to provide equal opportunities and establishing barrier-free environments.

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

Section 33 SGB IX provides for assistance either to persons with disabilities themselves or to their employers, including (inter alia) technical equipment for use in the workplace, aids to provide disability-specific adaptation of the workplace, training subsidies and integration assistance paid to employers, coverage of costs associated with course fees, examination fees,

expenses for study aids, working clothes and working equipment as well as costs for work assistance which the disabled person may need in order to find a job.

Assistance in the work section is part of the integration assistance for persons with disabilities as defined in sections 54, 56 SGB XII in conjunction with section 41 SGB IX.

Along with the BGG, the *General Equal Treatment Act* (Allgemeines Gleichbehandlungsgesetz - AGG) should also be mentioned. The AGG is a result of the transposition of the EU directives on the ban of discrimination on grounds of race, ethnic origin and gender into national law, including provisions on the protection of disabled persons from disability based discrimination at work – from vocational training to job applications and dismissal.

Sheltered workshops as a form of sheltered employment programme shall provide suitable vocational training and employment for disabled persons who are not or not yet able to enter (re-enter) the general labour market (section 41 SGB IX). They are open to all persons with disabilities – irrespective of the nature and severity of their disability – who are capable of doing a minimum amount of economically useful work, at the latest after having participated in measures in the vocational training section. The wages shall commensurate with the disabled persons' performance (section 136 SGB IX). As already mentioned the Federal Employment Agency is responsible for the placement of persons with severe disabilities into training and employment under section 104 SGB IX. Regarding the integration assistance for workshops, the social assistance funds are mostly responsible for the work-related assistance according to section 41 SGB IX in conjunction with the provisions of SGB XII whereas the Federal Employment Agency is generally responsible for assistance related to the vocational training section of workshops. The technical requirements to be met by workshops for disabled persons together with details of the approval procedure are set out in the Workshop Ordinance.

Furthermore, there are special forms of assistance available in addition to the employment integration assistance (vocational training and financial support as mentioned before) which can only be claimed by severely disabled persons under Part II of SGB IX.

According to sections 71 et seq. SGB IX, public and private employers with a workforce of 20 or more are obliged to fill five per cent of positions with persons with severe disabilities or pay a compensatory levy for unfilled mandatory quota places. The revenue from the compensatory levy should only be used for the purpose of integrating severely disabled persons into the

working world, as governed by the *Severely Disabled Persons Compensatory Levy Regulation* (SchwbAV – Schwerbehinderten-Ausgleichsabgabeverordnung). In case of the employment of people with severe disabilities without being obliged to do so, employers may be entitled under section 219 SGB III to receive wage cost subsidies from the Federal Employment Agency.

Sections 85 et seq. SGB IX provides special protection against unlawful dismissal for employees with severe disabilities once they have been employed for six months. Additionally, the interests of severely disabled persons in the workplace are protected by an elected disabled employees' representative (sections 93 et seq. SGB IX).

Under sections 101 et seq. SGB IX supplementary assistance is provided by the Federal Employment Agency and the integration offices to persons with severe disabilities in order to facilitate their participation in working life.

All employers are obliged to examine whether people with severe disabilities or people afforded equal status could be employed in case of open vacancies (section 81 SGB IX). Section 81 IX also requires the adaptation of the work to accommodate the disability by different measures, such as equipping workplaces with the requisite technical equipment and efforts to provide part-time jobs.

Severely disabled people are entitled to paid supplementary leave of five days per year (section 125 SGB IX). In addition to that, persons with severe disabilities can be exempted from working overtime in accordance with section 124 SGB IX.

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

The described measures provided by the *German Social Security Code* have not been affected by any austerity measures.

Yet it has to be mentioned that the amount of unemployed persons with disability increased remarkably in the years 2009 and 2010 as a result of the economic crisis, as a large amount of disabled people was employed in large companies dependent on exports and was not protected from dismissal in case of operational cuts.⁶⁶ Severely disabled people are not protected from

⁶⁶ DGB Abteilung Arbeitsmarktpolitik, *Der Arbeitsmarkt für Menschen mit Behinderungen in der Krise* (June 2010) arbeitsmarktaktuell n. 7, 1 [German].

dismissal under sections 85 et seq. SGB IX if continued employment is an unfair burden to an employer facing considerable limitations of operation in order to maintain profitability in times of the economic crisis. Meanwhile it became much more unlikely for people with disabilities to be re-hired due to the freeze on recruitment.⁶⁷

5.2. Children and Young Persons (Article 17 ESC)

5.2.1 Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

A revised version of the European Social Charter of 1961 was signed by Germany in 2007 but has not been ratified yet. The provision of Art. 17 ESC from 1996 is therefore not applicable. In contrast to the revised version, Art. 17 of the ESC from 1961 addresses the right of mothers and children to social and economic protection. Due to the inapplicability of Art. 17 ESC in respect to Germany, the following explanation will be treated as if Germany had ratified Art. 17 ESC.

5.2.1.1. General level of education and training in Germany⁶⁸

For information regarding the educational system please see question 5.2.3.

Overall, children and young persons have the education and the training they need. Already 89% olds and even 96% of the four years old attend early childhood education programs.

In Germany⁶⁹, 20% of young adults achieve a higher level of education than their parents, which is far below the OECD average of 37%; meanwhile, 22% achieve a lower level, which is higher than the OECD average of 13%. Only 12% of young people are not in education, employment or training. Germany spends 5.3% of its GDP on education and spends 10.5% of the total public spending on education. Furthermore, vocational education and training is an integral part in German society. The system offers qualifications in a wide range of professions and derives

⁶⁷ *ibid* 3.

⁶⁸ http://www.bildungsbericht.de/daten2012/bb_2012.pdf.

⁶⁹ <http://www.oecd.org/germany/EAG2012%20-%20Country%20note%20-%20Germany.pdf>.

from long tradition. This system has also shown the capacity to adapt to today's flexible labour market.⁷⁰

5.2.1.2. *Legal right to early childhood support*⁷¹

Early childhood support has a detrimental impact on children's development and can prevent social exclusion for children from families living in poverty or risking of living in poverty. In addition to that, the number of women working increased constantly. At the same time, the demand for childcare grew over the last decade.

In order to improve child care in Germany, Book VII of the *German Social Security Code* was amended in 2008 by the *Children Promotion Act* (Kinderförderungsgesetz). By this amendment, children under the age of three got entitled to day care in a day care centre or in day care for children.

In 2013, the Federal Government introduced the legal right to early childhood support in a day care centre or day nursery. Following the legal right to early childhood support, every child between the age of one and three is now entitled to day care centre or nursery.

However, complaints have already been lodged due to the fact that child care cannot be provided for every child.

5.2.1.3. *All-day schools*

Facing intra-societal changes, the enhancement of all-day schools in Germany has become very important. Between 2003 and 2009, the federal government promoted the development and expansion of all-day schooling through a specific investment programme called "*the Future of Education and Care*". This program was one of the largest initiatives in the field of education within Germany. Its successful completion was helped with 4 billion euro of investment. Following these investments, a significant increase in all-day education in recent years was noticeable. All-day schools provide better conditions for pupils as teachers can focus on the individual strengths of their pupils. As a consequence, a better quality of education is guaranteed. At the same time, all-day schools support families by granting parents more flexibility with regard to their jobs. More importantly, children from families living in poverty benefit from all-

⁷⁰ <http://www.oecd.org/edu/skills-beyond-school/LearningForJobsPointersfor%20PolicyDevelopment.pdf>.

⁷¹ http://www.kmk.org/fileadmin/doc/Dokumentation/Bildungswesen_en_pdfs/early_childhood.pdf.

day schools as classes are closely linked with additional sport, cultural and educational activities. Furthermore, all-day schools foster to grant equal opportunities for all children.

Giving these advantages, all-day schools contribute to building a stable and equal society.⁷² There has been a significant increase in all-day education in recent years so that more than half of all schools in Germany now provide all-day programmes.

5.2.1.4. Act on Education and participation package⁷³

As studies prove, children more a solid financial background will have better opportunities concerning their future career compared to children from poorer families in Germany.

One important reason for this situation lies in the fact that children from difficult economic backgrounds are not able to afford supplementary education. Willing to grant equal opportunities to all children, the Federal Government introduced the *Act on the education and participation package* (Gesetz zum Bildungs- und Teilhabepaket) in 2011. By act, all children whose parents are dependent on state transfers such as unemployment benefit, social security benefit or social assistance, are entitled to supplementary child allowance. This supplementary child allowance includes subsidies to participate in social activities and receive learning support, such as lunches in day-care centres for children, schools or after-school centres, contributions for youth sports clubs or music schools. Furthermore, the supplementary child allowance covers the costs of day trips organised by the school or day-care centre for children.

The *Act on Education and participation package* aims to give unprivileged children access to the education and training they need. The education and participation package was an important step towards more equality in the education system. Although this measure was appreciated, the social background of children can still be considered as a determinant factor for children's further development and job opportunities.

5.2.1.5. Promotion of language skills and integration

In many cases, children with other cultural backgrounds suffer from their insufficient language skills. Noticeable, language skills are a key element for children having a migrant background. Good knowledge of the German language guarantees children access to the society and culture

⁷² http://www.bmbf.de/pubRD/steg_2010.pdf

⁷³ http://www.kmk.org/fileadmin/doc/Dokumentation/Bildungswesen_en_pdfs/funding.pdf.

of Germany and can therefore be considered as main goal of integration. By launching the program „*Early Opportunities: Language & Integration*“ the Federal Government aims at improving the future prospects of disadvantaged children through early assistance. This early assistance enables children to enter school fully equipped with language skills. Thereby, the program mainly focuses on the promotion and development of language skills from children under three years. In order to achieve this goal, the Federal Governments spend over EUR 400 million for about 4,000 day-care centres. Early promotion of language skills can be considered as important step towards well-functioning integration. Still, many children at school are unable to understand German. Regarding the importance of language skills, the Government is required to enhance the promotion of language skills.

5.2.1.6. *Cultural Assistance for children*⁷⁴

Statistics show that an efficient way to support children's education and development is the promotion of out-of school programs. Despite this fact, out-of school education mostly is underestimated. However, out-of school education supports children in developing their individual personality and also encourages children to live in a self-determined way.

According to this, the Federal Government launched a special cultural assistance program for children. (*“Kultur macht stark, Bündnisse für Bildung”*).

The Federal Government thereby supports groups and associations working in a cultural field, summer camps, or exchanges with voluntary mentors enables.

Also, children from different economic as well as different cultural backgrounds will have the possibility to interact. Furthermore, children learn to work within a team and can develop their personal creativity. Thereby, out-of school programs also help children with a migration background to speak regularly in German. In a nutshell, cultural assistance supports equality between children coming from different background, enhances social skills such as team work and fosters language skills.

⁷⁴ <http://www.bmbf.de/en/14389.php>.

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support

*5.2.2.1. Child Protection Act*⁷⁵

Children can be considered as one of the most vulnerable groups of society. Therefore, special protection needs to be accorded to children. In 2012, a new *Child Protection Act* (Bundeskinderschutzgesetz) was introduced. The main function of the act is to implement better possibilities for in child protection. Furthermore, it fosters the prevention of all negative influences for children. In addition to that, it aims at strengthening the position of people dealing with child protection such as doctors or midwives, the welfare office or family court as well as the parents themselves.

Therefore, the act creates the legal basis for easily accessible help for families especially in the time directly before and after birth as well as in the first years after birth. It aims at stabilizing the family and provides a high level of help. The act addresses all persons and institutions in charge of child protection - such as youth offices, schools, health departments, hospitals, physicians, pregnancy counselling centres and police. Between these groups of responsible people, the legal act tries to span a cohesive network.

The *Act on Child Protection* also excludes previously convicted social workers from working in with children and young people and grants the youth welfare office the right to visit and families regularly in order to ensure children's welfare. Thereby, families receive the support they need in order to become able to take care of their children. At the same time, professional help within a network is granted in order to assist parents.

5.2.3. Has your MS taken any measures to provide children and young persons with free primary and secondary education or to encourage regular school attendance? What about tertiary education?

School is compulsory for all children living in Germany. There is no direct legal basis to protect free education, but a profound historical justification. Free education should include: Participation, application and free choice of school. Responsibility for the education system is

⁷⁵ http://www.fruehehilfen.de/fileadmin/user_upload/fruehehilfen.de/pdf/Publikation_QE_Kinderschutz_6_Expertise_Qualitaetsindikatoren.pdf.

determined by the federal structure of the state. The *Länder* are in charge of education and within the educational systems this applies to the schools sector (*Art. 7 I Grundgesetz*).⁷⁶ The Ministry of Education and Cultural Affairs of each Land is concerned with establishing the base for an efficient school system. Consequently, the rules governing compulsory schooling may vary from one German federal state to the next.

Compulsory schooling begins for all children in the year in which they reach the age of six and involves nine years of full-time schooling (ten years in Berlin, Brandenburg, Bremen and Thüringen; in Northrhine-Westphalia, the duration of full-time compulsory education is nine years for the grammar school, and ten years for other general education schools).⁷⁷ In Germany, education is divided into early childhood education, primary education, secondary education, tertiary education and adult learning. As shown above (5.2.1), both children and young persons have the education they need. For early childhood education and care please see Question 4.

Primary education is offered by the *Grundschule* (primary school) and covers grades 1-4 (in Berlin and Brandenburg grades 1-6). Secondary education is divided into lower and upper levels and is offered by three different types of schools - the *Hauptschule* (Lower Secondary School), *Realschule* (Middle Secondary School) and *Gymnasium* (Grammar School), all teaching a different curriculum with the aim of attaining a distinctive final qualification. Generally, at the age of 15 pupils have completed compulsory schooling and move into upper secondary education, which is either the last two grades of the *Gymnasium* that offers full-time general education and prepares pupils for the highest school qualification (the German *Abitur*) or vocational schools, as well as vocational education and training (dual vocational training). Around 60 per cent of young people in Germany take part in the dual system of vocational training - 'dual' because training takes place both in the company and in the part-time vocational school.⁷⁸

Tertiary education is provided by institutions of higher education and other establishments that offer study courses qualifying for entry into a profession to students who have completed the upper secondary level and obtained a higher education entrance qualification.⁷⁹ In Germany

⁷⁶ <http://www.bmbf.de/en/6204.php>.

⁷⁷ <http://www.bmbf.de/en/1263.php>.

⁷⁸ <http://www.bmbf.de/en/544.php>.

⁷⁹ http://www.kmk.org/fileadmin/doc/Dokumentation/Bildungswesen_en_pdfs/organisation_and_governance.pdf.

there are mainly two types of higher education institution: University and the *Fachhochschulen* (institutions which provide vocational education).

Generally, primary school is free as long as a child attends a state school, which is supervised by the Ministry of Education and Cultural Affairs of each Land. In Germany private schools are less common than in other EU-Countries but are nevertheless becoming increasingly popular. In most federal states the learning material for primary schools is provided by the state. The same applies to lower secondary education. For upper secondary education and tertiary education, young people should be especially encouraged and supported through the *Federal Education and Training Assistance Act* (BaföG) and *Upgrading Training Assistance* (Meister-BaföG), a state funded programme, which provides young people with the financial means necessary to cover living expenses and training fees.⁸⁰ According to § 68 SGB I it is a special form of social benefit and means that training is funded by the public sector.⁸¹ In 2013 the number of *BaföG* recipients remained at a very high level.

In total, 959,000 students were awarded *BaföG* grants and loans in 2013.⁸² On average 620,000 students and pupils received grants over the whole year.⁸³ However, significant financial barriers remain for many young people seeking to attend further education, one of the main problems regarding the educational system. In addition, the link between socio-economic background and the school a child attends remains strong. It is still the case that pupils with a low socio-economic status are much less likely to attend a *Gymnasium* than those from a better off background, with obvious knock-on effects when it comes to accessing tertiary education.

Despite the overall increase in higher education participation, disparities between different social groups have not been significantly reduced. In fact, the gap has become even wider for people with a migrant background.⁸⁴ The number of people who leave higher education institutions with a first degree has almost doubled since 2002.

⁸⁰ <http://www.bmbf.de/en/892.php>.

⁸¹ <http://www.bmbf.de/en/892.php>.

⁸² <http://www.bmbf.de/en/892.php>.

⁸³ <http://www.bmbf.de/en/892.php>.

⁸⁴ http://www.bmbf.de/pubRD/Education_in_Germany_2014.pdf.

5.2.4. Is youth unemployment high when compared to the general unemployment rate in your MS? If so, please describe what measures your MS has taken to address this issue.

Youth unemployment in Germany, which is defined as the unemployment of young people aged between 15 and 25 years, is the lowest within the EU and decreased to 5.2 % in April 2015.⁸⁵ Ultimately, this is due to two reasons: Firstly, demographic change and secondly, the education system. While the former will help lower unemployment in the mid- to long term, the focus should be on the educational system.

5.2.4.1. Dual system of vocational training

The dual educational system in Germany is considered to be one of the most effective within the EU in helping to prevent youth unemployment. It is part of the upper secondary education and may under certain circumstances lead to tertiary education or to a master craftsman's diploma (please see question 5.2.3). The core concept of the dual system of vocational training is a training that takes place simultaneously at a company and at a part-time vocational school.⁸⁶ About 60 % of young people take part in dual vocational training.⁸⁷ This approach combines practice and education with the aim of effectively promoting young skilled workers.

5.2.4.2. Regional differences

Although the problem of youth unemployment has eased considerably from a macroeconomic perspective in Germany, there are strong regional differences. While in federal states like Bavaria or Baden-Württemberg the youth unemployment rate is less than 2% and therefore hardly noticeable, in cities such as Berlin or Bremen it lies at around 15-17 %.⁸⁸ There is also a marked difference between the former communist states in the East (10.5%) and West Germany (5.5%).⁸⁹ Germany is thus split with regard to employment opportunities and vocational training. It is precisely in regions such as Berlin, Bremen and Brandenburg that the proportion of young people dropping out of vocational training or leaving school without qualifications is particularly high. These young people run the risk of becoming permanently trapped in a state of

⁸⁵ <http://de.statista.com/statistik/daten/studie/189105/umfrage/jugendarbeitslosenquote-nach-bundeslaendern/>.

⁸⁶ <http://www.bmbf.de/en/544.php>.

⁸⁷ <http://www.bmbf.de/en/544.php>.

⁸⁸ <http://de.statista.com/statistik/daten/studie/189105/umfrage/jugendarbeitslosenquote-nach-bundeslaendern/>.

⁸⁹ <http://de.statista.com/statistik/daten/studie/189105/umfrage/jugendarbeitslosenquote-nach-bundeslaendern/>.

unemployment.⁹⁰ Even within these regions there is a substantial difference in the rate of employment between urban and rural areas.⁹¹

5.2.4.3. *Qualification*⁹²

The risk of being unemployed also depends on the qualification a young person may have. Young people without professional training have much worse employment opportunities than those who have successfully completed vocational training and/or a school education. The main reason for youth unemployment is therefore not necessarily the lack of job opportunities but problems in ensuring that as many people as possible attain the education and qualification necessary for the job market. This is one of the main differences compared to other EU member states, where young people might not get a job even with a qualification.

Teenagers and young people have fewer chances to get a good training if they only have the school-leaving certificate. This is especially true for those who have just reached a lower-secondary-school qualification. Young people who do not attend at least upper secondary education face a high risk of unemployment or low wages.

5.2.4.4. *Measures taken by the federal government to address these issues*

The *Act to Improve the Chances of Integration in the Labour Market* (see also Question 4) aims to improve the integration of young people into the labour market by identifying the individual support required to successfully enter employment.

To help young people with the transition from school to work or vocational training the Federal Government introduced the Career Entry Support in April 2012 to inform pupils about career opportunities and a vocational preparation year.

The Federal Ministry of Education and Research also started initiatives aimed at mentoring young people during the critical transition from school to employment.

In addition, Germany implemented a “*National Pact to Promote Training and Young Skilled Workers*” (see also Question 4) to promote an increase in training positions in the leading organisations of German industry. Due to its success by reaching this target, the Pact was extended.

⁹⁰ http://www.diw.de/documents/publikationen/73/diw_01.c.420926.de/13-19.pdf.

⁹¹ http://doku.iab.de/forum/2008/Forum2-2008_Blien_Hong.pdf.

⁹² http://www.diw.de/documents/publikationen/73/diw_01.c.420926.de/13-19.pdf.

5.2.5 What impact have austerity measures had on the measures described in 5.2.1, 5.2.2, 5.2.3?

The described measures provided by the German Social Security Code have not been affected by any austerity measure. However, as education lies within the responsibility of the German Länder and not within the responsibility of the Bund, financial restrictions of the Länder influence the amount of training and education available to children. There are however upcoming constraints on the Länder, with the introduction of the Schuldenbremse (see Question 2), which will be required by law.

6. OTHER ISSUES

Are there any other relevant issues regarding the ESC, and not covered by the questions above, in your MS? Please describe the applicable legal framework and explain how it is not in compliance with the ESC.

The researchers were not able to find relevant aspects to be answered under this question.

7. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

Germany has neither signed nor ratified the Additional Protocol of 1995 providing for a system of collective complaints.

On April 21 1998, several Members of the Parliament put a Brief Question to the Federal Government of Germany, asking for the position of the Federal Government regarding the ratification and application of the European Social Charter.⁹³ Regarding Point 23 of the Brief Question, which concerned the reasons of the Federal Government for non-ratification of the Additional Protocol of 1995, the Government made the following comments⁹⁴:

⁹³ Bundestagsdrucksache 13/10460 [German].

⁹⁴ Bundestagsdrucksache 13/11415, 11 [German].

The democratic policy-making and thereby the freedom of decision of the responsible policymakers – in particular a future ‘Bundestag’ – shall only be restricted by international agreements in case of predominant reasons for such a commitment.

Concerning the ratification of the relevant protocol, substantive reasons are unfavourable. So far the monitoring procedure and the provisions of article 29 ESC regarding the recommendations of the Committee of Ministers have not aimed at increasing the commitments of the national legislator made by the ratification or create pressure apart from the necessity of justification. A legally binding condemnation was neither wished nor intended. The procedure under the amending protocol of the ESC and in even more the additional protocol regarding the collective complaint system are changing the constellation considerably. Due to the new complaint procedure positions that do not conform to the majority can be put forward in the course of the procedure against the intention of the national legislator. Therefore a collective complaint system might affect the domestic socio-political development.

Apart from that the introduction of the collective complaint procedure might lead to an additional impairment of the role of the governmental committee, especially as it is yet not at all guaranteed that the governmental committee is integrated in the procedure.

According to the report of the Federal Government on the state of the signing and ratification of European agreements and conventions concerning the period of March 2009 to February 2011⁹⁵, the Federal Government has still doubts regarding the signing and ratification of the Additional Protocol of 1995, especially as the outline of the monitoring procedure by the committee of experts is charged to the national government committee.⁹⁶

Frequently voices are being raised to demand the signing and ratification of the Additional Protocol, among others by the left party “*Die Linke*”⁹⁷ and the *German Institute for Human Rights* (DIMR – Deutsches Institut für Menschenrechte)⁹⁸.

⁹⁵ Bundestagsdrucksache 17/5315 [German].

⁹⁶ *ibid.*, 9 [German].

⁹⁷ <http://www.linksfraktion.de/interview-der-woche/soziale-menschenrechte-deutschland-schlusslicht/> [German].

⁹⁸ http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Stellungnahme_DIMR_9_Menschenrechtsbericht_der_Bundesregierung.pdf [German].

8. CONCLUSION

Germany has ratified the 1961 ESC on January 27 1965, but has refrained from ratifying the 1996 revised ESC, although it was signed on June 29 2007. So the revised version is not applicable for German legislature.

There have been no specific austerity measures as a reaction to the economic crisis in Europe. However, in order to achieve its long-term target of a structurally balanced fiscal budget, Germany will inevitably have to carry out cuts in social welfare.

Overall these measures have had a small impact on social security in Germany and the rights carried out by the ESC. As a matter of fact, the reactions to the crisis e.g. to the short-time working laws during peak of the crisis, led the government to spend even more money to help people to stay in jobs. In general, the German economy was not as severely influenced by the financial crisis of 2008 compared to other countries. This gave the opportunity to keep up with the same standard of social security as before the crisis. In some areas the level of social security and welfare could even be increased.

Since January 1 2011, families can get benefits from the education and participation package and since January 1 2013 there have been significant changes to simplify the determination of parental allowance, especially for unemployed parents and single parents. From August 1 2013, children in Germany who have reached their first birthday have the legal claim for public childcare. Following § 43 SGB VI (Book VI German Social Security Code), the pension for reduced earning capacity was improved in 2014 to prevent people with a reduced earning capacity from falling into poverty. By referring to the new changes to the minimum wage laws, the *Nursing Care Improvement Act I* and the *Equal Participation of Women and Men Act*, it is to be deduced that social rights have improved even more.

To sum it up one can conclude that austerity measures had no significant negative impact on the social rights guaranteed by the ESC.

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

Greece ratified the European Social Charter (ESC) on 6 June 1984 through Law n. 1426/1984 and accepted 67 of the Charter's 72 paragraphs. The Revised European Social Charter has been signed by Greece on 3 May 1996, but it has not yet been ratified. Greece has also ratified the Additional Protocol to the ESC and accepted the Additional Protocol (AP) providing for a system of collective complaints on 18 June 1998. However, it has not made yet a declaration enabling national Non-Governmental Organizations (NGOs) to submit collective complaints.¹

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

In the aftermath of the global economic crisis, which originally broke out in the USA in 2007 and rapidly deteriorated in autumn 2008, countries with serious external and domestic macroeconomic imbalances and structural weaknesses lacked the resilience and flexibility required to independently cope with the impact of the financial crisis.²

The Greek fiscal crisis erupted in the autumn of 2009, when the incoming socialist government uncovered an **unexpectedly high fiscal deficit** reaching 15.7% of GDP and a public debt reaching **129.7% of GDP**.³ These revelations dealt a severe blow to the country's credibility and brought about a confidence deficit, which, in turn, led to a downgrade of Greece's sovereign debt by Fitch, Standard & Poor's and Moody's making borrowing costs prohibitive. Unable to access funding from the financial markets, the Greek government was in need of financial assistance from its Eurozone partners. The factual interdependence of the participating

¹ See further, Council of Europe, 'Greece and the European Social Charter' <http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Greece_en.pdf> accessed on 19 February 2015.

² Bank of Greece - Centre for Culture, Research and Documentation, *The chronicle of the great crisis. The Bank of Greece 2008-2013* (Centre for Culture, Research and Documentation-The Bank of Greece 2014), 25.

³ *ibid* 36.

economies in the monetary union was so strong that the denial of some form of assistance to the debt-distressed countries could trigger a domino effect in the Eurozone as a whole. The quest for instruments to address the sovereign debt crisis brought a European **constitutional crisis** to the forefront: the EU did not possess the appropriate mechanisms to help the states in need and to guarantee financial stability of the common currency.⁴

The handling of this unprecedented situation launched a Europe-wide debate about the legality of the granting of assistance to Eurozone members in view of the '**No bail-out clause**' of art. 125 TFEU.⁵ Finally, on 2 May 2010, Greece received a first financial assistance package, consisting of a **EUR 110,000 million** bilateral loan, provided by the Eurozone member-states and the International Monetary Fund (IMF). Despite early projections for a quick resolution of the Greek crisis, it soon became apparent that Greece needed a second financial assistance package. Hence, on 14 March 2012 the Eurogroup approved the second financial assistance package for Greece, consisting of **EUR 130,000 million**, provided again by the Eurozone member-states and the IMF. This time though, the financial assistance on the side of the euro area Member States wasn't based on bilateral loans, but was provided by the European Financial Stability Facility (EFSF), a temporary crisis resolution mechanism which had been fully operational since August 2010.

The scheme followed in both financial assistance packages was similar: Domestic authorities and officials from the Commission, the ECB and the IMF – the so-called 'Troika' – negotiated macroeconomic adjustment programmes containing the conditions of financial assistance. The strict conditionality included in the programmes has so far been justified on the grounds that it expresses the Greek government's programme of reforms, or at least a consensual arrangement between Greece and its lenders.⁶ Nevertheless, in response to the question 'How much leeway did the countries concerned have to decide upon the design of the necessary measures?' raised by the European Parliament, the Greek minister stated that 'given the inability of Greece to

⁴ Anastasia Poulou, '*Austerity and European Social Rights: How Can Courts Protect Europe's Lost Generation?*' [2014] German Law Journal, 1145.

⁵ See further, Louis Jean-Victor, '*Guest editorial: The no-bail out clause and rescue packages*' [2010] Common Market Law Review 971; Palmstorfer Rainer, '*To bail out or not to bail out? The current framework of financial assistance for euro area Member States measured against the requirements of EU primary law*' [2012] European Law Review 771; Mike Wienbracke, '"Euro-Rettung" und sogenanntes "bail out"-Verbot (125 AEUV) nach dem "Pringle"-Urteil des EuGH' [2013] 16 ZEuS 1.

⁶ Michael Ioannidis, '*EU financial assistance conditionality after "Two Pack"*' [2014] ZaöRV 74, 61, 91.

access capital markets, its bargaining power was *de facto* weak.⁷ Hence, judging from the country's poor bargaining power and from the promise of reward, a justification of conditionality solely based on the alleged consensus of the Greek state is not convincing.⁸

The adjustment programmes were detailed in Memoranda of Understanding (MoU) and their most important elements were also included in Council Decisions directed to the respective recipient state.⁹ Within this framework, EU institutions were involved in two ways: Firstly, the Commission and the ECB were entrusted with formulating and monitoring the conditions of loan arrangements as constituent parts of the 'Troika'.¹⁰ Secondly, the Council of the EU approved the backbone of the financial assistance conditions in the form of Council Decisions. Hence, EU institutions are actively involved both in the drafting and in the official setting of the austerity measures. **As a result, Greece is bound to implement the measures framed in the form of secondary EU law.** Furthermore, one could validly argue that parallel to the fundamental rights of the Greek Constitution, the Charter of Fundamental Rights of the EU is applicable both for the EU institutions and the Member States applying the austerity measures.¹¹ Regarding their substance, the austerity programmes include not carefully targeted, indiscriminate cuts on social expenditure, amounting to unprecedented successive restrictions on social rights. It is apparent that these austerity measures relate to an extremely wide spectrum of social rights, which are protected both at national and international level.¹²

⁷ Ministry of Finance (Hellenic Republic), *Response of the Greek Minister of Finance to the questionnaire supporting the own initiative report evaluating the structure, the role and operations of the 'troika' (Commission, ECB and the IMF) actions in euro area programme countries'* (2014) <<http://www.europarl.europa.eu/document/activities/cont/201401/20140114ATT77323/20140114ATT77323EN.pdf>> accessed 25 February 2015, 3.

⁸ Ioannidis, *supra* n.6, 95.

⁹ Poulou, *supra* n.4, 1147.

¹⁰ Art.2 para.1 lit. (a) and art.3 para.1 of the EFSF Framework Agreement (consolidated version) <http://www.efsf.europa.eu/attachments/20111019_efsf_framework_agreement_en.pdf> accessed 22 February 2015.

¹¹ For a detailed analysis of this issue, see, Poulou, *supra* n.4, 1154 et seq.

¹² For a thorough analysis of social rights protection within Europe, see, Julia Iliopoulos-Strangas, *Soziale Grundrechte in Europa nach Lissabon. Eine rechtsvergleichende Untersuchung der nationalen Rechtsordnungen und des europäischen Rechts*, Nomos 2010. Especially for the case of Greece, see, Julia Iliopoulos-Strangas/Georg Leventis, *Der Schutz der sozialen Grundrechte in der Rechtsordnung Griechenlands*, in Julia Iliopoulos-Strangas, *Soziale Grundrechte in Europa nach Lissabon. Eine rechtsvergleichende Untersuchung der nationalen Rechtsordnungen und des europäischen Rechts*, Nomos 2010, 249 et seq.

The austerity measures that have been implemented in the domestic legal order have been introduced through labyrinthine laws, presidential decrees and ministerial decisions, which shall be analysed in detail in the following sections.

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

As a preliminary remark, it is important to note that upon ratifying the ESC, Greece declared that it would not consider itself bound by arts.5 and 6 ESC. Nevertheless, for the purposes of the present report, the conformity of the austerity measures implemented by Greece in the field of collective bargaining with arts.5 and 6 shall be examined *in abstracto*.

2.1.2. The pre-crisis legal framework

The Greek Constitution protects the right to collective bargaining (art.22 para. 2) and the right to unionise (art.23). Before the outburst of the crisis, the legal framework governing industrial relations was established by Law n. 1876/1990, according to which labour relations were regulated mainly at sectoral level with the conclusion of collective employment agreements (CEAs) between trade unions and employers, while State intervention was minimum. Sectoral CEAs took precedence over occupational and company ones, and the National General Collective Agreement (NGCA) set the minimum wage and work standards establishing thus a safety net for all workers in the Greek territory. According to the principle of favourability, in case of concurrent CEAs, the most favourable to the worker applied. Additionally, CEAs were still in force six months after their expiry (the so-called *metenergeia*). Finally, in case of an impasse in the negotiations with the employers, the workers had the prerogative to resort to arbitration unilaterally; the arbitrator's award could rule on both wage and nonwage matters and had the binding effect of a CEA and could thus protect effectively the interests of employees in case of disagreement with the employer.

2.1.3. The reforms of collective bargaining

The emergence of the financial crisis brought about substantial changes in the industrial relations. The relevant reforms were considered a key element of the adjustment programme.¹³ Labyrinthine laws aimed at rendering the labour market more flexible by, *inter alia*, decentralising collective bargaining, **jeopardising thus the autonomy of trade unions.** As one commentator put it, the new legislation aimed at the 'abolition of collective bargaining and the individualisation of contracts.'¹⁴ In fact, Law n. 4024/2011 stipulated that during the implementation of the adjustment programme, company level CEAs would take precedence over sectoral or occupational ones even if the latter contained more favourable provisions, provided that the safety net of the NGCA was observed; this **put an end to the principle of favourability.** In addition, under the same law company level CEAs may be concluded, in the absence of an employees' union in the company, by 'associations of persons'. These associations are composed of at least three fifths of the total number of employees, regardless of the total number of the company's employees, and are usually dispersed after the conclusion of the company CEA.

Law n. 4046/2012 and the relevant Joint Ministerial Decision n. 6/28.02.2012 abolished the NGCA concluded by the social partners in 2010, prohibited any salary raises enshrined either in law or in a CEA until the unemployment level fell below 10%, and reduced the period of CEAs' after-effect to 3 months. **Furthermore, minimum wage, as set in the NGCA, was reduced horizontally by 22%.** In continuation, Law n. 4093/2012 changed again the wage setting system; this would no longer be established through collective bargaining, but would be set by law. Subsequent Law n. 4172/2013 revised this system, stipulating that the minimum wage would be determined by a government decision, after consultation with the social partners. Finally, the institution of arbitration was not left intact by austerity: under Joint Ministerial Decision n. 6/28.02.2012 arbitration procedures can now be exclusively initiated only upon mutual consent of the parties. Besides, the arbiter can decide only on wage matters, taking also into consideration the general economic conditions of the country, the progress in enhancing the

¹³ Directorate-General for Economic and Financial Affairs, *The Economic Adjustment Programme for Greece* (Occasional Papers 61, May 2010) <http://ec.europa.eu/economy_finance/publications/occasional_paper/2010/pdf/ocp61_en.pdf> accessed 1 February 2015.

¹⁴ Apostolos Dedoussopoulos in collaboration with Valia Aranitou, Franciscos Koutentakis, Marina Maropoulou, *Assessing the Impact of the Memoranda on Greek Labour Market and Labour Relations* (ILO Working Paper No. 53, 2013) <http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_232796.pdf> accessed 10 February 2015, 50.

country's competitiveness and the reduction of labour cost during the adjustment programme. Hence, the possibility to rule on nonwage matter was abolished.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

Under art.6 ESC, States undertake to promote collective bargaining and joint consultations between workers and employers. Collective bargaining is considered the 'very essence and *raison d'être*' of a trade union and 'a fundamental trade union prerogative.'¹⁵ It involves voluntary negotiations between workers and employers; this implies that it is up to them to choose not only the matters of negotiation, but also the level at which negotiations can take place.¹⁶ Besides, according to the ECSR 'States should not interfere in the freedom of trade unions to decide themselves which industrial relationships they wish to regulate in collective agreements.'¹⁷ In addition, in order to be in conformity with art.6 ESC, States must ensure the participation of the affected groups in the promulgation of the regulations that apply to them.¹⁸

The anti-crisis legislation has severely weakened the role of trade unions as representatives of the workers' rights and paves the way for their marginalisation.¹⁹ The decentralisation of collective bargaining from sectoral to company level, 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. Besides, Law n. 4024/2011

¹⁵ Audrey R. Chapman and Russell Sage (eds), *Core obligations: building a framework for economic, social and cultural rights* (Intersentia, Antwerpen 2002), 66.

¹⁶ International Labour Office (ILO), *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (5th edn, Geneva, International Labour Office 2006), 988-991.

¹⁷ *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden* Complaint No. 85/2012 (ECSR, 3 July 2013), para. 111.

¹⁸ ECSR, Conclusions III (1973) Germany.

¹⁹ Isabelle Schömann, 'Collective Labour Law under Attack: How Anti-crisis Measures Dismantle Workers' collective rights' (ETUI Policy Brief No. 2, 2014) <<https://www.etui.org/en/Publications2/Policy-Briefs/European-Economic-Employment-and-Social-Policy/Collective-labour-law-under-attack-how-anti-crisis-measures-dismantle-workers-collective-rights>> accessed 20 February 2015; ILO, 365th Report of the Committee on Freedom of Association, Case No. 2820 (Greece): Reports in which the Committee requests to be kept informed of developments :Complaints against the Government of Greece presented by the Greek General Confederation of Labour (GSEE), the Civil Servants' Confederation (ADEDY), the General Federation Employees of the National Electric Power Corporation (GENOP-DEI-KIE) and the Greek Federation of Private Employees (OIYE) supported by the International Confederation of Trade Unions (ITUC), Reference Number, GB.316/INS/9/1, para.827.

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 and democratically elected persons and seriously compromises the unions' collective autonomy.²⁰ Taking into account that in 2012 almost 72.6% of all company level CEAs in Greece were concluded by these associations of persons and not by trade unions, it is apparent that Greece fails to comply with its positive obligation under art.11 ECHR to secure the effective enjoyment of trade union freedom in the context of collective bargaining and allow trade unions not only to be heard, but also 'strive for the protection of [their] members' interests'.²¹

In addition, the institution of social dialogue has suffered severe attacks; the austerity measures were voted in the Greek Parliament urgently and without prior consultation with the social partners. Even in cases where consultations did take place, no consensus was reached and the government proceeded to the passing of measures despite the disagreement of the social partners. Such disagreement was expressed, for example, in a joint letter of the social partners where they expressed their disapproval of the government's intention to reduce wages in 2012.²² As it has been suggested, references to social dialogue and consultation 'are mere pretexts and insincere'.²³ The ECSR has, in fact, found Spain to be in violation of art.6 para.2 ESC for failing to consult the social partners when implementing austerity measures similar to those taken by Greece.²⁴

States facing economic distress are expected to adopt measures to address this situation. Nevertheless, such measures should not have as a consequence the reduction of protection of rights reflected in the ESC. The latter must be effectively protected especially during an

²⁰ *ibid* para.826.

²¹ *Demir and Baykara v. Turkey* [GC], no. 34503/97, §§ 144, 154, 157, 159, Reports of Judgments and Decisions 2008. *National Union of Belgian Police v. Belgium*, 27 October 1975, §§ 39-40, Series A no. 19 p. 18. *Wilson, National Union of Journalists and Others v. the United Kingdom*, nos. 30668/96, 30671/96 and 30678/96, §§ 41-42, Reports of Judgments and Decisions 2002-V.

²² Sofia Lampousaki, 'Joint letter rejects private sector salary threshold cut' <<http://eurofound.europa.eu/observatories/eurwork/articles/other-working-conditions-industrial-relations/joint-letter-rejects-private-sector-salary-threshold-cut>> accessed 19 February 2015.

²³ Zoe Lanara, 'Trade Unions in Greece and the Crisis, A Key Actor under Pressure' <<http://library.fes.de/pdf-files/id/ipa/09012.pdf>> accessed 10 July 2014, 4.

²⁴ European Committee on Social Rights, Conclusions XX-3 (2014) Spain.

economic crisis 'when beneficiaries need protection the most.'²⁵ Austerity measures impose restrictions on the rights and, therefore, need to pass the proportionality test set by art. G, meaning that they have to be both appropriate and necessary in a democratic society and to achieve the legitimate aim pursued. The reforms implemented by Greece in the field of collective bargaining aimed at rendering the labour market more flexible in an effort to boost national economy. Nevertheless, so far, these measures 'have not contributed to the resolution of the issue of competitiveness of the Greek economy',²⁶ failing, thus, to pass the proportionality test and violating art.6 ESC.

Furthermore, the ILO Committee on Freedom of Association while examining a complaint lodged jointly by several Greek trade unions recognised that these measures were taken in an exceptional context, but urged Greece to comply with its obligations to promote and strengthen social dialogue.²⁷ It stated that the measures taken imposed 'extensive interventions in the voluntary nature of collective bargaining' which could 'destabilise the overall framework for labour relations'²⁸ and reiterated that such measures should be temporary in nature and that they need to be reviewed regularly following negotiation with the social partners, so that the latter could eliminate them 'at the earliest moment possible'.²⁹ Finally, at national level, it is important to note that with the Council of State decision n. 2307/2014, the reforms of the arbitration institution provided for in Cabinet Decision n. 6/28.02.2012 **were annulled as unconstitutional**; as a result, workers have regained their right to unilaterally resort to arbitration for both wage and nonwage matters.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

2.3.1. The right to a decent remuneration (Art. 4 para.1)

²⁵ European Committee on Social Rights, General Introduction to Conclusions XIX-2 (2009).

²⁶ 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.

²⁷ Schömann, supra n.19, paras.988-9.

²⁸ ibid para.995.

²⁹ ibid para.1000.

In an effort to reduce labour costs, Greece passed a series of laws imposing direct cuts in wages. Public sector wages were the first to suffer the consequences of the fiscal distress; under Laws nos. 3833/2010 and 3845/2010, they were initially reduced by **12%**, and later suffered a further reduction of **3%**. Furthermore, Law n. 3863/2010 provided for special apprenticeships for people between 15-18 years old with a remuneration amounting to **70%** of the general minimum wage. Under the same law, new entrants in the labour market under the age of 25 can be remunerated with the **84%** of the general minimum wage. Subsequently, the general minimum wage was reduced by **22%** (EUR 586 gross and EUR 476 after taxes) for workers older than 25 years old and by **32%** (EUR 510 gross and EUR 426.64 after taxes) for younger workers (Joint Ministerial Decision n. 6/28.02.2012). These measures have caused worrisome reactions both at national and international level: the Greek National Commission on Human Rights expressed its concern of ‘the rapid deterioration of living standards’,³⁰ the Greek Ombudsman has warned that ‘vulnerable groups increase and multiply’,³¹ whereas the UN Independent Expert observed that austerity has ‘compromised the living standards of the population.’³² Greek trade unions reacted by resorting to the ECSR with complaints against the labour reforms.³³ In complaint no. 66/2011,³⁴ the ECSR concluded that by establishing sub-minimum wages for young people, **Greece violated art.4 para.1 ESC** in the light of the non-discrimination clause included in the Preamble of the 1961 ESC. It held that for the remuneration to be fair, the wage had to be over the poverty line and must not fall below 60% of the national average wage (para.57). It stated that, although in certain circumstances it is acceptable to pay a lower minimum wage to young workers, this wage must under no circumstances fall under the poverty level of the country (para.60). Taking into consideration that with Law n. 4046/2012, the minimum wage for young workers was reduced by 32%, the ECSR concluded that their remuneration fell inadmissibly

³⁰ Greek National Commission on Human Rights, ‘NCHR Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights’ <http://www.nchr.gr/images/English_Site/CRISIS/nchr_crisis.pdf> accessed 12 January 2014, 1.

³¹ Greek Ombudsman, 2011 Annual Report summary, 1 <http://www.synigoros.gr/resources/ee2011-english_translation-final.pdf> accessed 12 January 2014.

³² Human Rights Council, *Report of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Employment of All Human Rights, particularly Economic, Social and Cultural Rights: Addendum, Mission to Greece (22-27 April 2013)*, A/HRC/25/50/Add.1, para.41 (UN Independent Report).

³³ For a further analysis, see below, Section 7.

³⁴ *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.

under the poverty level (para.64). The ECSR has reached the same conclusion regarding the minimum wage for workers over 25 years old on the grounds that the latter **is not sufficient to ensure a decent standard of living**.³⁵ Furthermore, workers' remuneration has been severely affected by the new flexible forms of employment. Under Law n. 3899/2010, employers can unilaterally impose rotation work for nine months instead of six, as previously envisaged, turning thus full time to part time work. The reduction of working time corresponds to a proportional reduction of remuneration. Indicatively, this type of work was unilaterally applied on workers by 7,846 enterprises in 2013, while the respective number in 2010 was only 60.³⁶

All these measures have excessively burdened workers and have brought to the forefront the previously invisible category of **'the working poor'**. In fact, in 2010 the in-work poverty was estimated at 13.8% of the working population.³⁷ Minimum wage has lost its function as a 'tool for poverty alleviation'³⁸ and **workers find themselves unable to satisfy even their basic needs**.

2.3.2. The right to a reasonable notice of termination (Art.4 para.4)

The **austerity measures have made dismissals easier and cheaper**. The ECSR has stated that the reasonableness of a termination notice cannot be judged *in abstracto*, but depends on the length of the service.³⁹ Laws nos. 3863/2010 and 3899/2010 reduced significantly both notice period and severance pay. Further reduction was introduced by Law n. 4093/2012, which lays down that the period of notice cannot exceed 4 months, regardless of the duration of the employment relationship. Within the Law n. 3899/2010, 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. This measure was found to be in **violation of art.4 para.4 ESC by the ECSR** in complaint no. 65/2011.⁴⁰ According to the ECSR, although the existence of a trial period is

³⁵ ECSR, Conclusions XX-3 (2014) Greece, 12.

³⁶ Matina Yannakourou and Chronis Tsimpoukis, 'Flexibility without Security and Deconstruction of Collective Bargaining: The New Paradigm of Labor Law in Greece' [2014] Comparative Labour Law & Policy Journal, 331, 335.

³⁷ European Union Statistics on Income and Living Conditions (EU-SILC), In-work at risk of poverty rate, <<http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tesov110&plugin=1>>, accessed 20 May 2014.

³⁸ UN Independent Report (19) para.45.

³⁹ ECSR, Conclusions XIII-4 (1996) Belgium.

⁴⁰ *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).

legitimate, its duration must not be so long that guarantees concerning notice and severance pay are rendered ineffective (para.26).The ECSR concluded that art. 4 para.4 ESC was violated since no provision of severance pay was guaranteed under Law n. 3899/2010 (para.28).

2.3.3. The anti-crisis legislation before the Council of State and the ECtHR

Decision n. 68/2012 of the Council of State ruled on the legality of wage cuts in the public sector imposed by Law n. 3845/2010. In a lengthy judgment, it stated that in the context of the acute fiscal crisis, the salary cuts were in principle neither inappropriate nor unnecessary, but proportional. Furthermore, the Council of State held that the constitutional principles of equal participation to the public expenses, in proportion with each other's possibilities (art.4 para.5) and the principle of human dignity (art.2 para.1), were not violated and concluded that the measures taken were in conformity with ECHR and the Greek Constitution.⁴¹ In continuation, the case was brought before the ECtHR; in *Konfaki and ADEDY v. Greece*, the applicants claimed that the measures in question violated art.1 of Protocol 1 ECHR.⁴² The ECtHR, taking into consideration the economic hardship of the country, reiterated that States enjoy a wide margin of appreciation with regard to their social policy (para.31). It held that wage cuts were enacted in the public interest (para.41) without being disproportionate (para.44), whereas the applicant failed to demonstrate how her living conditions had been worsened, at the risk of falling below the **subsistence threshold** (paras.44-46). Hence, it concluded that the measures in question were compatible with the right to property and dismissed the application as **manifestly ill-founded**.

Against this background, a series of decisions concerning particular groups of employees stand out: Council of State decisions nos. 4741/2014 and 2192-2196/2014 held that the reductions in the salaries of the members of teaching/research university staff and of the members of uniformed services were unconstitutional. The Special Court on disputes concerning the remuneration and pension of magistrates and judges⁴³ (*Misthodikieio*) reached the same conclusion in regards with their salaries (Decisions nos. 88-89/2013). In all of these cases, domestic courts referred to the favourable treatment that the Constitution grants to these groups, stressing that

⁴¹ The same line of thinking and conclusion was also followed in Council of State Decision n. 2307/2014.

⁴² *Konfaki and Adedy v. Greece* (dec.), App. Nos. 57665/12 and 57657/12 (ECHR 7 May 2013).

⁴³ See further, art.88 para.2 of the Constitution of Greece as revised by the parliamentary resolution of 27 May 2008 of the VIIIth Revisionary Parliament.

their earnings must be sufficient for a decent living and proportionate to the importance of their mission for the State.

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by his/her own efforts or from other sources?

Greek nationals and permanent resident foreigners in need who are not covered by general health care schemes are eligible for free medical services after being granted Social Protection Certificates.⁴⁴ After assessing the applicant's income, the person might be required to participate in the costs at a rate amounting to 30%. Holders of Social Protection Certificates are entitled to full hospitalisation in public hospitals, at third class beds, examination (including para-clinical and laboratory tests) and free administration of medicines, as well as medical transfer, if needed.

Furthermore, the National Social Cohesion Fund, an entity of public law under the supervision of the Ministry of Economy and Finance, has been set up in view of a transition from the general social expenditure to expenditure targeted to poor households.⁴⁵ The aim of the Fund is to support the most vulnerable groups at risk of poverty through integrated programmes of targeted income support. The categories of beneficiaries shall be determined on the basis of specific income and social criteria. The income criterion refers to an annual income lower than 60% of the median equivalent total available income, which is officially defined as the poverty line.⁴⁶ At the same time, the social criteria take into consideration specific social circumstances, such as single-parent families, unemployment or low income pensions. Apart from the benefits of the Fund, an emergency one-off allowance of EUR 600 is provided by the state, through the

⁴⁴ According to Joint Ministerial Decision n. 139491 (Laying down conditions, criteria and procedures for the access to the nursing care and healthcare system of the uninsured and the economically disadvantaged citizens) 2006.

⁴⁵ Through Law n. 3631 (Establishment of the National Social Cohesion Fund) 2008 [Καθορισμός προϋποθέσεων, κριτηρίων και διαδικασιών πρόσβασης στο σύστημα νοσηλευτικής και ιατροφαρμακευτικής περίθαλψης ανασφάλιστων και οικονομικά αδυνάτων πολιτών].

⁴⁶ European Commission, Eurostat, 'Glossary: At-risk-of-poverty rate' <http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:At-risk-of-poverty_rate> accessed 15 March 2015.

ministry in charge, to people unable to cover their basic living costs from any other source of income.⁴⁷ Moreover, pensioners who live on low benefits, are entitled to receive yearly, and for as long as they fulfil certain income criteria, a social solidarity supplement (EKAS) granted by their pension fund.⁴⁸ It is further to be noted that monetary benefits of maternity are paid to all working mothers who are unable to claim such benefits from their insurance body or who are uninsured, and that all female foreign citizens are entitled to a maternity allowance, provided that they meet the requirements of a legal residence in Greece and of non-payment by their insurance body.⁴⁹ In addition, a Special Emergency Fund was established under the status of a public law entity, aiming at financing programmes for the support and relief of people stricken by fires, earthquakes, floods and other natural disasters and extreme weather phenomena.⁵⁰ The same Law stipulates the granting of social benefits and financial support to all permanent residents of fire-stricken areas, with no exceptions. Despite the abovementioned assistance measures, the ECSR concluded in 2014 that the situation in Greece was not in conformity with art.13 para.1 ESC on the ground that there is no legally established general assistance scheme that would ensure that everyone in need has an enforceable right to social assistance.⁵¹

3.1.2. Persons who are unable to secure adequate resources either by his/her own efforts or from other sources due to illness?

⁴⁷ According to Law n. 57 (Taking measures on the social protection of the financially weak and repeal of the provisions governing the institution of destitution) 1973 and Ministerial Decision n. 31777 (Amendment of the Joint Ministerial Decision n. Π2/οικ.2673/2001 and increase of one-off allowance from EUR 234.78 to a maximum of EUR 600) 2009 [Λήψη μέτρων κοινωνικής προστασίας των οικονομικώς αδυνάτων και καταργήσεως των διεπουσών τον θεσμόν της απορίας διατάξεων].

⁴⁸ According to art.20 of Law n. 2434 (Policy Measures for Employment and Vocational Education and Training and Other Provisions) 1996 [Μέτρα πολιτικής για την απασχόληση και την επαγγελματική εκπαίδευση και κατάρτιση και άλλες διατάξεις].

⁴⁹ According to art.4 para.5 of Law n. 1302 (Ratification of the International Labour Organisation Convention No. 103/1952) 1982 [Επικύρωση της Διεθνούς Σύμβασης Εργασίας αριθ. 103/1952 «για την προστασία της μητρότητας»].

⁵⁰ Through Law n. 3624 (Ratification of the Act of Legislative Content of August 29, 2007 'social benefits and financial reinforcements to the fire victims') 2007 [Κύρωση της από 29 Αυγούστου 2007 Πράξης Νομοθετικού Περιεχομένου «Κοινωνικές παροχές και οικονομικές ενισχύσεις τους πληγέντες από τις πυρκαγιές»].

⁵¹ ECSR, Conclusions XX-2 (Greece), 37.

Social security protection in the case of invalidity is earnings-related and depends on the contributions and the affiliation duration before the person was affected by a social risk.⁵² Nevertheless, uninsured and indirectly insured people are eligible for welfare benefits. Persons with disabilities entitled to welfare benefits are: blind, deaf, heavily mentally retarded, HIV-positive people, people with severe disabilities (epilepsy, diabetes mellitus, lupus erythematosus, etc.), people with cerebral palsy and persons suffering from physical disabilities. Furthermore, asylum seekers, who are not residing in reception centres and are disabled in a percentage of over 67%, are entitled to a disability allowance, which amounts to EUR 290 per month.⁵³

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

To begin with, we will refer in brief to some specific austerity measures so that we can observe their impact, related to their nature, on the right to social and medical assistance of people without adequate resources. More precisely, reduction of pensions, dismissals, reduction of public health costs, as well as restrictions on disability pensioners have directly affected the right to social and medical assistance of the people in need.

3.2.1. Reduction of pensions

The reduction of pensions and subventions of holidays predicted by such Laws as nos. 3845/2010, 3863/2010, 3986/2011, 4024/2011, 4046/2012 and 4093/2012 has obviously resulted in the **reduction** of the household income. Although there have been commitments concerning the protection of low pensioners,⁵⁴ austerity measures have affected the social and

⁵² See further, Maria Korda, *The Role of International Social Security Standards. An in-depth study through the case of Greece* (Intersentia 2013), 342 et seq.

⁵³ According to Presidential Decree n. 220 (Harmonisation of the Greek Legislation to the provisions of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (Official Journal L 031, 06/02/2003)) 2007 [Προσαρμογή της Ελληνικής Νομοθεσίας προς τις διατάξεις της Οδηγίας 2003/9/ΕΚ του Συμβουλίου της 27ης Ιανουαρίου 2003, σχετικά με τις ελάχιστες απαιτήσεις για την υποδοχή των αιτούντων άσυλο στα κράτη μέλη (EEL 31/6.2.2003)].

⁵⁴ According to art.1 para.I; Annex I_V of Law n. 3845 (Measures to implement a mechanism to support the Greek economy by the Member States of the Euro area and the International Monetary Fund) 2010 [Μέτρα για την εφαρμογή του μηχανισμού στήριξης της ελληνικής οικονομίας από τα κράτη - μέλη της Ζώνης του ευρώ και το Διεθνές Νομισματικό Ταμείο]; art.7, Annex V_I of Law 4046 (Approval of Plans of Financial Facilitation between the European Financial Stability Facility (E.F.S.F.), the Greek Republic and the Bank of Greece, the Plan of Memorandum of Understanding between the Greek Republic, the European Commission and the Bank of Greece and other urgent measures to reduce the public debt and rescue the national economy)

medical care of people without adequate resources since the basic pension was appointed at EUR 360⁵⁵ from 2015, whereas the poverty threshold was set on a monthly basis at **EUR 540** per person in 2011.⁵⁶ In addition, the reduction of the basic pension is also applied with no exception, to the people in need who are entitled to a reduced pension, and specifically to the aged persons, the disabled and beneficiaries because of their relative's death as predicted under art.2 of Law n. 3863/2010. Furthermore, the social solidarity allowance for the retired due to age, disability or death, provided for in art.34 of Law n. 3996/2011 was available from January 2014 only pensioners over the age of 65, limiting thus the number of beneficiaries in need.⁵⁷ In this context, the Greek Ombudsman issued a press release calling for the continuance of payment of allowance for all pensioners and predicted that this particularly onerous measure means the exception of needy persons who are excluded from the reduced participation to medicines cost and puts at risk their medical care.⁵⁸ The abovementioned measures resulted in a reduction in annual household income that has affected pensioners' living standards and has impeded access to medical and social care for the people in need.⁵⁹

3.2.2. Dismissals

2012 [Έγκριση των Σχεδίων Συμβάσεων Χρηματοδοτικής Διευκόλυνσης μεταξύ του Ευρωπαϊκού Ταμείου Χρηματοπιστωτικής Σταθερότητας (Ε.Τ.Χ.Σ.), της Ελληνικής Δημοκρατίας και της Τράπεζας της Ελλάδος, του Σχεδίου του Μνημονίου Συνεννόησης μεταξύ της Ελληνικής Δημοκρατίας, της Ευρωπαϊκής Επιτροπής και της Τράπεζας της Ελλάδος και άλλες επείγουσες διατάξεις για τη μείωση του δημοσίου χρέους και τη διάσωση της εθνικής οικονομίας].

⁵⁵ According to art.2 of Law n. 3863 (New Social Security System and Relevant Provisions) 2010 [Νέο ασφαλιστικό σύστημα και συναφείς διατάξεις, ρυθμίσεις στις εργασιακές σχέσεις].

⁵⁶ According to Hellenic Statistical Authority (EL. STAT.), Press Release 'Income and Living Conditions Year 2012: Income reference period 2011' <http://www.statistics.gr/portal/page/portal/ESYE/BUCKET/A0802/PressReleases/A0802_SFA10_DT_AN_00_2_012_01_F_GR.pdf>, accessed 15 March 2015, 19.

⁵⁷ According to art.15 of Legislative Act 'Addressing urgent issues falling within the competence of the Ministries of Interior, Labour, Social Insurance and Welfare, of Public Order and Citizen's Protection, of the General Secretariat of the Government and the Minister of State' Government Gazette Issue n. 256 31 December 2012 [Ρυθμίσεις κατεπειγόντων θεμάτων αρμοδιότητας των Υπουργείων Εσωτερικών, Εργασίας, Κοινωνικής Ασφάλισης και Πρόνοιας, Δημόσιας Τάξης και Προστασίας του Πολίτη, της Γενικής Γραμματείας της Κυβέρνησης και του Υπουργού Επικρατείας, ΦΕΚ 256/31.12.2012].

⁵⁸ See further, Greek Ombudsman, 'The Ombudsman calls for the continuance of the Social Solidarity Supplement for Pensions (EKAS) programme for all disability pensioners, regardless of their age and degree of disability' Press Release (2014) <<http://www.synigoros.gr/resources/docs/456850.pdf>> accessed 20 January 2014.

⁵⁹ See further, OECD, 'Pensions at a Glance 2013, OECD and G20 Indicators' (2013) <<http://www.oecd.org/greece/OECD-PensionsAtAGlance-2013-Highlights-Greece.pdf>> accessed 27.02.2015.

Furthermore, the pre-retirement availability and the automatic dismissal of civil servants provided for under art.33 of Law n. 4024/2011 affected the number of unemployed, who, after two years of unemployment, lose their social insurance.⁶⁰

3.2.3. Reduction of public health costs

In addition, a series of measures concerning the reduction of expenses of public health laid down in Law n. 4046/2012, and more specifically the definition of public health cost maximum limit at 6% of GDP, the reduction of outside hospitals public pharmaceutical costs to EUR 200,00 million by 2014 and the reduction of 20% in the number of doctors by 2013, affected the social and medical care of people without adequate resources. Overall, the health budget has been cut down by **40%**. As a result, public health cost in Greece is at lower level with respect to any other member state of 15 European Union countries.⁶¹ Furthermore, the abovementioned austerity measures incomed the access to medicines. More precisely, according to a report of the independent expert of UN, the reduction of expenses of health-care has caused serious lack of medicines at hospitals and the introduction of co-payments has worsened the situation, since many patients due to austerity couldn't afford to pay for their medication.⁶² In addition, the reforms have restricted the right to medical assistance for undocumented immigrants. Due to the abovementioned austerity measures, the welfare state in Greece has been significantly affected. According to international reports,⁶³ a serious percentage of people in Greece are foregoing medical care not only due to financial constraints and reduced household incomes, but also due to rising out-of-pocket costs. Low-income groups are the worst affected, although they are likely to have the highest health care needs, and may be foregoing necessary care, such as medicines or routine medical check-ups for chronic conditions. This may have long-term health downgrade for the most vulnerable groups and economic consequences for society. This negative impact is

⁶⁰ ECSR, Conclusions XX-2 (November 2014) Greece, 25; Human Rights Council, *Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights*, Cephias Lumina, 17.

⁶¹ FIDH/HLHR, *'Downgrading rights: The cost of austerity measures in Greece'*, 15.

⁶² Human Rights Council, *Report of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, particularly Economic, Social and Cultural Rights*, 17.

⁶³ Human Rights Council, *Report of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, particularly Economic, Social and Cultural Rights*, 17; OECD, *'Health at a Glance 2013: OECD Indicators'* (2013) <<http://www.oecd.org/els/health-systems/Health-at-a-Glance-2013.pdf>> accessed 27 February 2015.

also outlined by the ECSR. More precisely, the Committee did not find that there was a properly functioning system in Greece that provided social and/or medical assistance to persons in need in the meaning of the Charter.⁶⁴ According to the Committee, the situation in Greece is not in conformity with art.13 para.1 of the Charter on the ground that there is no legally established general assistance scheme that would ensure that everyone in need has an enforceable right to social assistance.⁶⁵

In conclusion, according to the ECSR, the guarantee of a genuine individual right to assistance, together with a right to legal remedy, is a major contribution made by art.13, whereas social and medical assistance for persons in need is a safeguard against poverty. However, in Greece, the austerity measures worsened the -already defective- legal framework according to the Committee, and hindered the creation of a functioning system of social and medical assistance. This is the reason why there is an urgent need to reform the Greek social and medical assistance system in order to ensure the access of people without adequate resources to minimum but earnest levels of the welfare state, in accordance with the European Social Charter's requirements.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

The National Centre for Social Solidarity (EKKA) is the national coordinating body in Greece for the provision of social services to persons, families and population groups undergoing an intense emotional crisis or being in a state of emergency. Its mandate includes the coordination and linking of the Network of Services that provide social care and solidarity, the provision of emergency psychosocial support to children, families and vulnerable social groups affected by social exclusion and crisis, the information of the public on social welfare issues, including their linking to the Network of Social Welfare Services, and the training of professional and public awareness on social welfare issues. The access to social services is free of charge for all persons

⁶⁴ ECSR, *Activity report 2013*, 21.

⁶⁵ *ibid* 166.

belonging to a target group, namely for families, children and young people, elderly people, people with disabilities, vulnerable social groups, as well as foreign nationals legally residing in Greece. The effective access to the Centre depends on the availability of services, with priority given to the most vulnerable cases. Moreover, the Workers' Social Fund (OEE) is a contributory social policy body for lower income classes and socially vulnerable groups. The fund is in charge of nurseries, hotels and food supply companies. Additionally, the Workers' Housing Organisation (OEK) is the main provider of social housing in Greece. It is the main social housing policy vehicle and the largest housing construction body in the public sector. Nonetheless, the second MoU, signed in the framework of the second financial assistance package, prescribed the abolition of the Workers' Social Fund (OEE) and the Workers' Housing Organisation (OEK).⁶⁶ In implementation of this condition, Law n. 4046/2012 abolished these two public law entities, which had a continuous social activity for more than 70 years.⁶⁷ Apart from these public services, some NGOs are actively involved in alleviating personal or family want. For example, PRAKSIS is an independent NGO whose main goal is the design, application and implementation of humanitarian programmes and medical interventions.⁶⁸ Likewise, ARSIS -the Association for the Social Support of Youth- is an NGO, specialising in both the social support of youth and other social groups that are in difficulty or danger and in the advocacy of their rights. Lastly, the Greek Council for Refugees (ESP) is an NGO which has been active since 1989 in the field of asylum and human rights in Greece.⁶⁹

⁶⁶ See, European Commission, Directorate-General for Economic and Financial Affairs, *The Second Economic Adjustment Programme for Greece* (March 2012) Occasional Papers 94, 110, 148.

⁶⁷ According to art.1 para.6 and art.2 para.1 of Law n. 4046 (Approval of Plans of Financial Facilitation between the European Financial Stability Facility (E.F.S.F.), the Greek Republic and the Bank of Greece, the Plan of Memorandum of Understanding between the Greek Republic, the European Commission and the Bank of Greece and other urgent measures to reduce the public debt and rescue the national economy) 2012 [Έγκριση των Σχεδίων Συμβάσεων Χρηματοδοτικής Διευκόλυνσης μεταξύ του Ευρωπαϊκού Ταμείου Χρηματοπιστωτικής Σταθερότητας (Ε.Τ.Χ.Σ.), της Ελληνικής Δημοκρατίας και της Τράπεζας της Ελλάδος, του Σχεδίου του Μνημονίου Συνεννόησης μεταξύ της Ελληνικής Δημοκρατίας, της Ευρωπαϊκής Επιτροπής και της Τράπεζας της Ελλάδος και άλλες επείγουσες διατάξεις για τη μείωση του δημοσίου χρέους και τη διάσωση της εθνικής οικονομίας].

⁶⁸ See further, PRAKSIS Independent Non-Governmental Organization <www.praksis.gr> accessed 10 February 2015.

⁶⁹ See further, Greek Council for Refugees <www.gcr.gr> accessed 10 February 2015.

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

People at risk of poverty or social exclusion (AROPE) are defined⁷⁰ as the share of the population in at least one of the following three conditions: a) at the risk of poverty, meaning below the poverty threshold,⁷¹ b) in a situation of severe material deprivation, c) living in a household with very low work intensity. According to the interpretation of the ESC with regards to art.30,⁷² 'poverty' is defined as deprivation due to a lack of resources, whereas 'social exclusion' refers to persons suffering from extreme poverty, degrading situations or events, or from exclusion, whose rights to benefit may have expired a long time ago. Furthermore, this term refers to persons, who, without being poor, are denied access to certain rights or services as a result of long periods of illness, the breakdown of their families, violence, release from prison or marginal behaviour as a result, for example, of alcoholism or drug addiction.⁷³

A brief overview of the situation in Greece in 2009, just before the outburst of the global economic crisis, shows that poverty rates in the country were at a stable level around 20%, but substantially higher compared to the EU median average with reference to EU indicators.⁷⁴ In addition, the percentage of poverty, combined with social exclusion in Greece in 2009, amounted at **27.6%** - a percentage also high compared to the EU average.⁷⁵ This already flawed situation was seriously worsened by the austerity measures that the Greek Government had to

⁷⁰ European Commission, Eurostat, '*Glossary: At risk of poverty or social exclusion (AROPE)*' <http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:At_risk_of_poverty_or_social_exclusion_%28AROPE%29> accessed 25 February 2015.

⁷¹ Which is set at 60% of the national median equivalised disposable income after social transfers.

⁷² Council of Europe, *Digest of the case law of the European Committee of Social Rights* (2008), 167.

⁷³ Council of Europe, *European Social Charter Collected Texts* (6th edition 2008) 186.

⁷⁴ European Commission, Eurostat, '*At-risk-of-poverty Rate by Poverty Threshold, Age and Sex*' (2015) <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_li02&lang=en> accessed 25 February 2015.

⁷⁵ European Commission, Eurostat, '*At-risk-of-poverty Rate by Poverty Threshold, Age and Sex*' (2015) <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_li02&lang=en> accessed 25 February 2015.

take, over the last five years, in order to achieve a 'brutal fiscal adjustment'. The austerity measures and precisely the cut of salaries, pensions and social subventions, as well as health budgets, the dismissals and the reduction of social insurance (as described above), resulted in failure to protect the most vulnerable groups against poverty and social exclusion,⁷⁶ which, under circumstances of extreme material poverty in case of persons who are wholly dependent on State support, may engage the responsibility of the State in respect of ill-treatment imputable to public authorities, in breach of human dignity and physical integrity.⁷⁷

The impact of these 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 on today's high percentages of the abovementioned vulnerable groups.

4.1. Deterioration of poverty

The reduction of salaries under Laws nos. 3833/2010, 3845/2010, 3899/2010, the reduction of the lowest income under Law n. 4093/2012 and as a result, the reduction of the subvention of unemployment predicted for under Joint Ministerial Decision n. 3800/359/1.3.2012, resulted in the fall of the poverty threshold, increasing poverty and making the already poor people poorer. Actually, according to a recent ETUI policy brief on inequality, due to poverty and crisis in Greece as a result of austerity, **5%** of the Greek population in 2010 saw its annual income falling below the 2009 poverty line, swelling the ranks of those who were already in poverty (another **20%** of the population).⁷⁸ This statement is also confirmed by the rising of poverty and social exclusion rates in Greece after 2009. More precisely, the poverty rate in 2013 has risen by 3 points from the level of 2009, up to **23.1%** according to the Eurostat statistics,⁷⁹ whereas in 2013, the poverty and social exclusion risk has risen by 8 points, up to **35.7%**. The connection between the austerity measures and the high percentages of the Eurostat is also noted in the

⁷⁶ European parliament Resolution of 13 March 2014 on Employment and Social Aspects of the Role and Operations of the Troika (ECB, Commission and IMF) with Regard to Euro Area Programme Countries' (2014/2007/(INI), 13 March 2014), 5 <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0240+0+DOC+XML+V0//EN>> accessed 27 February 2015.

⁷⁷ *Budina v. Russia* (dec.), App. No. 45603/05, (ECHR, 18 June 2009); *Lariosbina v. Russia* (dec.), App. No 56869/00, (ECHR, 23 April 2002).

⁷⁸ International Labour Office, *Report on the High Level Mission to Greece (Athens, 19-23 September 2011)*, 59.

⁷⁹ European Commission, Eurostat, '*At-risk-of-poverty Rate by Poverty Threshold, Age and Sex*' (2015) <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_li02&lang=en> accessed 25 February 2015.

European Parliament resolution of 13 March 2014,⁸⁰ as well as in the report of the Independent Expert of the UN, Cephas Lumina.⁸¹

4.1.1. Increase of rate of people living in material deprivation

The austerity measures also affected the rate of people living in material deprivation. More precisely, through Law n. 4021/2011 (art.53), a special tax, the so-called '*haratsi*', was imposed on built surfaces with electricity connexion (E.E.T.H.D.E), 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,⁸² which annulled this specific sanction, this sanction infringes the right to a decent living. Furthermore, the privatisation of the *Water Supply* and Sewerage Company 'E.Y.D.A.P.' resulted, according to the Greek Council of State, in uncertainty concerning water provision, especially for the people living in adverse housing conditions. With this reasoning, the privatisation of E.Y.D.A.P. was annulled by the Council of State.⁸³ The negative impact of these measures and of the reduction of the lowest income and of unemployment subvention, as described above, is also mirrored on the percentage of people living in a situation of severe material deprivation which has significantly risen from **11%** in 2009 to **20.3%** in 2013, according to Eurostat.⁸⁴

4.1.2. Increase of unemployment

In addition, the pre-retirement availability and the automatic dismissal of civil servants, provided for under art. 33 of Law n. 4024/2011, affected the rates of unemployment, exacerbating social exclusion and poverty. Indeed, the negative effect of the abovementioned austerity measures in combination with the economic crisis created high rates of long-term unemployment in

⁸⁰ European parliament Resolution of 13 March 2014 on Employment and Social Aspects of the Role and Operations of the Troika (ECB, Commission and IMF) with Regard to Euro Area Programme Countries' (2014/2007/(INI), 13 March 2014), 6.

⁸¹ UN Human Rights Council, *Report of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, particularly Economic, Social and Cultural rights*, Cephas Lumina, 20-21.

⁸² Greek Council of State (Plenary Session), Judgment No. 1972 (2012), thought 25.

⁸³ Greek Council of State (Plenary Session), Judgment No. 1906 (2014).

⁸⁴ European Commission, Eurostat, '*Severe material deprivation rate by age and sex*' (updated 16 February 2015) <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_mddd11&lang=en> accessed 10 February 2015.

Greece;⁸⁵ an impact also confirmed by the European Parliament Resolution 2014.⁸⁶ These high rates are also indicated in the statistics of Eurostat. More precisely, according to the statistics of the latter, the gap of unemployment has widened dramatically from **9%** in 2009 to **27.5% in 2013**⁸⁷ and has fallen to **25.5%**⁸⁸ in 2014, according to the ELSTAT. In 2012, **youth unemployment** in Greece reached **57.6%**.⁸⁹ Moreover, the rate of people living in a household with a very low work intensity rate has risen from 6.6% in 2009 to 18.2% in 2013.⁹⁰ While the unemployed are eligible for the medical care benefits by virtue of Law n. 3863/2010, the long term unemployed, i.e. the unemployed for longer than two years, are severely affected by the austerity measures, as on the expiry of this two-year period they lose their public health insurance.⁹¹

4.1.3. Reduction of expenses on social protection of vulnerable groups

In addition, the austerity measures and more specifically, the reduction of health-care spending,⁹² such as the reduction of pharmaceutical expenses and of outpatient pharmaceutical expenditure, predicted by Law n. 4046/2012, caused longer time of waiting, higher costs of participation for the patients and finally, resulted in the exclusion of poor and marginalised groups from the health system.⁹³ This may have long-term health downgrade for the most vulnerable groups and may engage the responsibility of the State under art.2 ECHR, in case of a wholly insufficient

⁸⁵ Organisation for Economic Co-operation and Development (OECD), *Employment Outlook 'How does Greece Compare?'* (September 2014), 1.

⁸⁶ European parliament Resolution of 13 March 2014 on Employment and Social Aspects of the Role and Operations of the Troika (ECB, Commission and IMF) with Regard to Euro Area Programme Countries' (2014/2007/(INI), 13 March 2014), 4.

⁸⁷ 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.

⁸⁸ 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].

⁸⁹ Council of Europe Commissioner for Human Rights, *Report by Nils Mužnieks* No.6

⁹⁰ European Commission, Eurostat, 'People living in households with very low work intensity by age and sex (population aged 0 to 59 years)' (Last update: 16 February 2015) <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_lvhl11&lang=en> accessed 10 February 2015.

⁹¹ UN Human Rights Council, *Report of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, particularly Economic, Social and Cultural rights, Cephias Lumina*, 17.

⁹² To below 6% of GDP from 10% in recent years -approximately EUR 12.400 million in 2012.

⁹³ European Network of National Human Rights Institutions (ENNHRI), *Open letter on the upcoming Troika visit to Greece* (Edinburgh 10 January 2014), 2. See, also, UN Human Rights Council, supra n. 91, 17.

amount of social benefit to persons in extreme poverty, posing thus, a 'real and immediate risk either to [their] physical integrity or life'.⁹⁴ Furthermore, the austerity measures affected the social exclusion related to HIV infection. From 2010 to 2011, a 52% increase in HIV infections was reported. According to the relevant reports, this increase was mainly due to unsafe injecting practices among drug addicts, especially desperate young Greek citizens facing unemployment who had turned to drugs.⁹⁵

4.1.4. Roma Community

As far as Roma population in Greece is concerned, the negative impact of austerity measures is, somewhat, confirmed by the Conclusions of the ECSR, as well as by the European Court of Human Rights' jurisprudence.

More precisely, according to the Committee's jurisprudence, the housing conditions of Roma families in Greece are not adequate, Roma families have not sufficient legal protection and the level of family benefits is manifestly inadequate.⁹⁶ Indeed, a large number of Greek Roma resides in illegally established camps. More specifically, they live in dwellings made by themselves out of materials such as plastic, pieces of wooden panels, glass, fibreglass, etc. In most of the cases, these camps do not have running water, electricity, toilets or any facility necessary for dignified human living.⁹⁷ Furthermore, during the period of economic crisis, the Greek government has missed its target for the integration of Roma population to education. According to the European Court's jurisprudence,⁹⁸ Greece was found in several cases in breach of art.14 (prohibition of discrimination) of the Convention taken in conjunction with art.2 (right to education) of Protocol No. 1 related to Roma ethnic origin. As far as the right to employment is concerned, the vast majority of uneducated Roma people are self-employed (or unemployed).

⁹⁴ *Kutevov and Anikeyenko v. Russia* (dec.), App. No. 68029/01, (ECHR, 25 October 2005), para.62.

⁹⁵ UN Human Rights Council, supra n. 91, 17.

⁹⁶ 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.

⁹⁷ The Greek Ombudsman, 'The Greek Ombudsman's Roma Intervention Speech' (The European Parliament Committee on Civil Liberties, Justice and Home Affairs In Brussels, 1 December 2010) <<http://www.synigoros.gr/resources/roma-brussels-2010.pdf>> 8 April 2015, 2.

⁹⁸ European Court of Human Rights, *Sampani and others v. Greece, Lavida and Others v. Greece*, <http://www.echr.coe.int/Documents/FS_Roma_ENG.pdf> accessed 8 April 2015.

They usually engage in trade (*e.g.* selling carpets and agricultural goods in local markets, operating small businesses *etc.*), while others gather and sell iron and steel scrap or other metal parts.⁹⁹

In response to this situation, the Greek Government took a series of measures aiming to the social integration of Roma population. More specifically, with respect to their housing there are currently 39 Roma camps¹⁰⁰ in Greece, although, as mentioned above, the living conditions are not always adequate. As far as education and culture are concerned, the Greek government has made some positive steps aiming at integrating Roma population, such as by offering a monetary benefit for the enrolment of Roma children to school, or by permitting the enrolment of undocumented students, or by having adopted the 'card of travelling student' and preparatory classes.¹⁰¹ Furthermore, Greece participates in 'Intercultural Mediation for Roma Communities' – ROMED Programme which is an initiative organised by the Council of Europe and the European Commission with the aim to train mediators in delivering quality mediation between Roma communities and local authorities. More precisely, its goal is to improve the quality and effectiveness of the work of school/health/employment mediators, with a view to support better communication and cooperation between Roma and public national institutions (school, healthcare providers, employment offices).¹⁰² Finally, as far as employment is concerned, subsidised programmes of OAED (Manpower Employment Organisation) have been organised in order to start new businesses directed towards Roma, as well as similar training programmes, which, however, must be linked to finding a secure job.¹⁰³ This program, indented for Greek Roma, provided financial support to 500 new freelancers in order to launch their own personal business or to continue the operation of an already existing business.

⁹⁹ The Greek Ombudsman, *The Greek Ombudsman's Roma Intervention Speech* (The European Parliament Committee on Civil Liberties, Justice and Home Affairs In Brussels, 1 December 2010) <<http://www.synigoros.gr/resources/roma-brussels-2010.pdf>>8 April 2015

¹⁰⁰ The Greek Ombudsman, *Interactive Map of Roma Camps* <<http://www.synigoros.gr/maps?i=maps.el.maps>> accessed 8 April 2015.

¹⁰¹ The Greek Ombudsman, *The Greek Ombudsman's Roma Intervention Speech* (The European Parliament Committee on Civil Liberties, Justice and Home Affairs In Brussels, 1 December 2010) <<http://www.synigoros.gr/resources/roma-brussels-2010.pdf>>8 April 2015, 2.

¹⁰² ROMED, *Intercultural Mediation for Roma Communities* (A Joint Council of Europe/ European Commission Action) <<http://romed.coe-romact.org/sites/default/files/leaflets/ROMED1%20-%20ENGLISH.pdf>> accessed 8 April 2015.

¹⁰³ Manpower Employment Organisation, *Employment Programmes for Enterprises – Employers (beneficiaries) and for Unemployed persons/Employees (Beneficiaries)* <http://www.oaed.gr/index.php?option=com_content&view=article&id=630&Itemid=764&lang=el> accessed 8 April 2015.

4.1.5. Migrants and asylum seekers

One other group affected by the austerity measures is undocumented immigrants; according to an official directive issued on 2 May 2012, public services, public corporate bodies, local authorities, and social security institutions are not obliged to provide services to undocumented third-country nationals, except in cases of urgency. Additionally, the reduction of disability pension predicted by Law n. 3863/2010 worsened the social protection of this vulnerable group. Finally, according to relevant reports, austerity measures are being connected with the appearance and rise of the far-right political party 'Golden Dawn' and the attacks on vulnerable groups, such as immigrants and asylum seekers, recording 400 incidents over the last three years.¹⁰⁴

4.2. Measures aiming to a right to decent living-social and medical assistance

In response to this situation, the Greek Government took a series of measures aiming to social integration of vulnerable groups, so as to fight against poverty.

More precisely, in order to guarantee the right to a decent living the Greek government issued a Joint Ministerial Decision,¹⁰⁵ which established in November 2014 'a minimum guaranteed social income' predicted by Law n. 4093/2012. According to the Decision, the pilot programme 'Guaranteed Social Income' provides to the beneficiaries: a) income support, b) promotion and inclusion to social programmes – actions such as information of beneficiaries, referral to social services, provision of insurance booklet, social housing invoice of the Greek electric power company, water public company and municipal water and sewage companies, c) actions of integration and reintegration into work, including new jobs, community service programmes, training programmes, internships and work experience, integration (or reintegration) to educational programme. In addition, the programme predicted provision of heating allowance, inclusion to a programme of Social Grocery, inclusion to programmes implemented under the Fund for European Aid to the Most Deprived (FEAD), as well as to other programmes confronting poverty and social exclusion. This programme was implemented from November 2014, for six months to 13 Municipalities. Indeed, from 15 November 2014, beneficiaries could

¹⁰⁴ Human Rights Watch, *World Report- Events of 2014* (Seven Stories Press 2015).

¹⁰⁵ Joint Ministerial Decision n. 3018 (Official Gazette Issue 2/7 November 2014).

apply for the minimum income. In addition, under a 2013 Joint Ministerial Decision¹⁰⁶, income support to upland households and disadvantaged areas with low incomes was established. Meanwhile, actions of social integration were taken under the operational programme 'Development of Human Resources', which was co-founded by Greece¹⁰⁷ and the European Social Fund and was included in the National Strategic Reference Framework (2007-2013). Its aim is to prevent and tackle unemployment, foster social integration and reform the health sector. The programme beneficiaries are the poor, the unemployed and the homeless¹⁰⁸. Within the framework of the latter, it has been achieved the well functioning of the National Direct Social Network (Government in coordination with NGOs). Until now, 256 social structures, such as social groceries and pharmacies have been included.¹⁰⁹ In this context, in June 2013, the National Organisation for Health-care Provision (EOPYY) initiated the free distribution of medicines to about 50,000 unemployed and uninsured persons through a network of 'social' pharmacies in Attica - an initiative that was also welcomed by the UN Independent Expert.¹¹⁰

These measures fall within the ambit of art.30 ESC which refers to health, social security and social protection and requires from members to promote access to social rights.¹¹¹ However, although the percentages of social exclusion and poverty have severely increased since 2010, practically these measures have been taken with a remarkable delay. In addition to that, in order to fight against poverty and social exclusion, the Greek government provides a basic daily unemployment benefit, which in 2011, amounted at EUR 18.46 per day or EUR 461.50 monthly. However, it is to be noted that in 2011 the subsidised persons without dependents would get EUR 230 in unemployment benefit, which fell far below the 40% of the Eurostat at-risk-of-

¹⁰⁶ Joint Ministerial Decision n. 2/71338/0026 (Laying down the procedures and the supporting documents for the payment of the income support payment to families in less-favored and mountainous regions) 22 July 2013 [Καθορισμός διαδικασίας και δικαιολογητικών για την πληρωμή της εισοδηματικής ενίσχυσης οικογενειών ορεινών και μειονεκτικών περιοχών].

¹⁰⁷ Its administration is under the Special Management Service (SMS) of the Ministry of Labour and Social Security.

¹⁰⁸ Operational Programme 'Human Resources Development (EPANAD)' <<http://www.epanad.gov.gr/default.asp?PID=13&la=1>> accessed January 20 2014 [Greek].

¹⁰⁹ National Network of Immediate Social Intervention <<http://www.koinoniasos.gr/>> accessed 20 January 2014.

¹¹⁰ UN Human Rights Council, Report of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, particularly Economic, Social and Cultural rights, Cephias Lumina, 18.

¹¹¹ Council of Europe, *European Social Charter Collected Texts* (6th edition 2008), 257.

poverty rate and has thence been found to be manifestly inadequate for the people in need by the ECSR.¹¹²

4.3. Measures aiming at the areas referred to in art.30 ESC

4.3.1. Employment- training

Under the National Strategic Reference Framework (NSRF) 2007-2013, a programme is being implemented in order to assure access to education for the vulnerable groups. More specifically, this programme is considered to be an intervention to assist vulnerable social groups by certified, specialised centres for social and professional integration of persons with disabilities, detoxified, in the process of rehabilitation, long term unemployed, immigrants, homeless, people living in poverty.¹¹³ This measure is in conformity with art.30 of the ESC, according to which the State is required to strengthen the access of the poor and of the people suffering from degrading situations or exclusion to social rights.¹¹⁴

4.3.2. Housing

In order to assure social integration in Greece, the National Centre of Social Solidarity (E.K.K.A.) has been created, under the auspices of the Ministry of Labour, Social Security and Welfare, providing short-period hosting hostels and social hostels for the homeless. Greeks falling within vulnerable social groups and immigrants holding a work permit card have access to the above hostels. According to reports of 2012,¹¹⁵ these hostels provide hosting, psychological support, information for the available social services and connection with educational and medical services. Furthermore, there is the Reception and Solidarity Centre of the Municipality of Athens, which provides three hostels for the homeless –one of which is not operational. According to the website of the Municipality of Athens, these two hostels are hosting 160

¹¹² European Committee of Social Rights Conclusions XX-2 (Greece), 26.

¹¹³ ESF Actions Implementation Authority <[http://www.eye-ekt.gr/\(S\(jy2r4de4yqg0p455tktxx4aj\)\)/eye/StaticPage.aspx?pagenb=52053](http://www.eye-ekt.gr/(S(jy2r4de4yqg0p455tktxx4aj))/eye/StaticPage.aspx?pagenb=52053)> accessed 10 February 2015 [Greek].

¹¹⁴ Council of Europe, *European Social Charter Collected Texts* (6th edition 2008), 186.

¹¹⁵ Hellenic Ministry of Labour, Social Insurance and Welfare, 'Report for the operation of the National Center of Social Security' (2013) <http://www.ekka.org.gr/portal_docs/forceaccount/picture/20_1064.pdf> accessed 12 February 2015, 24.

homeless.¹¹⁶ The Reception and Solidarity Centre provides hosting, social- psychological support, clothing and feeding to the destitute, the homeless and the immigrants. These measures are in conformity with art.30 of the ESC, according to which States are required to improve information on social rights and related benefits and to combat psychological and socio-cultural obstacles in order to ensure the access to fundamental social rights.¹¹⁷ However, taking into consideration the big amount of people at risk of poverty or social exclusion as mentioned above, the access to these social services can be questioned.

4.3.3. Education and culture

As far as education is concerned, an educational programme for the vulnerable groups was implemented under the National Strategic Reference Framework (NSRF) 2007-2013. More precisely, in 2009-2010 a Greek language course was made available to unemployed, immigrants, refugees and other unemployed falling within vulnerable social groups, who could not integrate into society due to insufficient knowledge of Greek language.¹¹⁸ The access of the vulnerable groups to culture is ensured by the issuance of a culture card providing for free access to cultural sites.

4.3.4. Social and medical assistance

Concerning social and medical assistance, apart from the measures of the pilot plan ‘minimum guaranteed social income’, the Ministry of Health issued a Joint Ministerial Decision¹¹⁹ for free access to primary health care services for the uninsured and the poor.

All in all, with a view to ensure the effective exercise of the right to protection against poverty and social exclusion, art.30 requires States to adopt an overall and coordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and

¹¹⁶ Municipality of Athens, Reception and Solidarity Centre of the Municipality of Athens, <<https://www.cityofathens.gr/eypatheis-koinonikes-omades/astegoi>> accessed 20 January 2015 [Greek].

¹¹⁷ Council of Europe, *European Social Charter Collected Texts* (6th edition 2008), 388.

¹¹⁸ ESF Actions Implementation Authority, supra n.113.

¹¹⁹ Joint Ministerial Decision n. 56432 (Establishment of the conditions ,*criteria* and procedures for access of the uninsured and financially weak citizens to the pharmaceutical care *system*) 2014 [Καθορισμός προϋποθέσεων, κριτηρίων και διαδικασιών πρόσβασης στο σύστημα φαρμακευτικής περίθαλψης ανασφαλιστών και οικονομικά αδυνάτων πολιτών].

remove obstacles to access fundamental social rights.¹²⁰ According to the interpretation of the ESC, art.30 is included in the group of provisions concerning health, social security and social protection¹²¹ and the resources must be adequate. In the case of Greece, **a series of measures have been taken in conformity with the aforementioned article but, either with a remarkable delay or with lack of coordination.** This lack of effectiveness is inferred by the impact of austerity measures as mentioned above, as well as the high percentages of poverty and social exclusion. However, according to the European Social Committee ‘while it may be reasonable for the crisis to prompt changes in current legislation and practices, in one or other of these areas, in order to restrict certain items of public spending or relieve constraints on businesses, these changes should not excessively destabilise the situation of those who enjoy the rights enshrined in the Charter’.¹²² Furthermore, according to the jurisprudence of the European Social Committee ‘governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most.’¹²³ Moreover, according to the Committee, an increase of social exclusion and poverty rates and a lack of coordinated approach may entail a breach of art.30.¹²⁴

Relying on these data, even though there has been an effort in this direction, it has not been conducted in conformity with art.30, since access to the relevant services was not always effective or was given with serious delay. This is why Greece is required to adopt an overall and coordinated approach, aiming to reduce poverty and social exclusion, especially in the time of economic crisis, in order to guarantee the minimum but fundamental standards on decent living for all.

¹²⁰ Council of Europe, ‘*Digest of the case law of the European Committee of Social Rights*’ (1 September 2008) <http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf> accessed 20 February 2015, 167,168.

¹²¹ Council of Europe, *European Social Charter Collected Texts* (6th edition 2008), 257.

¹²² cf. *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), para.17.

¹²³ European Committee of Social Rights, *Conclusions* (2013) Italy, art.30.

¹²⁴ *ibid.*

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Art.15 ESC)

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

The social integration of people with disabilities differs from country to country and depends on many parameters, including legislative measures taken in order to meet the needs of these people, and allow them to be an active part of the society. The UN Convention on the Rights of Persons with Disabilities,¹²⁵ the UN Convention on the Rights of Child and the ESC prescribe the legal framework addressing the various issues regarding people with disabilities.¹²⁶

Concerning Greece, the Constitution recognises the State's positive obligation to ensure the protection of the right to special care for people with a chronic physical or mental illness or disability.¹²⁷ Furthermore, Law n. 3304/2005¹²⁸ prohibits, *inter alia*, all kinds of discrimination against people with special needs in the fields of education and employment.

The right to special care includes, among others, the protection of the right to education. In particular, as provided in art.1 of Law n. 2817/2000:¹²⁹

¹²⁵ UN General Assembly, Convention on the Rights of Persons with Disabilities (adopted 13 December 2006).

¹²⁶ For the development of the rights of people with disabilities, see, Deborah Mabbett, *The Development of Rights-based Social Policy in the European Union: The Example of Disability Rights* [2005] *Journal of Common Market Studies* 43, 97-120.

¹²⁷ 'People with disabilities have the right to enjoy measures that ensure their autonomy, professional incorporation and participation in the social, economic and political life of the country' (art.21 para.6).

¹²⁸ Law n. 3304 (Application of the principle of equal treatment independently of racial or national origin, religious or other beliefs, disability, age or sexual orientation) 2005 [Εφαρμογή της αρχής της ίσης μεταχείρισης ανεξαρτήτως φυλετικής ή εθνοτικής καταγωγής, θρησκευτικών ή άλλων πεποιθήσεων, αναπηρίας, ηλικίας ή γενετήσιου προσανατολισμού].

¹²⁹ Law n. 2817 (Education of people with special educational needs and other provisions) 2000 [Εκπαίδευση των ατόμων με ειδικές εκπαιδευτικές ανάγκες και άλλες διατάξεις]. The NCHR observes that even the legislation through separate laws constitutes a per se form of discrimination on people with disabilities. See, National Commission for Human Rights, Recommendations of the NCHR on the occasion of the Draft Law on Special Schooling and Education (Εθνική Επιτροπή για τα Δικαιώματα του Ανθρώπου, Συστάσεις της ΕΕΔΑ με αφορμή το Σχέδιο Νόμου για την Ειδική Αγωγή και Εκπαίδευση).

6. Persons with special educational needs are provided with special education, which in the context of the goals of primary, secondary and higher education pursues in particular: a) the development of their personality, b) the improvement of their abilities and skills, so that is possible their integration or reintegration in the common educational system and their cohabitation with the society, c) their professional grounding and their participation in the productive process, d) their mutually acceptance with the society and their equal social evolution. 7. For the achievement of the above goals measures are taken and services are provided to the above persons until the age of 22 years old in all classes of schools in primary and secondary education. Those measures include particularly the grounding and the implementation of special programs and teaching methods, the use of teaching materials and the providing of organs and special equipment and generally any kind of facilitations and ergonomic arrangements. The services include in particular diagnosis of the special educational needs of persons with disabilities, evaluation, pedagogical and psychological support, nature cure, occupational therapy, speech treatment, social and consultative work, transfer and movement and any other measure or service that supports the equal treatment of persons with special needs.¹³⁰

In Greece, education of people with special needs is provided by the state in public schools, free of charge (art.1 para. 9 of Law n. 2817/2000). The Ministry of Education is exclusively responsible for the special education of persons with special needs (art.1 para. 10 of Law n. 2817/2000). The latter can attend either the common school classes, with parallel support of a teacher qualified in education of people with special needs, or specially organised and staffed classes operating in schools of general technical professional education (art.1 para.11 of Law n. 2817/2000). When it is extremely difficult for people with disabilities to attend any of the aforementioned classes, due to the type and degree of their disability, it is possible for them to attend: a) independent schools of special education, b) classes that operate either independently or annexed to other schools in hospitals, recovery centres, as long as those who are hospitalised or live there children with special educational needs, c) classes in home, in exceptional cases. In such cases, tele-education is possible (art.1 para.12 of Law n. 2817/2000).

Concerning the provisions on independent special education schools, the following observations need to be made. To begin with, these types of schools consist of the following three levels: 1. nursery and primary schools for children between the ages of 4 to 14 years old (these schools

¹³⁰ Unofficial translation by the writer.

operate as united school units), 2. middle schools for persons from the age of 14 until the age of 18 years old, 3. united high schools for people until the age of 22 years old and lastly, 4. technical professional schools. The latter are further divided into two levels. In particular, the schools of first degree are addressed to those that have graduated from primary schools and their attendance lasts at least five years, whereas the schools of second degree are attended by those who have graduated from middle school. People with special needs also have the possibility, from the age of 14 till the age of 22, to attend workshops of special professional grounding (art.1 para.13 of Law n. 2817/2000). For apparent reasons, their education can be extended depending on the educational difficulties faced (art.1 para.15 point a of Law n. 2817/2000). Although in Greece school attendance is compulsory for nine years, for students with intellectual disabilities this does not seem to apply in practice.¹³¹

Moreover, there are established, by Law n. 2646/1998,¹³² Centres for the support of people with special needs, which operate in the context of the National Organisation of Social Care, with the aim, among others, to promote employment (art. 13 para. 1 point b, c and d of Law n. 2646/1998). Finally, according to the data for the year 2006, there were more than 50 Centres of Vocational Training and more than 20 Specialized Centres of Vocational Training for disabled people in most municipalities of Greece.¹³³

¹³¹ Open Society Institute EU Monitoring and Advocacy Programme, Open Society Institute Mental Health Initiative, Rights of People with Intellectual Disabilities, Access to Education and Employment, Greece, Monitoring Report 2006, 33.

¹³² Law n. 2646 (Development of the National System of Social Care and other provisions) 1998 [Ανάπτυξη του Εθνικού Συστήματος Κοινωνικής Φροντίδας και άλλες διατάξεις].

¹³³ Eleni Strati and Anna Evangelinou, Report on the employment of disabled people in European countries, Country: Greece, (Academic Network of European Disability experts, 2007), <<http://www.disability-europe.net/content/aned/media/EL%20-%20ANED%202009%20Employment%20Report%20Final.pdf>> accessed 13 March 2015, 11.

The current legislative context does not address totally the various parameters of the desired structure of the educational system of children and people with special needs. To start with, the ECSR has come to the conclusion that Greece's legislation in that field is in violation with art.15 para.1 ESC, since there are no provisions for life-long education of people with disabilities.¹³⁴ Furthermore, the UN Committee on the Rights of the Child recommended Greece to equip schools with all necessary facilities for the inclusive education of children with disabilities and ensure that they can choose their preferred school according to their best interests.¹³⁵ Another important issue concerning the education of people with special needs is mixed schooling.¹³⁶ This consists in an educational policy promoted in the context of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities.¹³⁷ But, this is still a policy partially applied.

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

¹³⁴ As cited in National Commission for Human Rights Recommendations of the NCHR on the occasion of the Draft Law on Special Schooling and Education (Εθνική Επιτροπή για τα Δικαιώματα του Ανθρώπου, Συστάσεις της ΕΕΔΑ με αφορμή το Σχέδιο Νόμου για την Ειδική Αγωγή και Εκπαίδευση), 15.

¹³⁵ UN Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Greece, CRC/C/GRC/CO/2-3 (13 August 2012), para. 51 point (d).

¹³⁶ That should not undermine the need to strengthen the already existing special schools. See, National Commission for Human Rights (supra n. 129). Pursuant to Law n. 4186/2013 (Law n. 4186/2013 (Government's Gazette Α' 193/17.09.2013) 'Restructuring of Secondary Education and other provisions' [Νόμος 4186/2013 (ΦΕΚ Α' 193/17.09.2013) Αναδιάρθρωση της Δευτεροβάθμιας Εκπαίδευσης και λοιπές διατάξεις] in classes attended by students with special educational needs and which have the maximum number of students, that number is reduced analogically (three students for every student with special educational needs) [art.28 para.15].

¹³⁷ United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, A/RES/48/96, December 1993. National Commission for Human Rights, Suggestions concerning the application of Law n. 3699/2008 'Special Schooling and Education of persons with disabilities or with special educational needs', Athens, 9 April 2009 (Εθνική Επιτροπή για τα Δικαιώματα του Ανθρώπου, Προτάσεις σχετικά με την εφαρμογή του Ν. 3699/2008 «Ειδική Αγωγή και Εκπαίδευση ατόμων με αναπηρία ή με ειδικές εκπαιδευτικές ανάγκες», Αθήνα, 9 Απριλίου 2009), 6.

As regards the access of people with disabilities to employment, reference must be made to Law n. 2643/1998¹³⁸ that protects, among others, people with at least 50% disabilities, that have limited potentials for professional exercise because of a chronic physical or mental or psychological disease or condition, provided that they are registered in the Manpower Employment Organisation and they are between 21 and 45 years old. Particular protection is afforded for those who have a child or sibling or spouse with disability of over 67% or more, due to severe psychological and physical conditions (this is formed to 50% or more, when the persons suffer from mental disabilities or autism).

The aforementioned law creates a *quota* scheme for both the private and the public sector. In particular, foreign enterprises that operate in Greece in any form, including their affiliates, under the condition that they employ more than fifty people, **are obliged to employ a percentage of 2% employees of the aforementioned category** (except for those enterprises that present damage during the last two years). Of course, this percentage is obligatory as for its minimum level of protection, meaning that each enterprise can certainly employ more people with disabilities. However, as for the year 2007, this legislative provision has been implemented by only 20% of the companies.¹³⁹ The percentage is raised at 3% for the public sector. Concerning in particular, the organisations of common benefit, banks and public sector, have the obligation, apart from the already mentioned, to employ a) at a percentage of 80% of vacancies at telephone centres blind graduates of the schools of training of blind telephonists, b) at a percentage of 1/5 of vacancies of night guards people with disabilities and c) at a percentage of 8% of lawyers of the legal services department.

The Greek legislation has also implemented provisions for the operation of sheltered workshops and workshops of professional training for people with mental health problems that aim at therapy, social rehabilitation and placement of these people into the various forms of the labour market (Law n. 2716/1999¹⁴⁰, art.10). The financial resources of these enterprises include their

¹³⁸ Law n. 2643 (Regard for the employment of persons of special categories and other provisions) 1998 [Μέριμνα για την απασχόληση προσώπων ειδικών κατηγοριών και άλλες διατάξεις].

¹³⁹ Eleni Strati and Anna Evangelinou, *Report on the employment of disabled people in European countries, Country: Greece*, (Academic Network of European Disability experts, 2007), 9.

¹⁴⁰ Law n. 2716 (Development and modernization of mental health services and other provisions) 1999 [Ανάπτυξη και εκσυγχρονισμός των υπηρεσιών ψυχικής υγείας και άλλες διατάξεις].

income from sales, funds (both national and EU) and donations and their members retain limited legal responsibility.¹⁴¹

Accompanying measures for employers include, among others, wage subsidies for employing people with learning disabilities, financial support for the adaptation of the workplace in order to meet the needs of people with disabilities, provisions special arrangements in cases of sick and state funding in order to employ people with special needs.¹⁴² Unfortunately, in Greece there is no legislative background for sheltered and supported employment.¹⁴³

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

Education, employment and austerity are three concepts that intercross in times of economic crisis. The situation becomes even more severe for people with disabilities. Although there are no concise data on the application of legislative provisions on persons with disabilities, there are some undisputed facts. It is indicative that in a recent press release, the Greek Ombudsman on the rights of children with disabilities notes that there is lack of financial sources concerning the fulfilment of organic positions by permanent educative, special educative and help staff.¹⁴⁴ This fulfilment often takes place at a later stage, long after the beginning of school year.¹⁴⁵ In addition, there are also problems regarding the application of measures aiming at the equal access to general schools.¹⁴⁶ Since the very beginning of the crisis in Europe, the presence of people with

¹⁴¹ Eleni Strati and Anna Evangelinou, *Report on the employment of disabled people in European countries, Country: Greece*, (Academic Network of European Disability experts, 2007), 11.

¹⁴² European Commission, *Supported Employment for people with disabilities in the EU and EFTA-EEA good practices and recommendations in support of a flexicurity approach* (Study Report, May 2011) <http://ec.europa.eu/justice/discrimination/files/cowi.final_study_report_may_2011_final_en.pdf> accessed 11 March 2015, 89.

¹⁴³ *ibid* 91. For more information on how sheltered employment works for people with disabilities, see, Laurent Visier, *Sheltered employment for persons with disabilities* [1998] *International Labour Review* 137, 347-365.

¹⁴⁴ The Greek Ombudsman, *The Ombudsman on the rights of children with disabilities* Press Release (2014) [Συνήγορος του Πολίτη, Δελτίο Τύπου, Ο Συνήγορος για τα δικαιώματα των παιδιών με αναπηρίες, (2014)]. As resulted from surveys, a 38% of the special nurseries and 23% of both primary and secondary special schools could not operate due to a lack of financial means. See, European Foundation Centre, *Assessing the Impact of European Governments' Austerity Plans on the Rights of People with Disabilities*, European Report (2012), 29.

¹⁴⁵ The Greek Ombudsman, *supra* n.144.

¹⁴⁶ *ibid*.

disabilities in the labour market has decreased.¹⁴⁷ All of the above simply underline **a core principal**: that even in times of economic crisis, it is crucial to keep in mind that the principles of equal treatment and non-discrimination should be two of the cornerstones of each social human-centered policy.

5.2 Children and Young Persons (Article 17 ESC)

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

Article 17(1a) and (2) ESC imposes on MS the positive obligation to provide all children and young persons with social, legal and economic protection, in particular by giving effect to the right to education through the establishment of educational systems that shall be directed to the development to the fullest potential of children's personality, talents and mental and physical abilities.¹⁴⁸ Drawing upon international human rights treaties,¹⁴⁹ and the interpretative Comments of the Committee of the Rights of the Child (CRC) and the Committee of the International Covenant of Economic, Social and Cultural Rights (ICESCR), art.17 incorporates four interrelated features of the right to education, namely its availability, accessibility, acceptability and adaptability.¹⁵⁰ Access to public schools should be guided by non-discrimination¹⁵¹ not

¹⁴⁷ Council of Europe Commissioner for Human Rights, *Safeguarding human rights in time of crisis*, Issue Paper (2013). In the EU, the economic crisis affected disproportionately people with disabilities compared to the general population. See, European Foundation Centre, supra n. 144, 22. But, still, at least as of the year 2011, according to EUROSTAT, the unemployment rate for persons without any activity difficulty is higher than those with difficulties. See, European Commission, Eurostat, *Disability statistics - labour market access* <http://ec.europa.eu/eurostat/statistics-explained/index.php/Disability_statistics_-_labour_market_access> accessed 3 March 2015, 6.

¹⁴⁸ Council of Europe, European Social Charter (Revised), 3 May 1996, ETS 163.

¹⁴⁹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into 3 January 1976) 993 UNTS 3 (ICESCR), Art.13-14; UNGA Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3(CRC), Art.28-29; First Protocol to the European Convention on Human Rights (adopted 1952), ETS 5. The right to education was already proclaimed in the Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) Art.26 and in the World Declaration on Education for All: Meeting Basic Learning Needs, adopted in Thailand in March 1990.

¹⁵⁰ UN Committee on the Rights of the Child (CRC), *General comment No. 1 (2001), Article 29 (1), The aims of education*, CRC/GC/2001/1(17 April 2001); UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)*, E/1992/23 (10 May 1999) and UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education*

merely in terms of physical and economic accessibility (*i.e.* schools fairly distributed over a convenient geographical area and education affordable to everyone), but foremost in maintaining equal standards in education policies for vulnerable groups residing in the state's territory, ranging from children in care or deprived of their liberty to pregnant teenagers, minority and refugee children or children unlawfully present in the country.¹⁵² Yet, education will not be efficient unless effect is given to its qualitative dimension.¹⁵³ In view of the holistic development of children's personality,¹⁵⁴ teaching curricula should be able to equip them with lifelong skills suitable for diverse sociocultural settings.¹⁵⁵

Article 16 of the Greek Constitution prescribes education as a mission for the state aiming at the intellectual, professional and physical training of Greeks, the development of consciousness and their formation as responsible citizens. Everyone is entitled to free education at all levels at public institutions, and the state shall provide financial assistance to groups in need in order to enable them enjoy their right to education.¹⁵⁶ Embracing education in a rights-language, the state has assumed responsibility to invest in human and material infrastructure to make the right to education practical and effective.

(*Art. 13 of the Covenant*), E/C.12/1999/10 (8 December 1999). The interplay between ESC and the CRC regarding the interpretation of Art.17 is emphasized by the ECSR. See, European Committee of Social Rights, '*Conclusion XV-2, Statement of Interpretation on Art.17*', <http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/Year/XV2Vol1_en.pdf> accessed 25 February 2011, 26. Also, *World Organisation against Torture (OMCT) v. Ireland*, Complaint No. 18/2003 (ECSR, 7 December 2004), paras.61-63.

¹⁵¹ UN Educational, Scientific and Cultural Organization (UNESCO), *Convention Against Discrimination in Education* (14 December 1960) <<http://www.refworld.org/docid/3ae6b3880.html>> accessed 25 February 2015.

¹⁵² European Committee of Social Rights, '*Statement of Interpretation on Art.17§2, Activity Report 2011*' (Council of Europe, May 2012) <http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ActivityReport2012_en.pdf> accessed 25 February 2012, 28; *Defence for Children International (DCI) v the Netherlands* Complaint No.47/2008 (ECSR, 20 October 2009), paras.47 and 48.

¹⁵³ For an overview of the purpose and content of education see, Kate Halvorsen, '*Notes on the Realisation of the Human Right to Education*' [1990] Human Rights Quarterly 341.

¹⁵⁴ The right to education is considered an empowerment right. See, Klaus Dieter Beiter, *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Art.13 ICESCR* (Martinus Nijhoff 2005) 28; UN Committee on the Rights of the Child (CRC), *General comment No. 1 (2001)*, supra n.150.

¹⁵⁵ For a thorough analysis, see, Katarina Tomasevski, '*Human Rights obligations: making education available, accessible, acceptable and adaptable*' (Right to Education Primers No.3, Latin American Council of Social Sciences, April 2009) <http://www.right-to-education.org/sites/right-to-education.org/files/resourceattachments/Tomasevski_Primer%203.pdf> accessed 25 February 2015.

¹⁵⁶ Hellenic Parliament, '*Official Translation of Constitution*' <<http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>> accessed 25 February 2015.

Within this framework, education in Greece is promoted through a centralised management system with the Ministry of Education exercising control over state schools by prescribing the national curriculum, appointing staff and allocating funding.¹⁵⁷ Design, construction and equipment of education premises are coordinated by the School Buildings Organisation, while educational materials are produced by the School Textbook Publishing Organisation. At a regional level, Education, Vocational and Sports Education Offices function in each prefecture monitoring the operation of schools in the region, but educational planning, implementation of educational initiatives and accreditation of forms and degrees of Higher Education fall under the competence of the National Education Council, the Organisation for Further Education of Teachers,¹⁵⁸ the National Lifelong Learning Committee¹⁵⁹ and the Accreditation Centre for Lifelong Learning Structures. Furthermore, the Institute of Educational Policy and the Educational Research Centre constitute the Ministry's advisory bodies with regard to revision of curricula, evaluation of pedagogical activities, teaching methods and continuing education and training.

Interestingly, however, a comprehensive evaluation mechanism for monitoring quality, efficiency and effectiveness of education is **a critical missing element** in Greece since external assessments of learning and evaluations of schools and teaching have been traditionally opposed and distrusted by the teaching profession. Only in 2011, the Ministry of education launched a piloting self-evaluation project according to which schools are instructed to present in an action plan each year's educational goals and submit at the end an assessment report commenting on the school's performance, its success in achieving the set educational goals and ways to overcome encountered weaknesses and problems.¹⁶⁰ Nevertheless, the formal education system offers other services in order to promote lifelong learning/skills and quality in education, such as

¹⁵⁷ Iordanis Paraskevoudou and John Morgan, 'Education System with a Bleak future?' [2011] *Weiterbildung*, 38.

¹⁵⁸ Founded by Law n. 2986 (Organisation of the Primary and Secondary Education Regional Agencies, and other stipulations) 2002 [Οργάνωση των περιφερειακών Υπηρεσιών της Α'θμιας και Β'θμιας εκπαίδευσης και άλλες διατάξεις].

¹⁵⁹ Established by Law n. 3369 (Systematisation of Lifelong learning and other stipulations) 2005 [Συστηματοποίηση της διά βίου μάθησης].

¹⁶⁰ Article 32 of Law n. 3848 (Upgrading of teacher role – establishment of assessment and meritocracy rules in education and other provisions) 2010 [Αναβάθμιση του ρόλου του εκπαιδευτικού - καθιέρωση κανόνων αξιολόγησης και αξιοκρατίας στην εκπαίδευση και λοιπές διατάξεις]; Organisation for Economic Co-operation and Cultural Development (OECD), *Education Policy Advice for Greece, Strong Performers and Successful Performers in Education*, (OECD Publishing Paris, 2011).

a) all-day schools through which students have the opportunity to engage in cultural activities, arts and sports,¹⁶¹ b) programmes of supportive teaching for pupils in secondary education,¹⁶² c) professional orientation counselling services through specialised Career Development Centres (KESYP),¹⁶³ d) Guidance Centres for pupils with personal, social or family problems, and e) 'Youth-in-Action' programmes¹⁶⁴ to enhance participation and entrepreneurship in education, employment, volunteering and culture. Finally, participation in school life is encouraged through parents' associations, actualising thus art.17 ESC imperative to respect parental rights in the education process.¹⁶⁵

Even though the role of education in the development of Greece as a competitive and productive country has been repeatedly highlighted in national action plans,¹⁶⁶ criticism against the educational system has not eclipsed. In practice, government policies have paid lip-service to the educational system whereas low grants (around 4% GDP¹⁶⁷) and administrative centralization cast doubts on its free nature and children's unobstructed opportunity to fulfil their educational objectives.¹⁶⁸

**5.2.2. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance?
Has your MS taken any measures to provide free or at least access to tertiary education?**

¹⁶¹ Ministry of Education <<http://www.minedu.gov>> accessed 25 February 2015.

¹⁶² The supervisory body for such programmes is the Special Service for the Implementation of Educational Activities. See, Ministry of Education, Special Service for the Implementation of Educational Activities (Ειδική Υπηρεσία Εφαρμογής Εκπαιδευτικών Δράσεων) <<http://www.ey.minedu.gov.gr>> accessed 25 February 2015 [Greek].

¹⁶³ For more information on counselling centres, see, Ministry of Education, Lifelong Learning & Religious Affairs-National Centre for Vocational Orientation <<http://www.ekep.gr/english/syepenglish.pdf>> accessed 25 February 2015.

¹⁶⁴ General Secretariat for Youth, <<http://www.neagenia.gr/frontoffice/portal.asp?cpage=NODE&cnode=6&clang=1>> accessed 25 February 2015 [Greek].

¹⁶⁵ International Bureau of Education of the United Nations Educational, Scientific and Cultural Organisation, 'World Data on Education' (7th edition, updated July 2012) <http://www.ibe.unesco.org/fileadmin/user_upload/Publications/WDE/2010/pdf-versions/Greece.pdf> accessed 25 Feb 2015.

¹⁶⁶ Ministry of Economy and Finance, 'National Strategic Reference Framework 2007-2013' (January 2007) <https://www.espa.gr/elibrary/Eggrafo_ESPA_el.pdf> accessed 25 February 2015.

¹⁶⁷ Organisation for Economic Co-operation and Cultural Development (OECD), *Education at a glance* (2002-2003), OECD Publishing Paris.

¹⁶⁸ Dionyssios Gouviyas, 'Response of the Greek State to Global Trends in Education Policy Making' [2007] European Educational Research Journal 25.

As the jurisprudence of the ECSR reinstates, the right to education can only be fulfilled when states ensure that functioning educational institutions and facilities are available in sufficient quantity within their jurisdiction at both primary and secondary education levels.¹⁶⁹ In Greece, any effort to improve the efficiency and effectiveness of the school network is challenged by the country's geographic diversity. More than half of primary and secondary schools are concentrated in the two most populous regions, Attica and Central Macedonia, and the remainder are dispersed across thousands of communities in mountainous areas of the mainland and the islands. As a result, schools are small with the number of students per classroom in some cases falling well below the legal maximum of 25 students per class in primary schools and 30 per class in secondary schools. Within this context, the state has prioritised its responsibility to rationalise the school network and overturn the low teacher-pupil ratio¹⁷⁰ toward the goal for improved educational outcomes and enhanced efficiency in the delivery of education services¹⁷¹.

The situation so holding, education -from primary to tertiary- is available to everyone free of charge at public institutions. Law n. 1566/1985¹⁷² on the organisation and delivery of primary and secondary education, provides that primary education comprises six years of school attendance. Enrolment is solely based on pupil's place of residence and is provided both by state and private schools, following the same curriculum. Teaching subjects are compulsory for all students and taught mostly by the class teacher save for the teaching of foreign languages and physical education.¹⁷³ Assessment is an integral part of the teaching-learning process and it is conducted by teachers. Upon completion of grade 6, students are furnished with a school-leaving certificate and are allowed to secondary education.¹⁷⁴

¹⁶⁹ Indicatively, Council of Europe, *Digest of the Case Law of the European Committee of Social Rights* (1 September 2008) <http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf> accessed 25 February 2015, 120.

¹⁷⁰ 10.1 in primary schools, 7.7 in lower secondary education and 7.3 in upper secondary education. See, OECD, *Education at a Glance (2009): OECD Indicators* <<http://www.oecd.org/education/skills-beyond-school/educationataglance2009oecdindicators.htm>> accessed 23 April 2015.

¹⁷¹ Organisation for Economic Co-operation and Cultural Development (OECD), *supra* n. 160, 23 et seq.

¹⁷² Law n. 1566 (Structure and functioning of Primary and Secondary Education and other stipulations) 1985 [Δομή και λειτουργία της Πρωτοβάθμιας και Δευτεροβάθμιας Εκπαίδευσης και άλλες διατάξεις].

¹⁷³ Ministry of Education-International Bureau of Education, *National Report of Greece* (International Conference on Education, 2008) <http://www.ibe.unesco.org/fileadmin/user_upload/Policy_Dialogue/48th_ICE/ICE_FINAL_REPORT_en_g.pdf> accessed 25 February 2015.

¹⁷⁴ *Supra* n.170.

With respect to secondary and tertiary education, several reforms have attempted to harmonise the Greek educational system with ESC standards - especially in the field of vocational training (arts.9 and 10 ESC), which constitutes an integral part of secondary and higher education.¹⁷⁵ Currently, lower-secondary education lasts three years and completes the compulsory education cycle. Post-compulsory secondary education is provided by the general lyceum (with three main streams, i.e. humanities, natural, sciences and technology, starting from the second year) and the vocational education lyceum (EPAL), combining general education and technical-vocational studies. The latter are additionally delivered at the post-secondary, non-tertiary level by vocational training schools (EPAS) and vocational training institutes (IEK).¹⁷⁶ Ultimately, vocational training has also been strengthened in higher education after Technological Education Institutions (TEI) were equated to Universities (AEI) by Law n. 2916/2001.¹⁷⁷

The integration of vocational training in the education stream has been welcomed as a positive step¹⁷⁸ geared to link education to the labour market and facilitate potentially a fairer distribution of students among educational institutions grounded upon their individual aptitude and interests.¹⁷⁹ This expansion in educational opportunities is especially noticeable when assessing the population's wide participation in Education, placing Greece in the most favourable position among European Countries. Dropout rates have shown a decrease as early as the 1990s reaching a percentage of 6.98% at the lower-secondary level¹⁸⁰ although percentages were higher at the

¹⁷⁵ European Committee of Social Rights, *Opinion of the Committee on Recommendation 1892 (2009) of the Parliamentary Assembly on "the contribution of the council of Europe in the development of the higher education area"* (Council of Europe, Activity Report 2010) <http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ActivityReport2010_en.pdf> accessed 25 February 2015, 33.

¹⁷⁶ Reforms introduced by Law n. 2525 (unified upper-secondary education) 1997 [Ενιαίο Λύκειο, πρόσβαση των αποφοίτων του στην Τριτοβάθμια Εκπαίδευση, αξιολόγηση του Εκπαιδευτικού έργου και άλλες διατάξεις] and Law n. 3475 (Organisation of secondary vocational education and other provisions) 2006 [Οργάνωση και λειτουργία της δευτεροβάθμιας επαγγελματικής εκπαίδευσης και άλλες διατάξεις].

¹⁷⁷ Law n. 2916 (Structure of higher education and regulation of issues of this technology sector) 2001 [Διάρθρωση της Ανώτατης Εκπαίδευσης και ρύθμιση θεμάτων του Τεχνολογικού Τομέα αυτής, ΦΕΚ 114Α'/11-6-2001].

¹⁷⁸ For the Committee's Conclusions XVI-2 and XVIII-2 regarding Greece, see, European Committee of Social Rights <http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/GreeceXVI2_en.pdf> accessed 25 February 2015 and European Committee of Social Rights, <http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/GreeceXVIII2_en.pdf> accessed 25 February 2015.

¹⁷⁹ Gouviás, *supra* n.168, 31.

¹⁸⁰ Stamatis Paleocrassas, Panayiotis Rousseas and Vassilia Vretakou, *Research on Dropouts in Junior High School (cohort of 1997/98)*, (Transition Observatory, Pedagogical Institute, Athens 2001).

post-compulsory level, reaching a high of 30%.¹⁸¹ According to Eurydice, the country recorded a relative increase in the number of students in 2012 with the percentage of enrolment in primary education reaching a high of 90%, which is attributable to better training of teaching staff, after-school tutoring, and supportive teaching programmes¹⁸². A participation rate of slightly more than 50% was registered with respect to young people entering tertiary education. Similarly, the proportion of students in general upper-secondary education varied between 60-70% and more than 90% of students were still in education one year after the end of compulsory education.¹⁸³

However, background problems nurturing inequalities prove the perception of an inclusive education system to be mere rhetoric. Limited government spending (2.7% GDP for primary and secondary education and 0.8% GDP for tertiary in 2000)¹⁸⁴ has resulted for instance in an escalation of private household expenditures for preparatory courses in cram schools to increase the possibility of success in the state-controlled entrance examinations to higher education. Such a system not only ties university admission to a numerical rating, disrespecting children's autonomy, but also introduces hidden costs that not everyone can meet. Thereby, candidates from wealthy families, which are capable of covering their off-springs' needs, are more privileged.¹⁸⁵ The Greek system appears thus to be selective, by introducing implicit socioeconomic criteria for university entry in breach of the Constitution.¹⁸⁶

A particular challenge for Greece lies in its obligation to provide education for children of ethnic and religious minorities by emphasising two fundamental aspects: a) equality of opportunity which will ensure minority groups' inclusion and active participation in society and b)

¹⁸¹ Stamatis Paleocrassas, Panayiotis Rousseas and Vassilia Vretakou, *Research on Dropouts in Technological Vocational Schools (cohort 2001/2002)*, (Transition Observatory, Pedagogical Institute, Athens 2005).

¹⁸² Hellenic Republic, Ministry of Finance, Hellenic National Reform Programme 2012-2015, *Report on the Progress towards 'Europe 2020' and the implementation of the Euro plus Pact commitments* (2012), 21.

¹⁸³ Education, Audiovisual and Culture Executive Agency (EACEA P9 Eurydice), *Key data on Education in Europe 2012*, (February 2012)

<http://eacea.ec.europa.eu/education/eurydice/documents/key_data_series/134en.pdf> accessed 1 March 2015. Similar statistics are documented for the period 2000-2002. See further, Organisation for Economic and Cultural Development (OECD), *supra* n.160.

¹⁸⁴ OECD, *supra* n.160, Chapter B2.

¹⁸⁵ Manos Antoninis and Panos Tsakloglou, 'Who benefits from Public Education in Greece? Evidence and Policy Implications?' [2001] *Education Economics* 197.

¹⁸⁶ Aristotelis Stamoulas, 'Forms of Infringement of the Right to Education in Contemporary Greek Educational Structures' [2006] *International education Journal* 74; Panos Tsakoglou and Ioannis Cholezas, 'Education and Inequality in Greece' (Discussion Paper No.1582, Institute for the Study of Labour, May 2005)

<<http://ftp.iza.org/dp1582.pdf>> accessed 25 February 2015.

perseverance of their identity.¹⁸⁷ Indeed, inadequacies in relation to both of these facets are observed with respect to the quality of education experienced by the Muslim Minority of Thrace and the Roma, the two predominant minority groups in Greece: The 1923 Lausanne Treaty, the 1951 Educational Agreement and the 1968 Cultural Protocol signed between Greece and Turkey fortify the special educational status of Muslims in Thrace, providing for the establishment of minority schools and instruction in their mother tongue without neglecting teaching of the official language. Although these standards are considered to be met,¹⁸⁸ the level of education provided is very **low** and a great number of Muslim students drop out due to inappropriate educational practices: outdated textbooks, poorly educated staff, absence of an efficient school curriculum are just a few of the problems children of this group face.¹⁸⁹ Governments have introduced a programme on 'Education of the Children of the Muslim Minority in Thrace' since the 1990s. Priority had been given to the improvement of school infrastructure, the revision of educational materials and the initiation of bilingual programmes in both minority and state schools. Positive outcomes are recorded in terms of dropout rates that have been reduced, and student's progression to secondary education, which has increased significantly in the last fifteen years.¹⁹⁰ Nevertheless, efforts to uphold the minority's right to education in line with EU and International Law standards are continuous and constitute a state priority.¹⁹¹

The educational situation of the Roma, however, remains unsatisfactory given the **low** percentage of enrolment in schools, the poor performance and high dropout rates, intensified by poverty and social discrimination.¹⁹² Roma children are often **refused** school registration or placed in segregated annexes, a practice which nurtures discrimination by applying double

¹⁸⁷ Holly Cullen, 'Education Rights or Minority Rights?' [1993] *International Journal of Law and the Family* 143; John Packer, 'Minority Education Rights in Europe' [2004] *International Journal of Education Law and Policy* (Special Issue) 109.

¹⁸⁸ Law Library of Congress, 'Report on Greece' (United States, 2007) <<http://www.loc.gov/law/help/child-rights/greece.php>> accessed 25 February 2015, 96.

¹⁸⁹ Kalliopi Boussiakou, 'The Educational Rights of the Muslim Minority under Greek Law' [2007] *Journal on Ethnopolitics and Minority Issues in Europe* 1.

¹⁹⁰ Committee of the Rights of the Child, 'Implementation of the Convention on the Rights of the Child: List of issues concerning additional and updated information related to the second and third combined periodic report of Greece', (May 2012), CRC/C/GRC/Q/2-3/Add.1.

¹⁹¹ Ministry of Justice, -General Secretariat of Transparency and Human Rights, *National Action Plan for Human Rights* (March 2014).

¹⁹² European Roma Rights Centre, 'Challenging Discrimination; Promoting Equality' (Report to the Committee of the Rights of the Child on Greece for consideration at the 58th Session, 2011) <<http://www.errc.org/cms/upload/file/greece-crc-submission-25-july-2011.pdf>> accessed 6 March 2015.

standards on access to education among different groups of children in the territory. Notably, the ECtHR condemned Greece for this practice in the *Sampanis*¹⁹³ case, ruling a violation of art.14 and art.2 Protocol No.1 ECHR. Attempting to override the problems, the state has implemented the 'Education of Roma children' programme, which aims at reinforcing access to education by establishing linkages between school, Roma families and the local community, providing transportation to and from schools, offering extra tutorial support and giving an annual family allowance for every child in education.¹⁹⁴

5.2.3. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

Article 17(1) (c) ESC affords special protection to children deprived of their family support, which includes children in public care as well as unaccompanied minors, whether immigrants or refugees, that are entitled to international protection and should benefit from the welfare services of the country of entry.¹⁹⁵ Within the Greek legal order the state's obligation to cater for unaccompanied minors lies in migration legislation, which comprises Law n. 3386/2005 regulating the entry, residence and social integration of third-country nationals into Greek territory, Law n. 3907/2011 on the creation of an independent Asylum Service and Appeals Authority, and Presidential Decree n. 61/1999 on asylum claims' submission that, in particular, specifies unaccompanied minors' access to the asylum procedure. The UN Special Rapporteur on the Human Rights of Migrants has repeatedly raised concerns about violations of

¹⁹³ *Sampanis and others v. Greece*, App no.32526/05 (ECHR, 5 June 2008, definitive 5 September 2008). Also, Roberta Medda-Windischer, 'Dismantling Segregating Education and the ECtHR: *D.H & Others v. Czech Republic: Toward and Inclusive Education?*' [2007-08] European Yearbook of Minority Issues 19; Ramona Duminica and Andrea Tabacu, 'Brief Reflections on the Exercise of the Rights to Education of the Romani Minority' [2010] AGORA, International Journal of Juridical Science, xxxiii.

¹⁹⁴ Ministry of Education, Lifelong Learning & Religious Affairs, 'The New School-The Pupil first' in OECD, *Government at a glance (2009) Country Note-Greece* (OECD Publishing, Paris 2014). Also, Committee of the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention of the Rights of the Child-Concluding observations: Greece* (August 2012) CRC/C/GRC/CO/2-3 and Committee of the Rights of the Child, supra n.190.

¹⁹⁵ Council of the European Union, Directive 2004/81/EC of 29 April 2004 on the Residence Permit Issued to Third-Country Nationals Who Are Victims of Trafficking in Human Beings or Who have been the Subject of Action to Facilitate Illegal immigration, Who Cooperate With the Competent Authorities, 6 August 2004, OJ L.261/23; 6.8.2014, 2004/81/EC which defines unaccompanied minors as third-country nationals below the age of 18, who are left unaccompanied after they have entered the territory of the Member State or who arrive in the territory of the Member State unattended by an adult responsible for them by law or custom and for as long they are not effectively taken into the care of such person.

unaccompanied children's rights by Greek authorities.¹⁹⁶ Indeed, in most occasions unaccompanied minors are viewed by the authorities as offenders of immigration legislation and upon their arrest are placed in reception or detention centres lacking special arrangements for children.¹⁹⁷ The absence of an official age assessment mechanism has crucially contributed to this end because age is a determining element for the legal procedures to be followed.¹⁹⁸ The latter also appear very dysfunctional since children are regularly not informed about their right to claim asylum nor are they guided throughout the process. The guardianship scheme is woefully insufficient too. Although the Public Prosecutor for minors is designated as their temporal legal guardian¹⁹⁹ until social services assume care responsibilities,²⁰⁰ there seems to be ineffective legal representation and an ultimate failure to ensure enjoyment of rights on an equal basis with Greek children.²⁰¹ The Committee of the Rights of the Child urges the state to ameliorate detention of minors, create new reception facilities and structures to cover housing needs and ascertain a functional, substantial and effective guardianship system. Against this background, the government has put forward measures²⁰² for medical, psychological and social support for immigrants kept in detention facilities in order to accommodate unattended minors' needs and abide with international standards.²⁰³

Regrettably, unattended minors are not the only group of children in a precarious situation. A glance at the system of institutional care for children removed from their families due to abuse, neglect or serious family crises reveals that, in general, child protection in Greece is in a very

¹⁹⁶ Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants* (April 2013) A/HRC/23/46/Add.4.

¹⁹⁷ Amnesty International, *'Out of the Spotlight: the Rights of Foreigners and Minorities are still a Grey Area'* (October 2005) <http://www.amnesty.eu/static/documents/2005/AL_Greece_Report_2005.pdf> accessed 9 March 2015.

¹⁹⁸ The Greek Ombudsman, 'The issue of determining the age of unaccompanied minors' (2014).

¹⁹⁹ Presidential Decree n. 220 (Harmonisation of the Greek Legislation to the Provisions of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the perception of asylum seekers (Official Journal L031, 06/02/2003)) 2007 [Προσαρμογή της Ελληνικής Νομοθεσίας προς τις Διατάξεις της Οδηγίας 2003/9/EK του Συμβουλίου της 27ης Ιανουαρίου 2003 σχετικά με τις ελάχιστες απαιτήσεις για την υποδοχή των αιτούντων άσυλο στα κράτη μέλη (EEL 31/6.2.2003)].

²⁰⁰ The coordinating authority for settling children in social care is the National Centre for Social Solidarity. See, Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant, Second periodic reports of States parties due in 2009, Greece* (February 2014) CCPR/C/GRC/2, 35.

²⁰¹ Victoria Galante, *'Greece's not-so-warm Welcome to Unaccompanied Minors: Reforming EU Law to Prevent Illegal Treatment of Migrant Children in Greece'* [2014] Brooklyn Journal of International Law 745.

²⁰² Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants, Comments by the Greek State*, A/HRC/23/46/Add.5.

²⁰³ Human Rights Watch, *'Left to Survive; Systematic Failure to Protect Unaccompanied Minors in Greece'* (December 2008) <http://www.hrw.org/sites/default/files/reports/greece1208webcover_0.pdf> accessed 1 March 2015.

critical situation. According to Civil Code Provisions (art.1532 following; art. 1589 following) children are placed in care institutions following parents'/guardians' application or by order of the Prosecutor of Minors and a subsequent Court decision when parental responsibilities are not properly exercised. In practice, court orders are vitiated and demonstrate shortcomings regarding the legislation's adequacy and implementation: the aims and duration of the placement are not determined according to the child's individual needs, parental involvement in the child's upbringing is frequently not mentioned, custody is rarely removed from parents – even when required – and most importantly provision for periodic reviews of placement decisions is absent. Furthermore, public care institutions are governed mostly by out-dated legislation dating back to 1973 whereas the ministerial decision (required by Law n. 2345/1995) defining the criteria upon which private entities are accredited with child protection services was issued only in October 2014.²⁰⁴ In addition, there are no national standards regarding personnel qualities and recruitment. Most institutions are understaffed with volunteers covering permanent posts. Problems are also encountered with respect to institutions' quality standards and operation requirements. Unfortunately, the Inspectorate for Health and Welfare Services²⁰⁵ and local Health Authorities of the Ministry of Health, which are the competent bodies for the institutions' monitoring and quality assessment, confine themselves in stressing the need for improved building standards and disregard the fact that there are other systemic failures to be addressed, relating to the way institutional care is organised in whole.

That said, the Children's Ombudsman has repeatedly reported that the rights of children in institutional care are not adequately safeguarded. In his reports he calls for the enactment of new legislation on the operation of residential institutions which will incorporate the specifications and quality standards set by the UN Guidelines for children in alternative care²⁰⁶ and Council of

²⁰⁴ Ministerial Decision n. Δ27/οικ.34481/1526 (Requirements for the Establishment and Operation of Child Protection Units Operating from Private Legal Entities (Institutions, Charities, Religious Institutions, Organisations and Generally Not for Profit Agencies not Covered by the Public Sector) 2014 [Προϋποθέσεις Ίδρυσης και λειτουργίας Μονάδων Προστασίας Παιδιού από Νομικά Πρόσωπα Ιδιωτικού Δικαίου (Ιδρύματα, Φιλανθρωπικά Σωματεία, Εκκλησιαστικά Ιδρύματα, Οργανώσεις προσώπων και γενικά φορείς μη υπαγόμενους στο δημόσιο τομέα μη κερδοσκοπικού χαρακτήρα)].

²⁰⁵ Established by Law n. 2920 (Health and Welfare Services Inspection Body and other provisions) 2001 [Σώμα Επιθεωρητών Υγείας και Πρόνοιας (ΣΕΥΥΠ) και άλλες διατάξεις].

²⁰⁶ UN General Assembly, *Guidelines for the Alternative Care of Children*, Geneva 24 February 2010, A/RES/64/142.

Europe Recommendation Rec(2005)5²⁰⁷. Particular attention is drawn to the need to replace large institutions by small family-type units and promote foster care instead. Children's rights to information, participation and privacy should also be upheld. Finally, it is important that policies preparing children for leaving the institutions are in place. To this end, cooperation with community social services that will continue to advise and offer mental and emotional support to children is regarded by the Ombudsman essential. It is evident that childcare in Greece requires a holistic reform. Sadly, the on-going financial crisis constitutes a serious impediment that halts any progress.²⁰⁸

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures has your MS taken to address this issue.

An assessment of youth unemployment rates in Greece demonstrates that the country has failed to ensure young workers a high and stable level of employment (art. 1 ESC) with a fair wage (art. 7 para.5 ESC) as well as the right to enter the occupation of their choice (art.4 ESC). In 2000 Greece had one of the highest overall unemployment rates of those aged under 25 years old in the EU – 29.5% versus 16.16% for the EU as a whole. Unemployment among tertiary education graduates under 24 stood at 28.8%, relative to 12.8% for the EU as a whole.²⁰⁹ Since the onset of the global recession in 2008 young people have been the hardest hit, whatever their level of qualification. Among young adults, the unemployment rate between 2008 and 2011 increased by more than 13% to reach 23% among those with an upper-secondary or post-secondary non-tertiary education, and more than 26% among those with tertiary qualifications.²¹⁰ In comparison to unemployment rates for all adults, youth unemployment was 8% higher. The aforementioned rates are the highest among OECD countries, which have a mean of 5-8% for young people who have attended upper-secondary and tertiary education.²¹¹ Against this detrimental situation, the state has enunciated work experience accumulation programmes for young people aged 16-

²⁰⁷ Council of Europe, *Recommendation Rec (2005) 5 of the Committee of Ministers to Member States on the rights of Children living in Residential Care* (16 March 2005).

²⁰⁸ For detailed information about institutional care in Greece, see, European Network of Ombudspersons for Children, *The Rights of children living in Institution s- A Report on a Study* (July 2011).

²⁰⁹ European Commission – Eurostat, *European Union Labour Force Survey* (Eurostat 2000).

²¹⁰ OECD, *Education at a Glance (2012) Country Note (Greece) OECD Indicator* (OECD Publishing, Paris, 2012).

²¹¹ OECD, *Education at a Glance (2014) Country Note (Greece) OECD Indicator* (OECD Publishing, Paris, 2014).

24 and a plan of action to boost youth entrepreneurship, whilst a proportion of state funds is allocated to private sector companies as a subsidy aiming at encouraging employment of higher education graduates on a full-time basis.²¹²

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

The Greek government's strategy to reduce public deficit and materialise structural adjustments have had various implications for the protection of children and young persons. Reduction in wages and rationalisation of resources in the public sector severely affected the state's ability to accomplish its commitments regarding children deprived of family support and dismantled the education sector. As reported by the UN Independent Expert on the effects of foreign debt on the full enjoyment of economic, social and cultural rights, annual public spending on education was cut from EUR 7,230 million in 2009 to EUR 5,840 million in 2013, a reduction of 30%, affecting drastically spending on educational material and daily operational and maintenance costs for schools. These expenditures were reduced by 24% in 2011 and by a further 19% in 2012.²¹³ School units of primary and secondary education have been merged, increasing significantly the distance for children to reach school. Consequently, access to education has been challenged and school dropout rates enhanced, especially among Roma children. In addition, the number of secondary school teachers has been reduced mainly through retirement and restrictions placed on new recruitments from mid-2010 while their salaries were cut by 17%, marking the highest reduction among OECD countries.²¹⁴ According to the Ministry of Education, however, these funding cuts have not resulted in a deterioration of the right to education. Yet, such claims can only be deemed unrealistic and raise serious concerns about the quality of the public education system which already suffered inefficiencies.

²¹² National Action Plan for Human Rights, supra n.191.

²¹³ Human Rights Council, *Report of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, particularly Economic, Social and Cultural Rights (22-27 April 2013)*, A/HRC/25/50/Add.1.

²¹⁴ Paraskevopoulos and Morgan, supra n.157.

6. OTHER ISSUES

Are there any other relevant issues regarding the ESC, and not covered by the questions above, in your MS? Please describe the applicable legal framework and explain how it is not in compliance with the ESC

6.1. The Status of Women in the Labour Market, the Right to Employment and the Present Situation after the Adoption of Austerity Measures

6.1.1. The Legislative Framework

A report on the issue of the impact of austerity measures on social rights would be incomplete if it would not deal with the social status of women, which constitute one of the most vulnerable groups in times of economic, social and cultural crisis, given that the impacts of the latter on the former are in most cases disproportionate. Given that the present paper has a limited length, emphasis must be placed on one of the many aspects of social rights influence. The right to employment is undoubtedly a critical issue that interferes with other rights and raises questions on how gender equality is actually applied in practice.

Gender equality is established through art.4 para. 2 and art.116 paras. 1 and 2 of the Greek Constitution. The state bears the obligation to adopt all necessary measures in order for *de facto* equality to be achieved. A characteristic example of such obligation is provided in art.4 of Law n. 4097/2012²¹⁵ that reads as follows:

1. It is forbidden any direct or indirect discrimination on the basis of sex, in public or private sector, whether directly or indirectly, in connection especially with family status, especially when it comes to creation, establishment or expanding of an enterprise or the start up or the expanding of any other independent professional activity.
2. In the fields that paragraph 1 covers, harassment or sexual harassment are considered to be discrimination on the basis of sex. The fact that a person rejects or tolerates such a behaviour can be used as basis for a decision making that affects that particular person.
3. The command

²¹⁵ Law n. 4097 (Application of the principal of equal treatment of men and women during self-contained professional activity - Legislative harmonization with Directive 2010/41/EE of the European Parliament) 2012 [Εφαρμογή της αρχής της ίσης μεταχείρισης ανδρών και γυναικών κατά την άσκηση αυτοτελούς επαγγελματικής δραστηριότητας – Εναρμόνιση της νομοθεσίας με την Οδηγία 2010/41/ΕΕ του Ευρωπαϊκού Κοινοβουλίου].

or the encouragement for the exercise of direct or indirect discrimination based on sex is considered discrimination.

In addition to this, Law n. 3896/2010²¹⁶ provides in art.12 that

it is forbidden any direct or indirect discrimination on the basis of sex or the family status of the employee concerning terms, employment conditions, promotions and design and application of staff valuation systems

And it continues in art.16,

A working woman that was on maternity leave has the right, after the end of the leave, to return to her work or equivalent position, without less favourable professional terms and conditions and take advantage of any improvement of the working conditions that she would be entitled to, during her leave.

Moreover, art.15 of Law n. 1483/1984²¹⁷ guarantees that:

The notice of termination of a labour contract or an employment relation of a working woman by her employer during pregnancy and for a time of 18 months after that or during her absence for a longer time period due to illness attributed to pregnancy or childbirth, unless there is severe reason for the termination is forbidden and it is absolutely void. The concept of severe reason does not cover the case of possible reduction of performance due to pregnancy.

6.1.2. How the Labour Market Actually Operates

It is commonly ground that the private sector is the one most affected by austerity measures.²¹⁸ It is indicative that in 2008-2009 unemployment rates in this sector have increased by **1.70%**,

²¹⁶ Law n. 3896 (Application of the principal of equal opportunities and equal treatment of men and women in labour and employment issues – Legislative harmonisation with Directive 2006/54/EC of the European Parliament and the Council, of 5 July 2006 and other provisions) 2010 [Εφαρμογή της αρχής των ίσων ευκαιριών και της ίσης μεταχείρισης ανδρών και γυναικών σε θέματα εργασίας και απασχόλησης - Εναρμόνιση της κείμενης νομοθεσίας με την Οδηγία 2006/54/ΕΚ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου, της 5ης Ιουλίου 2006 και άλλες συναφείς διατάξεις].

²¹⁷ Law n. 1483 (Protection and facilitation of working people with family obligations. Amendments and improvements of labour laws) 1984 [Προστασία και διευκόλυνση των εργαζομένων με οικογενειακές υποχρεώσεις. Τροποποιήσεις και βελτιώσεις εργατικών νόμων].

²¹⁸ Even before the economic crisis and the adoption of austerity measures, research has shown that Greece is one of the countries with the largest pay gap between public and private sector in favour of the former, with the overall difference being estimated above 35% (Tassos Giannitsis, Stavros Zografakis, Greece: Solidarity and Adjustment in Times of Crisis, Athens 2015, page 50, with further references <http://www.boeckler.de/pdf/p_imk_study_38_2015.pdf> accessed 26 April 2015).

whereas in the same period and in the same sector, women's unemployment increased by **2%** for women aged 35-44 and by **1.50%** for women aged 25-34.²¹⁹ In that context, there have been many cases of unfavourable treatment towards women not only during the hiring process, but also, during the pregnancy period and after their return to work at the end of the maternity leave.²²⁰ Employment relations which are more 'flexible' *vis-à-vis* traditional employment conditions have increased, whereas women are the ones most affected due to the new demands of the labour market. It is indicative that women represent the majority (around three-quarters) of all part-time employees,²²¹ with all the consequences that such a situation may imply (*e.g.* low salaries, absence of social security and health benefits etc.).

All the more so, there are many cases of imposition of rotation work²²² on working women most of which have not been dealt effectively in the conciliation process.²²³ It is characteristic that during the first semester of 2012 there has been an increase of **117.90%** of modification of full time labour contracts into rotation work as a result of unilateral decision on behalf of the

²¹⁹ Jane Lethbridge, *Impact of the Global Economic Crisis and Austerity Measures on Women* [2012] Public Services International, 16.

²²⁰ See, Greek National Commission for Human Rights (GNCHR), 'Statements on the 24th national report on the implementation of the European Social Charter and on the 9th national report on the application of the Additional Protocol of the European Social Charter' (2014), RAP/Cha/GRC/9 (2014) Add, 17; The Greek Ombudsman, 'Sex and Employment Relations - Annual Report 2013', 118.

²²¹ Generally, in Greece there has been a shift from full employment to part-time employment. Indicative of the aforementioned is that the number of employees with part-time employment increased by about 77.5 thousand persons (+30.3%) between the years 2008 and 2014 (2nd quarter), see Tassos Giannitsis and Stavros Zografakis, *Greece: Solidarity and Adjustment in Times of Crisis* (Athens 2015), <http://www.boeckler.de/pdf/p_imk_study_38_2015.pdf> accessed 26 April 2015, 38, with further references.

²²² The reinforce of the managerial prerogative in defining the working conditions is one the most important impacts of austerity measures. See further, Matina Yannakourou, 'Challenging Austerity Measures Affecting Work Rights at Domestic and International Level. The case of Greece' in Claire Kilpatrick and Bruno De Witte (eds), *Social Rights in Times of Crisis in the Eurozone: The Role of Fundamental Rights' Challenges* (EUI Working Paper LAW 2014), 20.

²²³ The Greek Ombudsman, 'Unfair unilateral impose of by turns employment on working women, after maternity leave' (Concise Special Report 2012), 3.

employer.²²⁴ In the view of the Greek Ombudsman, a measure of that kind should only be allowed as ultimate means instead of termination.²²⁵

It is also important to note that women with disabilities face a **double discrimination**. According to surveys, countries with an employment gap of **more than 20%** between men and women, such as Greece, also have high employment gaps between disabled men and disabled women.²²⁶ Nevertheless, research shows that even though the discrimination and inequalities in the employment field affecting women are present in many cases, the levels of relative complaints are disproportionately low.²²⁷

6.2. Migrants' Social Rights

According to the 2011 Census, there are **911,929 immigrants residing in Greece** (EU and third country nationals). It is thus imperative to examine how their rights under the ESC are exercised in the midst of the economic crisis.

6.2.1. Migrant workers

Immigrants are the worst hit and the most vulnerable members of society during an economic crisis. Unemployment is thriving among immigrants with the relevant rates being higher among them than among nationals; for example, in the final trimester of 2013, unemployment reached the level of **36.2%** among immigrants and **26.8%** among natives.²²⁸ To an extent, this could be

²²⁴ Compared to the first semester of 2011, as cited in The Greek Ombudsman's Concise Special Report. *ibid* 215. Globally, temporary contracts are a lot more among women than among men (see, International Labour Office, *Global Employment Trends for Women*, 2012). Moreover, the increased participation of women in the labour market has led to certain changes in the operation of the labour market and informal or unprotected types of work have become the rule. See, Shahra Razavi, *World Development Report 2012: Gender Equality and Development, An Opportunity both Welcome and Missed: An Extended Commentary*, (United Nations Research Institute for Social Development, 2011), 5.

²²⁵ *Supra* n. 220, 23.

²²⁶ See, European Parliament, *The Mobility and Integration of People with Disabilities into the Labour Market* (IZA Research Report No. 29, 2010), 21.

²²⁷ Panayota Petrolou, 'The Collective Complaints Procedure of the European Social Charter and its Added Value for Women's NGOs' <<http://www.ewla.org/sites/default/files/documents/events/3rd%20Congress%20%28Paris%29/papers/Paper%20-%20Panayota%20Petrolou%20-%20Collective%20Complaints%20Procedure%20of%20the%20European%20Social%20Charter.pdf>> accessed 13 March 2015, 15.

²²⁸ ELSTAT, 'Labour Force Survey: Third Trimester of 2013' (Press Release) <http://www.statistics.gr/portal/page/portal/ESYE/BUCKET/A0101/PressReleases/A0101_SJO01_DT_Q_Q_04_2013_01_F_GR.pdf> accessed 10 February 2015.

attributed to the fact that immigrants are employed in sectors that have been severely affected by the crisis, such as the construction industry. Apart from the direct effects of unemployment on their income and consequently, on their standard of living, the latter also affects the immigrants' legal status. For example, the renewal of a residence permit requires certain amount of stamps acquired through employment.²²⁹ Consequently, the loss of employment can result in a regular immigrant's falling into **irregularity**. Indicatively, in 2009, regular immigrants amounted to **600,000**, while in 2014 the same number fell to **450,000**.

Article 19 para. 6 ESC provides for the right of migrant workers to family reunion. Article 70 of Law n. 4251/2014 sets the conditions that need to be satisfied for the family reunion to take place. Among other things, the sponsor must have been legally residing in Greece for at least two years in order to be able to apply for family reunification. The ECSR has held that the two-year residence requirement is excessive and therefore it is not in conformity with art.19 para.6 ESC.²³⁰ In addition, the sponsor must have a stable and regular income without resorting to social benefits. Nevertheless, the ECSR has stated that the level of means required should not be so restrictive as to prevent any family reunion.²³¹ Besides, the origin of the income should not matter in so far as the sponsors are legally entitled to the benefits they may receive.²³² Especially, during the economic distress the country is going through and the effects this has on the income of workers, the income requirement of Law n. 4251/2014 must not be narrowly interpreted. Finally, the ECSR has found Greece to be in violation of art.19 para.6 ESC since the right to reunification is not granted to children between eighteen and twenty one years old.²³³

6.2.2. Irregular Immigrants

Greece has become a destination country for many immigrants from third countries, many of whom enter the country **irregularly** with the help of smugglers through illegal channels, risking their lives as well as their physical and moral integrity. Recent tragic events in the shores of

²²⁹ See art.15 of Law n. 4251 (*Immigration and Social Integration Code and other relevant provisions*) 2014 [Κώδικας Μετανάστευσης και Κοινωνικής Ένταξης και λοιπές διατάξεις].

²³⁰ European Committee of Social Rights, Conclusions XIX-4 (2011) (Greece), 24.

²³¹ *ibid.*

²³² FRA, 'Handbook on European law relating to asylum, borders and immigration' (2014) <http://fra.europa.eu/sites/default/files/handbook-law-asylum-migration-borders-2nded_en.pdf> accessed 15 February 2015, 134.

²³³ European Committee of Social Rights, *supra* n. 230, 23.

Greece and Italy have highlighted the **deficiencies** of the current migration policies, not only in Greece, but also in the general legislative framework of the EU, due to the lack of coordinated action and solidarity among Member States of the EU. According to the UN Refugee Agency, since the beginning of 2014, over **207,000 people** – increasingly Syrian and Eritrean asylum seekers – have crossed the Mediterranean Sea, counting approximately **3,419 migrants killed** (in 2014) trying to make the perilous journey to Europe, many travelling in rickety, unseaworthy boats.²³⁴

In view of these staggering figures, the question of whether these irregular immigrants are protected under the ESC arises. According to the Appendix of the ESC, the persons covered by arts.1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned. This seems to exclude irregular immigrants from the protection of the ESC. Nevertheless, in the case *FIDH v. France*, the ECSR held for the first time that legislation or practice which denies entitlement to medical assistance to foreigners, even irregular ones, is contrary to the ESC since healthcare is a prerequisite for the preservation of **human dignity** (paras.31 and 32).²³⁵ Later, the ECSR referred to the States' duty to apply social rights beyond the limited scope of the Appendix, applying them to everyone regardless of their nationality.²³⁶ In addition, the Parliamentary Assembly has addressed this issue, declaring that States should ensure minimum rights such as adequate shelter, emergency health care, fair wages and working conditions for irregular immigrants.²³⁷

In Greece, undocumented immigrants have **limited access to medical care**. Art.84 of Law n. 3386/2005 and subsequent art.26 of Law n. 4251/2014 prohibit the provision of medical care to irregular immigrants, except in cases of emergency. The Greek National Commission for Human Rights has criticised this regulation, stating that it violates both international human rights obligations and art.5 para.5 of the Greek Constitution under which the right to health is granted

²³⁴ UNHCR, IOM, IMO, UNODC and OHCHR, *Joint Statement on Protection at Sea in the Twenty-First Century* (Press Releases, 2014) <<http://www.unhcr.org/548825d59.html>> accessed 8 April 2014.

²³⁵ *International Federation of Human Rights Leagues (FIDH) v. France* Complaint No. 14/2003 (ECSR, 8 September 2004), paras.31,32.

²³⁶ European Committee of Social Rights, Conclusions XIX-4 (2011), General Introduction, 9, 10.

²³⁷ See, Parliamentary Assembly, *Human rights of irregular migrants*, Doc. 10924 (4 May 2006).

to all persons and not just nationals.²³⁸ As far as the right to work is concerned, Greece should ensure certain minimum standards in relation to irregular immigrants at work, especially those closely connected with human dignity such as the freedom from forced labour (art.1 para. 2 ESC). During the economic crisis, there have been several reports of migrant workers exploitation incidents. Such an incident took place in Nea Manolada, where 28 undocumented migrant strawberry pickers were **shot at** by their supervisors when they simply asked to be paid after 6 months of unpaid work under deplorable and subhuman conditions. In a scandalous decision, the court acquitted the farm owner from human trafficking charges while the shooters were convicted for aggravated assault.²³⁹

The economic crisis and the consequent budget cuts have had a tremendous impact on the **detention conditions** of undocumented immigrants. The latter, upon arrest, are held in detention and first-reception centres around the country. The detention conditions in these facilities have been strongly deplored by many NGOs and international human rights bodies. The facilities are often overcrowded and have inadequate heating and/or sanitary infrastructures. The detainees complain about the insufficient amounts of food, clothing and lack of outdoor spaces. The centres are understaffed and some of them lack permanent medical staff, making thus, the immigrants' access to medical care difficult; in consequence, several NGOs, such as the Doctors without Borders, have shouldered the responsibility of offering medical assistance to them.²⁴⁰ Such conditions are not in compliance with the country's obligation under the ESC. The abovementioned detention conditions have been scrutinised by the ECtHR in a series of decisions where Greece has been condemned for violating article 3 ECHR by holding asylum seekers under appalling conditions.

Under art. 31 ESC, States must promote access to housing of an adequate standard. According to the ECSR, this implies, among other things, housing safe from sanitary and health point of

²³⁸ Greek National Commission on Human Rights, 'Decision regarding the Right to Health of Undocumented Migrants' <http://www.nchr.gr/images/English_Site/PROSYGEGES/Right_health_Undocumented%202007.pdf> accessed 10 February 2015.

²³⁹ The Guardian, 'Greek court acquits farmers who shot 28 Bangladeshi strawberry pickers' <<http://www.theguardian.com/world/2014/jul/31/greek-court-acquits-farmers-shot-strawberry-pickers>> accessed 15 February 2015.

²⁴⁰ See, for example, Doctors without Borders, 'Invisible Suffering : Prolonged and systematic detention of migrants and asylum seekers in substandard conditions in Greece' <http://www.msf.org/sites/msf.org/files/invisible_suffering.pdf> accessed 15 February 2015.

view and not overcrowded.²⁴¹ Besides, as the ECSR has stated, the right to housing under art. 31 ESC is to be granted to all migrants regardless of their status.²⁴²

In *M.S.S v. Belgium and Greece*, the Court, while acknowledging that the economic crisis makes the reception of migrants and asylum seekers even more difficult (para.223), it held that the conditions of detention were **unacceptable**, having a profound effect on the person's dignity, especially in view of his vulnerable condition (para.233).²⁴³ Finally, the conclusion that the detention conditions of migrants amounted to degrading treatment in violation of article 3 ECHR was reached in the cases of *S.D v. Greece*,²⁴⁴ *Tabesh v. Greece*,²⁴⁵ *A.A v. Greece*²⁴⁶ and *Rahimi v. Greece*.²⁴⁷

7. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

Before examining the function of the collective complaint system under the ESC, it is important to make some observations concerning the justiciability (or not) of social rights.²⁴⁸ As generally accepted, social rights are based on the idea of solidarity and demand for positive actions²⁴⁹ on behalf of the state. That means that a state is required to take measures, to act in a positive way in order for social rights to be protected. This particular characteristic demonstrates the indissoluble connection between social rights and state benefits.

²⁴¹ European Committee of Social Rights, Conclusions (2003), France.

²⁴² *Defence for Children International (DCI) v. the Netherlands* Complaint No.47/2008 (ECSR, 20 October 2009), par.46-48.

²⁴³ *M.S.S v. Greece*, App. No. 30696/09 (ECHR, 21 January 2011).

²⁴⁴ *S.D v. Greece*, App. No. 53541/07 (ECHR, 11 June 2009) paras.49-54.

²⁴⁵ *Tabesh v. Greece*, App. No. 8256/07 (ECHR 26 November 2009) paras.38-44.

²⁴⁶ *A.A v. Greece*, App. No. 12186/08 (ECHR, 22 July 2010) paras. 57-65.

²⁴⁷ *Rahimi v. Greece*, App. No 8687/08 (ECHR, 5 April 2011) paras.81-86.

²⁴⁸ Churchill R. Robin R. and Khaliq Urfan, 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*, Vol. 15, No. 3, 2004, pp. 417-456.

²⁴⁹ For more information on positive rights see Fredman Sandra, *Human Rights Transformed: Positive Duties and Positive Rights*, University of Oxford, Legal Research Paper Series, Paper No 38/2006, August 2006.

In Greece, the prevailing opinion in both theory and jurisprudence accepts that the justiciability in the field of social rights, especially when it comes to the issue of social benefits, is recognised only after the positive actions are fulfilled in the legislative field. Another important issue concerning social rights is the theory of vested social rights, the relative version of which is the one prevailing in Greece. According to this theory, it is allowed to reduce the already provided by the legislation rights. At the same time, the total abolishment of social benefits is absolutely forbidden and so is the reduction that takes place without any particular preconditions.²⁵⁰

The justiciability of social rights is a topic that has created many controversies, especially during the last decades. On one hand, allowing a court to interfere with the state's social and, as a consequence, economic policy would possibly create problems concerning the principal of separation of powers. On the other hand, it is well known that the most disadvantaged groups of society are the ones most affected due to austerity policies, as already mentioned.

The interdependence of civil and political rights on one hand and social, economic and cultural rights on the other hand is recognized by the 1993 Vienna Declaration and Program of Action,²⁵¹ as well. The latter reaffirms that the international community must treat all human rights in an equal manner and with the same emphasis (para. 5). In any case, the indivisibility of human rights,²⁵² closely connected to justiciability, corresponds more to today's reality where relations of all forms of inequality are a commonplace.

²⁵⁰ See, Greek Council of State Judgment No. 1812 (2013) (accessible at NOMOS Database) where it was held that the state obligation to provide high quality healthcare services is subject to legislative limitations on the condition that such limitations do not result to overturn of the right to health. For the concept of minimum core of social rights see, Young G. Katharine, *The Minimum Core of Economic and Social Rights: A Concept in Search of Content* [2008] *The Yale Journal of International Law* 33, 113-175. It is important to note that in its GC No.3 the UNCESCR confirms that "the realization of economic, social and cultural rights is an obligation of all States" (para.14) and that "a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party" (para. 10) [UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3: The Nature of States Parties' Obligations (Art.2, Para.1 of the Covenant), 14 December 1990, E/1991/23].

²⁵¹ UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23.

²⁵² This specific characteristic implies that interconnection between the different "categories" of human rights (see, K. Jackbeth Mapulanga-Hulston, *Examining the Justiciability of Economic, Social and Cultural Rights* [Winter 2002], *The International Journal of Human Rights*, Vol. 6, No. 4, 32). The current perception on fundamental rights accepts that civil, political and social rights are inseparable, because the latter are necessary in order for the former to be realized. See, Thérèse Aubert-Monpeyssen, *The influence of the European Social Charter in national law: The increased justiciability of social rights* [2001], *Labour Law Review*, 1097-1110, where the writer also observes that the different wording of the ESC ("states are obligated to") implies a difference concerning the justiciability of the rights protected in comparison to the ECHR. In any case, as noted "it is...necessary to prioritise resources for human rights and to ensure a non-retrogression of rights, the indivisibility of human rights and the respect of

Given the above, the severe financial and economic crisis in Greece has already had obvious implications on social rights, in particular those relating to the thematic group of provisions 'Health, social security and social protection'. After the adoption of anti-crisis measures in our country,²⁵³ a growing number of civil society organisations have intervened²⁵⁴ as third parties before the ECSR on the basis of the AP to the ESC providing for a system of collective complaints.²⁵⁵ To date, 43 States have ratified both the Charter and the AP, based on which 113 complaints have been lodged. In the substantive field, the ECSR not only adopted decisions concerning the health risks posed by environmental problems in Greece,²⁵⁶ but also took several decisions concerning the reduction of pensions.

In order to examine the way the collective complaints' procedure has led towards the alleviation of the impact of austerity measures, we will first deliberate upon the advantages of the procedure as such, and then, we will focus on the existing case-law regarding the austerity measures affecting labour rights and young workers, as well as social cuts affecting pension schemes so as to pinpoint the increasing visibility of social rights, by indicating, at the same time, some unavoidable obstacles.

First of all, 'the right of collective complaint [...] is one of the few international remedies for violations of economic, social and cultural rights'.²⁵⁷ Such procedure²⁵⁸ is the only mechanism

minimum core human rights obligations, in order to mitigate the effects of the crisis for the most vulnerable categories of persons." (Council of Europe, Parliamentary Assembly, Committee on Equality and Non-Discrimination, Equality and the crisis, Draft report, Rapporteur: Mr Nikolaj Villumsen, page 15). See also, David Beetham, *What Future for Economic and Social Rights (1995)*, in: *Human Rights, The International Library of Essays in Law and Legal Theory* [2003], 234, where the author supports that "expressing basic economic and social requirements in the language of human rights...also offers an internationally authorized discourse to the deprived, to legitimate their own struggles for their realization".

²⁵³ As mentioned before, Greece has accepted the AP, but has not yet made a declaration enabling national NGOs to submit such complaints.

²⁵⁴ European Committee of Social Rights, *'Activity Report 2013'* (2014) <http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ActivityReportIndex_en.asp> accessed 17 January 2015, 6.

²⁵⁵ For a further analysis of the procedure, see, Holly Cullen, *'The Collective Complaints System of the European Social Charter: Interpretative Methods of the European Committee of Social Rights'* [2009] *Human Rights Law Review* 61, 63-67.

²⁵⁶ *International Federation for Human Rights (FIDH) v. Greece* Complaint No. 72/2011 (ECSR, 23 January 2013).

²⁵⁷ DJ Harris, 'Collective complaints under the European Social Charter: Encouraging progress?' in Kaiyan Homi Kaikobad & Michael Bohlander (eds), *International Law and Power: Perspectives on Legal Order and Justice-Essays in Honour of Colin Warbrick* (Martinus Nijhoff 2009), 3.

²⁵⁸ Which in fact, is less costly for all concerned, since most complaints are dealt with via a completely written procedure.

‘where a governmental body has a decisive say in the outcome of the proceedings’²⁵⁹ which can be characterised as quasi-judicial, if one considers that the ECSR, by elaborating on the values underlying the Charter and by suggesting ways to preserve intact their core, has developed considerable social rights’ jurisprudence. Compared to other monitoring mechanisms within the EU, the Committee has not been restrictive on admissibility issues²⁶⁰ and has generally acted speedily,²⁶¹ by delivering well-reasoned opinions on the merits. Furthermore, many complaints raise issues that have never been referred to state reports,²⁶² as for instance, in times of crisis, where new violations come continuously into the surface. In fact, in such cases, not only has the collective complaints’ system confirmed the increasingly judicial image of the Committee,²⁶³ but also the Committee’s example has been followed by other bodies,²⁶⁴ opening, thus, the way for a more coherent approach regarding the adoption of the austerity measures across different countries, by showing that ‘the complete deregulation of labour relations, the dramatic salary reductions and the dismantling of the welfare state do not only concern the workers, the

²⁵⁹ Robin R. Churchill and Urfan Khaliq, ‘*The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?*’ [2004] *European Journal of International Law*, 417, 447.

²⁶⁰ Besides, unlike the procedure before the ECtHR, such procedure is not conditional upon the domestic remedies’ exhaustion (even if the complaint is linked with issues in which – individual or collective – cases are pending before other institutions) and because of its collective character, there is neither victim requirement nor time limit for bringing the complaint.

²⁶¹ ‘The average duration of the admissibility stage was from 4 to 5 months, while the average duration of the phase on the merits was less than 11 months’. See, Luis Jimena Quesada, ‘*Adoption and Rejection of Austerity Measures: Current Controversies Under European Law - Focus on the role of the European Committee of Social Rights*’ [2014] *Revista catalana de dret públic* No. 49 41, 48. Notably, e.g. in 2013, ‘the average duration of the admissibility stage was 5.6 months and the average duration of the merits stage was 12.2 months’. See, European Committee of Social Rights, ‘*Activity Report 2013*’ (2014) <http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ActivityReportIndex_en.asp> accessed 17 January 2015, 12.

²⁶² E.g., in *Quaker Council for European Affairs (QCEA) v. Greece* Complaint No. 8/2000 (ECSR, 27 April 2001). See further, Cullen, supra n. 255, 70.

²⁶³ With the ‘independence and impartiality of the Committee and of its members, its methods of interpretation, the format of its decisions, the external impact of its case law and the examples of implementation of its decisions’. See more analytically, Quesada, supra n. 261, 48.

²⁶⁴ See further, Greek National Commission for Human Rights, ‘*Observations on the 24th Greek Report on the application of the European Social Charter and on the 9th Greek Report on the application of the Additional Protocol to the European Social Charter*’ (2014) <http://www.nchr.gr/images/pdf/apofaseis/ellinikes_ektheseis_en_ell_org/CoE/GNCHR_Observations_24thReportf.pdf> accessed 22 February 2015, 2.

unemployed and the pensioners in Greece; they are features of fiscal and social policies which are widespread in Europe'.²⁶⁵

After having examined the advantages of the collective complaints' procedure, it is important to look its effectiveness in the context of the Greek economic crisis.²⁶⁶ In relation to labour rights, the two first decisions on the merits were adopted by the ECSR on 23 May 2012 regarding two complaints (Nos. 65/2011 and 66/2011) submitted by two trade unions -the General federation of employees of the national electric power corporation (GENOP-DEI) and the Confederation of Greek Civil Servants' Trade Unions (ADEDY). As far as the right to social security is concerned, Complaints Nos. 76/2012, 77/2012, 78/2012, 79/2012 and 80/2012 call for further analysis.

Complaints Nos. 65/2011 and 66/2011 are noteworthy because they mirror the impact of the **austerity measures on labour relations**. In the first complaint, GENOP-DEI and ADEDY lodged a complaint against Greece regarding the 2010 Greek legislation that allows dismissal without notice or compensation of employees in an open-ended contract for the duration of an initial period of twelve months. While the Committee recognised that changes in the existing legislation in some areas in order to control public spending are reasonable in times of crisis, it found that the aforementioned legislation was incompatible with art.4 para.4 of the Charter, because it destabilised disproportionately the situation of those enjoying the rights enshrined in the Charter. In other words, it was made clear that the employment flexibility that the crisis demands cannot lead to the complete deprivation of the fundamental rights of labour law which protect the employees from their employers' arbitrary decisions or from economic fluctuations.²⁶⁷ Otherwise, employees will 'shoulder excessively large share of the consequences of the crisis' and 'accept pro-cyclical effects liable to make the crisis worse and to increase the burden on welfare systems, particularly social assistance'.²⁶⁸

In the second complaint that the same complainants submitted before the Committee, the latter found that there was no violation of arts.1 para.1 (right to work) and 7 paras.2 and 9 (right of

²⁶⁵ *ibid* 5.

²⁶⁶ Notably, the Greek National Confederation of Labour (GSEE) has recently lodged a complaint before the ECSR, regarding the violation of a great number of workers' social rights in the last four years (Complaint No.111/2014).

²⁶⁷ Quesada, *supra* n. 261, 49.

²⁶⁸ *ibid*.

children and young persons to protection) of the Charter, but, on the basis of the same legal reasoning, the Greek government has breached arts.7 para.7, 10 para.2, 12 para.3 and 4 para.1 of the Charter. The complaint concerned the domestic legislation regarding the 'special apprenticeship contracts' for employees aged between 15 to 18 years, which violated the provisions for entitlement to annual holiday with pay, systematic arrangements for apprenticeships, training and social security coverage. Moreover, the provisions for a fair remuneration and non-discrimination based on age were also breached, as the relevant domestic legislation allowed employers to pay new participants (less than 25 years old) to labour market a smaller percentage of the national minimum wage. At this point, it is worth mentioning that the Committee, apart from the notion of proportionality, analysed 'the idea of **progressiveness** and **non-regression** in relation to changes to the social security system', interpreting it, in fact, in a broader sense.²⁶⁹

This idea was better formulated in the merits of the other five decisions adopted in December 2012 regarding the **social security** system in Greece. In complaints Nos. 76/2012,²⁷⁰ 77/2012,²⁷¹ 78/2012,²⁷² 79/2012,²⁷³ 80/2012,²⁷⁴ the Committee claimed that less favourable international standards cannot be accepted and thus, it found that there was violation of art.12 para.3 (right to social security) of the Charter. The Committee also reiterated that, although restrictions to the benefits of a national social security system do not breach the Charter if certain prerequisites are met, it is the **cumulative effect** of such restrictions (*i.e.* modification of public and private pension schemes) combined with the procedures activating them that amount to a violation of the abovementioned article.²⁷⁵ Further, the ECSR clarified that **the international obligations of the Greek government under the loan arrangement with the EU organs did not absolve the government from the obligations arising from the Charter**. According to the

²⁶⁹ *ibid.*

²⁷⁰ *Federation of employed pensioners of Greece (IKA –ETAM) v. Greece* Complaint No. 76/2012 (ECSR, 7 December 2012).

²⁷¹ *Panbellenic Federation of Public Service Pensioners v. Greece* Complaint No. 77/2012 (ECSR, 7 December 2012).

²⁷² *Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece* Complaint No. 78/2012 (ECSR, 7 December 2012).

²⁷³ *Panbellenic Federation of pensioners of the public electricity corporation (POS-DEI) v. Greece* Complaint No. 79/2012 (ECSR, 7 December 2012).

²⁷⁴ *Pensioner's Union of the Agricultural Bank of Greece (ATE) v. Greece* Complaint No. 80/2012 (ECSR, 7 December 2012).

²⁷⁵ Quesada, *supra* n. 261, 49.

Committee, even though the government had to take urgent decisions, it should at least take the necessary measures in order to sufficiently protect the most vulnerable members of society as required by art.12 para.3. Nevertheless, neither had the government assessed the full impact of the austerity measures on certain social groups via minimum research or meaningful interaction with the organisations concerned nor had it searched for alternative measures that could limit the cumulative effects of the disputed decrees on pensioners. Finally, remarkably, the Committee highlighted the important role of domestic courts when examining the *inter partes* effect of the contested decrees on pensioners' individual right to property.²⁷⁶

At this point, it is more than clear that the austerity measures and the “anti-crisis” legislation which the Greek government has adopted, have led to the augmentation of complaints against Greece as a reaction towards a more effective protection of fundamental social rights. Given that the value of all the decisions aforesaid lies exactly in the formulation of the idea of proportionality and progressiveness and the development of specific criteria -both substantial and procedural- when assessing the possibility of restraining social rights in times of crisis, one can safely assume that **the collective complaints' mechanism is capable of inspiring third parties to address cases before the Committee in times of crisis.**

Yet, the real test is whether such complaints can actually provoke any changes in the behaviour of the defendant state in such times. Firstly, the range of potential complainants is restricted since **individual complaints are excluded** and furthermore, it is up to the national NGOs to decide whether or not to make complaints (only Finland has accepted such NGOs to do so), whereas **only a small range of international NGOs is recognised for the purposes of the Protocol.**²⁷⁷ Consequently, it seems that the complaint system is still of limited relevance to many social movements at the national level. Besides, such social action groups are reluctant to confront their governments in an international forum, especially for two reasons: primarily, they might risk of losing their government sympathy or financial support and secondly, national resolutions of social rights' issues are regarded as the “appropriate norm”.²⁷⁸

²⁷⁶ In this regard, the Committee referred to many judgments of the European Court of Human Rights. See, *inter alia*, *Ichtigiaroglou v. Greece*, App no.12045/06 (ECHR, 19 June 2008) and *Tsoukalas v. Greece*, App no. 12286/08 (ECHR, 22 July 2010).

²⁷⁷ Cullen, *supra* n. 255, 66.

²⁷⁸ Philip Alston, ‘Assessing the Strengths and Weaknesses of the European Social Charter’s Supervisory System’ [2005] Centre for Human Rights and Global Justice Working Paper No. 7 4, 24.

Moreover, the complaints' system is to be perceived as complementary to the existing reporting machinery,²⁷⁹ lacking thus, remedial powers.²⁸⁰ The ECSR is competent to legally interpret the ESC and make declaratory decisions.²⁸¹ Subsequently, a collective complaint is concluded by findings of non-compliance in the form of a recommendation or a resolution; **these, of course, are not legally binding.** For this reason, despite the indivisibility of all rights,²⁸² States not only endure being conservative in relation to fundamental social rights but also, they are provided with a broad discretion regarding the progressive fulfilment of such rights.²⁸³ What is more, although there is a substantial separation of their roles, the role given to the Council of Europe's Committee of Ministers in the overall process -in the form of making political determinations and recommendations as to the follow-up- has been variously criticised, as obscuring the role of the Committee to some extent.²⁸⁴

In fact, as far as the follow-up in our country is concerned, it is worth mentioning that in regard to seven of the aforementioned decisions (65/2011, 66/2011, 76/2012, 77/2012, 78/2012, 79/2012, 80/2012), 'none of the provisions found incompatible with the ESC has been modified or repealed'.²⁸⁵ In addition, the situation has extensively deteriorated,²⁸⁶ and austerity policies 'led

²⁷⁹ See the Explanatory Report to the Additional Protocol to the European Social Charter providing for a system of collective complaints.

²⁸⁰ In fact, the ECSR has stayed within the limits of its powers by rejecting claims for compensation, but has made requests to the Committee of Ministers to make a contribution to the costs of a successful complainant. See, e.g., *Confédération française de l'Encadrement CFE-CGC v. France*; Complaint No. 9/2000 (ECSR, 11 December 2001), *European Roma Rights Centre ERRC v. Greece*; Complaint No. 15/2003 (ECSR, 7 February 2005) and *Confédération française de l'Encadrement CFE-CGC v. France*; Complaint No. 16/2003 (ECSR, 30 November 2011).

²⁸¹ See art.8 (1) of the AP, where it is stated that the Committee concludes with a 'report' rather than a 'decision'.

²⁸² UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23.

²⁸³ See, e.g., *N.K.M. v. Hungary*, App. No. 66529/11 (ECHR, 14 May 2013), para. 49; *R.Sz. v. Hungary*, App. No. 41838/11 (ECHR, 2 July 2013), para.38.

²⁸⁴ Cullen, *supra* n. 255, 70.

²⁸⁵ Greek National Commission for Human Rights, 'Observations on the 24th Greek Report on the application of the European Social Charter and on the 9th Greek Report on the application of the Additional Protocol to the European Social Charter' (2014)

<http://www.nchr.gr/images/pdf/apofaseis/ellinikes_ektheseis_en_ell_org/CoE/GNCHR_Observations_24thReportf.pdf> accessed 22 February 2015, 4.

²⁸⁶ See, *inter alia*, Committee of Ministers, 'Report to the 103rd International Labour Conference 2014 on the application of ILO Convention No 102 by Greece and Council of Europe on the application of the European Code of Social Security by Greece' (Period from 1 July 2011 to 30 June 2012, 16 October 2013)

<[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResCSS\(2013\)21&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResCSS(2013)21&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383)> accessed 19 February 2015.

the country to an economic and humanitarian catastrophe unprecedented in peacetime'.²⁸⁷ Despite the fact that the Greek authorities did not challenge the conclusions of the ECSR and accepted that the labour laws of 2010 in question were not in conformity with the Charter, by pointing out that their adoption was necessary for the survival of the country's economy and that the measures were of a provisional nature (and thus, they would revoke them as soon as the economic situation would allow), they did not set a specific timeframe. Moreover, neither have the domestic courts adopted, or at least presented, the Committee's conclusions as the right guidelines in the several cases that have been brought before them.²⁸⁸

To sum up, the complaints system has **many weaknesses**. Basically, the nature of social rights along with the issue of their enforceability, the margin of appreciation given to each MS, the non-binding outcome of the collective complaints' procedure, together with the difficulties inherent in the interaction between national law and Community law, function as disincentive to the alleviation of the impact of the austerity measures - even in times of economic crisis. The bottom line, though, is that the collective complaints' system represents one important development that has the potential to enhance the efficiency of the ESC system as a whole. To this end, the Committee's well-reasoned and streamlined case-law could convince governments and relevant stakeholders that the system with respect to these rights is a good step forward.

8. CONCLUSION

8.1. Summary of main findings

8.1.1. Labour Rights

²⁸⁷ Committee of Experts on the Application of Conventions and Recommendations (CEACR), '*Observations on Social Security (Minimum Standards) Convention, 1952 (No. 102)*' (published in the 103rd ILC session, 2014) <http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0:NO:13100:P13100_COMMENT_ID:3150771> accessed 22 February 2015. Also, for an interesting analysis regarding the follow-up to the conclusions of the Committee on the Application of Standards, see, CEACR, '*Observations on Social Security (Minimum Standards) Convention, 1952 (No. 102)*' (published in the 104th ILC session, 2015) <http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0:NO:13100:P13100_COMMENT_ID:3191959> accessed 22 February 2015.

²⁸⁸ By contrast, a Labour Court in Spain (Labour Court no. 2 of Barcelona, judgment no. 412 of 19 November 2013) based its *ratio decidendi* on the Decision of the Committee in Complaint No. 65/2011, although Spain has not accepted the collective complaints' procedure.

The financial crisis brought about substantial changes in the field of labour law and collective bargaining, which were deemed as a key element of the adjustment programme. The aim was to render the labour market more flexible and to boost the country's economy and competitiveness. As a result, the Government imposed direct cuts on wages in the public sector, which were initially reduced by 12%, and later suffered a further reduction of 3%. Subsequently, the general minimum wage was reduced by 22% (EUR 586 gross and EUR 476 after taxes) for workers older than 25 years old and by 32% (EUR 510 gross and EUR 426.64 after taxes) for younger workers. In addition, special laws provided for even lower remuneration for young people between 15-18 years old (remuneration at 70% of the general minimum wage) as well as new entrants in the labour market under the age of 25 (remuneration at 84% of the general minimum wage). What is more, workers' remuneration has been severely affected by new flexible forms of employment, such as time-rotation, part-time contracts and reduction of working time. In addition, austerity measures have made dismissals easier and cheaper, by reducing significantly both notice period and severance pay. In parallel, austerity measures were designed to individualise the conclusion of employment contracts and decentralise collective bargaining. Measures such as the decentralisation of collective bargaining from sectoral to company level, the setting of the minimum wage by a governmental decision and not by a CEA, as well as the reform of the institution of arbitration violate the 'voluntary' character of collective bargaining. In addition, conferring the right to conclude company level CEAs to the so called 'associations of persons' (an entity not elected by the company workers) contravenes with the right to be represented by freely and democratically elected persons and seriously compromises the unions' collective autonomy and weakens social dialogue.

Worrisome reactions have been voiced both at national and international level for the rapid deterioration of living standards. Greek trade unions reacted by lodging successive complaints with the ECSR, where it was established that Greece contravenes with art.4 para.1 ESC in the light of the principle of non-discrimination, since domestic provisions establish sub-minimum wages for young people and workers below 25 years old. The ECSR has further concluded that the minimum wage for workers above 25 years old falls below the poverty level and is insufficient to ensure a decent standard of living.

In sum, the reforms implemented by Greece in the field of collective bargaining and labour law have severely deteriorated the living standards of the people and have brought to the forefront the invisible category of 'the working poor'. Minimum wage has lost its function as a tool for poverty alleviation and workers find themselves unable to satisfy even their basic needs.

8.1.2. Social Protection

Specific provisions in the Greek legal order provide some form of assistance and care for persons who are unable to secure adequate resources either by his/her own efforts or from other sources. Greek nationals and permanent resident foreigners in need, who are not covered by general health care schemes, are eligible for free medical services after being granted Social Protection Certificates and are entitled to full hospitalisation in public hospitals, at third class beds, examination, free administration of medicines and medical transfer. In addition, a specific National Social Cohesion Fund has been set up in order to support the most vulnerable groups at risk of poverty through integrated programmes of targeted income support. Moreover, an emergency one-off allowance of EUR 600 is provided by the state, through the ministry in charge, to people unable to cover their basic living costs from any other source of income whereas pensioners who live on low benefits, are entitled to receive yearly, and for as long as they fulfil certain income criteria, a social solidarity supplement (EKAS). In addition, a Special Emergency Fund was established under the status of a public law entity, aiming at financing programmes for the support and relief of people stricken by fires, earthquakes, floods and other natural disasters and extreme weather phenomena. Special provisions provide for social assistance in the case of invalidity, sickness and HIV-positive people.

Despite these measures, the ECSR has held that the situation in Greece is not in conformity with art.13 para.1 ESC for there is no legally established general assistance scheme that would ensure that everyone in need has an enforceable right to social assistance. Although there have been commitments concerning the protection of low vulnerable groups, austerity measures, such as reduction of pensions, dismissals, reduction of public health costs, as well as restrictions on disability pensioners have resulted in a reduction in annual household income and have impeded access to medical and social care for the people in need, especially the elder and the disabled. What is more, the reduction of expenses of health-care has caused serious lack of medicines at

hospitals, to the extent that many patients couldn't afford to pay for their medication due to the economic crisis.

Nonetheless, there are some public services which provide advice and personal help, in order to prevent, to remove, or to alleviate personal or family want, such as the National Centre for Social Solidarity, the Workers' Social Fund and the Workers' Housing Organisation, as well as NGOs actively involved in alleviating personal or family want (*e.g.* PRAKSIS, ARSIS and the Greek Council for Refugees). Yet, the second Memorandum Understanding prescribed the abolition of the Workers' Social Fund and the Workers' Housing Organisation, which had a continuous social activity for more than 70 years.

8.1.3. Social Exclusion

Furthermore, austerity measures had an impact on the level of poverty, deprivation and social exclusion in Greece, raising issues under art.30 ESC. The austerity measures implemented over the last five years, namely cuts on salaries, pensions, social subventions and health budgets, the dismissals and the reduction of social insurance, resulted in failure to protect the most vulnerable groups against poverty and social exclusion. More specifically, the reduction of salaries and of the lowest income, as well as the reduction of the subvention of unemployment resulted in the fall of the poverty threshold, increasing poverty and making the already poor people poorer. In 2010, 5% of the Greek population saw its annual income falling below the 2009 poverty line, swelling the ranks of those who were already in poverty (another 20% of the population). What is more, poverty rate in 2013 has risen by 3 points since 2009, up to 23.1% according to the Eurostat statistics, whereas in 2013, the poverty and social exclusion risk has risen by 8 points, up to 35.7%. The austerity measures also affected the rate of people living in material deprivation, resulting in material deprivation of electricity, through a special tax which was imposed on built surfaces with electricity connexion and was levied via electricity bills. Furthermore, the privatisation of the Water Supply Company resulted in uncertainty concerning water provision, especially for the people living in adverse housing conditions. In addition, the pre-retirement availability and the automatic dismissal of civil servants have affected the rates of unemployment, exacerbating social exclusion and poverty. According to Eurostat, unemployment gap has widened dramatically from 9% in 2009 to 27.5% in 2013 and has fallen to 25.5% in 2014, whereas youth unemployment in 2012 reached 57.6% of the population.

Moreover, the reduction of health-care spending and the augmentation of the cost of participation for patients resulted in the exclusion of poor and marginalised groups from the health system, leading to a long-term health downgrade for the most vulnerable groups. In fact, the percentage of people living in a situation of severe material deprivation has risen from 11% in 2009 to 20.3% in 2013, according to Eurostat.

It is further to be noted that austerity policies have seriously downgraded specific social groups, in particular the Roma community, undocumented immigrants and asylum seekers, living under appalling housing conditions in illegally established camps, which do not have fresh water, electricity, toilets or any facility necessary for dignified human living. Furthermore, during the period of economic crisis, the Greek government has missed its target for the integration of Roma population to education and society in general. Sadly, austerity measures are also being connected with the appearance and rise of the far-right political party 'Golden Dawn' and the attacks on ethnic minority groups, such as immigrants and asylum seekers, reaching more than 400 incidents over the last three years.

In response to this situation, the Greek Government took a series of measures aiming to social integration of vulnerable groups, so as to fight against poverty, such as a) income support, b) promotion and inclusion to social programmes – actions, c) social housing invoice of the Greek electric power company, water public company and municipal water and sewage companies, d) actions of integration and reintegration into work and educational programs, e) social groceries and pharmacies and other measures pertaining to housing, employment, social and medical assistance, education and culture (see above 4.3.). Even though these measures fall within the ambit of art.30 ESC, they have been taken either with a remarkable delay or with lack of coordination, falling short of the prerequisites of the ESC, in order to reduce poverty and social exclusion, especially in the time of economic crisis, in order to guarantee the minimum but fundamental standards on decent living for all.

8.1.4. Social Rights of Persons with Disabilities, Children and Young Persons

The economic crisis also had its toll on the rights of the most vulnerable groups, namely persons with disabilities, children and young people. The current legislative context does not address totally the various parameters of the desired structure of the educational system of children and

people with special needs. The ECSR has come to the conclusion that Greece's legislation in that field is in violation with art.15 para.1 ESC, since there are no provisions for life-long education of people with disabilities, whereas the UN Committee on the Rights of the Child recommended Greece to equip schools with all necessary facilities for the inclusive education of children with disabilities and ensure that they can choose their preferred school according to their best interests.

Greece has taken some measures to promote the access of persons with disabilities to employment, by encouraging employers to hire and maintain in employment persons with disabilities in the ordinary working environment. The Greek legislation has also implemented provisions for the operation of sheltered workshops and workshops of professional training for people with mental health problems that aim at therapy, social rehabilitation and placement of these people into the various forms of the labour market, along with wage subsidies, financial support and special arrangements in cases of sick and state funding in order to employ people with special needs. Unfortunately however, in Greece there is no legislative background for sheltered and supported employment. Nonetheless, it is an undeniable fact that since the very beginning of the crisis in Europe, the presence of people with disabilities in the labour market has significantly decreased.

According to art.16 of the Greek Constitution, free education shall be provided at all levels at public institutions. Hence, education -from primary to tertiary- is available to everyone free of charge at public institutions. Within this framework, education in Greece is promoted through a centralised management system with the Ministry of Education exercising control over state schools by prescribing the national curriculum, appointing staff and allocating funding. In addition, the formal education system offers other services in order to promote lifelong learning/skills and quality in education, such as all-day schools, programmes of supportive teaching for pupils, professional orientation counselling services, Guidance Centres for pupils and 'Youth-in-Action' programmes. Interestingly, however, a comprehensive evaluation mechanism for monitoring quality, efficiency and effectiveness of education is a critical missing element in Greece.

Nonetheless, the financial crisis had a direct impact on annual public spending on education, which was cut from EUR 7,230 million in 2009 to EUR 5,840 million in 2013, a reduction of

30%, affecting drastically spending on educational material and daily operational and maintenance costs for schools. These expenditures were reduced by 24% in 2011 and by a further 19% in 2012. School units of primary and secondary education have been merged, increasing significantly the distance for children to reach school. Consequently, access to education has been challenged and school dropout rates enhanced, especially among Roma children and the Muslim Minority of Thrace, a situation which is intensified by poverty and social discrimination. These cuts, along with structural problems of the educational system cast doubts on its free nature and children's unobstructed opportunity to fulfil their educational objectives, giving leeway to private household educational services.

What is more, since the onset of the global recession in 2008 young people have been the hardest hit, whatever their level of qualification. An assessment of youth unemployment rates in Greece demonstrates that the country has failed to ensure young workers a high and stable level of employment (art. 1 ESC) with a fair wage (art. 7 para.5 ESC) as well as the right to enter the occupation of their choice (art.4 ESC). Among young adults, the unemployment rate between 2008 and 2011 increased by more than 13% to reach 23% among those with an upper-secondary or post-secondary non-tertiary education, and more than 26% among those with tertiary qualifications.

8.1.5. Social Rights of Women

Particular emphasis should also be placed on the social status of women, one of the most vulnerable groups in times of crisis, given that the impacts of the latter on the former are in most cases disproportionate. In the context of the augmenting unemployment rates, there have been many cases of unfavourable treatment towards women not only during the hiring process, but also, during the pregnancy period and after their return to work at the end of the maternity leave. It is also important to note that women with disabilities face a double discrimination. According to surveys, countries with an employment gap of more than 20% between men and women, such as Greece, also have high employment gaps between disabled men and women.

8.1.6. Social Rights of Migrants

Last but not least, it must also be borne in mind that there are more than 911,929 immigrants residing in Greece and those have been the worst hit and the most vulnerable members of

society during the economic crisis. For example, in Greece, access to medical care is prohibited to undocumented immigrants, save for emergency cases. Unemployment rates are thriving among immigrants with the relevant rates being higher among them than among nationals, whereas the loss of employment can result in a regular immigrant's falling into irregularity. During the economic crisis, there have been several reports of migrant workers being exploited or even forced in labour without remuneration. Plus, the economic crisis and the consequent budget cuts have had a tremendous impact on the detention conditions of undocumented immigrants, which have been strongly deplored by many NGOs and international human rights bodies, about the insufficient amounts of food, clothing and lack of outdoor spaces. The ECtHR has repeatedly condemned Greece condemned for violating article 3 ECHR (prohibition of torture) by holding asylum seekers under such appalling conditions. In *M.S.S v. Belgium and Greece*, the Court, while acknowledging that the economic crisis makes the reception of migrants and asylum seekers even more difficult (para.223), it held that the conditions of detention were unacceptable, having a profound effect on the person's dignity, especially in view of his vulnerable condition

8.2. Final Remarks

Beyond these thematic findings, it is important to discern a distinctive element that characterises the austerity measures from a broader perspective. Taking into account the *de facto* weak bargaining power of the State during the negotiations with the Troika, it must be noted that **Greece was obliged to take measures contrary not only to its Constitution** (e.g. right to health, right to collective bargaining and human dignity), **but also to its international obligations**, *vis-à-vis* international human rights treaties, such as the ECHR, the ESC, the ILO and UN treaties, as well as the Charter of Fundamental Rights of the EU, which constitutes primary EU law.²⁸⁹

²⁸⁹ Prof. Dr. Andreas Fischer-Lescano, *Human Rights in Times of Austerity Policy, The EU institutions and the conclusion of Memoranda of Understanding*, Legal opinion commissioned by the Chamber of Labour, Vienna in cooperation with the Austrian Trade Union Federation, the European Trade Union Confederation and the European Trade Union Institute [2014], University of Bremen: Nomos Verlagsgesellschaft Baden-Baden, <http://ak-europa.eu/includes/mods/akeu/docs/main_report_en_331.pdf> accessed 27 April 2015, 60, according to whom 'The European bodies and institutions are bound to comply with EU law even in the financial crisis. There is no state of emergency that suspends EU law. [...] Through their involvement in the negotiation,

Nonetheless, it must further be acknowledged that in few cases, the Memoranda of Understanding (MoU) allowed the State a certain margin of appreciation, as to the measures which would be appropriate in order to achieve the aims of the Economic Adjustment Programme, in which however, **the Greek Government did probably not always made full use of its discretionary power**, opting for extreme political solutions (such as the special tax on built surfaces, the non-payment of which was sanctioned with a cut of electricity), that induced further cuts on public expenditure and augmented the burden on social rights of the citizens.²⁹⁰

This package form led to an accumulation of the austerity measures, so that they affected simultaneously more than one social policy fields. In fact, this has been already underlined by the ECSR in five cases concerning pension schemes in Greece.²⁹¹ In these cases, trade union claimants argued that the modification of both public and private pension schemes, as introduced by the Greek legislation in May 2010, constituted a violation of the right to social security (art.12 para.3) of the ESC. The complainant trade unions indicated that the pensions have been reduced six times altogether without including stipulations on provisional applicability or taking into account any modifications that had been simultaneously introduced into the taxation system affecting pensioners. In its decisions, the ECSR ruled that, even though the controversial restrictions to the benefits provided by the domestic social security system would under certain conditions not breach the Social Charter, 'due to the cumulative effect of the restrictive measures and the procedures adopted to put them into place' they amounted to a violation of the abovementioned right to social security.²⁹²

This is undoubtedly an important insight that should inform legal appraisal of the compatibility of the austerity measures with social rights: measures that, when taken on their own might not amount to a violation of a social right, would be differently assessed in the context of aggressive austerity package deals that have been concluded under democratically questionable procedures.

signature and implementation of the MoUs, the EU institutions are infringing primary law. They are acting unlawfully.'

²⁹⁰ On the form of EU conditionality as a package deal, see, Ioannidis, *supra* n. 6, 103.

²⁹¹ See above, Section 7.

²⁹² *Federation of employed pensioners of Greece (IKA –ETAM) v. Greece* Complaint No. 76/2012 (ECSR, 7 December 2012), para.83; *Panhellenic Federation of Public Service Pensioners v. Greece* Complaint No. 77/2012 (ECSR, 7 December 2012), para.79; *Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece* Complaint No. 78/2012 (ECSR, 7 December 2012), para.79; *Panhellenic Federation of pensioners of the public electricity corporation (POS-DEI) v. Greece* Complaint No. 79/2012 (ECSR, 7 December 2012, para.79; *Pensioner's Union of the Agricultural Bank of Greece (ATE) v. Greece* Complaint No. 80/2012 (ECSR, 7 December 2012), para.79.

On these grounds, the accumulation of restrictions is indeed a qualitative new element that merits special attention both by courts and scholars.

Moreover, the procedure on the basis of which the austerity measures were drafted, shows profound structural shortcomings in terms of democratic legitimacy. During the Eurozone crisis, executive power pushed aside the institutions of representative democracy, since decision-making was concentrated in supranational and national executives.²⁹³ At the same time, the power of both the European Parliament (EP) and national parliaments, which traditionally act as the watchdog of the executive power, was dramatically decreased.²⁹⁴ In fact, the EP concluded that it is doubtful whether formal documents were clearly communicated to and deliberated in due time by the respective domestic parliaments.²⁹⁵ Negotiations were held behind closed doors, without the presence of social partners – a deficiency explicitly criticised by the International Labour Organisation (ILO).²⁹⁶ The absence of prior consultation with trade union organisations has been even officially admitted by the Greek government, and has been ascribed to the complexity of economic and political issues and the conditions under which the European support mechanism for Greece was formulated.²⁹⁷ These profound shortcomings in terms of democratic procedure should also be taken into account in the legal assessment of the austerity measures, as such insulation from public debate and parliamentary scrutiny makes the intrusion in social rights also democratically questionable.

At this point, a further development in the political scene during the economic crisis should be noted: the outcome of the General National Elections of 25 January 2015. During its pre-electoral campaign, the left-winged political party, called 'SY.RIZ.A.' made a series of political

²⁹³ On a general assessment of executive dominance in the contemporary EU, see, Deirdre Curtin, 'Challenging executive dominance in european democracy' [2013] *Modern Law Review* 2013, 1.

²⁹⁴ Mark Dawson and Floris De Witte, 'Constitutional Balance in the EU after the Euro-Crisis' [2013] *Modern Law Review* 2013, 817, 832.

²⁹⁵ See European Parliament Resolution of 13 March 2014 on Employment and Social Aspects of the Role and Operations of the Troika (ECB, Commission and IMF) with Regard to Euro Area Programme Countries (2014/2007/(INI), 13 March 2014) <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0240+0+DOC+XML+V0//EN>> accessed 27 February 2015, para.30.

²⁹⁶ ILO, 365th Report of the Committee on Freedom of Association, *Case No. 2820 (Greece): Reports in which the Committee requests to be kept informed of developments: Complaints against the Government of Greece presented by the Greek General Confederation of Labour (GSEE), the Civil Servants' Confederation (ADEDY), the General Federation Employees of the National Electric Power Corporation (GENOP-DEL-KIE) and the Greek Federation of Private Employees (OIYE) supported by the International Confederation of Trade Unions (ITUC)*, Reference Number GB.316/INS/9/1, Conclusions, para.1002.

²⁹⁷ *ibid* para.967.

commitments towards alleviating social groups that had mostly been affected by the crisis (also known as the ‘Thessaloniki Programme’). In this direction, the newly elected Government passed its first Law²⁹⁸ introducing a series of measures to address flagrant situations of extreme poverty, providing in particular for: a) free of charge reconnection and free power supply (up to 300 kwh per month) during one year, to families and individuals living in conditions of extreme poverty, b) monthly rent allowance up to EUR 70 (per individual) and EUR 220 (per family) for up to 30,000 families and individuals living in conditions of extreme poverty, which are unable to lodge on private property at their place of residence, and c) monthly allowance for the feeding of people living in extreme situation of poverty, through catering coupons.

Nonetheless, despite winning the general national elections, the Government has not managed yet to implement its social policy programme in its entirety. This might be due to the fact that - deliberately or not - throughout its pre-electoral campaign, the new Government did not seem to take into consideration the current financial situation and the international obligations of the State. Given that Greece has so far had significant difficulty in achieving a political agreement with European Institutions and its lenders (the so called ‘Brussels Group’), the Government has been obliged to defer the implementation of its social policy at a latter phase of its 4-years mandate. Therefore, the situation of social rights in Greece in the aftermath of the recent General National Elections is yet to be examined in the light of the future developments within the country and the subsequent political arrangements in the European Union as a whole.

²⁹⁸ Law n. 4320 (Regulations for immediate action to address the humanitarian crisis, the organization of the Government and Governmental Institutions and other provisions) 2015 [Ρυθμίσεις για τη λήψη άμεσων μέτρων για την αντιμετώπιση της ανθρωπιστικής κρίσης, την οργάνωση της Κυβέρνησης και των Κυβερνητικών οργάνων και λοιπές διατάξεις].

9. TABLES OF CASE LAW AND LEGISLATION

For the purpose of our research, we have appended two detailed tables of cases, where the issue of compatibility of austerity measures with social rights provisions has been examined, both on national and international level.

9.1. Table of Cases before the Greek Council of State

Judgment No.	Provisions in Question	Ruling
668 (2012): Salaries and pensions cuts	Right to property, article 17 Constitution	No violation
	Principle of proportionality, article 25 Constitution	No violation
	Right to human dignity, article 2 of the Constitution	Not examined
	Principle of equality, article 4 of the Constitution	No violation
1283,1284,1285, 1286 (2012): Salaries and pensions cuts	Right to property, article 17 Constitution	No violation
	Principle of proportionality, article 25 Constitution	No violation
	Right to human dignity, article 2 of the Constitution	Not examined
	Principle of equality, article 4 of the Constitution	No violation
	Right to social security (Law N. 1285,1286/2012)	No violation
1972 (2012): Interruption of electricity for not paying special tax	Equality before public burdens, article 4 Constitution	No violation
	Right to property, article 17 Constitution	No violation
	Right to financial freedom, article 5 Constitution	Violation
	Right to human dignity, article 2 Constitution	No violation
527 (2013): Special tax on self-employed	Principle of equality, article 4 Constitution	No violation
	Right to financial freedom, article 5 Constitution	No violation
3342-45 (2013): Tax on surfaces with electricity	Equality before public burdens, article 4 Constitution	No violation
	Right to property, article 17 Constitution	No violation
3354 (2013): preretirement	Principle of equality, article 4 Constitution	Violation
1116-1117 (2014): PSI -	Right to financial freedom, article 5 Constitution and principle of proportionality	No violation

Private Sector Involvement	Right to property, article 17 Constitution and principle of proportionality	No violation
	Principle of equality, article 4 of the Constitution	No violation
	Equality before public burdens, article 4 Constitution	No violation
1507(2014), 2402(2014): Private Sector Involvement (PSI)	Right to financial freedom, article 5 Constitution and principle of proportionality	No violation
	Right to property, article 17 Constitution and principle of proportionality	No violation
	Principle of equality, article 4 of the Constitution	No violation
	Equality before public burdens, article 4 Constitution	No violation
1906 (2014)	Right to health, article 21 of the Constitution. (indirect privatisation of the water supply and sewage public company, via transfer of public shares to the National Asset Development Fund)	Violation
2192, 2193, 2194, 2195, 2196 (2014): wage cuts on the military forces	Equality before public burdens, article 4 Constitution	Violation
	Principle of proportionality, article 5 Constitution	Violation
	Principle of favorable treatment of the military forces	Violation
2307 (2014): Labor rights, collective autonomy, right to arbitration and minimum NGCA thresholds	Right to work and collective autonomy, article 22 Constitution	No violation
	Right to the 'after effect' of the CEA	No violation
	Right to unilateral resort to arbitration, article 22 Constitution	Violation
	Right to collective bargaining and arbitral resolution on non-wage matters and conditions	Violation
	Right to salary and wage increases	No violation
	Principle of equality, article 4 Constitution	No violation
1513(2014): wage increase and promotions of public servants	Principle of equality, article 4 Constitution	No violation
228, 229 (2014):	Right to financial freedom, article 5 Constitution	No violation

Population criteria for pharmacies	Principle of proportionality, article 25 Constitution	No violation
	Right to health, article 21 Constitution	No violation
274 (2014): generic medicaments	Right to health, article 21 of the Constitution	Violation

9.2. Table of Cases before the European Committee of Social Rights

No.	Name	Ruling
65/2011	General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece	Violation of Article 4§4 (right to a fair remuneration) of the 1961 Charter. Non applicability of Article 3§1a of the 1988 Additional Protocol to the 1961 Charter
66/2011	Resolution CM/ResChS(2013)2 on 5/02/2013, General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece	Violation of Articles 7§7 (right of children and young persons to protection), 10§2 (right to vocational training), 12§3 (right to social security) and 4§1 (right to a fair remuneration) of the 1961 Charter No violation of Articles 1§1 and 7§§ 2 and 9 of the 1961 Charter
72/2011	International Federation for Human Rights (FIDH) v. Greece	Violation of Article 11§1, 2 and 3 (right to protection of health) of the 1961 Charter
76/2012	Federation of employed pensioners of Greece (IKA –ETAM) v. Greece	Violation of Article 12§3 (right to social security) of the 1961 Charter.
77/2012	Panhellenic Federation of Public Service Pensioners v. Greece	Violation of Article 12§3 (right to social security) of the 1961 Charter
78/2012	Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece	Violation of Article 12§3 (right to social security) of the 1961 Charter

79/2012	Panhellenic Federation of pensioners of the public electricity corporation (POS-DEI) v. Greece	Violation of Article 12§3 (right to social security) of the 1961 Charter
80/2012	Pensioner's Union of the Agricultural Bank of Greece (ATE) v. Greece	Violation of Article 12§3 (right to social security) of the 1961 Charter
111/2014	Greek General Confederation of Labour (GSEE) v. Greece	Still pending

10. BIBLIOGRAPHY AND ONLINE RESOURCES

9.1. Primary Sources

9.1.1. National Legislation

9.1.1.1. Laws and decrees in chronological order

- Presidential Decree n. 57 (Taking measures on the social protection of the financially weak and repeal of the provisions governing the institution of destitution) 1973 [Λήψη μέτρων κοινωνικής προστασίας των οικονομικώς αδυνάτων και καταργήσεως των διεπουσών τον θεσμόν της απορίας διατάξεων].
- Law n. 1302 (Ratification of the International Labour Organisation Convention No. 103/1952) 1982 [Επικύρωση της Διεθνούς Σύμβασης Εργασίας αριθ. 103/1952 «για την προστασία της μητρότητας»].
- Law n. 1483 (Protection and facilitation of working people with family obligations. Amendments and improvements of labour laws) 1984 [Προστασία και διευκόλυνση των εργαζομένων με οικογενειακές υποχρεώσεις. Τροποποιήσεις και βελτιώσεις εργατικών νόμων].
- Law n. 1566 (Structure and functioning of Primary and Secondary Education and other stipulations) 1985 [Δομή και λειτουργία της Πρωτοβάθμιας και Δευτεροβάθμιας Εκπαίδευσης και άλλες διατάξεις].
- Law n. 2434 (Policy Measures for Employment and Vocational Education and Training and Other Provisions) 1996 [Μέτρα πολιτικής για την απασχόληση και την επαγγελματική εκπαίδευση και κατάρτιση και άλλες διατάξεις].
- Law n. 2525 (unified upper-secondary education) 1997 [Ενιαίο Λύκειο, πρόσβαση των αποφοίτων του στην Τριτοβάθμια Εκπαίδευση, αξιολόγηση του εκπαιδευτικού έργου και άλλες διατάξεις].

- Law n. 2643 (Regard for the employment of persons of special categories and other provisions) 1998 [Μέριμνα για την απασχόληση προσώπων ειδικών κατηγοριών και άλλες διατάξεις].
- Law n. 2646 (Development of the National System of Social Care and other provisions) 1998 [Ανάπτυξη του Εθνικού Συστήματος Κοινωνικής Φροντίδας και άλλες διατάξεις].
- Law n. 2716 (Development and modernization of mental health services and other provisions) 1999 [Ανάπτυξη και εκσυγχρονισμός των υπηρεσιών ψυχικής υγείας και άλλες διατάξεις].
- Law n. 2817 (Education of people with special educational needs and other provisions) 2000 [Εκπαίδευση των ατόμων με ειδικές εκπαιδευτικές ανάγκες και άλλες διατάξεις].
- Law n. 2916 (Structure of higher education and regulation of issues of this technology sector) 2001 [Διάρθρωση της Ανώτατης Εκπαίδευσης και ρύθμιση θεμάτων του Τεχνολογικού Τομέα αυτής, ΦΕΚ 114Α'/11-6-2001].
- Law n. 2920 (Health and Welfare Services Inspection Body and other provisions) 2001 [Σώμα Επιθεωρητών Υγείας και Πρόνοιας (ΣΕΥΥΠ) και άλλες διατάξεις].
- Law n. 2986 (Organisation of regional education directorates in primary and secondary education, evaluation of teaching work and teachers' training and other decisions) 2002 [Οργάνωση των περιφερειών της Πρωτοβάθμιας και Δευτεροβάθμιας Εκπαίδευσης, αξιολόγηση του εκπαιδευτικού έργου και των εκπαιδευτικών, επιμόρφωση των εκπαιδευτικών και άλλες διατάξεις].
- Law n. 3304 (Application of the principal of equal treatment independently of racial or national origin, religious or other beliefs, disability, age or sexual orientation) 2005 [Εφαρμογή της αρχής της ίσης μεταχείρισης ανεξαρτήτως φυλετικής ή εθνοτικής καταγωγής, θρησκευτικών ή άλλων πεποιθήσεων, αναπηρίας, ηλικίας ή γενετήσιου προσανατολισμού].

- Law n. 3369 (Systematisation of Lifelong learning and other stipulations) 2005 [Συστηματοποίηση της διά βίου μάθησης].
- Joint Ministerial Decision n. 139491 (Laying down the conditions, criteria and procedures for the access to the nursing care and healthcare system of the uninsured and economically disadvantaged citizens) 2006 [Καθορισμός προϋποθέσεων, κριτηρίων και διαδικασιών πρόσβασης στο σύστημα νοσηλευτικής και ιατροφαρμακευτικής περίθαλψης ανασφάλιστων και οικονομικά αδυνάτων πολιτών].
- Law n. 3475 (Organisation of secondary vocational education and other provisions) 2006 [Οργάνωση και λειτουργία της δευτεροβάθμιας επαγγελματικής εκπαίδευσης και άλλες διατάξεις].
- Law n. 3624 (Ratification of the Act of Legislative Content of August 29, 2007 ‘social benefits and financial reinforcements to the fire victims’) 2007 [Κύρωση της από 29 Αυγούστου 2007 Πράξης Νομοθετικού Περιεχομένου «Κοινωνικές παροχές και οικονομικές ενισχύσεις τους πληγέντες από τις πυρκαγιές»].
- Presidential Decree n. 220 (Harmonisation of the Greek Legislation to the provisions of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (Official Journal L 031, 06.02.2003)) 2007 [Προσαρμογή της Ελληνικής Νομοθεσίας προς τις διατάξεις της Οδηγίας 2003/9/ΕΚ του Συμβουλίου της 27ης Ιανουαρίου 2003, σχετικά με τις ελάχιστες απαιτήσεις για την υποδοχή των αιτούντων άσυλο στα κράτη μέλη (ΕΕL 31/6.2.2003)].
- Law n. 3631 (Establishment of the National Social Cohesion Fund) 2008 [Σύσταση Εθνικού Ταμείου Κοινωνικής Συνοχής και άλλες διατάξεις].
- Ministerial Decision n. 31777 (Amendment of the Joint Ministerial Decision n. Π2/οικ.2673/2001 and increase of one-off allowance from EUR 234,78 to a maximum of EUR 600) 2009 [Τροποποίηση της αριθμ. Π2/οικ.2673/2001 Κ.Υ.Α.& αύξηση

της εφάπαξ οικονομικής ενίσχυσης για ένδεια από EUR 234,78 σε EUR 600 κατά ανώτατο όριο.]

- Law n. 3845 (Measures to implement a mechanism to support the Greek economy by the Member States of the Euro area and the International Monetary Fund) 2010 [Μέτρα για την εφαρμογή του μηχανισμού στήριξης της ελληνικής οικονομίας από τα κράτη - μέλη της Ζώνης του ευρώ και το Διεθνές Νομισματικό Ταμείο].
- Law n. 3863 (New Social Security System and Relevant Provisions) 2010 [Νέο ασφαλιστικό σύστημα και συναφείς διατάξεις, ρυθμίσεις στις εργασιακές σχέσεις].
- Law n. 3848 (Upgrading of teacher role – establishment of assessment and meritocracy rules in education and other provisions) 2010 [Αναβάθμιση του ρόλου του εκπαιδευτικού - καθιέρωση κανόνων αξιολόγησης και αξιοκρατίας στην εκπαίδευση και λοιπές διατάξεις].
- Law n. 3896/2010 (Application of the principal of equal opportunities and equal treatment of men and women in labour and employment issues – Legislative harmonisation with Directive 2006/54/EC of the European Parliament and the Council, of 5 July 2006 and other provisions) 2010 [Εφαρμογή της αρχής των ίσων ευκαιριών και της ίσης μεταχείρισης ανδρών και γυναικών σε θέματα εργασίας και απασχόλησης - Εναρμόνιση της κείμενης νομοθεσίας με την Οδηγία 2006/54/EK του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου, της 5ης Ιουλίου 2006 και άλλες συναφείς διατάξεις].
- Law n. 4046 (Approval of Plans of Financial Facilitation between the European Financial Stability Facility (E.F.S.F.), the Greek Republic and the Bank of Greece, the Plan of Memorandum of Understanding between the Greek Republic, the European Commission and the Bank of Greece and other urgent measures to reduce the public debt and rescue the national economy) 2012 [Έγκριση των Σχεδίων Συμβάσεων Χρηματοδοτικής Διευκόλυνσης μεταξύ του Ευρωπαϊκού Ταμείου Χρηματοπιστωτικής Σταθερότητας (E.T.Χ.Σ.), της Ελληνικής Δημοκρατίας και

της Τράπεζας της Ελλάδος, του Σχεδίου του Μνημονίου Συνεννόησης μεταξύ της Ελληνικής Δημοκρατίας, της Ευρωπαϊκής Επιτροπής και της Τράπεζας της Ελλάδος και άλλες επείγουσες διατάξεις για τη μείωση του δημοσίου χρέους και τη διάσωση της εθνικής οικονομίας].

- Law n. 4097 (Application of the principal of equal treatment of men and women during self-contained professional activity - Legislative harmonization with Directive 2010/41/EE of the European Parliament) 2012 [Εφαρμογή της αρχής της ίσης μεταχείρισης ανδρών και γυναικών κατά την άσκηση αυτοτελούς επαγγελματικής δραστηριότητας - Εναρμόνιση της νομοθεσίας με την Οδηγία 2010/41/EE του Ευρωπαϊκού Κοινοβουλίου].
- Law n. 4186 (Restructuring of Secondary Education and other provisions) 2013 [Αναδιάρθρωση της Δευτεροβάθμιας Εκπαίδευσης και λοιπές διατάξεις].
- Legislative Act *'Addressing urgent issues falling within the competence of the Ministries of Interior, Labour, Social Insurance and Welfare, of Public Order and Citizen's Protection, of the General Secretariat of the Government and the Minister of State'* Government Gazette Issue No 256 31 December 2012 [Ρυθμίσεις κατεπειγόντων θεμάτων αρμοδιότητας των Υπουργείων Εσωτερικών, Εργασίας, Κοινωνικής Ασφάλισης και Πρόνοιας, Δημόσιας Τάξης και Προστασίας του Πολίτη, της Γενικής Γραμματείας της Κυβέρνησης και του Υπουργού Επικρατείας, ΦΕΚ 256/31.12.2012].
- Joint Ministerial Decision n. 2/71338/0026 (Laying down the procedures and the supporting documents for the payment of the income support payment to families in less-favored and mountainous regions) 22 July 2013 [Καθορισμός διαδικασίας και δικαιολογητικών για την πληρωμή της εισοδηματικής ενίσχυσης οικογενειών ορεινών και μειονεκτικών περιοχών].
- Joint Ministerial Decision n. 56432 (Laying down the conditions, criteria and procedures for access to the nursing care and healthcare system of the uninsured and the economically disadvantaged citizens) Official Gazette No 1753, Issue 2, 28 June 2014 [Καθορισμός προϋποθέσεων, κριτηρίων και διαδικασιών πρόσβασης στο

σύστημα φαρμακευτικής περίθαλψης ανασφαλιστών και οικονομικά αδυνάτων πολιτών].

- Law n. 4251 (*Immigration and Social Integration Code and other relevant provisions*) 2014 [Κώδικας Μετανάστευσης και Κοινωνικής Ένταξης και λοιπές διατάξεις].
- Ministerial Decision n. Δ27/οικ.34481/1526 (Requirements for the Establishment and Operation of Child Protection Units Operating from Private Legal Entities (Institutions, Charities, Religious Institutions, Organisations and Generally Not for Profit Agencies not Covered by the Public Sector) 2014 [Προϋποθέσεις Ίδρυσης και λειτουργίας Μονάδων Προστασίας Παιδιού από Νομικά Πρόσωπα Ιδιωτικού Δικαίου (Ιδρύματα, Φιλανθρωπικά Σωματεία, Εκκλησιαστικά Ιδρύματα, Οργανώσεις προσώπων και γενικά φορείς μη υπαγόμενους στο δημόσιο τομέα μη κερδοσκοπικού χαρακτήρα)].
- Joint Ministerial Decision n. 56432 (Establishment of the conditions, criteria and procedures for access of the uninsured and financially weak citizens to the pharmaceutical care system) 2014 [Καθορισμός προϋποθέσεων, κριτηρίων και διαδικασιών πρόσβασης στο σύστημα φαρμακευτικής περίθαλψης ανασφαλιστών και οικονομικά αδυνάτων πολιτών].
- Joint Ministerial Decision n. 39892/ΓΔ1.2 (Laying down terms and conditions with respect to the implementation of the pilot programme Minimum Income Guarantee – Guaranteed Minimum Income' (Official Gazette Issue 2) 7 November 2014 [Καθορισμός των όρων και των προϋποθέσεων εφαρμογής του πιλοτικού προγράμματος Ελάχιστο Εγγυημένο Εισόδημα – Εγγυημένο Κοινωνικό Εισόδημα].
- Law n. 4320 (Regulations for immediate action to address the humanitarian crisis, the organization of the Government and Governmental Institutions and other provisions) 2015 [Ρυθμίσεις για τη λήψη άμεσων μέτρων για την αντιμετώπιση της ανθρωπιστικής κρίσης, την οργάνωση της Κυβέρνησης και των Κυβερνητικών οργάνων και λοιπές διατάξεις].

9.1.1.2. Domestic jurisprudence

- Greek Council of State (Plenary Session), Judgment No. 68 (2012).
- Greek Council of State (Plenary Session), Judgment No. 1972 (2012).
- Greek Council of State (Plenary Session), Judgment No. 1812 (2013).
- Greek Council of State (Plenary Session), Judgement No. 1906 (2014).
- Greek Council of State (Plenary Session), Judgments Nos. 2192, 2193, 2194, 2195, 2196 (2014).
- Greek Council of State (Plenary Session), Judgment No. 2307 (2014).
- Greek Council of State (Plenary Session), Judgment No. 4741 (2014).
- Special Court on disputes concerning the remuneration and pension of magistrates and judges (Misthodiikeio) Judgment Nos. 88-89 (2013).

9.1.2. International Law

9.1.2.1. *International Treaties – Statutory instruments*

- Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.
- Council of Europe, European Social Charter (Revised), 3 May 1996, ETS 163.
- Cultural Agreement between Greece and Turkey (1953), United Nations Treaty Series vol. 178, No. 2333.
- Educational Agreement 1951.
- Treaty of Peace with Turkey (Lausanne Treaty, signed 24 July 1923), The Treaties of Peace 1919-1923, Vol. II (New York: Carnegie Endowment for International Peace, 1924).
- UN Educational, Scientific and Cultural Organisation (UNESCO), Convention Against Discrimination in Education (adopted 14 December 1960).

- UN General Assembly, Convention on the Rights of Persons with Disabilities (adopted 13 December 2006), A/RES/61/106.
- UN General Assembly, Convention on the Rights of the Child (adopted 20 November 1989) United Nations Treaty Series 3, vol. 1577.
- UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23.
- UN General Assembly, International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966), United Nations Treaty Series, vol. 993.
- UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).
- United Nations, UN (1990) World Declaration on Education for All and Framework for Action to Meet Basic Learning Needs.

9.1.2.2. *General comments*

- UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)*, E/1992/23 (10 May 1999).
- UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23.
- UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)* E/C.12/1999/10 (8 December 1999).
- UN Committee on the Rights of the Child (CRC), *General Comment No.1 (2001), Art.29(1) CRC: The Aims of Education*, CRC/GC/2001/1 (17 April 2001).
- UN Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Greece*, CRC/C/GRC/CO/2-3 (13 August 2012).

9.1.3. International Jurisprudence

9.1.3.1. *European Committee on Social Rights*

i. Complaints

- *Confédération française de l'Encadrement CFE-CGC v. France* Complaint No. 9/2000 (ECSR, 11 December 2001).
- *Confédération française de l'Encadrement CFE-CGC v. France* Complaint No. 16/2003 (ECSR, 30 November 2011).
- *Defence for Children International (DCI) v. the Netherlands* Complaint No. 47/2008 (ECSR, 20 October 2009).
- *European Roma Rights Centre ERRC v. Greece* Complaint No. 15/2003 (ECSR, 7 February 2005).
- *Federation of employed pensioners of Greece (IKA –ETAM) v. Greece* Complaint No. 76/2012 (ECSR, 7 December 2012).
- *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).
- *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 National Confederation of Labour (GSEE) v. Greece* Complaint No.111/2014 (ECSR, registered 26 September 2014).
- *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece* Complaint No. 49/2008 (ECSR, 6 July 2011).
- *International Federation of Human Rights Leagues (FIDH) v. France* Complaint No. 14/2003 (ECSR, 8 September 2004).
- *International Federation for Human Rights (FIDH) v. Greece* Complaint No. 72/2011 (ECSR, 23 January 2013).
- *Panbellenic 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 v. Greece* Complaint No. 77/2012 (ECSR, 7 December 2012).
- *Pensioner's Union of the Agricultural Bank of Greece (ATE) v. Greece* Complaint No. 80/2012 (ECSR, 7 December 2012).
- *Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece* Complaint No. 78/2012 (ECSR, 7 December 2012).
- *Quaker Council for European Affairs (QCEA) v. Greece* Complaint No. 8/2000 (ECSR, 27 April 2001).
- *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden* Complaint No. 85/2012 (ECSR, 3 July 2013).
- *World Organisation against Torture (OMCT) v. Ireland* Complaint No. 18/2003 (ECSR, 7 December 2004).

ii. Conclusions

- European Committee of Social Rights, Conclusions III (1973) Germany.
- European Committee of Social Rights, Conclusions XIII-4 (1996) Belgium.
- European Committee of Social Right, Conclusions XV-2 (1998).
- European Committee of Social Rights, Conclusions (2013) Italy.
- European Committee of Social Rights, Conclusions XX-3 (2014) Greece.
- European Committee of Social Rights Conclusions XX-2 (2014) Greece.
- European Committee of Social Rights, Conclusions XX-3 (2014) Spain.
- European Committee of Social Rights, Conclusions XIX-4 (2011).
- European Committee of Social Rights, Conclusions XIX-4 (2011) (Greece).
- European Committee of Social Rights, Conclusions (2003) France.
- European Committee of Social Rights, General Introduction to Conclusions XIX-2 (2009).

9.1.3.2. European Court of Human Rights

- *A.A v. Greece*, App. No. 12186/08, (ECHR, 22 July 2010).
- *Budina v. Russia* (dec.), App. No. 45603/05, (ECHR, 18 June 2009).
- *Demir and Baykara v. Turkey* [GC], App. No. 34503/97, Reports of Judgments Decisions 2008.
- *Ichtigiaroglou v. Greece*, App. no. 12045/06, (ECHR, 19 June 2008.)
- *Koufaki and Adedy v. Greece* (dec.), App. Nos. 57665/12 and 57657/12, (ECHR, 7 May 2013).
- *Kutepov and Anikeyenko v. Russia* (dec.), App. No. 68029/01, (ECHR, 25 October 2005).
- *Lariosbina v. Russia* (dec.), App. No 56869/00, (ECHR, 23 April 2002).
- *M.S.S v. Greece*, App. No. 30696/09 (ECHR, 21 January 2011).
- *N.K.M. v. Hungary*, App. No. 66529/11 (ECHR, 14 May 2013).
- *National Union of Belgian Police v. Belgium*, 27 October 1975, Series A no. 19.
- *R.Sz. v. Hungary*, App. No. 41838/11 (ECHR, 2 July 2013).
- *Rahimi v. Greece*, App. No. 8687/08 (ECHR, 5 April 2011).
- *S.D v. Greece*, App. No. 53541/07 (ECHR, 11 June 2009).
- *Sampanis and others v. Greece*, App. No. 32526/05, (ECHR, 5 June 2008).
- *Tabesh v. Greece*, App. No. 8256/07 (ECHR, 26 November 2009).
- *Tsoukalas v. Greece*, App No. 12286/08 (ECHR, 22 July 2010).
- *Wilson, National Union of Journalists and Others v. the United Kingdom*, nos. 30668/96, 30671/96 and 30678/96, Reports of Judgments and Decisions 2002-V.

9.1.3.3. Legislation of the European Union

- Council of the European Union, Council Directive 2004/81/EC of 29 April 2004 on the Residence Permit Issued to Third-Country Nationals Who are Victims of Trafficking in Human Beings or Who have Been the Subject of Action to Facilitate Illegal Immigration, Who Cooperate With the Competent Authorities, 6 August 2004, OJ L.261/23; 6.8.20014, 2004/81/EC.

- Council of Europe, European Social Charter (Revised), 3 May 1996, ETS 163.
- Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.

9.2. Secondary Sources

9.2.1. Books

- Bank of Greece - Centre for Culture, Research and Documentation, *The chronicle of the great crisis. The Bank of Greece 2008-2013*, (Centre for Culture, Research and Documentation-The Bank of Greece 2014).
- Beiter Klaus Dieter, *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Art.13 ICESCR*, (Martinus Nijhoff 2005).
- Chapman Audrey R. and Russell Sage (eds), *Core obligations: building a framework for economic, social and cultural rights* (Intersentia, Antwerpen 2002).
- Council of Europe, *European Social Charter Collected Texts* (6th edition 2008).
- European Commission – Eurostat, *European Union Labour Force Survey* (Eurostat 2000).
- Harris DJ, ‘Collective complaints under the European Social Charter: Encouraging progress?’ in Kaiyan Homi Kaikobad & Michael Bohlander (eds), *International Law and Power: Perspectives on Legal Order and Justice-Essays in Honour of Colin Warbrick* (Martinus Nijhoff Publishers 2009).
- Human Rights Watch, *World Report- Events of 2014* (Seven Stories Press 2015).
- Iliopoulos-Strangas Julia, ‘Soziale Grundrechte in Europa nach Lissabon. Eine rechtsvergleichende Untersuchung der nationalen Rechtsordnungen und des europäischen Rechts’, Nomos Baden-Baden, 2010.
- International Labour Office (ILO), *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (5th edn, Geneva, International Labour Office 2006).

- Korda Maria, *The Role of International Social Security Standards. An in-depth study through the case of Greece* (Intersentia 2013).
- Ministry of Education, Lifelong Learning & Religious Affairs, ‘The New School-The Pupil first’ in OECD, *Government at a glance (2009) Country Note-Greece* (OECD Publishing, Paris 2014).
- Organisation for Economic Co-operation and Cultural Development (OECD), *Education at a Glance (2012) Country Note (Greece): OECD Indicators*, (OECD Publishing Paris, 2012).
- Organisation for Economic Co-operation and Cultural Development (OECD), *Education at a Glance (2014) Country Note (Greece): OECD Indicators* (OECD Publishing Paris, 2014).
- Organisation for Economic Co-operation and Cultural Development (OECD), *Education at a glance (2002-2003)*, OECD Publishing Paris.
- Organisation for Economic Co-operation and Cultural Development (OECD), *Employment Outlook How does Greece Compare?* (OECD, 2014).
- Organisation for Economic Co-operation and Cultural Development (OECD), *Education Policy Advice for Greece, Strong Performers and Successful Performers in Education*, (OECD Publishing Paris, 2011).
- Strati Eleni and Evangelinou Anna, *Report on the employment of disabled people in European countries, Country: Greece*, (Academic Network of European Disability experts, 2007).

9.2.2. Journal Articles

- Antoninis Manos and Tsakloglou Panos, ‘*Who benefits from Public Education in Greece? Evidence and Policy Implications*’ [2001] *Education Economics* 197.
- Aubert-Monpeyssen Thérèse, ‘*The influence of the European Social Charter in national law: The increased justiciability of social rights*’ [2011] *Labour Law Review* 1097 [Aubert-Monpeyssen Thérèse, Η επίδραση του Ευρωπαϊκού Κοινωνικού Χάρτη στο εσωτερικό δίκαιο:

Η αυξημένη αγωγιμότητα των κοινωνικών δικαιωμάτων, Επιθεώρηση Εργατικού Δικαίου 2011, σ. 1097 – 1110].

- Beetham David, *'What Future for Economic and Social Rights'* [1995] *The International Library of Essays in Law and Legal Theory* 2003.
- Boussiakou Kalliopi, *'The Educational Rights of the Muslim Minority under Greek Law'* [2007] *Journal on Ethnopolitics and Minority Issues in Europe* 1.
- Churchill Robin R. and Khaliq Urfan, *'The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?'* [2004] *European Journal of International Law* 417.
- Cullen Holly, *'Education Rights or Minority Rights?'* [1993] *International Journal of Law and the Family* 143.
- Cullen Holly, *'The Collective Complaints System of the European Social Charter: Interpretative Methods of the European Committee of Social Rights'* [2009] *Human Rights Law Review* 61.
- Curtin Deirdre, *'Challenging executive dominance in European democracy'* [2013] *Modern Law Review* 2013.
- Dawson Mark and De Witte Floris, *'Constitutional Balance in the EU after the Euro-Crisis'* [2013] *Modern Law Review* 2013.
- Duminica Ramona and Tabacu Andreea, *'Brief Reflections on the Exercise of the Rights to Education of the Romani Minority'* [2010] *AGORA, International Journal of Juridical Science*.
- Fredman Sandra, *'Human Rights Transformed: Positive Duties and Positive Rights'* [2006] *Legal Research Paper Series, Paper No 38*.
- Galante Victoria, *'Greece's not-so-warm Welcome to Unaccompanied Minors: Reforming EU Law to Prevent Illegal Treatment of Migrant Children in Greece'* [2014] *Brooklyn Journal of International Law* 745.
- Gouvias Dionyssios, *'Response of the Greek State to Global Trends in Education Policy Making'* [2007] *European Educational Research Journal* 25.

- Halvorsen Kate, *Notes on the Realisation of the Human Right to Education* [1990] Human Rights Quarterly 341.
- Ioannidis Michael, *EU financial assistance conditionality after "Two Pack"* [2014] ZaöRV 74.
- Lethbridge Jane, *Impact of the Global Economic Crisis and Austerity Measures on Women* [2012] Public Services International.
- Louis Jean-Victor, *Guest editorial: The no-bail out clause and rescue packages* [2010] Common Market Law Review 971.
- Mabbett Deborah, *The Development of Rights-based Social Policy in the European Union: The Example of Disability Rights* [2005] Journal of Common Market Studies 43.
- Jackbeth Mapulanga-Hulston, *Examining the Justiciability of Economic, Social and Cultural Rights* [2002] The International Journal of Human Rights, Vol. 6, No. 4, 29.
- Medda-Windischer Roberta, *Dismantling Segregating Education and the ECtHR: D.H & Others v. Czech Republic: Toward and Inclusive Education?* [2007-08] European Yearbook of Minority Issues 19.
- Mike Wienbracke, *"Euro-Rettung" und sogenanntes "bail out"-Verbot (Art. 125 AEUV) nach dem "Pringle"-Urteil des EuGH* [2013] 16 ZEuS 1.
- Ozdemir Ramazan, *Turkish Minority Groups in Terms of Education and Political Participation in Greek Society in Western Thrace from 1923 to 1993* [2010] Turkish Journal of Politics 1.
- Packer John, *Minority Education Rights in Europe* [2004] International Journal of Education Law and Policy (Special Issue) 109.
- Palmstorfer Rainer, *To bail out or not to bail out? The current framework of financial assistance for euro area Member States measured against the requirements of EU primary law* [2012] European Law Review 771.
- Paraskevopoulos Iordanis and Morgan John, *Education System with a Bleak future?* [2011] Weiterbildung 38.
- Philip Alston, *Assessing the Strengths and Weaknesses of the European Social Charter's Supervisory System* [2005] Center for Human Rights and Global Justice Working Paper No. 7 4.

- Poulou Anastasia, '*Austerity and European Social Rights: How Can Courts Protect Europe's Lost Generation?*' [2014] German Law Journal 1145.
- Quesada Luis Jimena, '*Adoption and Rejection of Austerity Measures: Current Controversies Under European Law - Focus on the role of the European Committee of Social Rights*' [2014] Revista catalana de dret públic. No. 49 41.
- Stamoulas Aristotelis, '*Forms of Infringement of the Right to Education in Contemporary Greek Educational Structures*' [2006] International education Journal 74.
- Especially for the case of Greece, see Julia Iliopoulos-Strangas/Georg Leventis, *Der Schutz der sozialen Grundrechte in der Rechtsordnung Griechenlands*.
- Visier Laurent, '*Sheltered employment for persons with disabilities, Sheltered employment for persons with disabilities*' [1998] International Labour Review 137.
- Yannakourou Matina and Tsimpoukis Chronis, '*Flexibility without Security and Deconstruction of Collective Bargaining: The New Paradigm of Labour Law in Greece*' [2014] Comparative Labour Law & Policy Journal 331.
- Yannakourou Matina, '*Challenging Austerity Measures Affecting Work Rights at Domestic and International Level. The case of Greece*' in Kilpatrick Claire and De Witte Bruno (eds), *Social Rights in Times of Crisis in the Eurozone: The Role of Fundamental Rights' Challenges* (EUI Working Paper LAW 2014).
- Young G. Katharine, '*The Minimum Core of Economic and Social Rights: A Concept in Search of Content*' [2008] The Yale Journal of International Law 33.

9.2.3. Internet sources

- Amnesty International, '*Out of the Spotlight: the Rights of Foreigners and Minorities are still a Grey Area*' (October 2005)
<http://www.amnesty.eu/static/documents/2005/AI_Greece_Report_2005.pdf>
accessed 9 March 2015.

- Committee of Experts on the Application of Conventions and Recommendations (CEACR), *'Observations on Social Security (Minimum Standards) Convention, 1952 (No. 102)'* (published in the 103rd ILC session, 2014)
<http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3150771> accessed 22 February 2015.
- Committee of Experts on the Application of Conventions and Recommendations (CEACR), *'Observations on Social Security (Minimum Standards) Convention, 1952 (No. 102)'* (published in the 104th ILC session, 2015)
<http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3191959> accessed 22 February 2015.
- Committee of Ministers, *'Report to the 103rd International Labour Conference 2014 on the application of ILO Convention No 102 by Greece and Council of Europe on the application of the European Code of Social Security by Greece'* (Period from 1 July 2011 to 30 June 2012, 16 October 2013)
<[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResCSS\(2013\)21&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResCSS(2013)21&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383)> accessed 19 February 2015.
- Council of Europe, *'Digest of the case law of the European Committee of Social Rights'* (1 September 2008)
<http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf> accessed 20 February 2015.
- 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.
- Dedoussopoulos Apostolos in collaboration with Aranitou Valia, Koutentakis Franciscos, Maropoulou Marina, *'Assessing the Impact of the Memoranda on Greek Labour Market and Labour Relations'* (ILO Working Paper No. 53, 2013)
<http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_232796.pdf> accessed 10 February 2015.

- Directorate General of Human rights and the Rule of Law, '*Greece and the European Social Charter*' (Factsheet, January 2015)
<http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Greece_en.pdf> accessed 25 February 2015.
- Directorate-General for Economic and Financial Affairs, '*The Economic Adjustment Programme for Greece*' (Occasional Papers 61, May 2010)
<http://ec.europa.eu/economy_finance/publications/occasional_paper/2010/pdf/ocp61_en.pdf> accessed 1 February 2015.
- Doctors without Borders, '*Invisible Suffering: Prolonged and systematic detention of migrants and asylum seekers in substandard conditions in Greece*'
<http://www.msf.org/sites/msf.org/files/invisible_suffering.pdf> accessed 15 February 2015.
- Education, Audiovisual and Culture Executive Agency (EACEA P9 Eurydice), '*Key data on Education in Europe 2012*' (February 2012)
<http://eacea.ec.europa.eu/education/eurydice/documents/key_data_series/134en.pdf> accessed 1 March 2015.
- EFSF Framework Agreement (consolidated version) <http://www.efsf.europa.eu/attachments/20111019_efs_f_framework_agreement_en.pdf> accessed 22 February 2015.
- ELSTAT, 'Labour Force Survey: Third Trimester of 2013' Press Release
<http://www.statistics.gr/portal/page/portal/ESYE/BUCKET/A0101/PressReleases/A0101_SJO01_DT_QQ_04_2013_01_F_GR.pdf> accessed 10 February 2015.
- ESF Actions Implementation Authority <[http://www.eye-ekt.gr/\(S\(jy2r4de4yqg0p455tktx4aj\)\)/eye/StaticPage.aspx?pagenb=52053](http://www.eye-ekt.gr/(S(jy2r4de4yqg0p455tktx4aj))/eye/StaticPage.aspx?pagenb=52053)> accessed 10 February 2015 [Greek].
- ESF Actions Implementation Authority <[http://www.eye-ekt.gr/\(S\(no00fx55jt5kmoapqwtvgz45\)\)/eye/StaticPage.aspx?pagenb=50749](http://www.eye-ekt.gr/(S(no00fx55jt5kmoapqwtvgz45))/eye/StaticPage.aspx?pagenb=50749)> accessed 10 February 2015 [Greek].

- European Commission Eurostat, *People Living in Households with Very Low Work Intensity by Age and Sex (population aged 0 to 59 years)* (Last update: 16 February 2015)
<http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_lvhl11&lang=en>
accessed 10 February 2015.
- European Commission, Eurostat, *At-risk-of-poverty Rate by Poverty Threshold, Age and Sex* (2015) <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_li02&lang=en>
accessed 25 February 2015.
- European Commission, Eurostat, *Glossary: At risk of poverty or social exclusion (AROPE)*
<http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:At_risk_of_poverty_or_social_exclusion_%28AROPE%29> accessed 10 February 2015.
- European Commission, Eurostat, *Severe material deprivation rate by age and sex* (updated 16 February 2015)
<http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_mddd11&lang=en>
accessed 10 February 2015.
- 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.
- European Commission, Eurostat, *Disability statistics - labour market access*,
<http://ec.europa.eu/eurostat/statistics-explained/index.php/Disability_statistics_-_labour_market_access> accessed 3 March 2015.
- European Committee of Social Rights, *Activity Report 2010* (European Social Charter Directorate General of Human Rights and Legal Affairs)
<http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ActivityReportIndex_en.asp> accessed 13 March 2015.
- European Committee of Social Rights, *Activity Report 2011* (2012)
<http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ActivityReportIndex_en.asp> accessed 17 January 2015.

- European Committee of Social Rights, '*Activity Report 2012*',
<http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/Year/XV2Vol1_en.pdf> accessed 25 February 2015.
- European Committee of Social Rights, '*Activity Report 2013*' (2014)
<http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ActivityReportIndex_en.asp> accessed 17 January 2015.
- European Committee of Social Rights, '*Conclusions XVI-2-Greece*'
<http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/GreeceXVI2_en.pdf> accessed 25 February 2015.
- European Committee of Social Rights, '*Conclusions XVIII-2-Greece*'
<http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/GreeceXVIII2_en.pdf> accessed 25 February 2015.
- European Committee of Social Rights, '*Conclusions XX-2-Greece*' (November 2014)
<http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/GreeceXX2_en.pdf> accessed 22 February 2015.
- European Committee of Social Rights, '*Opinion of the Committee on Recommendation 1892 (2009) of the Parliamentary Assembly on "the contribution of the council of Europe in the development of the higher education area"*' (Council of Europe, Activity Report 2010)
<http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ActivityReport2010_en.pdf> accessed 25 February 2015.
- European Committee of Social Rights, '*Statement of Interpretation on Art.17§2, Activity Report 2011*' (Council of Europe, May 2012)
<http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ActivityReport2012_en.pdf> accessed 25 February 2012.
- European Court of Human Rights, *Sampani and others v. Greece, Lavida and Others v. Greece*,
<http://www.echr.coe.int/Documents/FS_Roma_ENG.pdf> accessed 8 April 2015.
- European Parliament Resolution of 13 March 2014 on Employment and Social Aspects of the Role and Operations of the Troika (ECB, Commission and IMF) with Regard to

- Euro Area Programme Countries ([2014/2007/\(INI\)](#), 13 March 2014)
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0240+0+DOC+XML+V0//EN> accessed 27 February 2015.
- European Roma Rights Centre, *'Challenging Discrimination; Promoting Equality'* (Report to the Committee of the Rights of the Child on Greece for consideration at the 58th Session, 2011) <http://www.errc.org/cms/upload/file/greece-crc-submission-25-july-2011.pdf> accessed 6 March 2015.
 - European Union Statistics on Income and Living Conditions (EU-SILC), *'In-work at risk of poverty rate'* <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcod e=tesov110&plugin=1> accessed 20 May 2014.
 - Fischer-Lescano Andreas, *Human Rights in Times of Austerity Policy, The EU institutions and the conclusion of Memoranda of Understanding*, Legal opinion commissioned by the Chamber of Labour, Vienna in cooperation with the Austrian Trade Union Federation, the European Trade Union Confederation and the European Trade Union Institute [2014], University of Bremen: Nomos Verlagsgesellschaft, Baden-Baden, http://ak-europa.eu/_includes/mods/akeu/docs/main_report_en_331.pdf accessed 27 April 2015.
 - FRA, *'Handbook on European Law Relating to Asylum, Borders and Immigration'* (2014) http://fra.europa.eu/sites/default/files/handbook-law-asylum-migration-borders-2nded_en.pdf accessed 15 February 2015.
 - General Secretariat for Youth, <http://www.neagenia.gr/frontoffice/portal.asp?cpage=NODE&cnode=6&clang=1> accessed 25 February 2015 [Greek].
 - Giannitsis Tassos, Zografakis Stavros, *Greece: Solidarity and Adjustment in Times of Crisis*, Athens 2015, http://www.boeckler.de/pdf/p_imk_study_38_2015.pdf accessed 26 April 2015.
 - Greek Council for Refugees, www.gcr.gr accessed 10 February 2015.

- Greek National Commission for Human Rights, '*Observations on the 24th Greek Report on the application of the European Social Charter and on the 9th Greek Report on the application of the Additional Protocol to the European Social Charter*' (2014)
<http://www.nchr.gr/images/pdf/apofaseis/ellinikes_ektheseis_en_ell_org/CoE/GN_CHR_Observations_24thReportf.pdf> accessed 22 February 2015.
- Greek National Commission on Human Rights, '*Decision regarding the Right to Health of Undocumented Migrants*'
<http://www.nchr.gr/images/English_Site/PROSFYGES/Right_health_Undocumente d%202007.pdf> accessed 10 February 2015.
- Greek National Commission on Human Rights, '*NCHR Recommendation: On the imperative Need to Reverse the Sharp Decline in Civil Liberties and Social Rights*'
<http://www.nchr.gr/images/English_Site/CRISIS/nchr_crisis.pdf> accessed January 12 2014.
- Hellenic Ministry of Labour, Social Insurance and Welfare, '*Report for the operation of the National Center of Social Security*' (Athens 2013)
<http://www.ekka.org.gr/portal_docs/forceaccount/picture/20_1064.pdf> accessed 12 February 2015.
- Hellenic Parliament, '*Official Translation of Constitution*'
<<http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>> accessed 25 February 2015.
- Hellenic Statistical Authority (EL. STAT.), '*Labour Force Survey: Third Quarter of 2014*' (Press Release, 18 December 2014)
<http://www.statistics.gr/portal/page/portal/ESYE/BUCKET/A0101/PressReleases/A0101_SJO01_DT_QQ_03_2014_01_F_GR.pdf> accessed 10 February 2015 [Greek].
- Hellenic Statistical Authority (EL.STAT), '*Statistics on Income and Living Conditions Year 2012*' (Press Release, Income reference period 2011)
<http://www.statistics.gr/portal/page/portal/ESYE/BUCKET/A0802/PressReleases/A0802_SFA10_DT_AN_00_2012_01_F_EN.pdf> accessed 27 February 2015.

- Human Rights Watch, *Left to Survive: Systematic Failure to Protect Unaccompanied Minors in Greece*' (December 2008)
<http://www.hrw.org/sites/default/files/reports/greece1208webwcover_0.pdf>
accessed 1 March 2015.
- International Bureau of Education of the United Nations Educational, Scientific and Cultural Organisation, *World Data on Education*' (7th edition, updated July 2012)
<http://www.ibe.unesco.org/fileadmin/user_upload/Publications/WDE/2010/pdf-versions/Greece.pdf> accessed 25 Feb 2015.
- Lampousaki Sofia, *Joint Letter Rejects Private Sector Salary Threshold Cut*'
<<http://eurofound.europa.eu/observatories/eurwork/articles/other-working-conditions-industrial-relations/joint-letter-rejects-private-sector-salary-threshold-cut>>
accessed 19 February 2015.
- Lanara Zoe, *Trade Unions in Greece and the Crisis, A Key Actor under Pressure*'
<<http://library.fes.de/pdf-files/id/ipa/09012.pdf>> accessed 10 July 2014.
- Law Library of Congress, *Report on Greece*' (United States, 2007)
<<http://www.loc.gov/law/help/child-rights/greece.php>> accessed 25 February 2015.
- Manpower Employment Organisation, *Employment Programmes for Enterprises – Employers (beneficiaries) and for Unemployed persons/Employees (Beneficiaries)*'
<http://www.oaed.gr/index.php?option=com_content&view=article&id=630&Itemid=764&lang=el> accessed 8 April 2015.
- Ministry of Economy and Finance, *National Strategic Reference Framework 2007-2013*' (January 2007) <https://www.espa.gr/elibrary/Eggrafo_ESPA_el.pdf> accessed 25 February 2015.
- Ministry of Education <<http://www.minedu.gov>> accessed 25 February 2015.
- Ministry of Education, Lifelong Learning & Religious Affairs - National Centre for Vocational Orientation <<http://www.ekep.gr/english/syepenglish.pdf>> accessed 25 February 2015.

- Ministry of Education, Special Service for the Implementation of Educational Activities (Ειδική Υπηρεσία Εφαρμογής Εκπαιδευτικών Δράσεων) <<http://www.ey.minedu.gov.gr>> accessed 25 February 2015 [Greek].
- Ministry of Education-International Bureau of Education, 'National Report of Greece' (International Conference on Education, 2008) <http://www.ibe.unesco.org/fileadmin/user_upload/Policy_Dialogue/48th_ICE/ICE_FINAL_REPORT_eng.pdf> accessed 25 February 2015.
- Ministry of Finance (Hellenic Republic), 'Response of the Greek Minister of Finance to the questionnaire supporting the own initiative report evaluating the structure, the role and operations of the 'troika' (Commission, ECB and the IMF) actions in euro area programme countries' (2014) <<http://www.europarl.europa.eu/document/activities/cont/201401/20140114ATT77323/20140114ATT77323EN.pdf>> accessed 25 February 2015.
- Municipality of Athens, Reception and Solidarity Centre of the Municipality of Athens, <<https://www.cityofathens.gr/eypatheis-koinonikes-omades/astegoi>> accessed 20 January 2015 [Greek].
- National Network of Immediate Social Intervention <<http://www.koinoniasos.gr/>> accessed 20 January 2014 [Greek].
- OECD, 'Education at a Glance (2009): OECD Indicators' <<http://www.oecd.org/education/skills-beyond-school/educationataglance2009oecdindicators.htm>> accessed 23 April 2015.
- OECD, 'Health at a Glance 2013: OECD Indicators' (2013) <<http://www.oecd.org/els/health-systems/Health-at-a-Glance-2013.pdf>> accessed 27 February 2015.
- OECD, 'Pensions at a Glance 2013, OECD and G20 Indicators' (2013) <<http://www.oecd.org/greece/OECD-PensionsAtAGlance-2013-Highlights-Greece.pdf>> accessed 27 February 2015.

- Operational Programme *Human Resources Development (EPANAD)*
<<http://www.epanad.gov.gr/default.asp?pID=13&la=1>> accessed January 20 2014 [Greek].
- Patra Eleni, *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.
- Petroglou Panayota, *The Collective Complaints Procedure of the European Social Charter and its Added Value for Women's NGOs*
<<http://www.ewla.org/sites/default/files/documents/events/3rd%20Congress%20%208Paris%29/papers/Paper%20-%20Panayota%20Petroglou%20-%20Collective%20Complaints%20Procedure%20of%20the%20European%20Social%20Charter.pdf>> accessed 13 March 2015.
- PRAKSIS Independent Non Governmental Organization, <www.praksis.gr> accessed 10 February 2015.
- ROMED, *Intercultural Mediation for Roma Communities* (A Joint Council of Europe/ European Commission Action) <<http://romed.coe-romact.org/sites/default/files/leaflets/ROMED1%20-%20ENGLISH.pdf>> accessed 8 April 2015.
- Schömann Isabelle, *Collective Labour Law under Attack: How Anti-crisis Measures Dismantle Workers' collective rights* (ETUI Policy Brief No. 2, 2014)
<<https://www.etui.org/en/Publications2/Policy-Briefs/European-Economic-Employment-and-Social-Policy/Collective-labour-law-under-attack-how-anti-crisis-measures-dismantle-workers-collective-rights>> accessed 20 February 2015.
- Special Service for the Implementation of Educational Activities,
<<http://www.eye.minedu.gov.gr>> accessed 28 February 2015.
- The Greek Ombudsman, *2011 Annual Report Summary*
<http://www.synigoros.gr/resources/ee2011-english_translation-final.pdf> accessed 12 January 2014.

- The Greek Ombudsman, *'The Greek Ombudsman's Roma Intervention Speech'* (The European Parliament Committee on Civil Liberties, Justice and Home Affairs In Brussels, 1 December 2010) <<http://www.synigoros.gr/resources/roma-brussels-2010.pdf>> 8 April 2015.
- The Greek Ombudsman, *'The Ombudsman calls for the continuation of the Social Solidarity Supplement for Pensions (EKAS) programme for all disability pensioners, regardless of their age and degree of disability'* Press Release (2014) <<http://www.synigoros.gr/resources/docs/456850.pdf>> accessed 20 January 2014.
- The Greek Ombudsman, Interactive Map of Roma Camps <<http://www.synigoros.gr/maps?i=maps.el.maps>> accessed 8 April 2015
- The Guardian, *'Greek court acquits farmers who shot 28 Bangladeshi strawberry pickers'* <<http://www.theguardian.com/world/2014/jul/31/greek-court-acquits-farmers-shot-strawberry-pickers>> accessed 15 February 2015.
- Tomasevski Katarina, *'Human Rights obligations: making education available, accessible, acceptable and adaptable'* (Right to Education Primers No.3, Latin American Council of Social Sciences, April 2009) <http://www.right-to-education.org/sites/right-to-education.org/files/resourceattachments/Tomasevski_Primer%203.pdf> accessed 25 February 2015.
- Tsakoglou Panos and Cholezas Ioannis, *'Education and Inequality in Greece'* (Discussion Paper No.1582, Institute for the Study of Labour, May 2005) <<http://ftp.iza.org/dp1582.pdf>> accessed 25 February 2015.
- UN Educational, Scientific and Cultural Organization (UNESCO), *Convention Against Discrimination in Education* (14 December 1960) <<http://www.refworld.org/docid/3ae6b3880.html>> accessed 25 February 2015.
- UN General Assembly, *'Vienna Declaration and Programme of Action'* (12 July 1993) <<http://www.refworld.org/docid/3ae6b39ec.html>> accessed 21 February 2015.
- UN Human Rights Council, *Report of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human*

Rights, particularly Economic, Social and Cultural rights, Cephas Lumina (27 March 2014) <http://search.ohchr.org/search?site=default_collection&client=default_frontend&output=xml_no_dtd&ie=UTF-8&oe=UTF8&Entqr=0&ud=1&sort=date%3AD%3AL%3Ad1&proxystylesheet=en_frontend&q=greece%20cephas%20lumina> accessed 25 February 2015.

- UNHCR, IOM, IMO, UNODC and OHCHR, *Joint Statement on Protection at Sea in the Twenty-First Century* (Press Releases, 2014) < <http://www.unhcr.org/548825d59.html>> accessed 8 April 2014.

9.2.4. Reports

- Council of Europe Commissioner for Human Rights, *Report by Nils Mužnieks* No.6.
- Council of Europe, Recommendation Rec (2005) 5 of the Committee of Ministers to Member States on the rights of Children living in Residential Care (16 March 2005).
- European Commission, Directorate-General for Economic and Financial Affairs, *The Second Economic Adjustment Programme for Greece* (March 2012) Occasional Papers 94.
- European Commission, *Supported Employment for People with Disabilities in the EU and EFTA-EEA Good Practices and Recommendations in Support of a Flexicurity Approach*, Study Report (2011).
- European Foundation Centre, *Assessing the Impact of European Governments' Austerity Plans on the Rights of People with Disabilities*, European Report (2012).
- European Parliament, *The Mobility and Integration of People with Disabilities into the Labour Market*, IZA Research Report (2010).
- FIDH/HLHR, *Downgrading rights: The cost of austerity measures in Greece*, (December 2014).
- Hellenic Republic, Ministry of Finance, Hellenic National Reform Programme 2012-2015, *Report on the Progress towards 'Europe 2020' and the implementation of the Euro plus Pact commitments* (2012).
- Human Rights Council, *Report of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights*,

particularly Economic, Social and Cultural Rights: Addendum, Mission to Greece (22-27 April 2013), A/HRC/25/50/Add.1.

- Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants*, (April 2013) A/HRC/23/46/Add.4.
- Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants, Comments by the Greek State*, A/HRC/23/46/Add.5.
- ILO, 365th Report of the Committee on Freedom of Association, *Case No. 2820 (Greece): Reports in which the Committee requests to be kept informed of developments: Complaints against the Government of Greece presented by the Greek General Confederation of Labour (GSEE), the Civil Servants' Confederation (ADEDY), the General Federation Employees of the National Electric Power Corporation (GENOP-DEI-KIE) and the Greek Federation of Private Employees (OIYE) supported by the International Confederation of Trade Unions (ITUC)*, Reference Number GB.316/INS/9/1.
- International Labour Office (ILO), *Global Employment Trends for Women* (International Labour Office December 2012).
- International Labour Office, *Report on the High Level Mission to Greece* (Athens, 19-23 September 2011).
- Ministry of Justice-General Secretariat of Transparency and Human Rights, *National Action Plan for Human Rights* (March 2014).
- Paleocrassas Stamatis, Rousseas Panayiotis and Vretakou Vassilia, *Research on Dropouts in Junior High School (cohort of 1997/98)* (Transition Observatory, Pedagogical Institute, Athens 2001).
- Paleocrassas Stamatis, Rousseas Panayiotis and Vretakou Vassilia, *Research on Dropouts in Technological Vocational Schools (cohort 2001/2002)* (Transition Observatory, Pedagogical Institute, Athens 2005).

9.3. Other sources

- Committee of the Rights of the Child, *Implementation of the Convention on the Rights of the Child: List of issues concerning additional and updated information related to the second and third combined periodic report of Greece*, (May 2012) CRC/C/GRC/Q/2-3/Add.1.
- Council of Europe Commissioner for Human Rights, *Safeguarding human rights in time of crisis*, Issue Paper (2013).
- European Network of National Human Rights Institutions (ENNHRI), *Open letter on the upcoming Troika visit to Greece* (Edinburgh, 10 January 2014).
- European Network of Ombudspersons for Children, *The Rights of children living in Institutions - A Report on a Study* (July 2011).
- Greek National Commission for Human Rights (GNCHR), 'Statements on the 24th national report on the implementation of the European Social Charter and on the 9th national report on the application of the Additional Protocol of the European Social Charter' (2014), RAP/Cha/GRC/9 (2014) Add, 17.
- Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant, Second periodic reports of States parties due in 2009, Greece* (2014) CCPR/C/GRC/2.
- International Labour Office (ILO), *Global Employment Trends for Women* (International Labour Office, December 2012).
- National Commission for Human Rights, *Recommendations of the NCHR on the occasion of the Draft Law on Special Schooling and Education* [Εθνική Επιτροπή για τα Δικαιώματα του Ανθρώπου, Συστάσεις της ΕΕΔΑ με αφορμή το Σχέδιο Νόμου για την Ειδική Αγωγή και Εκπαίδευση].
- National Commission for Human Rights, *Suggestions concerning the application of Law n. 3699 'Special Schooling and Education of persons with disabilities or with special educational needs' 2008 [2009]* (Εθνική Επιτροπή για τα Δικαιώματα του Ανθρώπου, Προτάσεις σχετικά με την εφαρμογή του Ν. 3699/2008 «Ειδική Αγωγή και Εκπαίδευση ατόμων με αναπηρία ή με ειδικές εκπαιδευτικές ανάγκες, 2009»).

- Open Society Institute EU Monitoring and Advocacy Programme, Open Society Institute Mental Health Initiative, Rights of People with Intellectual Disabilities, Access to Education and Employment, Greece, Monitoring Report 2006.
- Parliamentary Assembly, *Human rights of irregular migrants*, Doc. 10924 (4 May 2006).
- Razavi Shahra, *World Development Report 2012: Gender Equality and Development, An Opportunity both Welcome and Missed: An Extended Commentary*, (United Nations Research Institute for Social Development, 2011).
- Statements by the Greek national commission for Human Rights (GNCHR) on the 24th national report on the implementation of the European Social Charter and on the 9th national report on the application of the Additional Protocol of the European Social Charter submitted by the Government of Greece, 1st December 2014, RAP/Cha/GRC/9(2014) Add.
- The Greek Ombudsman, *'Sex and Employment Relations'*, Annual Report 2013 [Συνήγορος του Πολίτη, Φύλο και Εργασιακές Σχέσεις, Ετήσια Έκθεση 2013].
- The Greek Ombudsman, *'The issue of determining the age of unaccompanied minors'* (2014).
- The Greek Ombudsman, *'The Ombudsman on the rights of children with disabilities'* Press Release (2014) [Συνήγορος του Πολίτη, Δελτίο Τύπου, Ο Συνήγορος για τα δικαιώματα των παιδιών με αναπηρίες, (2014)].
- The Greek Ombudsman, *'Unfair unilateral impose of by turns employment on working women, after maternity leave'* (Concise Special Report 2012).
- UN General Assembly, *Standard rules on the equalization of opportunities for persons with disabilities: resolution / adopted by the General Assembly*, 20 December 1993, A/RES/48/96.
- UNESCO, *The Salamanca Statement and Framework for Action on Special Needs Education* (1994) World Conference on Special Needs Education, Salamanca, Spain.
- Villumsen Nikolaj, *'Equality and the crisis'* (Council of Europe, Parliamentary Assembly, Committee on Equality and Non-Discrimination).

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

Pursuant to the supplements and amendments of the European Social Charter, a package has been created, composed of interlocking elements, which enable member states to take on new obligations alongside their existing ones. The elements of the package are:

- European Social Charter (1961)
- Additional Protocol to the European Social Charter (1988).
- Protocol Amending of the European Social Charter (1991).
- Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (1995).
- Revised European Social Charter (1996).

Hungary has signed the international documents, which comprises every element of the charter package, and has ratified them as shown below:

	Date of Signature	Date of Ratification
European Social Charter (1961)	December 13 1991	July 8 1999
Additional Protocol (1988)	October 7 2004	June 1 2005
Amending Protocol (1991)	December 13 1991	February 4 2004
Collective Complaints (1995)	October 7 2004	
Revised European Social Charter (1996)	October 7 2004	April 20 2009

Table 1. Signature and ratification dates of the European Social Charter elements by Hungary.

1.1.1 Duties and Obligations of Hungary to Date

In 1999, Hungary ratified 12 of the 19 rights of the European Charter, published in 1961. This, admittedly based on the application of the principle of „optimal minimum”¹, which means that the National Assembly ratified only those articles, which it has deemed the country was able to implement in full to avoid the consequences of non-compliance.

The ratified articles as follows:

Article 1 – The right to work;

Article 2 – The right to just conditions of work;

Article 3 – The right to safe and healthy working conditions;

Article 5 – The right to organize;

Article 6 – The right to bargain collectively;

Article 8 – The right of employed women to protection;

Article 9 – The right to vocational guidance;

Article 11 – The right to protection of health;

Article 13 – The right to social and medical assistance;

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

Article 16 – The right of the family to social, legal and economic protection;

Article 17 – The right of mothers and children to social and economic protection.

Act V. of 2005. amended Act C. of 1999 on the Promulgation of the Additional Protocol to the European Social Charter which has become of the national law's via the amendment:

- Paragraph 1 of Article 7 – The right of children and young people to protection;
- Article 10 – The right to vocational training;
- Paragraph 1 of Article 12 – The right to social security;
- Article 15 – The right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement.

¹ Kőnczei György, *Mi is az Európai Szociális Charta?* (3rd edn, Fundamentum 1998) 140 [Hungarian].

In 2004 the Government decided to become a signatory of the Additional Protocol to the European Social Charter (1988) and the Revised European Social Charter (1996). The above referenced documents were signed as early as 2004, but proposal for the publication took place in April 2009. The National Assembly decreed the adoption of the Revised European Social Charter with the content identical to the proposal for promulgation on the February 23, 2009. Act VI of 2009 on Promulgation of the Revised European Social Charter was promulgated on March 13 in the Hungarian Journal. Hungary selected 17 full articles of the original charter, comprised of Articles 1. 2. 3. 5. 6. 8. 9. 10. 11. 13. 14. 15. 16. 17. and Article 1. 2. and 3. of the Additional Protocol of 1988. which corresponds to Articles 20., 21. and 22. of the Revised European Social Charter. Hungary also adopted Paragraph 1 of Article 7 Paragraph 1 of Article 12. and Articles 1. 5. 6. 13. 16., additionally Article 1 of the Additional Protocol to the European Social Charter, which corresponds to Article 20 of Revised European Social Charter.

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

Hungary has been severely impacted by the economic crisis; GDP plummeted 8 percentage points between 2008 and 2009, and has been stagnating ever since.² Compared to the other countries of the Visegrad Group Hungary has been much slower recover, in part due to the economic slowdown that has been taking place in the country prior to the crisis. OECD countries raised their social expenditures (unemployment compensation, child benefit and welfare payments to the needy). Hungary is one of those few countries, where there has been a reduction during each year of the crisis in these areas. Between 2008 and 2010, the real value of social expenditures dropped by 9%, further dropping by 4% between 2010-2012, which is equivalent to a drop of 13 % compared to the 2008 level. Despite the growing unemployment and poverty, the Government discontinued its entire poverty program and launched a subsidy program based on public work. In 2009 the Government froze family and social benefits and eliminated the 13th month pension. Austerity measures continued after 2010, thus subsidies lost 20 % of their real value since 2010. In 2010, the Government reduced the length of legal

² Hungarian Central Statistical Office Report (2012).

entitlement to unemployment compensation from 9 to 3 months. Simultaneously the public works program has gained more and more prominence. The austerity measures implemented by the current government were partially motivated by the intention of Government to escape the EU's excessive deficit procedure by keeping the budget deficit under 3%. In the interest of achieving this goal, the Government had passed several austerity packages, which impacted every area of the social welfare system, healthcare, public and higher education, and social insurance. VAT has been raised to 27 % (currently the highest within the EU); they introduced special taxes (e.g. communication tax, bank transaction tax. As the central element of the Government's economic policy, a single tier personal income tax (SZJA) of 16% has been introduced in 2011. At the same time this new tax system coupled, with an extremely high tax credit for children, supports wealthier families at the expense of the poor. Since the start of the crisis, people have been experiencing increased economic uncertainty. This is a natural consequence of economic circumstances and layoffs. Additionally, as a consequence of a weaker Forint, hundreds of thousands of people have gone bankrupt because of their CHF and EUR based loans. In 2014 the National Assembly adopted many laws, which promulgated the voiding contractual provisions concerning the application of exchange rate gap unilateral amendments by the bank. Additionally, the Government converted the foreign currency based mortgages at a fixed rate of exchange into HUF.

2. LABOUR RIGHTS

From the European Social Rights Charta Hungary ratified the Article 5 and 6 in 1999 which ensure the right to organize and the bargain collectively. The main importance rules can be found at the Fundamental Law of Hungary Article 8, Act CLXXV of 2011 on the right of association, Act I of 2012 on Labour Code, Act VII of 1989 on the right of strike.

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

Based on these acts we can distinguish four frames for the representation of interests in Hungary: trade union, workers' council, the representatives of the companies' supervising

committees, workers' representatives with specific responsibility for the safety and health.³ With the **trade union** the goal was to reduce the employees' subservience. The Unions are formed by workers and they aim to further and protect their interests against the employer.⁴ Their statutes are legal entity and it is a special type of association. So their legal regulations and aspects are the same as the associations'. That is why it is independent from the employer and it has own inner working system. The membership is voluntary. Rights of the representation of interests to organize collective actions and working conditions - that they fought it out - were included to collective contracts. The most important group is the Hungarian Trade Union Confederation that gathers trade unions and their aims are to further and protect the interests of members at legal relation of the employment and to represent the employees' social, cultural, financial interests. This is the largest interest representation organisation in Hungary has been created with 250,000 active and 100,000 pensioner members.⁵ The trade unions and the employers' representatives -which are the social partners-, became so important that they got huge influence at the regulation of the employment system. That is why among the social partners and the state started a cooperation which we can call the social dialogue and conciliation of interests. There are different levels of it such as local, departmental, national and international. The main important organisation of the national conciliation of interests is the National Economic and Social Council of Hungary⁶. But based on the ILO Convention No. 144/1976 it can't be regarded as the national council of the conciliation of interests because it has much wider jurisdiction and not just the social partners were invited but the churches, non-governmental organizations and various chambers of industry and commerce. Moreover the government doesn't participate just their representatives. At the competitive sector the reconciliation forum is the Permanent Consultative Forum of the Competitive Sector and the Government which is a tripartite consultative forum where these three parties hold regular discussions. Regarding the public service, their consultative forum is the National Public Service Interest Reconciliation Council. At the end it's important mention the Reconciliation of Public Servant which was based on the Act on Public Officials. Next to this, it is important to mention the Uniform

³ Ferencz Jácint- Göndör Éva- Gyulavári Tamás- Kártyás Gábor: Munkajogi alapismeretek, ELTE Eötvös Kiadó, 2013 181.o.

⁴ Section 270. (1) b) Act I of 2012 on Labour Code.

⁵ <http://www.szakszervezet.net/en/about-us>, Hungarian Trade Union Confederation's page.

⁶ Act XCIII of 2011 on National Economic and Social Council of Hungary.

Transport Trade Union, Trade Union of Teachers, Democratic League of Independent Trade Unions who are really active and have the most members. According to the trade union, the main function of **the workers' council** is that the workers and the employer cooperate with each other and decide some of the important questions together⁷. Aim is to inspire them to find common solutions. Functionally workers' council is a special part in the structure of the workplace. In this institution employees' representation is working directly. The most important rights of the workers' council is the involvement at some of the employer's decision making process. Moreover it's obligatory for the employer to ask the workers' council advice 15 days before the decision and time to time give information for the council.⁸ Besides if the workers organise a strike, the members of the council have to stay independent. The **representatives of the companies' supervising committees** control at the working methods. It's necessary to create this committee if the full time working employees' number is more than 200 and the workers' council didn't resign from the employees' places at the supervisor committee.⁹ One third of this committees' members are consisted by workers who are appointed by the workers' council. At the selection it has to also consider the labour unions' opinion. Their task is to check that the decisions of companies' leaders are compatible with the legislation and deed of association or resolution by the main part of the company. Moreover they have to monitor that the leaders don't infringe the interests of the company and the members. Finally, the **workers' representatives with specific responsibility** for the safety and health are chosen by the workers whose job to protect the employees' rights and interests if more than 50 people work there, the election is obligatory.¹⁰ Otherwise they could vote for representatives if it is launched by the labour union, the worker's council or the majority of the workers. The employer has to pay the fees of the elections. As a similarity with the council of workers' they don't have a legal entity. On the contrary representatives' job is much more confrontational than the labour union. After these steps the conflict is still not solved workers have opportunity to **strike**. The strike means that determined number of workers organize a walkout to fight for their financial or social goal. So it means that if only one person refuses the work it is unlawful. Next to the

⁷ Act I of 2012 on Labour Code 235. § (1).

⁸ Ferencz Jácint- göndör Éva- Gyulavári Tamás- Kártyás Gábor: Munkajogi alapismeretek, ELTE Eötvös Kiadó, 2013 190.o.

⁹ Section 3:119. Act V of 2013 on Civil Code.

¹⁰ Section 70/A. § (1) a-b) Act XCIII of 1993 on Civil Code.

ordinary strike there are two other types: strike of solidarity and warning strike. The **strike of solidarity**¹¹ means that other employers' workers are striking to support the workers who started the strike. So they show their solidarity next to the other workers. But it could be only launched by the labour union. The **warning strike**¹² means that the workers make a walkout for two hours to show the employers the consequences if they don't find a common resolution. As regards **political strike** is illegal, but there is no description what it means exactly. There are couple of working field where opportunity of the strike is not allowed such as at the jurisdiction or at the army. Besides when the employees' jobs affect essentially for the population (so at the public service), they have a chance to strike but they need to offer an acceptable service.¹³ If they are not able to agree with the employer about the minimum level of the service and it is not regulated by the law, it will be decided by the administrative and labour court. At the end if the strike was legal it can't be qualified as the infringement of the labour relation because right of strike is a fundamental right.¹⁴ So if one of the workers is unlawfully dismissed, she/he will be reinstated to her/his work.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

The European Committee of Social Rights took some notes about the Hungarian report. First of all they have doubts about the Hungarian regulation of trade unions' and employer' organizations. The foundation¹⁵ is bound for the agreement of 10 people and accepted statutes. After documents were submitted to the court they have 30 days to check if the application fits to the conditions. If they are not satisfied they could require completion of the document which takes 45 day.(15 for the submitter and 30 days for the court.) It is possible to that the court will repeat this demand if the documents are incorrect. However if the court finds the documents fine they have 60 days to register it. So it could restrict the right to freedom of association because workers need 10 volunteers who will found a trade union otherwise they can't protect

¹¹ Section 1 (4) Act VII. of 1989 on the strike.

¹² Section 2 (3) Act VII. of 1989 on the strike.

¹³ Section 4 (2) Act VII. of 1989 on the strike.

¹⁴ Article XVIII, Fundamental Law of Hungary.

¹⁵ Section 4 (1) Act CLXXV of 2011 on the right of association.

their right this way. Moreover it is a really slow procession where it could pass months until they could exercise their collective rights. The Committee asked more information about this regulation. Secondly, they observed if the employers have the right to join to the trade union. The Section 271 (3) Act I of 2012 on the Labour Code contain the rule that the employer can't distinguish the employees based on their membership or activities. If the employers breach this equality, the workers could turn to the Equal Treatment Authority. Thirdly the European Committee of Social Rights emphasized the importance of the collective agreements and they would like to ask much more actions from Hungary to promote and contribute it because their numbers are really low. Finally, the Hungarian regulation about right of strike is the biggest issue because it is not conformity with the European Social Rights Charta Article 6 (4). At the public sector for the workers it restrict the right of strike and for the civil service the employees don't have the right to strike. For example for the soldiers or the workers of the court.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

Hungary accepted all provision for Article 4 and austerity measures didn't have any impact of the Hungarian regulation. The minimum wage rises and the Labour Code contains the rules of fair lodging allowance and principle of the equal jobs equal payment. Article 21f) Act CXXXV of 2003 on equal treatment contains the prohibition of discrimination at the field of employment. If the employers breach this equality, the workers could turn to the Equal Treatment Authority. This institution has the power to force the employer to stop the miscarriage or to repeat this action in the future. Moreover it could order to publish the decision or they could impose a fine between HUF 50,000- 6,000,000. For the appeal opportunity does not lie they could go to the administrative and labour court.

3. SOCIAL PROTECTION

Based on the current situation, Hungary ratified the paragraph (1) of Article 12 about the establishment and maintaining of a social security system and the whole Article 13 about the

right to social and medical assistance¹⁶ from the social protection rights related regulations of the European Social Charter (hereinafter: ESC).

In the State, the right to social security appears as a constitutional fundamental right of the citizens and as a constitutional obligation of the state. But, we have to mention that it is interesting that the Constitutional Court (CC) declares in its 42/2000. (XI. 8.) CC decision and in other CC decisions, that there is no fundamental right to social security and the State has no obligation to provide the social security.¹⁷ The rules on social rights contained in the Constitution, just only guidelines for the State and there are no rights derive from these provisions¹⁸. In relation to the social protection the Fundamental Law of Hungary declares in its (1) paragraph of Article XIX that:

Hungary shall strive to provide social security to all of its citizens. Every Hungarian citizen shall be entitled to assistance in the case of maternity, illness, disability, handicap, widowhood, orphanage and unemployment for reasons outside of his or her control, as provided for by an Act.¹⁹

It is clear from this drafting that the Hungarian Fundamental Law does not declare the right to social security but merely the right to social assistance. This assumption is reinforced by the fact that the state is not obligated to create social security, but merely to strive to achieve it. Beyond all of these, in the State, “the nature and extent of social measures may be determined in an Act in accordance with the usefulness to the community of the beneficiary’s activity.”²⁰ In connection with the social security, the Fundamental Law provides three additional fundamental rights. These are: the right to physical and mental health²¹, the right to a healthy environment²², and the

¹⁶ Dr. Andre Szigeti Dr. Kozmané, *A Szociális Jogok Európai Egyezménye és Magyarországi Végrehajtása*, (Jog, Állam, Politika, 2009/04) 91-160. [Hungarian].

¹⁷ 42/2000. (XI. 8.) CC decision [2000] | Constitutional Court of Hungary | Official Journal of Hungary | Vol. 109 | [2000] | 6823 | [Hungarian].

¹⁸ Ombudsman report to case n. A/B-4586/2013 | [2013] | Ombudsman of Hungary | <http://www.ajbh.hu/documents/10180/1957691/Jelent%C3%A9s+a+k%C3%B6zfoglalkoztat%C3%A1s+e+gyes+jogi+k%C3%A9rd%C3%A9seir%C5%91+4586_2013/20633bc3-225d-4656-8db5-b28354ffb4d5?version=1.0> | [2013] | 5 | [Hungarian].

¹⁹ Fundamental Law of Hungary Article XIX (1) | 2011 [Magyarország Alaptörvénye].

²⁰ Fundamental Law of Hungary Article XIX (1) | 2011 [Magyarország Alaptörvénye].

²¹ Fundamental Law of Hungary Article XX. | 2011 [Magyarország Alaptörvénye].

²² Fundamental Law of Hungary Article XXI. | 2011 [Magyarország Alaptörvénye].

right to decent housing conditions and access to public services²³. In the latter cases, the Fundamental Law also does not about any obligation of the state but merely a simple striving.

In the State, the right to social security based on the social security scheme and on the state's undertaking of social responsibilities.

„In Hungary, the social security scheme's sectors developed along the risks which indented to fend off. Namely, temporary or permanent loss of ability to work arising from medical reasons and because of the exclusion from the labour market.”²⁴ Accordingly to this, in the State there are two sectors which make up of the social security scheme. Namely the sectors of health insurance and pension insurance. The social security scheme is a risk community of natural persons residing in the State and it is based on a mandatory participation. However, protection against unemployment is not a part of the social security scheme, but it also has a separate institutional system. In addition, neither the social protection of the families, nor the social protection the people in need are not parts of the social security scheme. Based on the above, the Hungarian social protection law has two main body, on the one hand there is the social security scheme, on the other hand there is the state's responsibility for the people in need.

3.1. Has the social security scheme in your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by their own efforts or from other sources?

As we explained in the previous section, the Hungarian social protective net has two main branches, the social security scheme and the pool of the other social services. The social security scheme is risk community of natural persons residing in Hungary, contrary to the social services outside of the social security scheme which are the responsibility undertakings of the persons who living and working in Hungary for the people who can not secure appropriate resources. The accession to the services of the social security scheme depends on the participation in the risk community and on the paid taxes, but contrary to this, the accession to the other social services outside the social security scheme depends on the need and there are always available for the people in need and not depends on tax payments or even citizenship, nationality or etc.

²³ Fundamental Law of Hungary Article XXII. | 2011 [Magyarország Alaptörvénye].

²⁴ Gábor Juhász, Katalin Tausz, *Szociális jog*; (ELTE TáTK Budapest; 2012) 40. [Hungarian].

The State's social security scheme complies with the paragraph 1 of Article 12 of ESC. The State created and maintains the social security scheme and with this the State performs its obligation under the above mentioned ESC provision. The social security scheme has two main branches. These are the pension insurance branch²⁵ and the health insurance branch²⁶. The state cares of the people who left the active working age through social security scheme's pension sector. It is obviously that the old age persons are not able to secure adequate resources but they are eligible for pension based on the paid taxes through their working years and of course they still eligible for medical care. The other branch of the State's social security scheme is the health insurance branch. This branch specifies the medical services for insured people. The services of the social security scheme are covered by the taxes laid down in the Act LXXX on the entitled persons for the services of social security scheme and the coverage of these services. This Act specifies the circle of the insured persons who are entitled to receive pension and medical care based and according to the provisions of the above mentioned Acts. These persons are the employees, entrepreneurs, students, other workers with remuneration in exchange for their work if the remuneration reaches the 30% of the minimum wage, ecclesiastic persons, licensed traditional small-scale producers if their remaining years to retirement and the acquired service time are 20 years jointly at least, the persons whose receive job seeker's allowance.²⁷

In the case of Article 13 of ESC, so in the case of the people who are not in the social security scheme and unable to obtain adequate resources, the State cares about these persons through the services regulated by the Act III of 1993. Law on Social Administration and Social Benefits and through the unemployment care forms which are laid down in the Act IV of 1991 on Furthering Employment and Provisions for the Unemployment. However, the unemployment care forms are only open for persons who can certify sufficient employment time²⁸ but the accession to these care forms is not depends on the tax payments. The costs of the above mentioned services

²⁵ Act LXXXI (on the Social Security Pensions) 1997 [a társadalombiztosítási nyugellátásról].

²⁶ Act LXXXIII (on services of compulsory health insurance) 1997 [a kötelező egészségbiztosítás ellátásairól].

²⁷ Act LXXX (on the entitled persons for the services of social security scheme and the coverage of these services) 1997 [a társadalombiztosítás ellátásaira és a magánnyugdíjra jogosultakról, valamint e szolgáltatások fedezetéről].

²⁸ 25.§ (1) and 30.§ (1) a) and 32.§ of Act IV (on Furthering Employment and Provisions for the Unemployment) 1991 [a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról].

and care forms are covered by the so-called social contribution tax²⁹. The payers of this tax are the employers, entrepreneurs and licensed traditional small-scale producers.³⁰ The rate of the tax is 27% of the tax base.³¹

The assistance and care of families in need has a separate law in Hungary.

The Hungarian social protection system is presented by the list below and by annex number 1.

- Own right pension benefits under the social security pension system:³²
 - (i) Old-age pension.
- Relative pension benefits under the social security pension system:³³
 - (i) Widow's pension;
 - (ii) Allowances for orphans;
 - (iii) Parental pension;
 - (iv) Accident relative pension benefits;
 - (v) Reversionary annuity.
- The services of health insurance system³⁴
 - (i) In kind healthcare services;
 - (ii) Benefits in cash;
 - (iii) Benefits in case of accident.
- The unemployment benefits³⁵
 - (i) Jobseeker's allowance;
 - (ii) Before pension job seeking aid;

²⁹ Act CLVI (on the modification of certain tax Laws and other related Laws) 2011 [egyes adótörvények és azzal összefüggő egyéb törvények módosításáról].

³⁰ 454.§ (1) of Act CLVI (on the modification of certain tax Laws and other related Laws) 2011 [egyes adótörvények és azzal összefüggő egyéb törvények módosításáról].

³¹ 459.§ (1) of Act CLVI (on the modification of certain tax Laws and other related Laws) 2011 [egyes adótörvények és azzal összefüggő egyéb törvények módosításáról].

³² Act LXXXI (on the Social Security Pensions) 1997 [a társadalombiztosítási nyugellátásról].

³³ Act LXXXI (on the Social Security Pensions) 1997 [a társadalombiztosítási nyugellátásról].

³⁴ Act LXXXIII (on services of compulsory health insurance) 1997 [a kötelező egészségbiztosítás ellátásairól].

³⁵ Act IV (on Furthering Employment and Provisions for the Unemployment) 1991 [a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról]

- (iii) Allowance for job seeking expenses
- Family allowances³⁶
 - (i) Family allowance;
 - (ii) Bringing-up allowance;
 - (iii) Education allowance;
 - (iv) Child care allowances;
 - (v) Child care costs;
 - (vi) Child care aid;
 - (vii) Bringing-up aid;
 - (viii) Maternity benefit;
- Benefits under social needs:³⁷
 - (i) Cash benefits depends on social needs:
 - Determined by the municipal notary according to the Act III of 1993:
 - Substitute support instead employment;
 - Regular social aid;
 - Home maintenance support;
 - Equitable nursing fee;
 - Municipality aid.
 - Determined by the municipal council according to the municipal decree:
 - Equitable nursing fee;
 - Municipal aid.
 - Determined by the district office according to the Act III of 1993:
 - Old age allowance;
 - Nursing fee, special nursing fee, increased amount nursing fee.

³⁶ Act LXXXIV (on the Family Support) 1998 [a családok támogatásáról].

³⁷ Act III (Law on Social Administration and Social Services) 1993 [a szociális igazgatásról és szociális ellátásokról].

(ii) Social benefits in kind:

▪ Cash benefits depends on social needs:

- Substitute support instead employment;
- Regular social aid;
- Home maintenance support;
- Municipality aid:

(1) Types of benefits:

- Elizabeth pass;
- Food;
- Heating aid;
- Support for buying textbooks and school supplies;
- Tuition fee;
- Utility costs;
- Support to pay the fees of child care facilities;
- Support to meet the family needs and to farming.
 - Land use options;
 - Agricultural services and benefits;
 - Current assets and work equipment;
 - Consultancy;
 - Vocational training.
- Public funeral;
- Public health care;
- Medical service;
- Debt management service;
- Energy use aid.

- Social services:
 - Basic social services
 - (1) Village and homestead caretaker service;
 - (2) Catering;
 - (3) Home assistance;
 - (4) Family support;
 - (5) Home assistance with signaling system;
 - (6) Community services;
 - (7) Support services;
 - (8) Street social work;
 - (9) Day care service.
 - Specialized care services
 - (1) Long-term residential institution:
 - Nursing, care;
 - Rehabilitation;
 - Care home.
 - (2) Residential institution:
 - Temporary accommodation;
 - Supported housing;
 - Other special social institution.

3.1.2. Persons who are unable to secure adequate resources either by their own efforts or from other sources due to illness?

In the case of incapacity for work due to illness, primarily the employee eligible for 15 days sick leave and during this time (s)he eligible for the 70% of the absence fee based on the Labour Code.³⁸ After the 15 days, under the social security schemes medical insurance sector, the

³⁸ Act I (on Labour Code) 2012 [a Munka Törvénykönyvéről]

employee eligible for sick pay³⁹ and furthermore in the framework of accident care (s)he eligible for accident sick pay⁴⁰ or accident benefit⁴¹. It is important to mention that the absence fee is paid by the employer but in addition the employer has to pay the one third part of the amount of the sick pay, accident sick pay or accident benefit as a contribution.⁴² Those persons are eligible for sick pay - among others - who are unable to work due to illness. The sick pay is provided for the duration of the incapacity, but not more than one year. The measure of the sick pay is basically 60% of the calculated income, but in the case of when the insurance period is less than 2 years or during the period of inpatient care, the measure of the sick pay is only 50%.⁴³ The accident sick pay is provided for person who suffers incapacity of work as a result of industrial accident. The duration of the accident sick pay is maximum 1 year but it can be prolonged with 1 additional year. The measure of the accident sick pay is equal with the calculated income except the case of travel accident when it is just the 90% of the calculated income.⁴⁴ The accident benefit is provided for person who suffer more than 13% damage of health as a result of industrial accident but not eligible for benefits of persons with changed working capacity. The duration of the accidental benefit is maximum 2 years if the damage of health is not more than 20%, but if it is more, than the duration of the benefit is unlimited for the period of the damage of health.⁴⁵

³⁹ 43.§ (1) of Act LXXXIII (on services of compulsory health insurance) 1997 [a kötelező egészségbiztosítás ellátásairól].

⁴⁰ 55.§ (1) of Act LXXXIII (on services of compulsory health insurance) 1997 [a kötelező egészségbiztosítás ellátásairól].

⁴¹ 57.§ (1) of Act LXXXIII (on services of compulsory health insurance) 1997 [a kötelező egészségbiztosítás ellátásairól].

⁴² 19.§ (5) of Act LXXX (on the entitled persons for the services of social security scheme and the coverage of these services) 1997 [a társadalombiztosítás ellátásaira és a magánnyugdíjra jogosultakról, valamint e szolgáltatások fedezetéről].

⁴³ 43.§-48.§ of Act LXXXIII (on services of compulsory health insurance) 1997 [a kötelező egészségbiztosítás ellátásairól].

⁴⁴ 55.§ of Act LXXXIII (on services of compulsory health insurance) 1997 [a kötelező egészségbiztosítás ellátásairól].

⁴⁵ 57.§-59.§ of Act LXXXIII (on services of compulsory health insurance) 1997 [a kötelező egészségbiztosítás ellátásairól].

Damage of health	Measure of the benefit
14-20%	8%
21-28%	10%
29-39%	15%
39%-	30%

Table 2. Shows the measure of the accidental benefit, based on the average monthly income of the previous 12 months.

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

In 2008, due to the intensification of the global economic crisis the State had to change the social welfare system. In regard to this, there were sectors where the government took monetary austerity measures (e.g.: health insurance), while in other sector the centralization and the transfer of financial assets came to the forefront. Again in other sectors the types of the cares and services changed and the accession conditions became stricter. With the latter practice the government achieved spectacular statistical results. For example, when the government introduced the Public Work Programme, the unemployment rate significantly decreased. The government achieved this with that the unemployment persons in the National Labour Office's database do not get real job offers, but get an offer to work within the framework of this programme. The monthly wage for the public work is HUF 47,000 which is less than the half of minimum wage and a little bit more than the living wage which was HUF 87,510 at 2013.⁴⁶ Furthermore, if someone accepts the public work offer, then the National Labour Office did not search and help further to find a real job. The persons who did not accept the public work offer were deleted from the database of the registered unemployment persons and because of this the unemployment rate was significantly decreased but just statistically.

⁴⁶ KSH *táblázat*: <http://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_zhc011.html> accessed 28 March 2015 [Hungarian].

The best way to estimate the effect of the austerity measures in the healthcare sector is that to examine the indicators of healthcare spending growth. In Hungary, this indicator was constantly negative between 2006 and 2009, thus, spending on healthcare decreased continuously during this period. Because the easement of the economic crisis the healthcare spending started to increase again between 2010 and 2011, but in 2012 again a decrease could be observed.⁴⁷ It can mention as a specific austerity measure the revocation or reduction of the social insurance support of many drugs. Furthermore – after the intensification of the economic crisis –, the central budget's contribution to the health insurance fund continuously decreased.⁴⁸ However, it is important to note that cuts above only on real terms can be interpreted as cuts because the amounts of the spending on nominal terms are stagnated or increased slightly. In the healthcare sector in 2009 there was a particularly significant curtailment. That was the reduction of sick pay with 10% which resulted a significant decrease in the public expenditure on that.⁴⁹

Amount of payments to the unemployed did not change significantly due to the economic crisis; however, the jobseeker's allowance was drastically reduced from the maximum duration of 270 to 90 days.

It was one of the most cardinal points of austerity measures in the pension system that in 2009 the 13th month pension was terminated and it was substituted by the institution of the pension premium with very strict conditions.⁵⁰ There was another significant austerity measure which was the increasing the retirement age from 62 to 65 years in 2009. Another meaningful austerity measure was the restructuring of the disability pension system which resulted that many previous disability pensioners lost the eligibility for this kind of pension. Due to the austerity measures in

⁴⁷ OECD, *Health Statistics* 2014, <<http://www.oecd.org/els/health-systems/Briefing-Note-HUNGARY-2014.pdf>> accessed 25 February 2015

⁴⁸ HVG: *Megszorítások az egészségügyben, 2009* <http://hvg.hu/gazdasag/200910_MEGSZoRITASoK_AZ_EGESZSEGuGYBEN_Alapdilemma> accessed 25 February 2015 [Hungarian].

⁴⁹ KSH *táblázat*: <http://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_fsp003.html> accessed 25 February 2015 [Hungarian].

⁵⁰ No. T / 9180/14. (unified proposal on the amending of Act LXXXI of 1997. on the Social Security Pensions) 2009 [egységes javaslat a társadalombiztosítási nyugellátásról szóló 1997. évi LXXXI. törvény módosításáról].

the pension system, the number of persons in the system decreased by 300 thousand while the number of non-working age population increased.⁵¹

In the case of the two above mentioned sectors, the austerity measures fully comply with the social security scheme related ESC obligations of the State, because it only undertook and ratified the (1) paragraph of the Article 12. This obligation is only just to create and maintain the social security system.

Very significant austerity measures were taken among the social benefits. According to the Central Statistical Office, in 2009 the number of regular social aid recipients decreased with about 140 thousand compared to the previous year and the amount used by this support was approximately HUF 47 billion less.⁵² Addition to the above, in July 1 2009. the government suspended the home maintenance supports. Last but not least, it was not a classic austerity measure, but in 2011 the government carried into effect the so called social contribution tax with the Act CLVI of 2011 on the modification of certain tax Laws and other related Laws. The burden of this tax is on the employers, entrepreneurs and licensed traditional small-scale producers and it almost doubled the amount of tax burden of an income, so it almost doubled the costs of the employment of a person as well. This tax was one of the answers on the increased costs of social services because of the increased social needs.

All of the austerity measures are unenumerable. It is true to say that the most general austerity measure in the case of social protection is to cut and rearrange the amounts of social benefits and social security system in the State's budget. We also have to mention, that the fact that the State's spending on social protection were not increased considerably, is not really complies with the State's obligation under Article 13 of ESC because the needs are increased significantly and because of these, most of the persons in need could not get the necessary help and assistance.

⁵¹ Policy Agenda, *A válság előtti évekhez képest 380 milliárd forint megszorítás történt a nyugdíjasokon* 2014 <<http://www.policyagenda.hu/hu/nyitolap/a-valsag-elotti-evekhez-kepest-380-milliard-forint-megszoritas-tortent-a-nyugdijasokon>> accessed 25 February 2015 [Hungarian].

⁵² KSH *táblázat*, <http://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_fsp010b.html> accessed 25 February 2015 [Hungarian].

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

The services under this chapter are the: village and homestead caretaker service, debt management service, family support, support services, street social work, home assistance, home assistance with signalling system, community services, day care service, nursing, care, rehabilitation, care home, temporary accommodation, supported housing, other special social institution. These kinds of services were not affected directly by the austerity measures. However, the dismissal of the employees of the institutions which provide these services was resulted that the level of accession to these services and the quality of these services decreased significantly. In the case of these services, we can also cite the general austerity measure which was mentioned in 3.2. (Cuts and rearranges). And there are one more huge problem in this field, namely that the persons who provides these kind of advices and personal help are not the best qualified because the State cannot give them a competitive salary, so the best qualified experts who could provide these services do not and will not work in the social sector.

We have to mention that, the private sector also provides similar services that we mentioned before. In general these services are provided through foundations and public benefit organisations. But in the private sector the problem is the same, that not enough money in the budget. There were not special austerity measures in this sector, but the general austerity measure was applied here too. There is an also huge problem, which is the corruption. There are many foundations and other public benefit organisations which are operating in transparent and uncontrollable.

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

4.1. Ratification

At the time of the Revised European Social Charter's ratification, Hungary decided not to accept Article 30, concerning the right to protection against poverty and social exclusion. Leaving Article 30 out of the package is justified in the Explanatory Notes with the **lack of clear definition** of the terms 'poverty' and 'social exclusion', as well as with the **lack of a comprehensive measure** covering all the diversified aspects of the Article. Accordingly, the Hungarian legal system is missing the required 'overall and co-ordinated approach' of Article 30. The Explanatory Notes also state that a significant progress in this field is expected by Hungary's participation in the **European Union's platform against poverty and social exclusion**.⁵³ A more generic explanation can be given by the applied principle of "optimal minimum". According to this, Hungary choose only a restricted number of articles of ESC, not to undertake too much obligation and so, to be a trustworthy member of the Council of Europe. The principle can be also explained as the chosen articles were the ones for which the Hungarian legal system and practice was already sufficient or could be made sufficient through minor expenses, or only through legislation.⁵⁴

4.2. To Live in or at Risk of Poverty

The European Committee of Social Rights has taken into account a set of indicators in interpreting Article 30. One of the main indicators used to measure poverty is the **relative poverty rate** that corresponds to the percentage of people living under the poverty threshold,

⁵³ Explanatory Notes to the Act VI (on the Ratification of the Revised European Social Charter) 2009 [2009. évi VI. törvény indokolása a módosított európai szociális karta kihirdetéséről].

⁵⁴ Andrea Kozmáné Szigeti, '*A szociális jogok európai egyezménye és magyarországi végrehajtása*' [2009] (Jog, állam, politika 2009/4.) 91-160 [Hungarian].

which is set at 60% of the equivalised median income. The at risk-of-poverty rate before and after social transfers, is used as a comparative value to assess national situations.⁵⁵ In Hungary the relative poverty rate was slowly rising every year between 2007 and 2014 from 12.3 per cent (29.3 per cent without social transfers, including pension) to 14.6 per cent (26.3 per cent without social transfers, including pension). In a comparison with the EU average (around 16.6 per cent including social transfers) these rates are still considered to be low. However it is also shown in Eurostat statistics, that countries with low relative income poverty rates, such as Hungary, can have remarkably high mean deprivation levels.⁵⁶

Thus, our rate of **at risk of poverty or social exclusion** (defined as the share of the population in at least one of the following three conditions: at risk of poverty, in a situation of severe material deprivation, living in a household with very low work intensity) ranks among the highest in Europe. According to Eurostat statistics, the situation had been worsening in the last years but a slight improvement is to be observed in the recent publications. The rate rose from 29.4 per cent (2007) to 33.5 per cent (2013), but fell by 2.4 per cent in the last year.⁵⁷ The especially distressing **rate of severely materially deprived people** has been significantly increasing in the last years, from 17.9 per cent in 2008 to 26.8 per cent in 2013. The EU average of this rate was 9.9 per cent in 2013. Again, the recently published rates of 2014 show a decrease of almost 3 per cent here as well.⁵⁸

Children, youths, large families, single parent families, unskilled, long-term unemployed strata, the Roma population and those living in disadvantaged region are considered as especially **vulnerable social groups** in connection with poverty and social exclusion. Today, more than 40 per cent of **children** and almost 38 per cent of **youngsters** (between the age of 18 and 24) are at risk of poverty or social exclusion in Hungary. Contrary to common belief, the rates are significantly lower concerning the older population: “only” 21.1 per cent of elderly Hungarians

⁵⁵ European Committee of Social Rights 'European Social Charter Conclusions (2013) General Introduction' 9, http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/GeneralIntro2013_en.pdf accessed 1 April 2015.

⁵⁶ Eurostat < http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_li02 > accessed 1 April 2015.

⁵⁷ Eurostat <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_peps01&lang=en> accessed 1 April 2015.

⁵⁸ Eurostat <http://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=t2020_53&language=en> accessed 1 April 2015.

(at the age of 65 or over) were at risk-of-poverty or social exclusion in 2007. This rate has even decreased since, to 18 per cent in the last year.⁵⁹

Based on estimates the total number of **Roma** in Hungary exceeds 700,000 and some 500,000 to 600,000 of them live in disadvantaged regions, typically in rural environment and segregated residential zones. The poverty level among them exceeds 70 per cent, which couples with extremely poor health condition and low educational level.⁶⁰

4.3. The Impact of the Austerity Measures on the Poverty Level, Deprivation and Social Exclusion

The Hungarian financial market was severely hit by the global crisis. Thus austerity measures were implemented affecting also the social spending on family benefits and social security from 2009, in attempt to lower the labour costs of Hungarian enterprises and to preserve foreign investments in the State.⁶¹

Expenditure on social protection as per cent of the GDB has been increasing from 2004 (20.8 per cent) until 2009 (23.4 per cent) but has been decreasing since. In 2012 21.8 per cent of the GDP was spent on social protection, while the estimated EU average is 29.5 per cent.⁶²

The tax reforms presented between 2010 and 2013 were generally speaking more prosperous for the wealthy and the middle class than for the poor.⁶³ The currently highest **VAT rate** (27 per cent) in the European Union is disadvantageous mostly for the poor as they have no savings and spend the most of their income on consumption. The shift to the **flat-rate personal income tax** lowered the tax wedge; however removing the earned-income tax credit increased the wedge of low income workers. On the other hand the reduction of pay-roll taxes of five prioritised employee groups (youth, elderly, unskilled workers, long-term unemployed and mothers of small

⁵⁹ Eurostat < <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do> > accessed 1 April 2015.

⁶⁰ Minister of State for Social Inclusion, Ministry of Public Administration and Justice, *National Social Inclusion Strategy – Extreme poverty, child poverty, the Roma* [2011] 25

< http://ec.europa.eu/justice/discrimination/files/roma_hungary_strategy_en.pdf > accessed 1 April 2015.

⁶¹ Serena Romano, *The Political and Social Construction of Poverty – Central and Eastern European Countries in Transition* (Policy Press, University of Milano 2014) 187.

⁶² Eurostat

< <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tps00098&plugin=1> > accessed 1 April 2015.

⁶³ OECD, *Economic Policy Reforms: Going for Growth Country Notes Hungary* 2013

< <http://www.oecd.org/eco/growth/Hungary.pdf> > accessed 1 April 2015.

children) introduced by the **Job Protection Action Plan** encourages creation of new and preservation of existing jobs from January 2013.⁶⁴ As announced by the Government the Job Protection Action Plan will be extended to include also agricultural workers between the ages of 25 and 55.⁶⁵ Families with three or more children also benefit from the expansion of the family tax credit, aiming to make a positive impact on fertility rates.⁶⁶ Alarming changes have occurred in the **education sector**. The age of compulsory education has been lowered from 18 to 16, the funding for tertiary education has been severely cut and the number of new students in tertiary education is remarkably falling since the years of the global crisis. The total expenditure on education has also decreased. In 2007 5.21 per cent, in 2011 4.71 per cent of GDP were spent on education.⁶⁷ **Healthcare** expenditure as per cent of the GDP was 7.97 per cent in 2012.⁶⁸ Life expectancy at birth is slowly increasing but still ranks among the weakest in Europe.⁶⁹

Reframing the social protection system with the aim of **promoting employment** induced restraint on eligibility of several benefits. The limitation of maximum time of job seeker's allowance – among other changes – is significant. The longest period of payment is reduced (from 270 to 90 days), the condition of eligibility has changed (requiring 365 days spent in labour in the last three years contrary to the five years required before), the highest amount payable is lowered to the level of the minimum wage (net HUF 68,775) (EUR 220) and the prior existing lower limit of payment (previously 60 per cent of the minimum wage) is removed. A person who has exhausted his claims for job-seekers allowance and has not yet found a job, may be eligible for substitute support instead employment on the grounds of need awarded by local authorities. The amount of this substitute support (HUF 22,800) hasn't changed for years and was

⁶⁴ 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.

⁶⁵ 'Announcement of the Prime Minister's Office' <<http://www.kormany.hu/en/prime-minister-s-office/news/the-government-has-decided-on-the-construction-of-350-kilometres-of-new-roads>> accessed 1 April 2015.

⁶⁶ Csaba Tóth G. and Péter Virovác, 'Nyertések és Vesztesékek - A magyar egykulcsos adóreform vizsgálata mikroszimulációs módszerrel' (fókusz – A gazdasági jogalkotás hatása a reálfolyamatokra) 2013.

⁶⁷ Eurostat <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=educ_figdp&lang=en> accessed 1 April 2015.

⁶⁸ Eurostat <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=hlth_sha_hc&lang=en> accessed 10 April 2015.

⁶⁹ Eurostat <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=demo_mlexpec&lang=en> accessed 10 April 2015.

determined as manifestly inadequate by the European Committee of Social Rights in 2013, falling manifestly below the poverty threshold.⁷⁰

4.4. Strategies regarding Poverty and Social Inclusion

The Hungarian government guarantees the strategic foundations for interventions designed to promote social inclusion and social cohesion with a coherent system of comprehensive and area specific strategies, rather than with a single strategy.⁷¹

The social inclusion policy in Hungary is aligned to the **National Sustainable Development Framework Strategy**, which was prepared in 2011 and adopted – following public debate – in 2013 by the Governmental Decision 18/2013. (III. 28.). ‘The goal of a national sustainable development concept (framework strategy), is to provide a long-term direction, uniting the whole nation, for individual and collective actions.’⁷² The conciliatory and deliberative body regarding the framework strategy is the National Council for Sustainable Development, which consists representatives of political parties, government, science, economy, churches and civil organisations. The Council’s task is to inform the Members of Parliament about the sustainability risks and effects of proposals submitted to the Parliament and also to take part in informing the public regarding sustainability.

The social inclusion policy is also aligned to national strategies guaranteeing the stability of the state budget and economic competitiveness, namely, the Széll Kálmán Plan and the New Új Széchenyi Plan. **National Social Inclusion Strategy** (hereinafter: NSIS), as being a horizontal strategy, intersects various specific strategies, including the Hungarian Labour Plan, the Semmelweis Plan (healthcare reform plan), the Hungarian Labour Plan, the ‘Making Things Better for our Children’ National Strategy, the Strategic Plan of the Decade of Roma and the Public Education Strategy.⁷³

⁷⁰ European Committee of Social Rights, ‘*Conclusions 2013 (Hungary)*’ 23
<http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Hungary2013_en.pdf> accessed 1 April 2015.

⁷¹ Government of Hungary ‘*National Social Report Hungary 2014*’ 4
<<http://ec.europa.eu/social/BlobServlet?docId=11712&clangId=en>> accessed 2 April 2015.

⁷² ‘*National Council for Sustainable Development Homepage*’ <<http://nfft.hu/en/>> accessed 10 April 2015.

⁷³ 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.

The Hungarian Government adopted NSIS on 30 November 2011. The Strategy is focusing on the social inclusion of the most disadvantaged social groups, especially **Roma, children and those living in disadvantaged regions** for the period 2011-2020. The strategy is accompanied by a short term governmental action plan containing the specific tasks, identification of responsible Members of Government and deadlines in the areas of child welfare, education, employment, health care, housing, the involvement of the individuals concerned, the awareness raising and the fight against discrimination.⁷⁴ The preparation and submission of this document was required by the EU Framework for National Roma Integration Strategies, which was accepted by the social and employment ministers in May 2011. This EU Framework invites the Member States to prepare or update their National Roma Integration Strategies or integrated sets of policy measures for improving the situation of the Roma.⁷⁵ The NSIS is a Roma strategy but not just a Roma strategy. It aims to **target all individuals living in poverty and social exclusion** regardless of their origin ethnicity, but provides special means, methods and approaches for the involvement of the Roma population. The social policy described in the NSIS aims to address social problems in a **comprehensive approach**, through coordination of policies and complex interventions regarding the problem areas of social inclusion (child poverty, Roma issue, regional disadvantages).⁷⁶ The basic principles of the Strategy are as follows:

- Activation: it is important to activate currently inactive population able to work to get employed and take responsibility for their fate;
- Performance criteria: some performance is expected from the beneficiaries in case of social benefits;
- Coordination: different policies need to be reconciled;
- Complexity: on territories hit by poverty policies on employment, education, healthcare and housing must be handled together in reconciliation with each other;

⁷⁴ *ibid* 7.

⁷⁵ OSCE Human Dimension Committee, 'National Social Inclusion Strategy – Deep poverty, child poverty and Roma (2011-2020)' [2012] <http://www.mfa.gov.hu/NR/rdonlyres/972EC4A2-4018-4340-8AD8-4E39911587ED/0/120504HU_Social_Inclusion_Strategy_background_OSCE_HDC_120509.pdf> accessed 10 April 2015.

⁷⁶ *National Social Inclusion Strategy* 7-8.

- Monitoring: establishment and operation of a proper monitoring system by which the efficiency and the targeted nature of the programs can be traced.⁷⁷

4.5. Promoting Effective Access to Employment

The Hungarian Parliament adopted Hungary's New Fundamental Law in 2011. In the 'new constitution' a strong commitment to a workfare model is to be observed. The National Avowal of the Fundamental Law underlines the **importance of labour** as follows: 'We hold that the strength of community and the honour of each man are based on labour, an achievement of the human mind.'⁷⁸ Correlate to the 'old constitution' emphasising not only the right to free choice of employment, but also **everyone's obligation to contribute** to the enrichment of the community through work, has an important symbolic value.

Everyone shall have the right to freely choose his or her work, occupation and to engage in entrepreneurial activities. Everyone shall be obliged to contribute to the enrichment of the community through his or her work, in accordance with his or her abilities and possibilities.

The necessity of work for the State's economic success and the moral obligation of the individuals to make effort for their own well-being is emphasised in the constitution as well: 'The economy of Hungary shall be based on work which creates value, and on freedom of enterprise.'⁷⁹ 'Everyone shall be responsible for him- or herself, and shall be obliged to contribute to the performance of state and community tasks according to his or her abilities and possibilities.'⁸⁰ These changes of legislation were argued to be a sign, that the State shrugged off its responsibility and comfortably placed it on the shoulders of the people. However imposing obligation on the people to contribute through their work is to be found in also other constitutions of European countries and cannot be interpreted as an enforceable legal obligation leading to the possibility of force labour. However it can – and it does – provide a base for determination of **'the nature and extent of social measures'**, as a later amendment of the 'new constitution' suggests: 'The nature and extent of social measures may be determined in an Act in

⁷⁷ Minister of State for Social Inclusion, Ministry of Public Administration and Justice, 'Forward to National Social Inclusion Strategy – Extreme Poverty, Child Poverty, the Roma' [2011] <<http://romagov.kormany.hu/hungarian-national-social-inclusion-strategy-deep-poverty-child-poverty-and-the-roma>> accessed 1. April 2015.

⁷⁸ The National Avowal of The Fundamental Law of Hungary.

⁷⁹ The Fundamental Law of Hungary Article M para 1.

⁸⁰ *ibid* Article O.

accordance with the usefulness to the community of the beneficiary's activity'.⁸¹ Here is to mention that the possibility of such determination and thus the possibility to revoke social measures on various grounds was given also prior to the New Fundamental Law. Namely, in the interpretation of the Constitutional Court, social security was never determined as a fundamental right but only as an objective of the State obligated only to strive to provide social security.⁸²

As stated in the NSIS, the primary economic policy priority of the Government regarding access to employment is to create one million new, taxpayer jobs in Hungary over a period of ten years through 'coordinated, effective and targeted operation and coordination of the country's economic and employment policies and, in the long run, of the country's education, training, social and health care policies.'⁸³ As also emphasised in NSIS 'the low employment rate characteristic of the Hungarian labour market is primarily attributable to the high inactivity of the population with low educational qualifications.'⁸⁴

Extended public work scheme has been introduced in 2008 (Way to Work Program) and in 2011 (The National Public Work Program). 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. Also the traditionally low **employment rate** has increased and now exceeds its pre-crisis level. Hungary's performance in connection with the job quality however, (based on earnings quality, labour market security and quality of the working environment) still 'ranks among the weakest of OECD countries, even compared to its regional neighbours'.⁸⁵ Some studies suggest that supporting employers hiring unskilled workers, spending on the development of the working environment and to attract new market participants is more successful than directly employ masses through public work.⁸⁶

⁸¹ *ibid* Article XIX para 3.

⁸² András Téglási, 'A szociális állam „erodálása” vagy megmentése?– avagy a szociális biztonság az új Alaptörvényben' [2011] Jogelméleti Szemle [Hungarian].

⁸³ 'National Social Inclusion Strategy' 44.

⁸⁴ *ibid* 42.

⁸⁵ OECD Employment Outlook 'How does Hungary compare?' [2014] <<http://www.oecd.org/hungary/EMO-HUN-EN.pdf>> accessed 6 March 2015.

⁸⁶ HÉTFA Elemző Központ, Gábor Hajdu and Károly Mike, 'Szegénység és a társadalmi kirekesztés megoldása' [2013] <http://palyazat.gov.hu/download/52431/Szeg%C3%A9nys%C3%A9g_%C3%A9s_t%C3%A1rsadalmi_kirekeszt%C3%A9s.pdf> accessed 10 April 2015 [Hungarian].

However, in tune with the government's aim to **reframe the social benefit system** so that it encourages employment, the numbers of participants in public work are increasing, while the regulation of the programme is rather strict and punitive. Benefit recipients are obliged to accept the offered public work, labour market service or training or they lose jobseeker's allowance. As further consequence they will also be excluded from the public work scheme for three months and also get erased from the database of registered jobseekers for the minimum time of 60 days, after which they can request their re-enrolment. The erasure occurs on the ground of failure to comply with jobseeker's duty to cooperate with the National Labour Office. Another common breach of this duty is to miss the previously defined regular time of appearance in the Office. Since January 2013 the National Labour Office does not serve notice on the jobseekers prior to the erasure but only informs them about the possibility of appeal afterwards.⁸⁷ It is also possible to get excluded from the public work for committing misdemeanour or on the grounds of failure to meet the obligation stipulated by local city councils regarding the tidiness of the jobseeker's residential environment. Parents of children of school age can be excluded on the grounds of their children's non-appearance at school.⁸⁸

Contrary to the early stages of the programme, the public work scheme is now combined with training, which is of course a necessary element to achieve reintegration into the labour market. The people concerned can participate in training programmes that conclude with OKJ (*Országos Képzési Jegyzék* - National Qualification Register) vocational qualification, professional knowledge necessary for doing particular work with a certification.⁸⁹ The net wage earned by unskilled participants working full time is HUF 51,847 (EUR 175) in 2015. Although the wage of participant is somewhat increasing every year, the wages of public work do not strive to reach the national minimum wage, on the contrary, the gap between them is constantly widening (HUF 13,576 in 2011 and HUF 16,928 in 2015).⁹⁰ The Public Work Scheme's **effect on**

⁸⁷ Act IV (on Furthering Employment and Provisions for the Unemployment) 1991 [a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról].

⁸⁸ Act CVI (on Public Employment and the Amendment of Other Acts Related to Public Employment) 2011 [Törvény a közfoglalkoztatásról és a közfoglalkoztatáshoz kapcsolódó, valamint egyéb törvények módosításáról].

⁸⁹ Government of Hungary 'National Reform Programme Hungary' [2014] <http://ec.europa.eu/europe2020/pdf/csr2014/nrp2014_hungary_en.pdf> accessed 1 April 2015.

⁹⁰ Menedzsment Fórum, 'Egyre jobban leszakad a közmunkások bére' <http://www.mfor.hu/cikkek/1200_forinttal_no_a_kozmunkasok_bere.html> accessed 10 April 2015 [Hungarian].

eliminating poverty was more significant in the first 3 years as the majority of the participants worked full time, then due to the changes of 2011, the number of total participants increased but significantly more participants worked part time (4 or 6 hours a day), earning considerably less. From 2012 the number of participants working full time has started to increase again.⁹¹

4.6. Promoting Effective Access to Housing

Typical problems of housing conditions in Hungary are the unpaid public utility bills and housing debts, the low ratio or lack of social housing, the concentration of extremely grave housing problems and segregation which also determines the living environment.⁹²

As a practical tool for debt management, NSIS encourages a wider use of prepaid meters. Thus, at the request of eligible persons in need, the electricity and gas providers are obliged to install such meters.⁹³ The need of targeted information campaigns for endangered groups on household management is also emphasised. The **foreign currency debt management measures** of the Government aim to serve the preservation of housing and the prevention of social exclusion. Measures of fundamental importance were taken to freeze the most important **household overhead expenses** via official pricing and then to reduce them in several steps.⁹⁴ Complex programmes are being implemented to **eliminate segregated slums**, and if eliminating is not doable, to create elementary housing and hygienic conditions in such neighbourhoods. The NSIS expects the personal contribution of those involved to the refurbishment of local community and residential buildings. These programmes have already reached 57 settlements, in about 80 slums in 2014. Each project involves at least 45 persons and 75 per cent of them enter trainings.⁹⁵ Since 1 July 2013 municipals can only receive grants subject to specific decision and tender from the subsystems of the budget, or EU funds, or other international programmes if they have an effective 5-year term **Local Equal Opportunity Programme**. These identify

⁹¹ Luca Koltai, 'Work Instead of Social Benefit? Public Works in Hungary' (Mutual Learning Programme 2012 Spring Peer Reviews, 2012) <<http://ec.europa.eu/social/BlobServlet?docId=10515&langId=en>> accessed 6 March 2015.

⁹² 'National Social Inclusion Strategy' 51.

⁹³ Act LXXXVI (on electricity) 2007 [törvény a villamos energiáról].

⁹⁴ Act LIV (on reducing overhead household expenses) 2013 [törvény a rezsicsökkentések végrehajtásáról].

⁹⁵ 'National Reform Programme Hungary' 151.

systemic interventions to reduce segregation.⁹⁶ The **system of social-policy benefits** serving housing purposes has been reviewed to allow better targeting and to increase the proportion of benefits provided in kind.⁹⁷

4.7. Promoting Effective Access to Education and Training

A priority task of public education is to provide development in **early childhood** prior to entry into the school system and to take account of the **special needs** of children and students with specific educational needs and integration, learning and behavioural difficulties, to promote their optimal development and to create opportunities for their widest possible social inclusion.⁹⁸

In accordance with the Framework Agreement of the Government and the National Roma Self-Government 20,000 young Roma may obtain marketable vocational qualifications in 50 vocational schools participating in the social inclusion institutional framework, 10,000 young Roma may attend courses offering final examinations and 5,000 talented Roma individuals may prepare for successful participation in higher education.⁹⁹ The National Reform Programme 2014 (hereinafter: NRP) includes 10 main measures concerning education. An important aim stated in NRP is **reducing the number of early school leavers**. In this context, kindergarten attendance will be compulsory from the age of three as of 1 September 2015.¹⁰⁰ Other measures mentioned to prevent the phenomenon include promoting of non-formal and informal learning methods and programmes provided by cultural institutions and also complex schemes and **scholarship programmes for the success in school** of pupils with multiple disadvantages. Such schemes and scholarship programmes are the *Útravaló* (Road to) scholarship programmes to promote access of disadvantaged students to secondary education and acquirement of vocational qualification including also mentor support; Integration Pedagogical System aiming to balance the differences in opportunities of disadvantaged children; *Arany János* Talent

⁹⁶ *ibid* 148-149.

⁹⁷ Government of Hungary, '*Nemzeti Társadalmi Felzárkózási Stratégia Nyomonkövetési Jelentés*' [2013] 45 <http://romagov.kormany.hu/download/b/54/80000/NTFS_eves_besz.pdf> accessed 1 April 2015. [Hungarian].

⁹⁸ '*National Social Inclusion Strategy*' 73.

⁹⁹ '*National Social Inclusion Strategy – Extreme Poverty, Child Poverty, the Roma – Framework Agreement Between the Government of Hungary and the National Roma Self-Government*' [2011] <<http://romagov.kormany.hu/download/8/58/20000/Annex%202.PDF>> accessed 2 April 2015.

¹⁰⁰ '*National Reform Programme Hungary*' 93-112.

programmes including talent fostering, dormitory and dormitory vocational school programmes; *Tanoda* programmes supporting the inclusion of pupils living in material deprivation or in adverse social conditions; Second Chance programmes for youths with multiple disadvantages beyond school age who missed or hasn't finished secondary studies to be led back to education. Furthermore new Roma specialised colleges have been established with the active cooperation of the four Hungarian historical churches. Other programmes and scholarships aiming to **increase the rate of those having tertiary qualification** or a qualification equivalent to higher education, and programmes to develop **foreign language knowledge** are also detailed here. In relation to eliminating discrimination, the establishment of elementary school enrolment districts prevents the segregation of pupils on the basis of race or social situation. Additionally, the possibilities and problems of living together with the nationalities, within this the Roma-Gipsy culture now appear in the National Curriculum.¹⁰¹

4.8. Promoting Effective Access to Health Care

The policies that serve to supplement the comprehensive reform of the Hungarian health care sector implemented in the last three and a half years focus on preventive care; one of the most important present and future areas of this is the reinforcement of the prevention of contagious and chronic non-contagious diseases.¹⁰²

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.¹⁰³ School fruit programme was introduced from the academic year 2009/2010 to increase the amount of vegetables and fruit consumption of children.¹⁰⁴

4.9. Civil Society Organisations, Monitoring, Indicators

¹⁰¹ *ibid* 93.

¹⁰² 'National Social Report Hungary' 18.

¹⁰³ *ibid* 10.

¹⁰⁴ 'National Reform Programme Hungary' 147.

As a result of multiply staged **public debate** of NSIS previous to its adoption, numerous propositions were turned in regarding its conception. Reflecting on these, the Strategy became enlarged by two new parts, a chapter on public security and another chapter on awareness raising and mentality shaping. The NSIS underlines the importance of involving civil organisations, in particular Roma organisations several times. The **National Roma Self-government** as a significant partner of the Government regarding the NSIS, reviewed the draft of the Strategy in several rounds.

Several governmental consultation institutes take part in the follow-up of the implementation of the strategy, its annual review and the revision of the strategy every three years. The **Roma Coordination Council** has been established in September 2011 to serve as the advisory, consultation body for NSIS. It consists of 27 members, including representatives of the National Roma Self-government, the Hungarian historical churches civil society organisations, municipals and the Government. It holds a meeting at least twice a year.¹⁰⁵ **The Evaluation Committee of the National Strategy 'Making Things Better for Our Children'** consists of experts delegated by government agencies, professional, civil and church organisations.¹⁰⁶

4.10. Monitoring system

Specified **programme monitoring system** has been established regarding NSIS. Main tasks are to compile the annual report for the Government, furthermore, to monitor the progress of the measures two-three times per year and to inform the Roma Coordination Committee (and if necessary the Social Inclusion and the Inter-ministerial Committee of Roma Affairs, and Strategic Evaluation Committee of 'Let it be better for children') about the results. In addition to create a system of strategic indicators, to coordinate and finance surveys, and to to run coordination and methodological working groups that ensure the support of monitoring.¹⁰⁷

On one hand the **indicators** used regarding the social inclusion strategy reflect EU numerical targets according to the Europe 2020 strategy; on the other hand also additional indicators are used to ensure the follow-up of the measures in accordance with the specific characteristics of

¹⁰⁵ 'National Social Inclusion Strategy' 108.

¹⁰⁶ Parliamentary Resolution No. 47/2007. (V. 31.) [Hungarian].

¹⁰⁷ 'National Reform Programme' 141-142.

the strategy. The NSIS also consists of a detailed list of indicators assigned to the specific goals.¹⁰⁸

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

The group of people living with disabilities is not narrow minority. Over 50 million European citizens living with disabilities, which is over 10% of the entire EU population. According to the 2001 census data compiled by the Central Statistical Office (KSH), 577,000 people claimed to have been living with disabilities. This translates into approximately 5.7% of the population. KSH claims that the data underestimates the size of the disabled population. The actual number may be as high as 600,000 people.

The educational level of people living with disabilities is significantly worse off than the educational level of the entire population. Among disabled people, the proportion of the least educated (having completed at most the 8th grade) is substantively higher¹⁰⁹ than those who have earned vocational certification, college degree or university diploma (naturally, when interpreting this data, we must take into consideration the fact that among people living with disabilities the older generation represented to a much more significant extent).

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible

¹⁰⁸ 'National Social Inclusion Strategy' 120-133.

¹⁰⁹ Sajó András, A materiális természetjog árvái, avagy hogyan védi Alkotmánybíróságunk az elesetteket (4th edn, Magyar Jog) [Hungarian].

by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

Every fifth person of working age (21.5% of the 15-64 year old age range) (KSH 2012) has some kind of a long-term health problem, or other disability. In the European Union this ration is 16%. It is exceptionally important to integrate this large group, socially as well as economically. The creation of the employment opportunities that match their working ability is important not just the perceptive of welfare expenditures; it also has a positive impact on the sense of well being of disabled people.

In 2006, the National Assembly adopted the National Program For People With Disabilities for the years 2007-2013, the objectives of which included the establishment of complex rehabilitation. Based on the national reform program¹¹⁰, to reach the highlighted objectives of the Europe 2020 Strategy Plan, Hungary intends to contribute with improvement of the rate of employment among 20-64 populations to 75% by 2020. Highlighted measures regarding employment include the improvement of employment for disabled workers. The national budget subsidized the employment of disabled workers with HUF 202 billion between 2007-2011.

Those companies which employ at least 40% disabled workers receive rehabilitation employment wage subsidies. As of 2012, companies with more than 25 employees, where less than 5% of those employees are disabled workers, are obligated to pay rehabilitation contribution. This contribution is HUF 946,000/person.¹¹¹

5.1.2.1. Rehabilitation subsidy

The companies with more than 25 employees, accrue a mandatory employer contribution payment obligation. This not-insignificant sum is payable when the employer employs disabled workers at lower proportion than 5% as compared to the entire pool of employees.

In 2010, the contribution grew to more than five times the previous level; since then, however, it has remained unchanged. In 2014, for each employee under the mandatory minimum level, the company has to pay HUF 964,500 (in four installments) as an advance payment. The sum approximates the average wages of one employee for a year. The primary objective of the

¹¹⁰ National Reform Program of Hungary. Available here:

http://ec.europa.eu/europe2020/pdf/nrp/nrp_hungary_en.pdf.

¹¹¹ Zombor Ferenc, Szolidaritás reform – szociális törvényi szabályozás és adatvédelem; Esély; 2005. 2. [Hungarian].

contribution (if one absolutely must pay) the employers would rather pay this amount to the employees.

The rehabilitation contribution payment obligation may be set off by the employment of disabled workers, assuming that:

- The health status of the employee, on the basis of the comprehensive certification of the rehabilitation authority, is at most 60%;
- The health degradation is at least 40%, and the drop in working ability is at least 50%;
- Is receiving disability benefits and/or the personal benefit of blind people;
- 4 working hours;
- Possesses rehabilitation card.

All employers who wish to employ persons with mental or physical disabilities are obligated to make the workplace suitable in all ways pursuant to decree. The state, however, does not abandon conscientious employers; in addition to budgetary bodies, every organization may receive case-by-case or regular subsidies, to establishing favorable condition for job creation. The companies can use the subsidies that may be obtained via tender to make the workplace suitable for rehabilitation or to remodel. The companies may also provide the employees a wage subsidy or expense reimbursement (e.g. the employment of support personal, the cost of work equipment and protective gear, travel expense reimbursement, the cost of employment eligibility examination, etc.).

Employers may receive subsidies for disabled employees in addition to having applied for such subsidies via tender, by receiving tax benefits. The state has option to forgive the employer 27% of the pre-tax wage of the employee, meaning the entire tax, of persons who possess a valid rehabilitation card.

Pursuant to Government Decree 327/2012 (XI. 16.)¹¹² Those employers who employing disabled employees are only entitled to change positions and/or make payments to subsidize wages, if the rehabilitation accreditation certificate has been issued for employer.

¹¹² Available here: http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1200327.KOR.

5.2. Children and Young Persons (Article 17 ESC)

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

That part of Hungarian legal system which deals with the rights of children and the young people in Hungary is very well regulated and framed. The basis of their rights - which also served as a guideline for the Hungarian regulation -, especially their right to education, are the Universal Declaration of Human Rights and the Convention Against Discrimination in Education¹¹³. The national basis of the Hungarian legislation concerning the rights of children and young people are the Fundamental Law and the Civil Code hand in hand together with other complementing Acts and Regulations such as Act CXC of 2011 on National Public Education, Act LXXIX of 1993 on Public Education, Act CCIV of 2011 on National Higher Education and the Government Decree 121/2013 (IV.26) on Educational Authority.

When examining the rights of children and young people family relations also have to be taken into consideration, since parents and, in some cases, other relatives have different rights over children.

The right to education is both right and obligation and the state provides the conditions of it¹¹⁴. On the one hand it is right as in the institutions of public education everyone has the right to participate in education (Section 2 (2) Act LXXIX of 1993 on Public Education) and on the other hand it is obligation as taking part in the education in Hungary is compulsory for every children (Section 6 (1) Act LXIX of 1993 on Public Education) either by regular attendance or by being a private student (Section 7 (1) Act LXXIX of 1993 on Public Education)¹¹⁵.

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

¹¹³ W. Janis, Mark - S. Kay Richard , Wilfred Bradley, Anthony (2008): European Human Right Law, Oxford University Press.

¹¹⁴ Langley, Winston (2013): Human Right Issues Since 1945, Barnes & Noble.

¹¹⁵ Act LXXIX of 1993 on Public Education.

What concerns the question of children and young person temporarily or definitively deprived of the support of their families - thus being under guardianship or in state custody - is that the government had to take great measures to control these circumstances which have to be treated with high level of state support. Since low educational level means severe problems in the society and would result in economic problems later on, the state is in the need of supporting those underprivileged children and young people. Means of regulations supporting the education of young people may be legal and political ones, financing measures and pedagogical-methodological improvements. One of the most important political means is that the government specifies the prohibition of use of segregation of underprivileged children – this reflects the government’s liberal education policy (Section 1 Act CXC of 2011 on National Public Education)¹¹⁶. Social support of the state is expressed in the form of free textbooks, free catering, etc. for children most in need of it. One of the most important of all types of support is the additional financial state support provided above the normal amount of financial support to the schools after every underprivileged student. Another way the state support manifests itself is the availability of competitions for the improvement of pedagogical methods and creating long-term pedagogical programs to make skills of the pedagogues more advanced and specialized in order to be able to handle and teach underprivileged children. The main indirect aim of this competition, which children and teacher shall apply together for, has been to catch up children with poor circumstances and without family support and to balance equality. What is new in this program is that not only children are financially supported but teachers, acting as mentors when proclaiming their support, and pedagogues too. The Ministry of Education and Culture has started The Arany János Talent Development Program in 2000, and the aim has been to help the development of those talented children during their high school studies who live in disadvantageous circumstances and without any family support, or other circumstances independent of them means setback in their progress to higher levels of education¹¹⁷. Surveys show the number of children from worse circumstances rises constantly and also the winners of the competitions are mostly children without family support or even without family. What concerns the question of children at the age of kindergarten we are still waiting for good solutions to come as there is no definite state regulation which would support children -

¹¹⁶ Act CXC of 2011 on National Public Education

¹¹⁷ http://store1.digitalcity.eu.com/store/clients/release/AAAABJFV/doc/jelentes_2009.05.27-11.10.38.pdf.

temporarily or definitely deprived of their family support - in such greatness that could solve the problems and improve the education of these very young people.

**5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance?
Has your MS taken any measures to provide free, or at least access to, tertiary education?**

It is the task of the state to create and operate the public educational system (Section 2 (3) Act LXXIX of 1993 on Public Education)¹¹⁸. As primary and secondary education is generally free the state organs and local governments are responsible for providing the institutional basis of free and compulsory education. There can also be schools and kindergartens not operated by the state and local governments but still, they receive financial aid from the state. According to the Act on Public Education minority governments, ecclesiastical legal personalities, economic organs, foundations, associations, other legal personalities and natural persons can set up and maintain educational institutions as well (Section 3 (2) Act LXXIX of 1993 on Public Education) with the help of the state in form of financial support which amount is determined in the annual Financial Act of Hungary¹¹⁹. Those institutions which are not in the hands of the state and the local governments, but still perform tasks which would originally be the tasks of the state or the local governments – but having been transferred according to Act on Public Education – can also receive additional financial aid from the state and local governments (Section 4 (6) Act LXXIX of 1993 on Public Education)¹²⁰. This financial support grants that parents don't have to pay twice: one time as tax payers and one time as users of education.

The Fundamental Law of Hungary states that public education is free together with additional educational programs and collegiate accommodation (Section 3 (3) Act LXXIX of 1993 on Public Education)¹²¹. Free education has its limit of course, the Act on Public Education determines the limits over which education is not state supported but self-financing, and for

¹¹⁸ Act LXXIX of 1993 on Public Education.

¹¹⁹ Act LXXIX of 1993 on Public Education.

¹²⁰ Act LXXIX of 1993 on Public Education.

¹²¹ Act LXXIX of 1993 on Public Education.

certain additional programs and eating facilities parents have to pay as well (Section 115 Act LXXIX of 1993 on Public Education)¹²².

The right to education is closely connected to other fundamental rights such as the right to freedom of conscience and religion¹²³. The right of parents that they can choose educational institutions freely according to their religion and philosophical beliefs must be respected both by the state and the local governments, although parents have to practise their rights according to the interests of their children, respecting their right to freedom of conscience, religion and thought, and they have to take into consideration the children's opinion which depends on their age and maturity (Section 4 (1) Act LXXIX of 1993 on Public Education)¹²⁴. The Act on Public Education disposes the rights and obligations of those who take part in the educational system: children, students and their parents. These are mainly the basic human rights confirmed by educational acts, but we can also find some paragraphs in acts that regulate educational legal relationship. The rights of the children and students include that they should be raised in safe and healthy circumstances in the educational institutions, should be provided with the necessary mental and health treatment required according to their age and maturity, should be protected from any kind of physical and mental violence¹²⁵. One of the most important rights parents have is the right to freedom of choosing school. The Act on Public Education states – strengthening the rights of children – that the right of the children cannot be completely limited especially after they reach the age of 14, because over this age of kids parents always have to take into consideration their will - they may practise the right to choose children's school together (Section 13 (4) Act LXXIX of 1993 on Public Education)¹²⁶.

Examining the higher education system we can see it is completely different from the public education system as rights and obligations differ from those of the public education. Although public education is free and compulsory, higher education is limited to the right to free access based on personal skills, and participants can get financial aid from the state for their studies. The task of the state is to provide the objective, personal and material preconditions of the right

¹²² Act LXXIX of 1993 on Public Education.

¹²³ Sári, János – Somody Bernadette (2008): *Alapjogok Alkotmánytan II.*, Osiris Kiadó.

¹²⁴ Act LXXIX of 1993 on Public Education.

¹²⁵ Act V. of 2013 on Civil Code.

¹²⁶ Act LXXIX of 1993 on Public Education.

to study, therefore ensuring the access to education for those who has the abilities required by higher educational institutions. Though this task is programmatic, actualization depends on the economic policy, the bearing capacity of citizens and as a consequence it cannot be forced out by any court decision (Constitutional Court Decree 1310/D/1990.)¹²⁷.

According to Act CCIV of 2011 on National Higher Education to operate the system of higher education is the role of the state both by maintaining institutions and by ensuring the right of founding any institution by others (Section 2 (2) Act CCIV of 2011 on National Higher Education)¹²⁸. The operation of these institutions requires the license of the Parliament (Section 6 (1) Act CCIV of 2011 on National Higher Education)¹²⁹.

The state provides financial support for non-state-operated institutions. The Fundamental Law does not determine free high education and in this case tuition fee is not contradictory to the Fundamental Law - there is no fundamental right to ensure free higher education. The Fundamental Law only assesses that the state has to provide financial aid for the participants under certain conditions and higher education should be open for everyone who has the abilities required by the institutions to conduct studies. The Constitutional Court stated (Constitutional Court Decree 79/1995. (XII.21.)) that the state has different obligations related to different educational systems – primary, high school education and higher education - and education can be made self-financing¹³⁰. Stated in the Act on Higher Education, education may be self-supported, semi-self-supported and self-financing (Section 39 (1) Act CCIV of 2011 on National Higher Education)¹³¹. Constitutional Court stated (Constitutional Court Decree 41/2005 (X.27.)) it is not enough to grant rights and protection against state limitations and interventions, but the state also has to grant by acts and regulations that free, uninfluenced scientific activities are ensured for everyone¹³².

Higher education institutions are independent of the government and polity. The state has to provide regulations which ensure the practise of professional, free and non-influenced scientific education such as providing well-organized institutional system, institutional regulations. Higher

¹²⁷ Constitutional Court Decree 1310/D/1990.

¹²⁸ Act CCIV of 2011 on National Higher Education.

¹²⁹ Act CCIV of 2011 on National Higher Education.

¹³⁰ Court Decree 79/1995. (XII.21.).

¹³¹ Act CCIV of 2011 on National Higher Education.

¹³² Constitutional Court Decree 41/2005 (X.27.).

educational system has an inside-autonomy granted by laws, especially by the Act on Higher Education, which states liberty of education, research and scientific life is materialized through autonomy (Section 2 (1) Act CCIV of 2011 on National Higher Education)¹³³. In the system higher education institutions also deal with their own financials, organizational policy and inside-regulations but still, autonomous rights can be limited by the law and, of course, they are.

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue

This all means educational support from the state is inevitable, otherwise these children without any support would represent the undereducated part of society in the future, uprightly leading to the high level of unemployment, which, if examining the last decade, rises noticeably. Every fourth young people under 25 do not have a job in Hungary, a very dramatic number, among the worst in the European Union, and the reasons behind it are very complex¹³⁴.

On one hand young people move to other European countries in hope for a better lifestyle, higher wages and better job opportunities, on the other hand just because they cannot find any job suitable for them in Hungary. Political beliefs also affect their decisions many times, but it should be part of the government policy trying to improve the circumstances and to offer favourable conditions for the youngsters.

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

The decrease of financial state support for the educational system has resulted in the concept of a less-financially-supported educational system: more students in higher education have to pay for their studies, and who is supported by the state may have to sign the so called student contract with the conditions of staying in Hungary for a defined period of time and working under the control of the Hungarian law in return for the financial support from the state (Article XI. Fundamental Law)¹³⁵. This is the newest method the state uses in order to control later

¹³³ Act CCIV of 2011 on National Higher Education.

¹³⁴ http://www.ksh.hu/docs/hun/xftp/idoszaki/pdf/ifjusag_munkaero_piac.pdf.

¹³⁵ Article XI. Fundamental Law.

unemployment among the young generations, together with scholarships to motivate talented youngsters to study and be good professionals in the future.

6. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

The goal of the European Social Charter (ESC), which was proclaimed in Hungary in 1999, is the protection of the economic, social and cultural human rights.

Later on, the ESC treaty was supplemented by the Additional Protocol of 1995 providing for a system of collective complaints (CETS No. 158). Although this protocol was signed among other human rights treaties by the Hungarian State, **the ratification have not been occurred**, therefore it doesn't have an effect in Hungary.

6.1. Reasons and Motives

The „*Kormányhatározat*” **Governmental Decision n. 1028/2004 (IV. 15.)** writes about the Revised European Social Charter and the signature of the Additional Protocol. In this Decision the Government decided about the signatures and created a single-issue committee that coordinated the related tasks. According to this decision, Hungary follows the „**optimal minimum**” principle in this matter. It means that Hungary – between the frames of the treaty – chooses such human rights to guarantee that are already protected in the state either by the ESC or other agreements of the international law. That does not impose expenditures on the budget, but reflects the commitment of the State to the European values.¹³⁶ The cause of defaulting ratification of the Collective Complaint System is the **lack of sources in the Hungarian budget**, which was already overwhelmed by the procedure for joining the European Union. It seems, that the lack of the ratification does not draw serious attention, this research have not found recent calls made by Stakeholders to ratify the complaint mechanism.

¹³⁶ Andrea Kozmáné Szigeti, '*A szociális jogok európai egyezménye és magyarországi végrehajtása*' [2009] Jog, állam, politika 2009/4. 91-160 [Hungarian].

7. CONCLUSIONS

To sum up this summary leads us to the conclusion that Hungary accepted and put into force Article 4, 5 and 6 without austerity measures. But there are some fields like the right of strike where still need to overthink and reregulate it that the freedom of social and labour rights could succeed more.

In general, it is true to say that, the State's austerity measures on social protection are more or less compliant with the obligations under ESC, because in Hungary there are not enforceable constitutional fundamental social rights (the state is not obligated to create a well operating social protection system, it is just obligated to strive to achieve that). Furthermore, the ESC does not declare clear the content of the Article 13, especially does not declare a minimum level of compliance. Because of these reasons, the State can continue the same legislative policy which is also applied in the connection of EU compliance, namely that the State stretches the borders and the interpretation of the treaty.

Hungary hasn't accepted Article 30 of the ESC therefore the European Committee of Social Rights doesn't rule on the conformity of the situation in our State regarding this Article. However reviewing the recent systematic efforts of Hungary to ensure a 'coherent system of comprehensive and area specific strategies'¹³⁷ concerning social inclusion, the picture is rather encouraging. I believe that the actions, which have been taken to involve civil society organisations, the specialised monitoring system established and the goal-driven indicators used to measure this complex phenomenon would be generally speaking in compliance with the ESC. As to the often criticised public work scheme, the Committee stated earlier:

The establishment of a link between social assistance and a willingness to seek employment or to receive vocational training is in keeping with the Charter, in so far as such conditions are reasonable and consistent with the aim pursued, that is to say to find a lasting solution to the individual's difficulties, without depriving the person concerned of his/her means of subsistence.¹³⁸

To responsibly decide if the measures taken by our State are or are not 'adequate in their quality and quantity to the nature and extent of poverty and social exclusion' in Hungary, would

¹³⁷ 'National Social Report Hungary' 4.

¹³⁸ European Committee of Social Rights 'Conclusions 2013 (Hungary)' 21.

certainly require a more detailed review. In my view however, the adoption of an approach striving to achieve optimal coordination of all regarding policies is indeed promising. Nevertheless, taking into consideration the conclusions of the Committee regarding Article 30 could have indubitably a beneficial impact on the further measures of our State.

8. CASE LAW, LEGISLATION, BIBLIOGRAPHY AND ONLINE RESOURCES

- http://ec.europa.eu/europe2020/pdf/nrp/nrp_hungary_en.pdf.
- http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1200327.KOR.
- Sajó András, A materiális természetjog árvái, avagy hogyan védi Alkotmánybíróságunk az elesetteket (4th ed, Magyar Jog) [Hungarian].
- Zombor Ferenc, Szolidaritás reform – szociális törvényi szabályozás és adatvédelem; Esély; 2005. 2. [Hungarian].
- Prugberger Tamás: Európai és magyar összehasonlító munka- és közszolgáltatási jog, KJK-KERSZÖV Jogi és Üzleti Kiadó Kft, Budapest 2000.
- Dudás Katalin-Gyulavári Tamás- Horváth István—Hős Nikolett- Kártyás Gábor- Kulicity Mária- Kun Attila- Petrovics Zoltán: Munkajog, ELTE Eötvös Kiadó, 2014.
- Ferencz Jácint- göndör Éva- Gyulavári Tamás- Kártyás Gábor: Munkajogi alapismeretek, ELTE Eötvös Kiadó, 2013 .
- Dr. Asbóth Balázs: A még elégséges szolgáltatás mértékének meghatározására irányuló nem peres eljárás, 2011. November 16, <http://www.jogiforum.hu/publikaciok/444>.
- Sári János-somody Bernadette: Alapjogok, Alkotmánytan III, Osiris Kiadó 2008.
- http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Hungary2014_en.pdf.
- http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/HungaryXVII_I1_en.pdf.
- Dr. Andre Szigeti Dr. Kozmané, *A Szociális Jogok Európai Egyezménye és Magyarországi Végrehajtása*, (Jog, Állam, Politika, 2009/04) 91-160. [Hungarian].
- Gábor Juhász, Katalin Tausz, *Szociális jog*; (ELTE TáTK Budapest; 2012) 40. [Hungarian].
- HVG: *Megszorítások az egészségügyben*, 2009
<http://hvg.hu/gazdasag/200910_MEGSZORITASOK_AZ_EGESZSEGuGYBEN_Al_apdilemma> accessed 25 February 2015 [Hungarian].

- Policy Agenda, *A válság előtti évekhez képest 380 milliárd forint megszorítás történt a nyugdíjasokon* 2014 <<http://www.policyagenda.hu/hu/nyitolap/a-valsag-elotti-evekhez-kepest-380-milliard-forint-megszoritas-tortent-a-nyugdijasokon>> accessed 25 February 2015 [Hungarian].
- Ombudsman report to case n. AJB-4586/2013 | [2013] | Ombudsman of Hungary | <http://www.ajbh.hu/documents/10180/1957691/Jelent%C3%A9s+a+k%C3%B6zfoglalkoztat%C3%A1s+egy+egy+jogi+k%C3%A9rd%C3%A9seir%C5%91+4586_2013/20633bc3-225d-4656-8db5-b28354ffb4d5?version=1.0> | [2013] | 5 | [Hungarian].
- 42/2000. (XI. 8.) CC decision [2000] | Constitutional Court of Hungary | Official Journal of Hungary | Vol. 109 | [2000] | 6823 | [Hungarian].
- Act IV (on Furthering Employment and Provisions for the Unemployment) 1991 [a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról].
- Act III (Law on Social Administration and Social Services) 1993 [a szociális igazgatásról és szociális ellátásokról].
- Act LXXXI (on the Social Security Pensions) 1997 [a társadalombiztosítási nyugellátásról].
- Act LXXXIII (on services of compulsory health insurance) 1997 [a kötelező egészségbiztosítás ellátásairól].
- Act LXXX (on the entitled persons for the services of social security scheme and the coverage of these services) 1997 [a társadalombiztosítás ellátásaira és a magánnyugdíjra jogosultakról, valamint e szolgáltatások fedezetéről].
- Act CLVI (on the modification of certain tax Laws and other related Laws) 2011 [egy adótörvények és azzal összefüggő egyéb törvények módosításáról].
- Act LXXXIV (on the Family Support) 1998 [a családok támogatásáról].
- Fundamental Law of Hungary 2011 [Magyarország Alaptörvénye].
- Act I (on Labour Code) 2012 [a Munka Törvénykönyvéről].

- No. T / 9180/14. (unified proposal on the amending of Act LXXXI of 1997. on the Social Security Pensions) 2009 [egységes javaslat a társadalombiztosítási nyugellátásról szóló 1997. évi LXXXI. törvény módosításáról].
- KSH *táblázat*: <http://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_zhc011.html> accessed 28 March 2015 [Hungarian].
- OECD, *Health Statistics* 2014, <<http://www.oecd.org/els/health-systems/Briefing-Note-HUNGARY-2014.pdf>> accessed 25 February 2015.
- KSH *táblázat*: <http://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_fsp003.html> accessed 25 February 2015 [Hungarian].
- KSH *táblázat*, <http://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_fsp010b.html> accessed 25 February 2015 [Hungarian].
- Serena Romano, *The Political and Social Construction of Poverty – Central and Eastern European Countries in Transition* (Policy Press, University of Milano 2014).

8.1. English Titles

8.1.1. Websites

- ‘Announcement of the Prime Minister’s Office’ <<http://www.kormany.hu/en/prime-minister-s-office/news/the-government-has-decided-on-the-construction-of-350-kilometres-of-new-roads>> accessed 1 April 2015.
- European Committee of Social Rights, ‘Conclusions 2013 (Hungary)’ <http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Hungary2013_en.pdf> accessed 1 April 2015.
- Eurostat <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_li02> accessed 1 April 2015.
- Eurostat <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_peps01&lang=en> accessed 1 April 2015.

- Eurostat
<http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=educ_figdp&lang=en>
accessed 1 April 2015.
- Eurostat
<http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=hlth_sha_hc&lang=en>
accessed 10 April 2015.
- Eurostat
<http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=demo_mlexpec&lang=en>
accessed 10 April 2015.
- Eurostat <<http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>>
accessed 1 April 2015.
- Eurostat
<http://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=t2020_53&language=en> accessed 1 April 2015.
- Eurostat
<<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tps00098&plugin=1>> accessed 1 April 2015.
- Foreword to National Social Inclusion Strategy – Extreme Poverty, Child Poverty, the Roma (Minister of State for Social Inclusion, Ministry of Public Administration and Justice, 2011) <<http://romagov.kormany.hu/hungarian-national-social-inclusion-strategy-deep-poverty-child-poverty-and-the-roma>> accessed 1 April 2015.
- Government of Hungary ‘National Social Report Hungary 2014’ 4 <<http://ec.europa.eu/social/BlobServlet?docId=11712&langId=en>> accessed 2 April 2015.
- 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.

- Government of Hungary, ‘National Reform Programme Hungary’ [2014] <http://ec.europa.eu/europe2020/pdf/csr2014/nrp2014_hungary_en.pdf> accessed 1 April 2015.
- Homepage of the National Council for Sustainable Development <<http://nfft.hu/en/>> accessed 10 April 2015.
- Koltai L, ‘Work Instead of Social Benefit? Public Works in Hungary’ (Mutual Learning Programme 2012 Spring Peer Reviews, 2012 <<http://ec.europa.eu/social/BlobServlet?docId=10515&langId=en>> accessed 6 March 2015.
- Minister of State for Social Inclusion, Ministry of Public Administration and Justice, ‘Social Inclusion Strategy – Extreme Poverty, Child Poverty, the Roma [2011] <http://ec.europa.eu/justice/discrimination/files/roma_hungary_strategy_en.pdf> accessed 1 April 2015.
- National Social Inclusion Strategy – Extreme Poverty, Child Poverty, the Roma Annex 2– Framework Agreement Between the Government of Hungary and the National Roma Self-Government 2011 <<http://romagov.kormany.hu/download/8/58/20000/Annex%202.PDF>> accessed 2 April 2015.
- OECD ‘*Economic Policy Reforms: Going for Growth Country Notes Hungary 2013*’ <<http://www.oecd.org/eco/growth/Hungary.pdf>> accessed 1 April 2015.
- OECD Employment Outlook ‘How does Hungary compare?’ [2014] <<http://www.oecd.org/hungary/EMO-HUN-EN.pdf>> accessed 6 March 2015.
- OSCE Human Dimension Committee: National Social Inclusion Strategy – Deep poverty, child poverty and Roma (2011-2020) 2012 <http://www.mfa.gov.hu/NR/rdonlyres/972EC4A2-4018-4340-8AD8-4E39911587ED/0/120504HU_Social_Inclusion_Strategy_background_OSCE_HDC_1_20509.pdf> accessed 10 April 2015.

- Act CVI (on Public Employment and the Amendment of Other Acts Related to Public Employment) 2011 [Törvény a közfoglalkoztatásról és a közfoglalkoztatáshoz kapcsolódó, valamint egyéb törvények módosításáról].
- Act IV (on Furthering Employment and Provisions for the Unemployment) 1991 [a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról].
- Act LIV (on reducing overhead household expenses) 2013 [törvény a rezsicsökkentések végrehajtásáról].
- Act LXXXVI (on electricity) 2007 [törvény a villamos energiáról].
- Explanatory Notes to the Act VI (on the Ratification of the Revised European Social Charter) 2009 [2009. évi VI. törvény indokolása a módosított európai szociális karta kihirdetéséről].
- Parliamentary Resolution No. 47/2007. (V. 31.).
- The Fundamental Law of Hungary.
- Téglási A, A szociális állam „erodálása” vagy megmentése?– avagy a szociális biztonság az új Alaptörvényben [2011] Jogelméleti Szemle.
- Kozmáné Szigeti A, 'A szociális jogok európai egyezménye és magyarországi végrehajtása' [2009] (Jog, állam, politika 2009/4.).
- Tóth G Cs and Virovác P, Nyertesek és Vesztesek - A magyar egykulcsos adóreform vizsgálata mikroszimulációs módszerrel [2013] (fókusz – A gazdasági jogalkotás hatása a reálfolyamatokra).

8.2. Hungarian Titles

8.2.1. Websites

- HÉTFA Elemző Központ, Hajdu G and Mike K, 'Szegénység és a társadalmi kirekesztés megoldása' 2013
<http://palyazat.gov.hu/download/52431/Szeg%C3%A9nys%C3%A9g_%C3%A9s_t%C3%A1rsadalmi_kirekeszt%C3%A9s.pdf> accessed 10 April 2015.

- Nemzeti Társadalmi Felzárkózási Stratégia Nyomonkövetési Jelentés (2013)
<http://romagov.kormany.hu/download/b/54/80000/NTFS_eves_besz.pdf> accessed
1 April 2015.
- Menedzsment Fórum Egyre jobban leszakad a közmunkások bére
<http://www.mfor.hu/cikkek/1200_forinttal_no_a_kozmunkasok_bere.html> accessed
10 April 2015.

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

Italy has ratified both the versions of the European Social Charter. The 1961 ESC was ratified on the 22nd October 1965, being accepted all of its provisions¹; the revised ESC was ratified on the 5th July 1999, being accepted all of its provisions but one (article 25).²

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

The 2008 economic crisis has had a great impact on the Italian Economy and decreasing the national debt – a longstanding problem for Italy – has been considered one of the main requirements to meet and one of the main ways to overcome its economic issues.

In this direction, after the great recession, the Italian Parliament and Government have taken a huge number of austerity measures.

The right-wing government Berlusconi IV (May 2008- November 2011) which had the hard task to provide the first solutions to the economic crisis, had surely adopted an austerity policy.

In particular, amongst the main measures taken by this government, it must be mentioned a range of taxes that have been increased or introduced especially during the summer 2011.

Many existing taxes have been increased, such as the stamp duties (so called “superbollo” for high-powered cars)³; the taxes on annuities; the corporate tax for shell corporations⁴. There have also been the application of the so called “Robin Hood Tax” to renewable energy companies⁵; an

¹ The President of the Republic was authorized by the Italian Parliament with the l. 3 July 1965, n. 929 (G. 3 August 1965, n. 193).

² The President of the Republic was authorized by the Italian Parliament with the l. 9 February 1999, n. 30 (GU 23 February 1999, n. 44, Ord. suppl. n. 38)

³ See art. 23, d.l. 6 July 2011, n. 98 (GU 6 July 2011, n. 155) as converted by l. 15 July 2011, n. 111 (GU 16 July 2011, n. 164) (in Gazzetta Ufficiale - Serie generale - n. 164 del 16 luglio 2011).

⁴ See d.l. 13 August 2011, n. 138 (GU 13 August 2011, n. 188) as converted by l. 14 September 2011 n. 148.

⁵ Ibid.

increase of the tax on vehicle insurances⁶; a one-off income tax increase (in general on all the incomes above EUR 300,000; on the wages of the workers in the public sector) and a very important increase in the VAT rate (from 20% to 21%).⁷

Amongst the new taxes, it is possible to mention the IMU (a kind of property tax)⁸ and the tax on lottery wins (6% of the prizes)⁹.

In addition, many spending cuts have been enacted. The most important in financial terms have been the cuts in public wages, Ministries', public administration's and local governments' spending.¹⁰ In addition, it must be said – taking into account its impact on the social rights of elderly people – that that government have also provided the increase of the retirement age.¹¹

The next “technocratic” Government led by Mario Monti (November 2011-April 2013) has even strengthened the austerity approach to the economic crisis.

On the one hand, in the so-called “Decreto Salva Italia”¹² there has been an important increase of taxation. Namely, the main measures were the introduction of a property tax which targeted the properties that are located in foreign countries (IVIE) of a new kind of landfill tax (TARES) and the increase of many other taxes (VAT rate; fuel taxes; tax on electricity; income tax etc.).¹³

On the other hand, the aforementioned decree¹⁴ and a spending review¹⁵ provided a number of budget cuts to many areas of the public sector, in a general context of reorganization and

⁶ See art. 17(2), d.lgs. 6 May 2011, n. 68.

⁷ See d.l. 13 August 2011, n. 138 (GU 13 August 2011, n. 188) as converted by l. 14 September 2011 n. 148

⁸ Art. 7-8-9, d.lgs. 14 March 2011, n. 23, (GU 23 March 2011, n. 67) which provided that this tax would have entered into force from 2014 (being the principal residence exempted). Notwithstanding, the Monti Government with the d.l. 6 December 2011, n. 201 (GU 6 December 2011, n. 284, ord. suppl. 251) as converted by l. 22 December 2011, n. 214 (GU 27 December 2011, n. 300, ord. suppl. n. 276) has applied the tax also to the principal residence and anticipated its introduction in 2012.

⁹ D.d. 12 October 2011, which implemented the norms contained in art. 2(3) of d.l. 13 August 2011, n. 138, as converted by l. 14 September 2011, n. 148.

¹⁰ See e.g., art. 1, 4, 16 d.l. 6 July 2011, n. 98 (GU 6 July 2011, n. 155) as converted by l. 15 July 2011, n. 111 (GU 16 July 2011, n. 164) Art. 1(3)-(5) d.l. 13 August 2011, n. 138, as converted by l. 14 September 2011, n. 148.

See also the so called “patto di stabilità”, i.e. a plan aimed at reducing the debt of the local governments, provided by art. 31 et seq. “Legge di stabilità 2012” [l. 12 November 2011, n. 183 (G.U. 14 November 2011, n. 265)]

¹¹ See art. 1(20) d.l. 13 August 2011, n. 138 (GU 13 August 2011, n. 188) as converted by l. 14 September 2011 n. 148; art. 5 l. 12 November 2011, n. 183 (G.U. 14 November 2011, n. 265).

¹² D.l. 6 December 2011, n. 201 (GU 6 December 2011, n. 284, Suppl. Ord. n. 251).

¹³ Ibid. see art. 13 et seq.

¹⁴ Ibid. see art. 21 et seq.

¹⁵ D.l. 7 May 2012, n. 52 (GU 8 May 2012, n. 106) as converted by l. 6 July 2012, n. 94 (GU 6 July 2012, n. 156).

rationalization of the administrative structure of the State and of the local governments, with a planned saving of EUR 17 billion in three years (2012-2014). Amongst the main measures, once again, there have been a reform of the old-age pension system.¹⁶

After the elections of 2013, the Letta coalition government (April 2013-February 2014) struggled to pursue a non-austerity approach. In this sense, for instance it is possible to mention the abolition of the IMU for the principal residence¹⁷ or the temporary avoidance of raises of the VAT rate.

Notwithstanding, under the pressure of the economic situation and because of the need to comply with the standards agreed at the European level, also this government has adopted some austerity measures. In particular, in addition to some novel taxation measures (e.g. extension for three other years of the tax on all the incomes above EUR 300,000; the introduction of a new one-off tax on high pensions; the introduction of the so-called web tax etc.) there have been a range of public sector cuts and a new huge spending review.¹⁸

Finally, the new Renzi government (February 2014 - ongoing) has maintained the need for a non-austerity approach in the resolution of the crisis. The main measures taken so far under the new government are the ones provided in the “Legge di Stabilità” 2015.¹⁹

Even though this Act has been very controversial in its nature and impact and despite the fact that it has provided an important spending review (officially EUR 15 million of public sector cuts)²⁰ it seems to have carried out at least a less rigorous version of the “European austerity” if compared to the measures taken by the previous executives.

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

¹⁶ See D.l. 6 December 2011, n. 201, art. 24 (GU 6 December 2011, n. 284, Suppl. Ord. n. 251).

¹⁷ See d.l. 31 August 2013, n. 102 (GU 31 August 2013, n. 204) as converted by l. 28 October 2013, n. 124 (GU 29 October 2013, n. 254).

¹⁸ See in particular the “Legge di Stabilità 2014”, l. 27 December 2013, n. 147 (GU 27 December 2013, n. 302)

¹⁹ See l. 23 December 2014, n. 190, (GU 29 December 2014, n. 300).

²⁰ See the explanatory report to the draft of the act in <http://www.governo.it/Notizie/Palazzo%20Chigi/dettaglio.asp?d=76911> [accessed 20 January 2015].

The Italian legal system recognizes that workers have both the right to organize themselves in their workplace and the right to bargain collectively.

According to Article 18 of the Italian Constitution, citizens have the right to associate freely,²¹ while according to Article 39, 'trade union have the right to organise themselves freely' and '[they] may, through a unified representation that is proportional to their membership, enter into collective labour agreements that have a mandatory effect for all persons belonging to the categories referred to in the agreement'.²²

Italian Constitution also provides that collective agreements signed by trade unions take effect *erga omnes* only if those trade unions are regularly registered in public offices (Article 39 paragraphs from 2 to 4). This provision has never been implemented by Italian trade unions and consequently collective agreements concluded by them have not an *erga omnes* validity, but should take effect only to their members.²³

Despite this, in Italy the right to collective bargaining is exercised mainly through trade unions, which have historically assumed a key role in industrial relations, ensuring to workers the free exercise of their labour rights.²⁴

Law n. 300 of 20 May 1970 (Employee's Statute) is the most relevant source of law. It provides and regulates workers' rights and their legal relations with employers.

The analysis of the Employee's Statute will allow us to explore how social and collective bargaining rights are exercised in Italy.

The Employee's Statute was issued with three different purposes:

- To protect the freedom and dignity of the workers against repressive situations that could occur at work;
- To strengthen the effectiveness of workers' freedom of association in the workplace;

²¹ 'Citizens have the right to form associations freely, without authorisation, for aims that are not forbidden to individuals by criminal law. Secret associations and associations that, even indirectly, pursue political aims by means of organisations having a military character, are prohibited' (Italian Constitution, 1947, Article 18, our translation).

²² O Mazzotta, *Diritto del Lavoro* (5th edn, Giuffr  Editore, 2013) 10-13 [Italian].

²³ G Salta, G Vaccari, *L'efficacia erga omnes del contratto collettivo aziendale* (Bollettinoadapt.it, 2011) <http://www.bollettinoadapt.it/old/files/document/10880salta_valcavi_16.pdf> accessed 25 March 2015 [Italian] 1-2.

²⁴ G Giugni, *Diritto Sindacale* (3rd edn, Cacucci, 2010) 12-15 [Italian].

- To ensure legal and judicial protection to trade unions.²⁵

Articles 1 to 13 of the Employee's Statute state the principles of freedom and human dignity of the workers.

Workers are granted with the freedom to express at workplace their political, labour and religious opinion (Article 1), while employers are prevented from conducting any kind of investigation on such matters (Article 8).

The workers' rights are effectively protected by those provisions that establishing strict limits on the employers' power to appoint security guards for the protection of corporate assets (Article 2-3), to place audio-visual surveillance systems (Article 4) and to adopt disciplinary measures towards workers (Article 7).²⁶

While the first part of the Employee's Statute (Title I) recognises and protects workers' individual rights, the second part (Title II, Articles 14-18) identifies the most suitable forms of protection of their rights to associate and to organise in trade unions.

Article 14 of the Employee's Statute recognises the freedom of association and the freedom of trade union activity at workplace. Articles 15 and 16 prevent employers from committing any discrimination (also of economic nature).

Article 18 – one of the most important provisions of the whole Act – protects workers against unfair dismissal.

Title III (Articles 19-27) and Title IV (Articles 28-32) of the Employee's Statute regulate in several aspects the procedure to exercise trade union rights:

- Article 19 states that national trade unions – which entered into collective bargaining agreements applied in a company – may constitute a representative branch (*i.e. rappresentanze sindacali aziendali*) within that company;
- Article 20 regulates the workers' right to organise trade union meetings;
- Article 21 regulates the right to hold referendums on specific topics related to trade union activity;

²⁵ *ibid* 30.

²⁶ *ibid*. 31.

- Articles 22 to 27 regulate a number of matters pertaining to paid and unpaid leaves for workers who exercise labour leaders functions, the right to display work-related texts or trade union statements in appropriate areas within the company, the right to collect contributions and promote participations to trade unions and the obligation for the employers to provide the workers with a suitable area within the company where they may meet and exercise trade union activities;
- Article 28 guarantees legal protection against anti-union conducts carried on by the employer. It is stated that the judicial authority may adopt enforceable orders to stop the employer's illegal conduct and remove its negative effect;
- Articles 29 to 32 regulate a number of matters related to work permits for those workers exercising leadership roles within trade unions.

Title V (Articles 33-34) and Title VI (35-41) of the Employee's Statute have mainly a complementary role. Article 37 remarkably extends to public employees all the Statute's provisions.²⁷

Italian law does not fix any model of organization either for the trade unions or for the employers' associations.

The most frequent pattern in Italy is the industry-wide union, which has local, provincial, regional and national bodies (vertical organization). The national unions join in trade union federations (horizontal organization).²⁸

Today, in Italy there are three main trade unions confederations:

- *Confederazione Generale Italiana del Lavoro* (Italian General Confederation of Labour);
- *Confederazione Italiana Sindacati Lavoratori* (Italian Confederation of Workers' Trade Unions);
- *Unione Italiana del Lavoro* (Italian Labour Union).

Italian employers have a similar model of organization, with provincial, regional and national associations, which join to form federations. There are three main employers' federations

²⁷ *ibid* 32-48.

²⁸ E Casciano, *Il diritto senza norme: prospettive ed evoluzioni della rappresentanza sindacale* (Filodiritto.it, 2014) <http://www.filodiritto.com/articoli/pdf/2014/02/il-diritto-senza-norme-prospettive-ed-evoluzioni-della-rappresentanza-sindacale?_id8=3> accessed 26 March 2015 [Italian].

according to the field they are active in: industrial, commercial and artisan (*Confindustria, Confcommercio, Confartigianato*).²⁹

The progressive implementation of the provisions set out by the Employee's Statute allowed so far the development of revision processes with respect to the regulation and the exercise of the right to collective bargaining.

Until 1992 collective bargaining agreements in Italy was left to direct negotiation between trade unions and employers' associations.

In 1993, under the need to comply with the criteria established to achieve the goal of European monetary unification, the Italian government took part as a third neutral subject to negotiation procedures between trade unions and employers.³⁰

On 22 July 1993, the Italian government, trade union confederations and entrepreneurial organizations signed a Protocol on incomes and employment policy.³¹

According to such Protocol, two different levels of collective bargaining would be considered since that moment: national bargaining and decentralised bargaining.

National collective bargaining would bring to national collective agreements establishing the outline of the fundamental rules on the condition of workers. Decentralised bargaining would be bound by such outline and would play an integrative role to national negotiation, thus ensuring a regulated and coordinated decentralization of collective bargaining. This agreement would be renegotiated every four years (this period was reduced to three years on 2009)³².

By adopting the Social Agreement for Development and Employment (i.e. *patto sociale per lo sviluppo e l'occupazione*) in December 1998, the Italian government – led by a coalition of centre-left parties – chose the collective bargaining (i.e. *concertazione collettiva*) as the basic instrument for the management of industrial relations. Such instrument was based on dialogue and participation to policy-making and bargaining activity by national trade unions, organizations of employers and public authorities.

²⁹ P Accardo, A de Matteis, G Mammone, *National Labour Law Profile: Italy* (Ilo.org, 2011) <http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158903/lang-en/index.htm> accessed 26 March 2015.

³⁰ O Mazzotta, *Diritto del Lavoro* (5th edn, Giuffrè Editore, 2013) 14-20 [Italian].

³¹ See the full text of the Protocol at < <http://www.confetra.it/it/prontuari/Protocollo-1993.pdf>> [Italian].

³² *ibid* 2-6.

Collective bargaining might therefore play a crucial role in determining government employment-related policies, at both national and local level: through this agreement, even decentralized collective bargaining had the power to negotiate with representatives of the local government authorities in the definition of those most effective employment policies to be locally implemented.³³

Following 2001 Italian national elections and the victory of a right-oriented coalition, the Italian Government signed a new agreement with trade unions (not including the Italian General Confederation of Labour) and employers' representatives. Such agreement significantly reduced the role played by collective bargaining in the definition of employment policies³⁴.

According to this agreement, known as Pact for Italy (i.e. *Patto per l'Italia*), central and local government were not bound by any recommendations made by the social parties and pertaining to economic and employment policies.

In 2007, the new centre-left government tried to increase collective bargaining role for the determination of employment policies. However, a parliamentary crisis and the beginning of the world economic crisis caused the failure of such political action³⁵.

Between years 2009-2011, the hierarchical relationship between national and decentralised collective bargaining was revisited by a new Interconfederal Agreement, which was signed on 2009 by trade unions and employers' association. Several powers and competences of national collective bargaining were transferred to decentralised collective bargaining (see next chapters for further information).

According to the above analysis, it is possible to state that Italian Law fulfils provisions set up by Article 6, paragraphs 1-2 of European Social Charter.

Article 31 of law n. 183/2010, in fulfilling article 6 paragraph 3 of European Social Charter, set up an appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes. It gives to national collective bargaining the power to identify specific forms of

³³ N Guerzoni, *Il ruolo del Parlamento nella concertazione fra Governo e parti sociali* (Camera.it, 1999) <http://documenti.camera.it/bpr/9609_testo.pdf> accessed 25 March 2015 [Italian].

³⁴ A Bellavista, *Il Patto per l'Italia e la riforma della disciplina dei licenziamenti* (di-elle.it, 2002) <<http://www.di-elle.it/45-approfondimenti/321-il-patto-per-l-italia-e-la-riforma-della-disciplina-dei-licenziamenti-di-alessandro-bellavista>> accessed 25 March 2015 [Italian].

³⁵ European Committee of Social Rights, Addendum to 13th Report (Italy) 2014, 32-33.

conciliation and arbitration within national collective agreements and establish a special commission with the aim to manage and to solve labour disputes. This commission, called Commission for Conciliation, must be operational in every Labour Territorial Directions (which are peripheral bodies of the Italian Ministry of Labour) and has the power to receive, manage and complete mediation or conciliation attempts between workers and employers (and their representatives such local trade unions or other associations) into the territorial area of its competence.³⁶

The right of strike (granted to workers by article 6 paragraph 4 of the European Social Charter) in Italy is recognised by Article 40 of the Constitution: 'the right to strike is exercised within the framework of the statutory provisions regulating it'.

Lacking any statutory definition of what strike means from a juridical point of view, the question of how to balance workers' social rights and employers' economic freedoms have been addressed by case law and legal doctrines.

In 1980, the *Corte di Cassazione* (Supreme Court of Cassation) has specified that the exercise of the right to strike shall be limited, on ensuring that whatever its form or way of realisation, it does not infringe upon other constitutional rights (which are considered external restrictions to the right to strike), including the right of employers to resume productive activity once the strike is over.³⁷

In Italy, the right of strike is a 'individual right to collective exercise'. This phrase sums up both the view that the right to strike is recognised to all individual employees and not to trade unions or other organized groups, and the view that this right concerns the protection of a collective interest and must necessarily assume a collective dimension. In this regard, it should be highlighted that trade unions, while not being holders of the right to strike, in practice assume its political control and determine its specific exercise by proclamation and management of conflicting actions.

³⁶ Law n. 183 (Mandates to Government in labour matters) 2010, 35 [Delega al Governo in tema di lavoro].

³⁷ Case n. 711 [1980], Supreme Court of Cassation, *Rivista di Giustizia Civile* Vol. I [1980] 1022 [Italian].

The right to strike is recognized to the generality of employees, regardless of the nature of the relationship and the nature of the service³⁸. In the event of a strike in essential public services, law n.146/1990 requires of the unions wishing to declare a strike a several number of obligations (like notice period, the completion of the procedures of cooling and reconciliation, respect for minimum intervals, essential services, periods of exemption identified in the agreements and regulations of the sector)³⁹. This measure is set in order to ensure the balancing of the right to strike with the enjoyment of others constitutionally protected rights.

No austerities measures have been enacted to revise the right to strike between years 2009-2014.

Even if the European Committee of Social rights considers excessive the requirement for trade unions to notify employers of the duration of strike affecting public services (as set up by Law 146/1990), Italy seems to fulfil article 6 para. 4 European Social Charter.⁴⁰

In conclusion, it is possible to observe that the right to collective bargaining is recognized and properly regulated by Italian law. It is also possible to state that during the first decade of 2000 the influence of national collective bargaining in shaping employment policies is drastically reduced.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

Since 2011, Italy has set up a progressive adoption of austerity measures, aimed to face the severe European economic crisis.

The need to reduce the high level of unemployment⁴¹, re-launch the international competitiveness of Italian companies and enable investments in the Italian market, led three

³⁸ G Ferraro et alii, *The Right to Strike in the EU - The complexity of the norms and safeguarding efficacy* (Ictur.org, 2011) <http://www.ictur.org/pdf/Right_To_Strike.pdf> accessed 25 March 2015.

³⁹ Law n. 146 (Rules on the exercise of the right to strike in essential public services and on safeguard of the rights of the people constitutionally protected rights) 1990 [Norme sull'esercizio del diritto di sciopero nei servizi pubblici essenziali e sullasalvaguardia dei diritti della persona costituzionalmente tutelati].

⁴⁰ European Committee of Social Rights, *Conclusions 2013* (Italy) 29.

⁴¹ The Italian unemployment rate grows up from 8,2% in year 2011 to 13% in year 2014. For more details see: ISTAT <<http://www.istat.it/it/lavoro>>.

different government teams, between years 2011-2015, to drastically reform the Italian employment law and to modify the rules on collective bargaining.⁴²

Deferring to the next chapter the analysis of changes to the employment law, with a specific focus on employees' right to a fair remuneration, it is now necessary to analyse the most relevant changes to the right to collective bargaining.

As previous highlighted, national collective bargaining had the role to establish the outline of fundamental rules on condition of workers in national collective agreements. Decentralised bargaining could not waive these rules and employment agreements signed into company had to comply with them.

On 28 June 2011, the new Interconfederal Agreement signed between trade unions and employers' associations, stated that decentralised bargaining may waive some of the rules shaped by national collective bargaining.

Therefore, the rules set up by national collective agreements, which regulate the performance of work, working hours and organization of work, could be modified by decentralised bargaining.⁴³

Nevertheless, this power is allowed only when it is necessary to manage situations of corporate crisis or in presence of significant investments to promote economic development and employment in the company.⁴⁴

The Law Decree n. 138/2011 is an additional measure that gives more autonomy to decentralized bargaining.

According to article 8, decentralised bargaining can stipulate in-company collective agreements aimed to implement specific measures that may grant new employments, better provisions in employment contracts, salary increases, increase of business competitiveness and the resolution of company or employment crisis.⁴⁵

⁴² L Capone et alii, *Labour market reforms tracker February 2014* (Lexology.com, 2014) <<http://www.lexology.com/library/detail.aspx?g=014cb5b2-0990-4a2e-9ccf-69828cba9831>> accessed 26 March 2015.

⁴³ M Viceconte, *L'accordo interconfederale 28 giugno 2011* (Diritto.it, 2011) <<http://www.diritto.it/docs/32047-l-accordo-interconfederale-28-giugno-2011?page=3>> accessed 26 March 2015 [Italian].

⁴⁴ A C Scacco, *La nuova contrattazione aziendale dopo l'accordo interconfederale del 28 giugno* (Diritto.it, 2011) <<http://www.diritto.it/docs/32412-la-nuova-contrattazione-aziendale-dopo-l-accordo-interconfederale-del-28-giugno?page=2>> accessed 26 March 2015 [Italian].

⁴⁵ Law Decree n. 138 art. 8 (1) (Urgent measures for financial stabilization and for development) 2011 [Misure urgenti per la stabilizzazione finanziaria e per lo sviluppo].

This new type of agreements can include considerable exceptions to that rules provided by national collective agreements which discipline the allocation of work tasks to employees, working hours, changes to the employees' contractual status or the use of flexible typologies of employment.⁴⁶

The above-mentioned agreements take effect *erga omnes* to workers who are employed in the signatory company, only if the following parameters are respected:

- The agreement has been approved by the employees through the exercise of their right to vote;
- The approval has been the result of a majority vote;
- The agreement must have been approved before 28 June 2008.⁴⁷

In-company collective agreements may derogate rules of national collective agreements only if this do not involve a violation of the rights guaranteed to employee by Italian Constitutional Law and by the main sources of Italian labour law, like the Employee's Statute. Nevertheless, according to law decree 138/2011, an in-company collective agreement may regulate the exercise of certain rights guaranteed by the Employee's Statute in a way partially different from the provisions set up by the national collective agreement.

As result of this analysis, it can be concluded that both the Interconfederal Agreement of June 2011 and the law decree n. 138/2011 have resized the hierarchical relationships between the national collective agreements and in-company collective agreements, and consequently they have given a new role to decentralized collective bargaining.⁴⁸

In November 2012, national trade unions (except Italian General Confederation of Labour) and employer's associations signed the Agreement on Productivity (*Accordo sulla Produttività*).

Through this agreement, specific roles and specific competences were conferred to national collective bargaining and to decentralized bargaining, with the aim to favour cooperation

⁴⁶ Law Decree n. 138 art. 8 (2) (Urgent measures for financial stabilization and for development) 2011 [Misure urgenti per la stabilizzazione finanziaria e per lo sviluppo].

⁴⁷ Law Decree n. 138 art. 8 (3) (Urgent measures for financial stabilization and for development) 2011 [Misure urgenti per la stabilizzazione finanziaria e per lo sviluppo].

⁴⁸ A. Pandolfo, Lavoro e produttività nell'economia globale. La contrattazione collettiva decentrata dopo la manovra di ferragosto 2011 (Federalismi.it, 2011) <<http://www.federalismi.it>> accessed 26 March 2015 [Italian].

between workers and employers in achieving objectives of economic and productivity growth into companies.⁴⁹

According to the Agreement on Productivity, national collective bargaining must ensure to workers both the definition of a minimum level of remuneration and the recognition of those rights that are mandatory within the national collective agreements. Decentralised collective bargaining may instead defines all the rules aimed to regulate the organisation and the performance of work into company (working hours, exercise of the right of strike, use of video-surveillance tools, etc...⁵⁰).

This new balance of powers and competences between national collective bargaining and decentralised collective bargaining does not necessarily represent a decrease of the protection of the right to collective bargaining for Italian employees.

If national bargaining has historically been the instrument to establish the outline of the fundamental rules on the condition of workers, decentralised bargaining with its new powers, may now be itself an instrument able to manage company crisis, promoting cooperation between local trade unions and employers.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

According to report set up in January 2015 by The European Committee of Social Rights⁵¹, article 4 of the European Social Charter (hereinafter 'ESC') is partially fulfilled by Italian law.

The Italian Constitution recognizes to employees the right to a fair remuneration, sufficient for a decent standard of living for themselves and their families. Article 36 states that 'workers have the right to a remuneration commensurate to the quantity and quality of their work and in all cases to an adequate remuneration ensuring them and their families a free and dignified existence'. Workers cannot waive this right.

⁴⁹ Baker and McKenzie, *The Reform of Italian Employment Law (92/2012): a practical overview* (Lexology.com, 2012) <<http://www.lexology.com/library/detail.aspx?g=9ab9c7b6-ba7b-4b3e-8a75-cae72bdad0aa>> accessed 25 March 2015.

⁵⁰ European Committee of Social Rights, Addendum to 13th Report (Italy) 2014, 5.

⁵¹ European Committee of Social Rights, *Conclusions 2014 (Italy)* 2014.

Italian law does not establish a minimum threshold of retribution for workers. The definition of such limit has always been entrusted to national collective bargaining between trade unions and employers' associations.

Until 2009, the Interconfederal Agreement of July 1993 (signed by trade unions and employer's associations) had established that the workers' minimum wage should be calculated every two years, taking into account both of their placement into the company and the raising of the consumer price index.

In April 2009, austerity measures adopted by Italian government (like VAT increase, insurance and gasoline tax increase) led to a new Interconfederal Agreement, which established that the workers' minimum wage should be calculated every three years, together with the renegotiation of the provisions set in national collective agreements.

According to the Agreement, the negotiation of any wage increase would be entrusted directly to the decentralised collective bargaining, with the aim to favour cooperation between local trade unions and employers in achieving targets of economic and productivity growth into company.

These measures, jointed with the powers given to decentralised collective bargaining by the Interconfederal Agreement of June 2011 and by the Agreement on Productivity (see previous chapter for further details) lead to several conclusions:

- In Italy, there is not a law that establishes a minimum wage to workers. This threshold is set by national collective bargaining;
- Decentralised collective bargaining may negotiate increases in wage, compatibly with the achieving of targets of economic and productivity growth into company.

Therefore, after the adoption of austerities measures between years 2009-2014, the fulfilment of article 4 para. 1 ESC by Italy is mainly linked to its two different level of collective bargaining. Moreover, the simple establishment of the minimum wage to workers does not guarantee them an automatic decent standard of life, considering the increasing of prices due to economic crisis⁵².

For these reasons, Italy seems to do not fulfil article 4 para. 1 ESC.⁵³

⁵² European Committee of Social Rights, *Conclusions 2014 (Italy)* 2014, 12-13.

⁵³ European Committee of Social Rights, *Conclusions 2014 (Italy)* 2014, 13.

Referring to paragraph 2 of article 4 ESC (increased remuneration for overtime work), European Committee of Social Rights on 2010 stated that the situation in Italy was not in conformity.

Following the austerity measures taken by the Interconfederal Agreements between years 2009-2012, national collective bargaining has the power to define the increasing of remuneration for overtime work.

In its 13th Report to European Committee of Social Rights, Italy demonstrated that each national collective agreement set up for each occupational category provides a fair increasing of remuneration for overtime work. Only the national collective agreement in the food industry sector foresees the possibility of a worker to benefit from a compensatory rest that is equivalent to the overtime worked, but not longer. Italian authorities believe that the situation is not in breach of the provision of the ESC, because the worker may in any event choose to be compensated for overtime with remuneration at an increased rate.⁵⁴

Nevertheless, the European Committee of Social Rights 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. In Italy instead, workers are not entitled to a longer rest period in relation to the period of overtime work'.

For these reasons, Italy does not fulfil article 4 para. 2 ESC⁵⁵.

Paragraph 3 of article 4 ESC set up the principle of non-discrimination between women and men with respect to remuneration.

Article 37 of Italian Constitution states that 'women at work have the same rights and are entitled to equal pay for equal work. Working conditions must allow women to fulfil their essential role in the family and ensure special appropriate protection for the mother and child'.

Between years 2006-2010, Italian government set up two different legislative decrees aimed to strengthen the principle of anti-discrimination between genders in workplace:

- Legislative decree n. 198 of 11 April 2006: it regulates women's right to non-discriminatory treatment in the workplace and in the access to public assets and services;

⁵⁴ European Committee of Social Rights, *Addendum to 13th Report (Italy)* 2014, 13-15.

⁵⁵ European Committee of Social Rights, *Conclusions 2014 (Italy)* 2014, 9.

- Legislative decree n. 5 of 25 January 2010: this act is the *acquis* into Italian law of the rules set up by Directive 2006/54 / EC, on equal treatment for men and women in employment.

No austerity measures have been taken between years 2011-2014 to change the rights recognise to women by Italian law. Furthermore, the gender pay gap in Italy amounts to 5.3%, while the European index is set to 16.2%⁵⁶.

For these reasons, it is possible to state that Italy fulfil article 4 para. 3 ESC.

Referring to paragraph 4 of article 4 ESC (reasonable notice of termination of employment), between years 2009-2012, Italian national collective bargaining in textile, private metal-working and mechanical industries as well as food-processing sector, has not succeeded in ensure an increase of the terms of notice in case of employment termination.

Given that these terms have remained the same since 2011 and they have already been considered too short by European Committee of Social Rights, it is possible to state that Italy does not fulfil article 4 para. 4 ESC⁵⁷.

In closing, even the paragraph 5 of article 4 ESC (limits to deduction from wages) seems to be not fulfilled by Italian law.

Deductions from wages are disciplined by a specific source of law, the Presidential decree n. 180 of 5 January 1950, which identifies mandatory limits on the amounts that can be deducted from workers' wages.

In March 2012, the Italian government adopted the law decree n. 16, which fixes further limits on these deductions, in favour of lower wages⁵⁸.

Nevertheless, European Committee of Social Rights states that paragraph 5 of article 4 ESC is not fulfilled by Italy. This non-conformity was based on 'Italy's inability to show that in practice, wages after deductions were still sufficient for workers to provide for themselves and their dependants'⁵⁹.

⁵⁶ European Committee of Social Rights, *Addendum to 13th Report (Italy)* 2014, 18-19.

⁵⁷ European Committee of Social Rights, *Conclusions 2014 (Italy)* 2014, 10.

⁵⁸ European Committee of Social Rights, *Addendum to 13th Report (Italy)* 2014, 23-26.

⁵⁹ European Committee of Social Rights, *Conclusions 2014 (Italy)* 2014, 11.

In conclusion, it is possible to observe that in Italy the rights recognized to workers by article n. 4 ESC are covered only in part. The European economic crisis and the need to front the increase of unemployment and to re-launch the business productivity, led both the Italian government, trade unions and employers' association, to adopt austerity measures, which have compressed and adapted to this new social-economic reality some of the rights historically acquired by Italian workers.

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by their own efforts or from other sources?

The national security scheme provides for specific assistance for the so-called *incapienti*, i.e. citizens who do not earn more than EUR 8,000.00 per year. The main provision in favour of this vulnerable group is that they are not subject to the personal income tax, indeed their incomes are considered as a no tax area.

In order to enhance the economic assistance to vulnerable citizens, the recent Stability Act⁶⁰ provided for a monetary bonus of EUR 960.00 per year to individuals earning no more than EUR 26,000.00 per year. The provision is broad and general and applies to employees or individuals with a status similar to the one of employees such as cooperatives' members.

The aforementioned bonus replaces the project "Support for Active Inclusion" (i.e. *Sostegno per l'inclusione attiva – SLA*), a pilot project instituted in January 2013⁶¹ on previous experiences of monetary support of the same kind⁶² providing for a credit card for purchases to citizens

⁶⁰ Law n. 190/2014 [Legge di Stabilità 2015] 2014, art 1 n. 12: "Whether the gross amount of the income tax determined on the incomes listed in Articles 49 and 50 (i.e. Presidential decree n.917/1986) is higher than the deduction applicable to those incomes, the tax payer benefits of a monetary bonus related to the working period per year, which is not included in the taxable incomes and amount to: 1) EUR 960.00 if the total incomes are not higher than EUR 24,000.00; 2) EUR 960.00 if the total incomes are higher than EUR 24,000.00 but not higher than EUR 26,000.00. The monetary bonus is attributed for the portion equivalent to the ratio between the amount related to EUR 26,000.00, diminished of the total incomes, and the amount related to EUR 2,000.00".

⁶¹ Ministry decree 10 January 2013.

⁶² cf Law decree n. 112/2008, Law decree n. 5/2012.

suffering grave poverty. The beneficiaries, i.e. Italian citizens, European citizens and their families, received this special card with a monthly contribution calculated on the number of family members, and specifically:

- EUR 231.00 for two family members;
- EUR 281.00 for three family members;
- EUR 331.00 for four family members;
- EUR 404.00 for five or more family members.

On their side, the beneficiaries had to undertake the obligations to: periodically refer to the local responsible of the program; actively involve in job-seeking research; attend workshop and professional trainings; attend school, if applicable; and engage in health prevention activities.

The pilot program has been conducted in the cities of Bari, Bologna, Catania, Florence, Genoa, Milan, Naples, Palermo, Rome, Turin, Venice and Verona and did not have a follow up. Even if the Government nor the Ministries clearly stated the decision to stop the program, its complexity and the low amount of the monetary bonus, aspects which raised concerns among the civil society, may be the reason for its failure.

Apart from the aforementioned measures, providing for a direct monetary intervention, the Ministry of Works and Welfare (i.e. *Ministero del Lavoro e delle Politiche Sociali*) instituted the National Fund for Social Policies (i.e. *Fondo Nazionale per le Politiche Sociali*) in 2000⁶³ in order to ensure social assistance to individuals and families with the main aims of guaranteeing adequate quality of life, equal opportunities, non-discrimination and citizenship rights, and preventing individual and collective discomfort⁶⁴. The State as well as Regional and Local Governments are entitled to administrate the National Fund establishing the criteria to provide monetary resources and creating the services also with the help of civil society and NGOs⁶⁵.

3.1.2. Persons who are unable to secure adequate resources either by their own efforts or from other sources due to illness?

⁶³ Law n.328/2000.

⁶⁴ Law n.328/2000, art 1 n. 1.

⁶⁵ Law n.328/2000, pt II.

The aforementioned National Fund for Social Policies also provides for a specific plan of intervention addressing disabled persons. Indeed, Article 14 of the Law instituting the National Fund for Social Policies⁶⁶ describes a well structured system in order to provide assistance to this vulnerable group. The Article provides for an individual program including health services covered by the National Health Service (i.e. *Servizio Sanitario Nazionale*), personal services aimed at the inclusion of disabled persons in the civil society and monetary resources to overcome poverty, marginalisation and social exclusion. This program is based on the individual needs of every person in the targeted group.

Another provision, specifically the Law for Assistance, Social Integration and Rights of Disabled People⁶⁷, attributes a general monetary bonus to persons with disabilities on a monthly basis in the form of a pension, called *pensione di invalidità*. The attribution and distribution of the bonus is managed by the National Institute for Social Security (i.e. *Istituto Nazionale Previdenza Sociale – INPS*). The beneficiaries of this monthly bonus fall under three different categories: the so called *invalido civile*, meaning a person with a permanent diminishment of his/her working capacity of at least 1/3 or a minor unable to conduct basic activities related to his/her age; deaf persons called *sordo civile*; and blind persons called *cieco civile*.

The attribution of the monetary bonus is not automatic and may be subject to adjustments if the condition of the beneficiary changes.

In addition to this, the Law for Assistance, Social Integration and Rights of Disabled People⁶⁸ addresses also the problem of self-sufficiency of persons with disabilities. Indeed, if the beneficiaries of aforementioned monetary bonus are not self-sufficient, they obtain an additional bonus in order to cover the costs of a residential structure or a person providing for their needs. This additional bonus may be subject to adjustment, too, and it may be cancelled if the situation of non-self-sufficiency is not persistent.

A different monetary bonus, always in the form of a monthly pension, is provided to individuals who suffered or suffer of an injury at work or of a work-related illness. The institution providing

⁶⁶ Law n.328/2000, art 14.

⁶⁷ Law 104/1992 [Legge Quadro per l'Assistenza, l'Integrazione Sociale e i Diritti delle Persone con Handicap].

⁶⁸ *ibid.*

for this specific bonus is the National Institute for Insurance of Work Injuries (i.e. *Istituto Nazionale per l'Assicurazione contro gli Infortuni sul Lavoro - INAIL*).

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

Austerity measures had an impact on the social security scheme provoking a reduction of the rights recognised by the European Social Charter. In Italy austerity measures have been realised through cuts in public spending and increase of the tax burden⁶⁹. As the security scheme is mainly based on tax deduction and monetary bonus, this represented a radical change in the welfare system. Specifically, while the average expenditure per capita has increased of EUR 16.00 in 2007⁷⁰, there has been no such adjustment in term of monetary bonus. For this reason beneficiaries became poorer than before⁷¹, has their benefits have been not adapted to the actual expenditure per capita. Moreover, the number of new beneficiaries per year has been reduced since 2012.⁷²

Austerity measures had a dangerous impact on families, which seems a contradiction as the Italian security scheme attributes a pivotal role to families.⁷³ On the basis of the latest Eurostat data, 29.9% of Italian families is at risk of poverty with the highest percentage registered in Sicily with 54.6% of families at risk. These families at risk present three common characteristics:

- Their average expenditure is below the national standard of at least 60%;
- They work less than 8 hours per week; and,
- They are not able to cover basic expenses, including rent and house services bills as electricity.⁷⁴

⁶⁹ National Council for Economy and Work [Consiglio Nazionale dell'Economia e del Lavoro], *Report on Welfare 2012-2013*, 8.

⁷⁰ Italy, *National Strategy Report on Social Protection and Social Inclusion 2008-2010*, pt. II, 15.

⁷¹ National Council for Economy and Work [Consiglio Nazionale dell'Economia e del Lavoro], *Report on Welfare 2012-2013*, 8.

⁷² *ibid.*

⁷³ Italy, *National Strategy Report on Social Protection and Social Inclusion 2008-2010*, pt. III, 68.

⁷⁴ National Council for Economy and Work [Consiglio Nazionale dell'Economia e del Lavoro], *Report on Welfare 2012-2013*, 11.

This situation has been also condemned by Oxfam International, which registered a dramatic situation in Italy after the economic crisis as citizens within the group with the 10% of the lowest incomes diminished their incomes by 0.4% between 2008 and 2011 while, at the same time, citizens with the highest incomes increased them by 0.5% in the same years.⁷⁵

The current Italian legislation providing for the effective exercise of the right to social and medical assistance may result in a violation of Article 13(1) ESC as it establishes “specific eligibility criteria”⁷⁶, in contrast with the extent of the provision. Indeed, following the official interpretation of Article 13(1) ESC, made by the European Committee of Social Rights, “social assistance must be guaranteed to any person on the sole ground that he/she is in need”.⁷⁷ This vision is not transposed in the Italian legislation, thus we may say it does not fully comply with Article 13(1) ESC.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

The main provision in the field of advising vulnerable groups and provide them with social services is the Law on the Realisation of the Integrated System for Social Intervention and Services.⁷⁸ The aforementioned Law describes in details all the characteristics of the national security scheme and its accessibility for citizens.

For the description of the services included in the scheme, the Law n. 328/2000 recalls the Law decree n. 112/1998.⁷⁹ The recalled decree defines the services included in the security scheme as every activity related to the provision of services, covered by the system itself or offered under payment, and every monetary bonus aimed at overcoming situations of poverty and difficulties faced by citizens.⁸⁰ The provision of the services and the advice offered to the beneficiaries are managed by local governments in cooperation with NGOs and volunteers. Indeed, Article 5 of

⁷⁵ Oxfam International, *A cautionary tale – The true cost of austerity and inequality in Europe*, 2003.

⁷⁶ European Committee of Social Rights, *Conclusions 2013 (Italy)*, 35.

⁷⁷ *ibid.*

⁷⁸ Law n. 328/2000 [Legge quadro per la realizzazione del sistema integrato di interventi e servizi sociali].

⁷⁹ Law n. 328/2000 [Legge quadro per la realizzazione del sistema integrato di interventi e servizi sociali], art 1 n. 2.

⁸⁰ Law decree n. 112/1998, art 128.

the Law n. 328/2000 specifies that local institutions, regional governments and the State must provide adequate trainings to volunteers in order to coordinate their actions. Moreover, local institution must respect transparency and simplification in attributing specific duties to NGOs and volunteers and they have the obligation to rule upon these relationships with specific decrees. The services are applied through regional coordinated programs.

The Third Part of the Law focuses in three main areas covered by the security scheme:

- Individual programs for persons with disabilities;
- House help for elders and non-self-sufficient people;
- Support to families.⁸¹

As regards advice to the beneficiaries, a specific provision⁸² of the Law n. 328/2000 establishes an information system with a dual approach: a top-down approach in order to inform citizens about the services offered, and a bottom-up approach in order to acquire information on the status of poverty and needs among the citizens and eventually adopt adjustments to local policies.⁸³

However, this may be not sufficient as most of the benefits are not automatic but acquired only under official request by the beneficiaries, making all the services less accessible to masses. On the other hand, it must be underlined that the European Committee of Social Rights considered the legislation adequate as it stated: “The Committee concludes that the situation in Italy is in conformity with Article 13(3) of the Charter”.⁸⁴ On this basis, we must consider the Italian legislation as fully complying with Article 13(3) ESC.

⁸¹ Law n. 328/2000 [Legge quadro per la realizzazione del sistema integrato di interventi e servizi sociali], pt III.

⁸² Law n. 328/2000 [Legge quadro per la realizzazione del sistema integrato di interventi e servizi sociali], art 21.

⁸³ *ibid.*

⁸⁴ European Committee of Social Rights, *Conclusions 2013 (Italy)*, 39.

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

In compliance with the obligations undertaken under the European Social Charter, Italy extended its security scheme aiming at avoiding social exclusion and adopted financial aid measures for vulnerable groups.

To be specific the national expense for social protection pertain to pension benefits by 66.7%, to healthcare by 24% and to general welfare assistance by 8.1%.⁸⁵

As for employment, the Italian Ministry of Labor had already instituted in 1993 the Fund for Employment with the aim to increase employment rates.⁸⁶

In 2008,⁸⁷ the Italian Government charged the Fund for Employment with the new task to finance also professional trainings (i.e. *formazione professionale*).

Such trainings are aimed to offer vulnerable groups better chances to find a job if unemployed, or to find better opportunities if employed at very low wages.

In accordance with the Lisbon Strategy and the European Employment Strategy developed since 2009, the Ministry of Labor recently declared that its action would be devoted to increase employment rates and the number of professional trainings, encourage entrepreneurship and ensure that adequate gender quotas are respected at workplace.

With regard to housing, the Italian Government remarkably allocated EUR 205,589,000.00 with the National Fund for housing support⁸⁸ and instituted the Investments Fund for Housing (i.e. *Fondo Investimenti per l'Abitare*). The establishment of the latter fund was duly approved by Bank

⁸⁵ Italy, *National Strategy Report on Social Protection and Social Inclusion 2008-2010*, pt I, 6-7.

⁸⁶ cf Law Decree n. 148/1993 converted into Law No. 263/1993, art 7.

⁸⁷ Law Decree n. 185/2008, art 18(1)(a).

⁸⁸ Law Decree n. 185/2008, art 21; Law n. 244/2007 [Legge Finanziaria 2008], 261.

of Italy (i.e. *Banca d'Italia*)⁸⁹ and the Italian joint-stock company under public control “*Cassa Depositi e Prestiti (CDP)*” was charged with the task to manage it with the aim to reduce the costs in the field of housing.

With regard to training and education, the measures adopted focused on social inclusion of vulnerable groups and specifically of immigrants, Roma and Sinti. Considering the data that the 6% of the entire resident population in Italy is constituted by foreigners, EU citizens included,⁹⁰ the inclusion strategy focused on three pillars:

- Teaching Italian language;
- Promote regular employment;
- Guarantying decent housing.⁹¹

The National Strategy Framework especially focused on Roma, Sinti and Travellers community based, temporarily or permanently in Italy, due to the peculiar characteristics of these groups, included the historical background of these groups in Italy and their difficulties in reaching integration. On this basis, the priority of the Government is to strengthen inter-institutional dialogue in favour of Roma, Sinti and Travellers, to promote a more effective dialogue within the civil society and to raise awareness on these cultures to combat stereotypes⁹². On the other hand it must be said that the European Committee of Social Rights 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.⁹³

As regards also asylum seekers and irregular migrants, the National Office Against Racial Discrimination (i.e. *Ufficio Nazionale Antidiscriminazioni Razziali – UNAR*) has been recently instituted.⁹⁴ The UNAR addresses also the problem of education as a method of integration promoting multilingualism and instituting specific programs for student learning Italian as a second language.⁹⁵

⁸⁹ Resolution No. 167/2010.

⁹⁰ Italy, *National Strategy Report on Social Protection and Social Inclusion 2008-2010*, pt II, 33.

⁹¹ *ibid.*

⁹² *ibid.* 34.

⁹³ European Committee of Social Rights, *Conclusions 2013 (Italy)*, 48.

⁹⁴ Law decree n. 215/2003 implementing the Directive n. 2000/43/CE.

⁹⁵ Ministry of Education, *The Italian Way for Multicultural Education and Integration of Foreigner Students 2007*, 12-13.

As regards medical assistance, while it is easy accessible at low costs for Italian nationals, indeed a wide range of services is offered to elders and unemployed individuals,⁹⁶ it is not so accessible to individual without resources.⁹⁷ Moreover, the National Strategy Report provides for assistance in emergency situations but this represents a reduction of the rights guaranteed under Article 30 ESC.⁹⁸ This superficial approach is further demonstrated by the Law decree n. 140/2005 on the treatment of asylum seekers⁹⁹ only briefly deal with medical assistance¹⁰⁰ stating that they are included in the National Medical Assistance but not specifying any details about the services offered nor the way to access them.

Unfortunately, the outcome of the political action here analysed is not yet satisfying.¹⁰¹ Indeed austerity measures adopted in Italy to reduce public debt had a negative impact on national poverty rates¹⁰² as highlighted in different parts of the report.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

The duty of the Italian Republic is to remove all obstacles which limit the equality of citizens;¹⁰³ as a result, the main aim of our MS is to promote a complete inclusion of persons with special needs by ensuring their right to an individual project.¹⁰⁴

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

⁹⁶ Italy, *National Strategy Report on Social Protection and Social Inclusion 2008-2010*, pt III.

⁹⁷ European Committee of Social Rights, *Conclusions 2013 (Italy)*, 36.

⁹⁸ *ibid.*

⁹⁹ Law decree n. 140/2005 implementing the Directive 2003/9/CE.

¹⁰⁰ Law decree n. 140/2005 implementing the Directive 2003/9/CE, art 10.

¹⁰¹ European Committee of Social Rights, *Conclusions 2013 (Italy)*, 49.

¹⁰² *ibid* 48.

¹⁰³ 1948 Italian Constitution, Art. 3.

¹⁰⁴ Law n. 328 (Framework Law for the creation of an integrated system of interventions and welfare services) 2000, 14 [Legge quadro per la realizzazione del sistema integrato di interventi e servizi sociali].

Article 3 of the Italian Constitution states that education is open to all; not only must schools offer equal access to children with disabilities, but they should also promote their inclusion in the *Piano dell'Offerta Formativa* ('POF', school educational policy plan) in all aspects of school life.¹⁰⁵ Consequently, the main aim of the educational system in Italy is to promote the educational success of every student.¹⁰⁶ Students with Special Educational Needs are entitled to special care for a variety of reasons; in particular, in Italy the macro-category of Special Educational Needs includes disabilities, specific developmental disorders and socio-economic cultural or linguistic disadvantages.¹⁰⁷ According to the Ministry, the first sub-category includes all students whose 'disability'¹⁰⁸ is diagnosed by specialists or educational psychologists upon request of their parents or the school director.¹⁰⁹ By contrast, the sub-category of 'disorders' concerns all other educational needs which are not provided for under the Framework Disability Law, including ADHD, dyslexia, or cognitive borderline disorder.¹¹⁰ Finally, the latter sub-category includes socioeconomic, linguistic and cultural disadvantages identified on objective or pedagogical grounds.¹¹¹

Therefore, school inclusion procedures are significantly different. For instance, the assessment of a disability should be requested by the family before the child's enrolment.¹¹² A 'Functional Diagnosis' is reached whereby, unlike in medical certificates, the type and severity of the

¹⁰⁵ Decree of the President of the Republic of Italy n. 275 (Regulation on school autonomy under Art. 21 of Law n. 59, March 15 1997) 1999, 3 [Regolamento recante norme in materia di autonomia delle istituzioni scolastiche ai sensi dell'art. 21, della legge 15 marzo 1997, n. 59].

¹⁰⁶ MIUR, '*Linee guida per il diritto allo studio degli alunni disabili e degli studenti con disturbi specifici dell'apprendimento*' <<http://hubmiur.pubblica.istruzione.it>> accessed 14 February 2014 [Italian].

¹⁰⁷ Ministerial Directive (Measures for pupils with special educational needs and local organisations for school inclusion) 27 December 2012, 1 [Strumenti di intervento per alunni con bisogni educativi speciali e organizzazione territoriale per l'inclusione scolastica].

¹⁰⁸ Law n. 104 (Framework law for care, social integration and rights of persons with disabilities) 1992 [Legge-quadro per l'assistenza, l'integrazione sociale e i diritti delle persone handicappate].

¹⁰⁹ Decree of the President of the Republic of Italy (Official guidelines for public health services dealing with disabled pupils) 24 February 1994, 2 [Atto di indirizzo e coordinamento relativo ai compiti delle unità sanitarie locali in materia di alunni portatori di handicap]; Prime Minister's Decree n. 185 (Regulation to determine pupils with disabilities under Art.35(7) of Law n. 279, 27 December 2002) 2006, 2 [Regolamento recante modalità e criteri per l'individuazione dell'alunno come soggetto in situazione d'handicap, ai sensi dell'articolo 35, comma 7, della legge 27 dicembre 2002, n. 279].

¹¹⁰ Law n. 170 ('New rules on specific learning disabilities at school) 2010 [Nuove norme in materia di disturbi specifici di apprendimento in ambito scolastico]; Ministerial Directive (Measures for pupils with special needs and local organisation for school inclusion) 27 December 2012 [Strumenti di intervento per alunni con bisogni educativi speciali e organizzazione territoriale per l'inclusione scolastica].

¹¹¹ Ministry of Education Circular n. 8, 6 March 2013.

¹¹² See footnote 39 above.

impairment is determined, as well as the potential ability of the disabled pupil to be rehabilitated.¹¹³ Such diagnosis is produced by a multidisciplinary team composed of a specialist, a pediatric neuropsychologist, a rehabilitation assistant and a social worker employed at *Azienda Sanitaria Locale* ('ASL', the local health service)¹¹⁴ and provides the basis for the *Profilo Dinamico Funzionale* ('PDF', dynamic functional profile) and the *Profilo Educativo Individualizzato* ('PEI', individual educational profile). The former is produced by the abovementioned multidisciplinary team with the school's *Gruppo di Lavoro per l'Handicap* ('GLH', working group for disabled pupils) in collaboration with the parents of the disabled pupil and includes short- and medium-term estimations about the educational development of the disabled child.¹¹⁵ The latter, which must be written by ASL health professionals and teachers from the school council in collaboration with the parents of the disabled child, not only shows how to improve the inclusion of disabled pupils according to their PDF, but is also a life-long plan promoting their self-determination.¹¹⁶ Consequently, the PEI must be constantly monitored by the ASL, together with the school council and the family, to verify the actual improvements achieved, and must be reviewed upon completion of each education stage, i.e. at the end of nursery, primary, secondary school and higher education.¹¹⁷

Moreover, general assistance is also provided to disabled children by non-teaching staff helping children easily access school or sanitary facilities.¹¹⁸ The Italian *Comuni* (municipal authorities) provide care in nursery, primary and secondary schools, while, the *Province* (provincial authorities)

¹¹³ Giorgio Latti, *I diritti esigibili. Guida normativa all'integrazione sociale delle persone con disabilità* (1st edn, Franco Angeli 2010) 76 [Italian].

¹¹⁴ Decree of the President of the Republic of Italy n. 3 (Official guidelines for public health services dealing with disabled pupils) 24 February 1994 [Atto di indirizzo e coordinamento relativo ai compiti delle unità sanitarie locali in materia di alunni portatori di handicap].

¹¹⁵ *ibid.* 4.

¹¹⁶ *ibid.* 5; Giorgio Latti, *I diritti esigibili. Guida normativa all'integrazione sociale delle persone con disabilità* (1st edn, Franco Angeli 2010) 79 [Italian]; Dario Ianes and Sofia Carmerotti, *Il piano educativo individualizzato. Progetto di vita* (1st edn, Erickson, 2009) [Italian].

¹¹⁷ Decree of the President of the Republic of Italy n. 6 (Official guidelines for public health services dealing with disabled pupils) 24 February 1994 [Atto di indirizzo e coordinamento relativo ai compiti delle unità sanitarie locali in materia di alunni portatori di handicap]; Prime Minister's Decree n. 185 (Regulation to determine pupils with disabilities under Art. 35(7) of Law n. 279, 27 December 2002) 2006, 2 [Regolamento recante modalità e criteri per l'individuazione dell'alunno come soggetto in situazione d'handicap, ai sensi dell'articolo 35, comma 7, della legge 27 dicembre 2002, n. 279].

¹¹⁸ CCNL (National Collective Employment Agreement) *School Division*, 16 May 2003, 37, Table A.

focus on higher education. Since the Seventies,¹¹⁹ specialist teachers support the inclusion and education of disabled children, also monitoring their PEI and coordinating their work with the school council. Nowadays, schools generally employ one specialist teacher per every two disabled children.¹²⁰ In order to ensure total inclusion, school transport is provided by local authorities¹²¹ and during study visits disabled pupils are accompanied by assistant teachers or non-teaching staff.¹²²

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

The Italian Constitution states that Italy is a democratic Republic founded on labour and recognises the right of all citizens to work.¹²³ Therefore, Italian Law n. 381 (Social Cooperative Regulation) 1991 [Disciplina delle Cooperative Sociali] states that the aim of social cooperatives is to promote work inclusion of disabled workers and the people with disadvantages e.g. alcohol and drug users.¹²⁴ As for their internal composition, at least 30% of a social cooperative's members (both natural and legal persons) must be disadvantaged persons and no more than 50% can be volunteers, who are entitled only to be reimbursed of the costs incurred.

With reference to tax benefits, their operating profits are tax-exempt but cannot be distributed to shareholders and must be set aside or reinvested. In addition, social cooperatives receive tax exemptions on inheritance and donations. Despite the Public Administration contract regulation,

¹¹⁹ Law n. 157 (Guidelines for pupil assessment, abolition of remedial exams and other amendments to school regulations) 1977 [Norme sulla valutazione degli alunni e sull'abolizione degli esami di riparazione nonché altre norme di modifica dell'ordinamento scolastico].

¹²⁰ Law n. 104 (Framework law for care, social integration and rights of persons with disabilities) 1992, 13 [Legge-quadro per l'assistenza, l'integrazione sociale e i diritti delle persone handicappate].

¹²¹ Law n.118 (Conversion into law of Decree Law n. 5 of 30 January 1971 and new provisions in favour of the disabled and non-military invalids) 1971[Conversione in legge del D.L. 30 gennaio 1971, n. 5 e nuove norme in favore dei mutilati ed invalidi civili] Art. 28.

¹²² Ministry of Education Circular n. 291 14 October 1992.

¹²³ 1948 Italian Constitution, Articles 1 and 4.

¹²⁴ Law n. 381 (Regulation of social cooperatives) 1991 [Disciplina delle cooperative sociali] Articles 1(b) and 3.

public institutions and companies may enter into an agreement with social cooperatives whose consideration, net of VAT, shall be inferior to the amount set by EU Directives on public procurement.¹²⁵

In addition, special employment rights are ensured by Law n. 68, 12 March 1999. In particular, a scheme known as 'target recruitment' promotes the inclusion of disabled persons by matching the needs of the enterprises with the abilities of the disabled person through technical tools, support schemes, workplace adjustments and the employees' interpersonal relations.¹²⁶ Consequently, it is unlawful for the employer to give a task to a disabled worker which he/she cannot carry out because of his/her disability.¹²⁷

Moreover, Art. 1 of Law n. 68/1999 enlists the groups of disabled persons who must be hired by public and private employers under certain conditions:¹²⁸ i.e. blind and deaf-mute persons, war disabled, people with physical, sensory or mental impairments which cause a reduction of their capacity to work by 45% as certified by an Invalidity Committee, and people with a degree of invalidity exceeding 33% as certified by the INAIL (Italian insurance institute for employment injuries). Therefore, public and private employers have an obligation to employ these groups of disabled people according to the following percentages:¹²⁹ disabled people must represent the 7% of the overall number of employees for enterprises counting more than 50 employees; there must be at least 2 disabled people for enterprises with a number of employees between 36 and 50 and at least 1 disabled person where the number of employees lies between 15 and 35. Furthermore, tax exemptions are provided for the recruiting employers.¹³⁰

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

¹²⁵ *ibid.* 5.

¹²⁶ Law n. 68 (Regulations on the right to employment for persons with disabilities) 1999 [Norme per il diritto al lavoro dei disabili] Article 2.

¹²⁷ Law n. 68 (Regulations on the right to employment for persons with disabilities) 1999 [Norme per il diritto al lavoro dei disabili] Article 10.

¹²⁸ *ibid.* 1.

¹²⁹ *ibid.* Art. 3.

¹³⁰ *ibid.* Articles 4 and 10-13.

Despite the European Committee of Social Rights concludes that the situation in Italy is conformed with art. 15 para. 1 and 3 ESC it defers its conclusions on para. 2¹³¹. In particular ‘the economic crisis seems to have a particularly negative impact on the employment of disabled people and asks what measures are envisaged or taken to counter this situation’¹³².

According to the Final Report of the 4th National Disability Conference, a new legal framework regarding disability is needed in order to harmonise national laws.¹³³

In 2010 the Constitutional Court declared that budgetary reasons can not restrict the right to education for disabled children.¹³⁴ Moreover, according to the Final Report above only 50% of disabled pupils can attend study visits and only 24% can use computer or digital devices in class; hence ICT implementation and better training for teachers is recommended in the Report.¹³⁵

The European Court of Justice recently declared that Italy must considerably improve its work inclusion with inclusion procedures for disable people:¹³⁶ in particular, according to the Court, Italy needs a better implementation of the article 5 of the directive n. 78, 27 November 2000, considering that public benefits on work inclusions cannot substitute employer duty. Even if the Law n. 68, 12 March 1999 promotes the work inclusion according to the Court, it provides job placement only to some categories of disable people. On one hand, in recent years the number of disabled persons registered in recruitment lists has increased consistently; on the other hand, the impact of the economic crisis on labour market has reduced the number of disabled employees, e.g. down to 20% in 2011.¹³⁷ In addition, the Final Report recommends taking into account the right to work of disabled women, by promoting part-time contracts, telecommuting and telework and raising awareness among employers.¹³⁸ Despite the Decree Law for the

¹³¹ European Committee on Social Rights, *Conclusions 2012 (Italy)*, 2012, 19-31[English].

¹³² Ibid. 25.

¹³³ Carlo Francescutti, *Documenti conclusivi della quarta conferenza nazionale sulle politiche delle disabilità svoltasi a Bologna dal 12 al 13 luglio 2013*, 11 [Italian].

¹³⁴ Case n. 80 [2010], Italian Constitutional Court, <http://www.camera.it/temiap/temi16/Sentenza_802010.pdf> accessed 18 February 2014 [Italian].

¹³⁵ Salvatore Nocera, *Documenti conclusivi della quarta conferenza nazionale sulle politiche delle disabilità svoltasi a Bologna dal 12 al 13 luglio 2013*, 29 [Italian].

¹³⁶ C-312/11 [2011] European Court of Justice, <<http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-312/11&td=ALL#>> accessed 18 February 2015 [Italian and French].

¹³⁷ Sandro Giovanielli, *Documenti conclusivi della quarta conferenza nazionale sulle politiche delle disabilità svoltasi a Bologna dal 12 al 13 luglio 2013*, 16 [Italian].

¹³⁸ ibid. 17 and 18.

rationalisation of public administrative authorities,¹³⁹ the right to work of disabled people must be enforced, even in case of employee surplus.¹⁴⁰

5.2. Children and Young Persons (Article 17 ESC)

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

According to the Constitution the education is open to all.¹⁴¹ In particular the framework of education is built on the connections between educational system, centrality of the persons and the role of public powers¹⁴². Therefore the right to education is granted to all children without any discriminations based on citizenship or the necessity of financial resources¹⁴³. Foreign minors are entitled to compulsory education (cost free), to access educational services and to take part to the school community life¹⁴⁴, independently from the compliance of their *status* with immigration law¹⁴⁵. Although the parents are in the national territory against immigration law and even if the child has no identity documents, foreign children have the right to receive school education since the minor position is unfettered by the laws at any level of compulsory education, also in nursery school¹⁴⁶. Additionally the provisions on the right-duty¹⁴⁷ to education establish ten years of compulsory education and the obligation to receive education in school until the 19th year of age,

¹³⁹ Decree-Law n. 101 (Urgent measures for rationalisation in public administrative authorities) 2013 [Disposizioni urgenti per il perseguimento degli obiettivi di razionalizzazione nelle pubbliche amministrazioni], Art. 7.

¹⁴⁰ Sandro Giovanielli, *Documenti conclusivi della quarta conferenza nazionale sulle politiche delle disabilità svoltasi a Bologna dal 12 al 13 luglio 2013*, 17 [Italian].

¹⁴¹ 1948 Italian Constitution, Art. 34.

¹⁴² 1948 Italian Constitution, Articles 2, 3, 33 and 34.

¹⁴³ Fulvio Cortese, *Amministrazione e scuola. Snodi e crocevia del diritto scolastico italiano*, (1st edn, Editoriale Scientifica, 2014) 30 [Italian].

¹⁴⁴ Decree Law n. 286 (Consolidated Law on Immigration) 1998 [Testo Unico sull'immigrazione] Art. 38.

¹⁴⁵ Decree of the President of the Republic of Italy n. 394 (Regulation to implement the Consolidated Law provisions governing immigration and the status of foreigners, according to article 1, paragraph 6, of the legislative decree July 25 1998, n.298) 1999 [Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, a norma dell'articolo 1, comma 6, del decreto legislativo 25 luglio 1998, n.298] Art. 45.

¹⁴⁶ Court of Milan, 11 February 2008, order n. 2380 <<http://www.stranieriinitalia.it/briguglio/immigrazione-e-asilo/2008/febbraio/ord-trib-mi-asili.pdf>> accessed 15 March 2015 [Italian]; Note of the Ministry of the Interior n. 2589, 2010; Circular Letter of the Ministry of Education, University and Research n. 375, 2013.

¹⁴⁷ Umberto Pototsching, *Istruzione (diritto alla) in Enciclopedia giuridica*, (16th edn, Giuffrè 1973) 98 [Italian].

whereas at least three years are needed to achieve a school diploma or a professional qualification¹⁴⁸. In particular education is compulsory from six to sixteen years of age, and covers the eight-year first cycle of education (5 years of primary school and 3 years of lower secondary school) and the first two years of the second cycle¹⁴⁹. Afterward the last two years of compulsory education (from fourteen to sixteen years of age) can be completed either in State upper secondary schools (licei, technical institutes and vocational institutes), or through a three-year vocational education and training course under the competence of the *Regioni* (regional authorities)¹⁵⁰. Finally law provides criminal sanctions for parents or persons in charge of the children where they deprive minors of their right-duty to education¹⁵¹.

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

The Young Offender's Court today (the *Opera Nazionale Maternità ed Infanzia* (national maternity and childhood organisation) before the Seventies) aims to protect the child in situations of potential injury or neglect. Such institution adopts measures restricting the exercise of parental authority, disposes the custody of children, declares the state of adoptability¹⁵².

Moreover, except for reasons related to public order or national security, Italian legislation does not allow expulsion of minors¹⁵³, consequently minors are not detained. On the assumption that detention of children accompanied by parents is not explicitly prohibited, they can be detained

¹⁴⁸ Decree Law n. 76 (Definition of the general rules on the right and duty to education and training, in accordance with article 2, paragraph 1, letter c), of the Law 28 March 2003, n.53) 2005, 1 [Definizione delle norme generali sul diritto-dovere all'istruzione e alla formazione, a norma dell'articolo 2, comma 1, lettera c, de.le legge 28 marzo 2003, n.53]; Decree Law n. 226 (General rules and essential level for the second cycle of the education and training system, in accordance with article 2 of the Law 28 March 2003, n.53) 2005, 1 [Norme generali e livelli essenziali delle prestazioni relative al secondo ciclo del sistema educativo di istruzione e formazione, a norma dell'articolo 2 della legge 28 marzo 2003, n.53]; Law n. 296 (Provision for the formation of the annual and pluriannual budget (Finance act 2007)) 2006, 1 [Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (Finanziaria 2007)].

¹⁴⁹ Ministerial Directive n.139 (Regulation laying down rules for fulfilment of compulsory education) 2007 [Regolamento recante norme in materia di adempimento dell'obbligo di istruzione].

¹⁵⁰ Law n.133 (Conversion into law, with amendments of the Decree-Law of 25 June 2008, n.112, containing urgent measures for economic development, simplification, competitiveness, the stabilisation of public finance and tax equalisation) 2008 [Conversione in legge, con modificazioni, del decreto-legge 25 giugno 2008, n.122, recante disposizioni urgenti per lo sviluppo economico, la semplificazione, la competitività, la stabilizzazione della finanza pubblica e la perequazione tributaria].

¹⁵¹ 1930 Criminal Code, Art. 731.

¹⁵² 1942 Italian Civil Code, Art. 330.

¹⁵³ Legislative Decree n.298 (Consolidated law on immigration) 1998, 19 [Testo unico sull'immigrazione].

with their parents, but only for family unity purposes and if requested by the parents or decided by the Young Offender's Court. In practice, few children are detained; usually they are separated from detained parents and placed in a child care facility. Since the detention of unaccompanied children is prohibited by the Italian law¹⁵⁴, they live in dedicated facilities for minors managed by the social services' departments of the municipality or, if they apply for asylum, in special facilities for minors within the *Sistema di Protezione per Richiedenti Asilo e Rifugiati* ('SPRAR,' system of protection for asylum seekers and refugees). However, the lack of spare places, specific facilities or shortcomings in the identification process may result in the accommodation of a child in a centre for adults or even in detention¹⁵⁵.

Furthermore, the Ministerial Directive regarding *Bisogni Educativi Speciali* ('BES', special education needs)¹⁵⁶, which each student can manifest for certain period or continuously, extends compensatory and dispensatory measures provided for by law previously concerning pupils with: disability (e.g. students who are blind, visually impaired, hearing impaired, physically disabled, mentally disabled), *Funzionamento Cognitivo Limite* ('FCL', cognitive functioning limit), specific developmental disorders (e.g. attention disorder and hyperactivity, disorder of the verbal or nonverbal language), socio-economic, linguistic and cultural disadvantages. Consequently the expression *Bisogni Educativi Speciali* ('BES', special education needs) is extensively used and the directive itself defines them as:

The area of educational disadvantage is much broader than the one which entails the presence of deficit. In each class there are students who have a request for special attention for a variety of reasons: social and cultural disadvantage, specific learning disorders and / or specific developmental disorders, difficulties arising from the lack of knowledge of the Italian language and culture because they belong to different cultures.

¹⁵⁴ Legislative Decree n. 25 (Implementation of Directive 2005/85/EC on minimum standard procedures in Member State for granting and withdrawing refugee status) 2008, 26 [Attuazione della Direttiva 2005/85/EC recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato].

¹⁵⁵ Global Detention Project, <<http://globaldetentionproject.org/countries/europe/italy/introduction.html>> accessed 20 June 2015 [English].

¹⁵⁶ Ministerial Decree (Instruments of intervention for children with Special Education Needs and territorial organisation for school inclusion) 27 December 2012, [Strumenti di intervento per alunni con Bisogni Educativi Speciali e organizzazione territoriale per l'inclusione scolastica].

Therefore the acronym 'BES' indicates a large number of pupils to whom the principle of personalisation of teaching, in accordance with the Italian law¹⁵⁷, must be applied with particular emphasis in terms of features, intensiveness and duration of the changes. *In specie* pupils with Special Educational Needs are experiencing a particular situation, which hinders them in learning and development: this negative situation can be an organic, biological, or family, social, environmental, contextual or combinations of these. As a consequence these difficulties can be global and pervasive (e.g. autism) or more specific (e.g. dyslexia), sectoral (e.g. language disorders, psychological disorders of anxiety); mild or severe, permanent or (hopefully) temporary. In these cases, the educational needs that all pupils have (need to develop skills, need of belonging, of identity, of appreciation, acceptance, to name a few) will enrich. Especially their need to develop skills of autonomy, for example, is complicated by the fact that there may be motor deficits, cognitive, or family difficulties in living positively autonomy and growth, and so on. In this sense the educational needs become special, therefore teachers need special skills, as well as resources, in order to be more effective and to work properly¹⁵⁸.

**5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance?
Has your MS taken any measures to provide free, or at least access to, tertiary education?**

The Italian Constitution states¹⁵⁹ that capable and deserving persons may reach the highest levels of education although they could not afford a college, through education grants, family allowances and other benefits¹⁶⁰. Therefore university students may obtain economic support during their studies from Regional Authorities, the Universities or other external bodies, however the *Livelli essenziali delle prestazioni* ('LEP' basic study allowances) are established by the State¹⁶¹. As a result Regional Authorities such as *Azienda Regionale per il Diritto agli Studi Superiori*¹⁶²

¹⁵⁷ Law n.53 (Enabling Government to define general standards of education and levels of performances in education and vocational training) 2003 [Delega al Governo per la definizione delle norme generali sull'istruzione e dei livelli assistenziali delle prestazioni in materia di istruzione e formazione professionale].

¹⁵⁸ Dario Ianes and Sofia Carmelotti, *Alunni con BES, Bisogni Educativi Speciali* (1st edn, Erickson 2013), 14 [Italian].

¹⁵⁹ 1948 Italian Constitution, Art. 34.

¹⁶⁰ Cesare Miriello, *Manuale di legislazione universitaria* (1st edn, Maggioli Editore 2013), 359 [Italian].

¹⁶¹ Law n. 240 (Rules on the organization of universities, academic staff and recruitment, as well as delegation to the government to enhance the quality and efficiency of the university system) 2010 [Norme in materia di personale accademico e reclutamento, nonché delega al governo per incentivare la qualità e l'efficienza del sistema universitario].

(‘ER.GO’ regional authority for the right to higher education) offers support to certain students, including educational grants, accommodation services, various contributions (e.g. international mobility programmes), information technology services, assistance to disabled students. Moreover according to the *Indicatore della situazione economica equivalente* and *Indicatore della situazione patrimoniale equivalente* (‘ISEE’, equivalent economic situation indicator, and ‘ISPE’, equivalent asset situation indicator)¹⁶³ students might benefit from tuition fees exemption or reduction. To this purpose they must meet both merit and registration eligibility requirements.¹⁶⁴

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue

According to the *Italian Institute of Statistics* (‘ISTAT’) the average unemployment rate of people aged between 15-64 is 12,6%, however unemployment rate of young people aged 15-24 is 41,2%. The unemployment rate is three times bigger in South of Italy than in the Central or in the Northern parts of the country¹⁶⁵.

Another issue in Italy is the phenomenon of *human capital flight*. In 2013 around 40,000 Italian graduates left the country to pursue a career abroad¹⁶⁶. Hence the loss of high skilled human capital and the inability to attract and retain human capital from the rest of the world heavily penalizes the country in the context of a globalised world that increasingly competes on the basis of knowledge and innovation¹⁶⁷. Furthermore an excessively rigid educational system with insufficient contact with the labour market results in a very late entry such market, which

¹⁶² ER.GO <<https://www.er-go.it/index.php?=5963>> accessed 23 March 2015 [English].

¹⁶³ UNIBO <<https://www.unibo.it/en/attachments/tasse/FasceIndicatoriISEEeISPE.pdf/@@download/file/F>> accessed 23 March 2015 [Italian].

¹⁶⁴ Decree of the President of the Prime Minister of Italy n. 139 (Regulation concerning the revision of the procedures for determining and application fields of the equivalent economic situation indicator) 2013 [Regolamento concernente la revisione delle modalità di determinazione e i campi di applicazione dell’Indicatore della Situazione Economica Equivalente “ISEE”].

¹⁶⁵ ISTAT, <http://www.istat.it/file/2015/03/Occupati-e-disoccupati_2_marzo_2015.pdf?title=Occupati+e+disoccupati+28%mensili%29+-+02%2Fmar%2F2015+-+Testo+integrale.pdf> accessed March 15 2015 [Italian].

¹⁶⁶ Il sole 24 ore, <<https://www.ilsole24ore.com/art/notizie/2013-10-01/coldiretti-disoccupazione-record-400mila-10524.shtml?uuid=Abss6GhI>> accessed March 15 2015 [Italian].

¹⁶⁷ Elena Signorini, *Diritto al lavoro. Crisi. Lavoro dei giovani* (1st edn, Giuffrè 2013), 13 [Italian].

prevents young people from gaining experience and favours the lack of an adequate vocational training system¹⁶⁸.

The *Department of Youth and National Civic Service*, established in 2008, is responsible for implementation of youth policies, coordination of international youth exchange schemes and for tackling issues affecting youth. Since 2011 a cross-sectorial approach was undertaken by various Ministries with reference to topics such as school, labour, university, welfare, social services and housing.

Moreover in 2013 EU Member States committed to ensure young people's successful transition into work by establishing *Youth Guarantee*¹⁶⁹ schemes, whose implementation already started: in Italy the set-up of integrated e-Portal allows people to connect to a national register to facilitate automatic verification of the fulfilment requirements, and transmission and offers¹⁷⁰.

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

According to the European Committee of Social Rights' Conclusions¹⁷¹ the number of Roma children which attend school is still too low, for that reason the Committee underlines the inconformity of Italy with the article 17 para. 2 ESC. In particular there is no *ad hoc* program which is addressed specifically to Roma and Sinti children, actually the number of students is still decreasing¹⁷² and some experts define the phenomenon as absenteeism. However, local cultural inclusion projects in cities such as Pisa are a clear sign of the necessity to implement the level of inclusions, but on a political level, taking into account the poor economical conditions suffered by the majority of Italians, it tends to be manipulated. Even if the Constitution states that the Italian school system is open to all children in Italy regardless of their nationality, the members of the Committee are doubtful whether they can effectively enjoy their right under such poor

¹⁶⁸ Francesco Pastore, *Youth unemployment in Italy at the time of a new great depression* (Friedrich Ebert Stiftung, November 2012) <<http://library.fes.de/pdf-file/id/09476.pdf>> accessed March 15 2015 [English].

¹⁶⁹ European Commission, <<http://ec.europa.eu/social/main.jsp?langId=10795>> accessed 15 March 2015 [English].

¹⁷⁰ Ministry of Labour and Social Policy, <<http://www.garanziaGiovani.gov.it/Pagine/dfault.aspx>> accessed 15 March 2015 [Italian].

¹⁷¹ European Committee of Social Rights, *Conclusions 2011 (Italy)*, 2011, 23 [English].

¹⁷² Maria Teresa Tagliaventi, *Alunni con cittadinanza non italiana. Eterogeneità dei percorsi scolastici* (1st edition Fondazione ISMU, 2014), 118 [Italian].

living conditions. Actually nowadays the same poor living conditions and difficulties are suffered by the constantly increasing number of minors immigrants and asylum seekers.

Furthermore the Committee defers its conclusions upon the maximum length of pre-trial detention during which young offenders have a statutory right to education. However, since 2012 the number of minors detained in prisons is constantly decreasing: 508 in 2012, 452 in 2013 and 386 in 2014¹⁷³; and it underlines the idea that educate or re-educate a child it is a complex and laborious issue to be played outdoors and not in prisons. Hence a memorandum of understanding describes the bilateral agreement between the Ministry of Education and the Ministry of Justice whose principal aim is to ensure to juvenile detainees and adults real opportunities for social and job integration through educational and vocational training¹⁷⁴.

Regarding youth on November 2011 the government adopted a package of measures entitled *Right to future* aimed to react against the effects of the economic crisis and to tackle the precarious conditions faced by young people. Such measures focus on four areas affecting young's people development: study, employment, housing and family¹⁷⁵. According to the Italian Parliament in 2010¹⁷⁶ the budget for *Fondo per le politiche giovanili* (national youth fund) amounted to Euro 81,087 million. According to the *Right to future* measures such fund was provided with further Euro 216 million. Even if in 2013 the budget was reduced to Euro 6,2 million, the Department of Youth and National Civic Service states that transversal funding tackling youth-related issues such as support to precarious workers and housing aid do also exist¹⁷⁷. According to the World Bank, Italy spent 9.05% of its government expenditure on education provisions in 2009, and 4.50% of its GDP in 2010¹⁷⁸.

¹⁷³ Dipartimento per la giustizia minorile, *Secondo rapporto sulla giustizia minorile*, 2014, 20 [Italian].

¹⁷⁴ Memorandum of understanding, (Special program for education and training in prisons) 23 October 2012, [Programma speciale per l'istruzione e la formazione negli istituti penitenziari].

¹⁷⁵ Stefania Rota and Serena Fabrizi, *Country sheet on youth policy in Italy* 2013,14 [English].

¹⁷⁶ Italian Government <<http://leg.16.camera.it/465?area=18&tema=233%Politiche+giovanili#paragrafo2796>> accessed 15 March 2015 [Italian].

¹⁷⁷ Prime Minister Office, Department of Youth and National Civil Service <<http://gioventu.gov.it>> accessed 20 March 2015 [Italian].

¹⁷⁸ The World Bank <<http://data.worldbank.org/topic/education>> accessed 20 March 2015 [English].

6. OTHER ISSUES

Are there any other relevant issues regarding the ESC, and not covered by the questions above, in your MS? Please describe the applicable legal framework and explain how it is not in compliance with the ESC

Social rights are human rights. These rights belong to all human beings in the same way as civil and political rights and to an even greater degree since they are, in many respects, a prerequisite for effective enjoyment of civil and political rights.¹⁷⁹

The Italian National Institute of Statistics (Istat) recently announced that the country's economy was still in recession in the third quarter of 2014.¹⁸⁰

In this kind of situation, the need for austerity measures to revitalize the country's economy faces the need to protect the citizens' social rights. In fact, even if in times of crisis the spending review appears to be a compulsory measure, if it reduces drastically the national funds and resources allocated to social policies, as happened in Italy¹⁸¹, it is not difficult to predict that quite soon the living conditions will become dramatic, not only for the most disadvantaged ones, but also for those persons belonging to the so-called middle class, who cannot make use of already limited health care measures and services.¹⁸² That is why in a regime of chronic difficulties to govern and distribute resources among the population, protection of social rights become much more difficult.

In addition to the previously analysed rights, many others issues have been related to the introduction of new austerity measures, starting from the Monti government to nowadays.

¹⁷⁹ This is one of the first sentences written on the Paper for the Conference on the Future of the Protection of Social Rights in Europe, taken in Brussels, on 12-13/02/2015, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168022833d> accessed 10 March 2015.

¹⁸⁰ Full text of the quarterly national accounts are available at <http://www.istat.it/en/archive/140558> accessed 14 March 2015.

¹⁸¹ Francesca Ceruzzi, *National Fund for vulnerable people needing long-term care* (Interlinks.org 2013) <http://interlinks.euro.centre.org/model/example/NationalFundForVulnerablePeopleNeedingLTC> accessed 23 March 2015.

¹⁸² Silvia Zullo (ed.), *La dimensione normativa dei diritti sociali: Aspetti filosofico-giuridici* (Giappichelli 2013) 46 [Italian].

We will just name a few, the most relevant ones, related to the social protection of elderly persons (art. 23 ESC), and the right to protection in cases of termination of employment (Article 24 ESC).

6.1. Social Protection of Elderly Persons

As far as the social protection of elderly persons (article 23 ESC) is concerned, during the last government there has been a strong attack on the social security system.¹⁸³ In the past, pensions were the most important form of social protection in Italy: those who paid contributions continuously for 35 years could retire at the age of 58. Entire families often depended on this kind of financial support.

However, the increase in life expectancy and a significant decrease in birth rate during the last few decades, more than doubled the percentage of people over 65 compared to the number of people younger than 14.

This factor caused severe problems in the public economic resources, linked to the difficulty that INPS (the National Social Insurance Agency) had in the management of new retirement requests. For this reason, several measures have been introduced to resolve this issue.

With the Decree-Law 201/2011, the retirement age was raised drastically for both men and women, with the goal of reaching the threshold of 66 years by 2018¹⁸⁴; at the same time, the number of years for which workers have to pay contributions in order to qualify for full pension increased from 35 to 42. Regarding the amount of the pension, in most cases the inflation adjustment was eliminated in 2012 and 2013.

Even the 2013 annual report of the Council of Europe shows that the most serious violations of the European Social Rights ascribed to Italy are the absence of a guaranteed minimum income for all, and in particular minimum pensions are too low, unable to provide an adequate level of quality of life.

According to the report, 'In Italy the amount of a minimum pension is insufficient and there is no legislation to guarantee for elderly people the same standard of living of the rest of the

¹⁸³ Decree-Law 201/2011 (Decreto Salva Italia–Save Italy Decree).

¹⁸⁴ Decree-Law 201/2011 art.24, co. 6.

population'.¹⁸⁵ Furthermore, 'Italy has not demonstrated the adoption of appropriate measures to fight against poverty and social exclusion'.¹⁸⁶ The Council of Europe then stated the necessity of further investigation, which will be published in the next Italian report, in 2016.

At the same time, the national associations are also trying to enforce the rights of the poorest bracket of the population, asking for more effective social dialogue with the current Renzi government. The unions are demanding that the Italian government grant higher pensions, increase the investments in public services and set a guaranteed minimum wage¹⁸⁷. Therefore, at the moment it is possible to state that the situation in Italy is not in conformity with Article 23 ESC, because the legal framework is inadequate to combat age discrimination outside employment.

6.2. Right to Protection in Cases of Termination of Employment

Our MS has been gravely hit by crisis and austerity measures, due to its structural weaknesses.¹⁸⁸ Since 2011, several labour market and social protection reforms have been presented: in 2012, Law No. 92/2012 (the so-called Fornero Reform) has introduced extremely innovative measures, with the aim of increasing flexibility and competitiveness. Such measures had a great impact on the main aspects of Italian Labour Law, i.e. the regulation of employment contracts, the unemployment benefit system and, most of all, the legal procedures to establish and terminate the employment relationship.

One of the most relevant cornerstone of Italian Labour Law was the protection against unfair dismissal, included in Article 18 of the Workers' Statute. Under the previous regime, the dismissal of an employee was lawful only if it was duly justified by:

- A behaviour of the employee so censurable that the continuation of the employment is impossible for even a single day, justifying the immediate termination of the contract; or

¹⁸⁵ European Committee of Social Rights, *Conclusions 2013 (Italy)*, 29.

¹⁸⁶ *ibid.* 50.

¹⁸⁷ Stefania Manservigi, 'Riforma delle pensioni 2015: le novità studiate dal governo Renzi?' (Forexinfo.it) <<http://www.forexinfo.it/Riforma-delle-pensioni-2015-governo-Renzi>> accessed 29 March 2015.

¹⁸⁸ 'Social and Employment Situation in Italy' (Europarl.eu 2014) <[http://www.europarl.europa.eu/thinktank/it/document.html?reference=IPOL-EMPL_NT\(2014\)518757](http://www.europarl.europa.eu/thinktank/it/document.html?reference=IPOL-EMPL_NT(2014)518757)> accessed 23 March 2015.

- A considerable breach of contractual obligations by the employee, which justified the termination of the contract after a notice period; or
- Reasons concerning the employer, such as closure of a branch.

A drastic remedy was contemplated in case of unlawful or unfair dismissal of an employee working in a business unit with more than 15 employees, or for an employer who employs more than 60 employees at national level: the employee could have actually claim his job back, and ask to be paid full damages for all the salaries he didn't get from the date of the (unlawful or unfair) dismissal, up to forced reinstatement ordered by a labour court judge. This regime was seen as a major trouble by employers and caused them to think twice before recruiting, holding back an already recession-bound labour market.¹⁸⁹

The Fornero Reform changes completely this kind of protection, and rewrites in full Article 18. In its brand new statement, Article 18 breaks the automatic link between unjustified dismissal and reinstatement, identifying the few cases in which reinstatement is still mandatory and when it can be replaced by compensation.¹⁹⁰

Anyway, even if we cannot say that the Fornero Reform violates social rights of workers, such as art. 24 ESC, we must admit that easier dismissals seem to have only resulted in a rise in the unemployment rate, instead of granting an easier access to the job market.¹⁹¹

In fact, 2013 statistics report a relevant increase in individual terminations since the Fornero Reform became law.¹⁹²

¹⁸⁹ Freshfields Bruckhaus Deringer LLP, 'Labour market reforms tracker February 2014' (Lexology.com 2014) <<http://www.lexology.com/library/detail.aspx?g=014cb5b2-0990-4a2e-9ccf-69828cba9831>> accessed 25 March 2015; T.Treu, 'Flessibilità e tutele nella riforma del lavoro', *Giornale di diritto del lavoro e di relazioni industriali*, I/2013 37-38; M.Ferraresi, 'L'articolo 18 dello Statuto dei lavoratori dopo la riforma Fornero: bilancio delle prime applicazioni in giurisprudenza', *Diritto delle Relazioni Industriali*, II/2013, 339

¹⁹⁰ Mandatory reintegration is limited to cases of:

- a. Discriminatory dismissal (e.g. political views, religious faith);
- b. Dismissal taking place just before or within one year from the employee's wedding;
- c. Dismissal of a female employee within a year from the birth of a child
- d. Dismissal for illicit reasons or otherwise null by law;
- e. Oral dismissal.

¹⁹¹ See footnote 163.

¹⁹² Benedetta Valenti, 'Termination of Employment in Italy under the Fornero Labour Reform Law N. 92/2012. Content and results one year after its introduction.' (Ssalex.com) <http://www.ssalex.com/file_load/salvisaponara_24_139_file.pdf> accessed 14 March 2015.

Due to the persistent crisis in the working market, and the high number of unemployment among young people and women, especially from Southern regions, in June 2013 and in March 2014 the Italian government changed aspects of the 2012 reform and introduced economic incentives to hire young workers between 18 and 29 years old.¹⁹³ The main decrees are the “Decreto Sviluppo-bis” (D.L. 18 October 2012, no. 179), the “Decreto del Fare” (D.L. 21 June 2013, no. 69) and, recently, the “Decreto Occupazione” (D.L. 28 June 2013, no. 76).

More recently, the actual Government has set on a new Programme for Labour Reforms, the Jobs Act (L. 183/2014), with the aim to reduce the large number of short-term and temporary contracts that have spread significantly during the past decade, and to replace them with a single and more efficient model of contract that assures progressively increasing job protections from the first to the third year, leading to permanent hires. This provision is without doubt innovative, but the reform is so recent that we cannot already say if the Jobs Act will have a significant impact on helping to raise again the Italian economy.¹⁹⁴

7. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

The collective complaint system did not contribute significantly in the reduction of the impact of austerity measures in Italy, because it has been used only sporadically in our legal system.¹⁹⁵ Only six complaints to the Committee have been filed from 2009 until 2014: just one in 2012, 3 in 2013, and only one in 2014. This attitude may depend on the belief that domestic measures are

¹⁹³ Freshfields Bruckhaus Deringer LLP, ‘The Italian labour market reform, what has changed? What is going to change?’ (Lexology 2014) <<http://www.lexology.com/library/detail.aspx?g=1f602744-9f35-4078-b0a3-90f03ffce65a>> accessed 14 March 2015.

¹⁹⁴ Clyde & Co LLP, ‘Italy: employment law reforms’ (Lexology.com 2015) <<http://www.lexology.com/library/detail.aspx?g=e64bcef6-7a73-4aa8-8168-24343588c2bd>> accessed 1 April 2015; F. Carinci, ‘Jobs Act, atto I: la legge n. 78/2014 fra passato e futuro’, *Diritto delle Relazioni Industriali* I/2015, 5; P. Potestio, ‘Employment Protection e assicurazione contro la disoccupazione: dal modello di Blanchard e Tirole al Jobs Act’, *Diritto delle Relazioni Industriali* I/2015, 140. [Italian].

¹⁹⁵ Lucia Serena Rossi (ed.), *Le organizzazioni internazionali come strumenti di governo multilaterale* (Giuffrè, Milano 2006) 74 [Italian].

able to offer a more effective legal protection. For example, the Italian civil procedure law gives more discretionary powers to the judge of the labour than to the ordinary judge.¹⁹⁶

Anyway, we must say that Italian judges use commonly the provisions of the European Social as a support for their judgments. For example, in the proceedings No. 69789/2002 of the Court of Rome, and No. 2365/2005 of Court of Cagliari, the judges enhanced the current internal rules on educational protection of people with disabilities by the reference of art II-15 ESC, on the social integration of people with disabilities.

Another issue to point out is the difficulty for Italian judges to determine the rank of ESC in our legal system: our MS accepted almost all the provision of the European Social Charter, but ordinary judges do not have the power to suspend national rules even if they are partially or totally incompatible with the ESC.¹⁹⁷ This problem has not occurred frequently because, unlike the European Court of Justice, at the moment the European Committee of Social Rights has still very little jurisprudence.

A brief analysis of the list of complaints filed against Italy, since the revision of the European Social Charter, can show that only 2 complaints have already reached the decision on the merits: No. 58/2009 'Centre on Housing Rights and Evictions (COHRE) v. Italy' and No. 87/2012 'International Planned Parenthood Federation European Network (IPPF EN) v. Italy'.

7.1. Complaint No. 58/2009: Centre on Housing Rights and Evictions (COHRE) v. Italy

In the first complaint, registered on 29 May 2009, the organization COHRE pled a violation of Articles 16 (the right of the family to social, legal and economic protection), 19 (right of migrant workers and their families to protection and assistance), 30 (right to protection against poverty and social exclusion) and 31 (right to housing), read alone or in conjunction with Article E (non-discrimination) of the Revised Charter. The complainant organization claimed that 'the recent so-called emergency security measures and racist and xenophobic discourse have resulted in unlawful campaigns and evictions leading to homelessness and expulsions, disproportionately

¹⁹⁶ According to art. 421 c.p.c., the judge of the labour can admit almost every kind of evidence: he can also order a *duces tecum* and question a witness who normally would not be able to testify, according to art. 246-247 c.p.c.

¹⁹⁷ F. Oliveri, 'La Carta Sociale Europea come "strumento vivente": Riflessioni sulla prassi interpretativa del Comitato Europeo dei Diritti Sociali?', *Jura Gentium* II/2012, 5. [Italian].

targeting Roma and Sinti'.¹⁹⁸ According to the allegations presented by COHRE, Roma and Sinti could not completely enjoy their right to housing, and in particular they had great difficulties in having access to housing and family benefits, due to a 'xenophobic and racist propaganda which aggravates their social exclusion'.¹⁹⁹ The European Committee of Social Rights, after the decision of admissibility on 8 December 2009, declared the violation of Articles 16, 19, 30 and 31 of the Revised Charter and transmitted its report containing its decision on the merits of the complaint to the Parties and to the Committee of Ministers on 6 July 2010. As the Committee stated, Italy was responsible for policies and practices that have resulted in Roma and Sinti residents living in inadequate housing conditions, as well as forced eviction and expulsion of migrant Roma from Italy: for example, the European Committee of Social Rights found that many Romani camps have been destroyed by arson or vandalism based on racial hatred, and their inhabitants have been evicted and even expelled from Italy by state police, often without notice or the possibility to choose an alternative accommodation. After the examination of the decision, Italy reassured the Committee of Ministers about the measures it would have taken to guarantee social rights also for Roma community in compliance with the ESC;²⁰⁰ actually, the Italian government has not fulfilled this commitment, as it continues to implement practices in violation of art. 30 ESC.

7.2. Complaint No. 87/2012: International Planned Parenthood Federation European Network (IPPF EN) v. Italy

In the second complaint, registered on 9 August 2012, the complainant organization claimed that the contents of Article 9 of Law No. 194 of 1978, about the conscientious objection of medical practitioners in relation to the termination of pregnancy, is in violation of Article 11 (the right to health) of the European Social Charter, read alone or in conjunction with the non-discrimination clause in Article E, as it does not protect the right to access termination of pregnancy procedures. The European Committee of Social Rights after the decision of admissibility on 22 October 2012, concluded that there was a violation of Article 11§1 and transmitted its report

¹⁹⁸ European Committee of Social Rights, 11 June 2009, Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint n° 58/2009, 6-7.

¹⁹⁹ *ibid.* 10.

²⁰⁰ Council of Europe, Committee of Ministers, CM/ResChS (2010)8 on Complaint n. 58/2009 Centre on Housing Rights and Evictions (COHRE) v. Italy, 21 October 2010, on <<https://wcd.coe.int/ViewDoc.jsp?id=1692929&Site=CM>> accessed 19 March 2015.

containing its decision on the merits to the Parties and to the Committee of Ministers on 7 November 2013.

The report stated that ‘women seeking access to abortion services in Italy are treated differently than other persons in the same situation with respect to access to health care, without justification’²⁰¹, as a lot of Italian women are forced to migrate from one region to another, due to the difficulty to exercise their reproductive rights: in fact, official data from the Italian Health Ministry reports a very high percentage (over 70%) of gynaecologists declaring themselves ‘conscientious objectors’. Anyway, no concrete measures have been taken, since the transmission of the report, to give a more definite application to art. 9 co. 4 of Law 194/78²⁰² and stop the violation of the European Social Charter.

7.3. Complaint No. 102/2013: Associazione Nazionale Giudici di Pace v. Italy

More recently, on 2 December 2014 the Committee adopted the decision on admissibility regarding the case *Associazione Nazionale Giudici di Pace v. Italy*, Complaint No. 102/2013, pertaining to the violation of Article 12 (right to social security) of the European Social Charter. The complainant organisation, Associazione Nazionale Giudici di Pace (the National Association of Justices of the Peace), argued that Italian law does not provide any social security and welfare protection for this category of honorary Judges.

The absence of a specific welfare protection for honorary judges is an issue that has not found a concrete legal regulation during the last years, and it represents a serious problem for this category of judges, working with the same effort as ordinary judges. In fact, in Italy honorary judges have an important role concerning the disposal of excessive number of pending cases, swamping and slowing down the judicial system as a whole, which finds it increasingly difficult to apply the principle of reasonable length of proceedings underlying the Italian Constitution and the European Convention on Human Rights in civil and criminal processes, due to the slowness of our legal system: at the moment, they get rid of more than 50% of these processes²⁰³. Because

²⁰¹ European Committee of Social Rights, 3 September 2012, *International Planned Parenthood Federation European Network (IPPF EN) v. Italy*, Complaint n° 87/2012, 23.

²⁰² According to art. 9 co. 4, ‘Regions and hospitals must organize themselves to assure access to termination of pregnancy’.

²⁰³ European Committee of Social Rights, 9 August 2013, *Associazione Nazionale Giudici di Pace v. Italy*, Complaint n° 102/2013, 3.

of the importance of their role, honorary judges must respect the same duties as ordinary judges, and are subjected to the same disciplinary responsibility, but have no social protection after their retirement.

This is the reason that drove the *Associazione Nazionale Giudici di Pace* to submit a complaint to the Committee on 2013, stating that the Italian situation stands in sharp violation of art. 12 of the European Social Charter that guarantees adequate social security to every worker. Moreover, the complainant association remarked the total incompatibility of the Italian situation with the principles established in the Recommendation CM / Rec (2010) 12 of the Committee of Ministers to member states. In the mentioned recommendation is confirmed that judges, both stipendiary and honorary, are entitled to remuneration commensurate with their professional role and their responsibilities, such as to make them immune to any pressure aimed at influencing their decisions. For this reason, systems of basic remuneration that depend on the performance should be avoided, as they may cause difficulties to the independence of judges.

The European Committee considered admissible the claim, stating that the *Associazione Nazionale Giudici di Pace* is truly an organization that works to protect the interests of the class it represents. For this, the AnGdP can be considered as a trade union, since in Italy there is no regulatory system of trade unions and they have the same status as unrecognized association.

The government had to present memories until 12 February 2015, but no memories have been published yet.

8. CONCLUSIONS

The previous paragraphs have outlined how complex the situation is in Italy as regards the compliance with various standards of the European Social Charter that could have been affected by the political consequences of the economic crisis.

As regards the area of the Labour rights, it must be said that Italian's post-second world war trade-union system has probably been one of the most developed and powerful trade-union system in Europe.

In this sense, it is no coincidence that, despite the negative consequences of the economic crisis, in overall terms, Italy still seems to be able to fulfil its obligations under article 5 (right to organise) and 6 (right to bargain collectively) of the ESC.

In particular, as far as art. 6, paras 1-2 ESC is concerned, the protection provided by the Italian labour law system, from its constitutional roots (art. 39) to the primary legislation, seems to be sufficient. This even after the measures taken after the financial crisis of 2008, which have struck a new balance of powers between national and local level of collective bargaining (in line with the general tendency of decentralising collective bargaining started in the 90s) without necessarily causing a decrease of protection of the right in question.

Moreover, art. 31 of the Act n. 183/2010 have provided an “appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes”, in accordance with art. 6, para 3 ESC.

The right to strike as well, despite the European Social Committee’s criticism on Italian’s regulation of strikes in essential public services, seems to fulfil the ESC standards.

On the other hand, the most problematic issue is related to the right to a fair remuneration ex art. 4 ESC.

Indeed, various are the reasons of concern: the minimum wage established by the collective agreements (para 1); the regulation of the increased remuneration for overtime work (para 2); the reasonableness of the notice of termination of employment (para 4) in the textile, private metalworking, mechanical industries and food-processing sector; the regulation concerning the limits to deduction from wages (para 5).

All of these failures to comply with the European Social Rights standards seem to relate more directly with Italian’s economic situation, which renders it very difficult to provide a higher protection.

For what concerns the Human rights standards concerning “Social protection” (art. 13 ESC), we have seen that many are the limits of Italian’s legislation. In particular, as the European Committee of Social rights (ECSR) argued, Italy seem to fail in providing adequate assistance for every person in need (para 1).

Moreover, even though it has been considered in compliance with art. 13, para 3 ESC by the ECSR, the “Integrated System for Social Intervention and Services” ex Act 328/2000 might have a greater concrete impact. Indeed, since the access to the benefits is dependent on an official request by the perspective beneficiaries, a better system of advertisement of the services provided would be of assistance.

As to the Protection from social exclusion, the situation is even more dramatic. Indeed – as the ECSR stated – there is a lack of an “overall and coordinated approach to combating poverty and social exclusion”²⁰⁴ and, anyhow, the measures taken to address these issues have not obtained satisfying results.²⁰⁵

As to the specific question of the integration of the migrant groups *Roma* and *Sinti*, it has been stressed that Italian government’s measures are probably too far generic and with a limited scope to effectively address the problem. In other words, it seems that the Italian current legislation is nothing more than *window-dressing* and it is therefore not able to solve the present issues.

For what concerns the protection of weak categories of people (such as disabled persons, children, young people, elderly people) the main problematic aspect to consider is probably the one of the work inclusion of disabled persons (art. 15, para 2).

Indeed – as highlighted above – the economic crisis seems to have had a particular negative impact on the employment of disabled people and therefore have affected the compliance of Italian labour law with the ESC.

Another concerning issue is the one of the elderly people. Namely, the Italian pension system is facing high difficulties in providing services to an ever-increasing number of elderly people. It has resulted in the increase in the pension age; in the elimination of mechanisms of inflation adjustment; in general terms, in a level of pension benefit that is so low that it has been considered inadequate for the purposes of art. 12, para 1 ESC by the ECSR.

As far as the collective Complaint procedure is concerned, it must be recognised that it has not had a significant success in Italy. Indeed, for instance, only 6 complaints to the committee have been filed from 2009 until 2014 (i.e. from the beginning of the financial crisis up to the present time).

²⁰⁴ See European Committee of Social Rights, Conclusions 2013 (Italy), 50.

²⁰⁵ See the poverty rates p. note.

Unfortunately, the failure of this system may be due to the belief that the domestic measures are able to provide a more effective legal protection.

In conclusion, it seems possible to say that Italy is currently a vivid example of a country in which the social rights standards have been truly affected by the financial crisis. As the violations of the rights to a fair remuneration and the rights (in broad terms) related to the Welfare State services demonstrate, the real consequences and the greatest burden of the impacts have fallen not only on the weakest and poorest categories (workers, women, older and not-self-sufficient people, children and young people, the homeless, the immigrants and the ethnic minorities) but also on the middle class, which is facing an important process of proletarianization.²⁰⁶

In this context it is very difficult to provide any solution on how to address the aforementioned issues, since the greatness of the phenomenon seem to suggest that these are not merely “human rights violations”, but on the contrary the consequence of one essential feature of the rights – especially the social ones – i.e. their dependence on the health of a State’s economy.²⁰⁷

We refer to the need of the State to deal, on the one hand, with the apparently infiniteness of the social needs and rights and, on the other hand, with the limitedness of the resources which is even higher in time of crisis and in the context of a weak economy as the Italian one. It is therefore important to understand that – despite the contrary opinion of some academics and of the ECSR itself²⁰⁸ – there is a trade-off between different rights and, in this period, the social ones have proved to be surely regressive in the European policies.²⁰⁹

For this reason, in general terms, it is now probably too optimistic to think of solutions that may be able to completely satisfy all of the European HR standards without at least a greater commitment of the governments in the redistribution of wealth (especially by the means of highly progressive taxations).

This, however, seems not to be contemplated by the “EU austerity” policy adopted in Italy.

²⁰⁶ See the statistic data mentioned at para 3.2.

²⁰⁷ See e.g. Norberto Bobbio, *The Age of Rights* (Polity Press 1995).

²⁰⁸ See General Introduction to Conclusions XIX-2 (2009), in which the ECSR stated that the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter.

²⁰⁹ See similarly, amongst the Italian commentators, Antonino Spadaro, *I diritti sociali di fronte alla crisi (necessità di un nuovo “modello sociale europeo”: più sobrio, solidale e sostenibile)*, *RivistaAIC* (available at <http://www.rivistaaic.it/>) 9.

9. TABLES OF CASE LAW AND LEGISLATION

- 1930 Italian Criminal Code.
- 1942 Italian Civil Code.
- 1948 Italian Constitution.
- C-312/11 [2011] European Court of Justice,
<<http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-312/11&td=ALL#>> accessed 18 February 2015 [Italian and French].
- Case n. 711 [1980], Supreme Court of Cassation, *Rivista di Giustizia Civile* Vol. I [1980] 1022 [Italian].
- Case n.2380 [2008] Court of Milan, Division 1st, order 11 February 2008
<<http://www.stranieriinitalia.it/briguglio/immigrazione-e-asilo/2008/febbraio/ord-trib-mi-asili.pdf>> accessed 15 March 2015 [Italian].
- Case n. 80 [2010], Italian Constitutional Court,
<http://www.camera.it/temiap/temi16/Sentenza_802010.pdf> accessed 18 February 2014 [Italian].
- European Committee of Social Rights, Complaint n° 58/2009, *Centre on Housing Rights and Evictions (COHRE) v. Italy*.
- European Committee of Social Rights, Complaint n° 87/2012, *International Planned Parenthood Federation European Network (IPPF EN) v. Italy*.
- European Committee of Social Rights, Complaint n° 102/2013, *Associazione Nazionale Giudici di Pace v. Italy*.
- King's Decree n. 1404 (Establishment and operation of the Juvenile Court) 1934 [Istituzionefunziaonamento del Tribunale per i minorenni].
- Law n. 929/1965.
- Law n. 300 (Employee's Statute) 1970 [Statuto dei Lavoratori].
- Law n.118 (Conversion into law of Decree Law n. 5 of 30 January 1971 and new provisions in favour of the disabled and non-military invalids) 1971 [Conversione in

legge del D.L. 30 gennaio 1971, n. 5 e nuove norme in favore dei mutilati ed invalidi civili].

- Law n. 157 (Guidelines for pupil assessment, abolition of remedial exams and other amendments to school regulations) 1977 [Norme sulla valutazione degli alunni e sull'abolizione degli esami di riparazione nonché altre norme di modifica dell'ordinamento scolastico].
- Law 194/1978 (Legge sull'aborto).
- Law n. 146 (Rules on the exercise of the right to strike in essential public services and on safeguard of the rights of the people constitutionally protected rights) 1990 [Norme sull'esercizio del diritto di sciopero nei servizi pubblici essenziali e sulla salvaguardia dei diritti della persona costituzionalmente tutelati].
- Law n. 381 (Regulation of social cooperatives) 1991 [Disciplina delle cooperative sociali].
- Law n. 104/1992 [Legge Quadro per l'Assistenza, l'Integrazione Sociale e i Diritti delle Persone con Handicap].
- Law n. 30/1999.
- Law n. 68 (Regulations on the right to employment for persons with disabilities) 1999 [Norme per il diritto al lavoro dei disabili].
- Law n. 328/2000.
- Law n. 296 (provision for the formation of the annual and pluriannual budget (Finance act 2007)) 2006 [Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (Finanziaria 2007)].
- Law n. 244/2007 [Legge Finanziaria 2008].
- Law n. 170 (New rules on specific learning disabilities at school) 2010 [Nuove norme in materia di disturbi specifici di apprendimento in ambito scolastico].
- Law n. 183 (Mandates to Government in labour matters) 2010 [Delega al Governo in tema di lavoro].

- Law n. 240 (rules on the organization of universities, academic staff and recruitment, as well as delegation to the government to enhance the quality and efficiency of the university system) 2010 [Norme in materia di personale accademico e reclutamento, nonché delega al governo per incentivare la qualità e l'efficienza del sistema universitario].
- Law n. 111/2011.
- Law n. 148/2011.
- Law n. 212/2011.
- Law n. 92/2012 (Fornero Reform).
- Law n. 94/2012.
- Law n. 124/2013.
- Law n. 147/2013 [Legge di Stabilità 2014].
- Law n. 190/2014 [Legge di Stabilità 2015].
- Law decree n. 148/1993 converted into Law No. 263/1993.
- Law decree n. 112/1998.
- Law decree n. 286 (Consolidated Law on Immigration) 1998 [Testo Unico sull'immigrazione].
- Law decree n. 215/2003 implementing the Directive n. 2000/43/CE.
- Law decree n.76 (Definition of the general rules on the right and duty to education and training, in accordance with article 2, paragraph 1, letter c, of the Law 28 March 2003, n.53) 2005 [Definizione delle norme generali sul diritto-dovere all'istruzione e alla formazione, a norma dell'articolo 2, comma 1, lettera c, della legge 28 marzo 2003, n.53].
- Law decree n. 140/2005 implementing the Directive n. 2003/9/CE.
- Law decree n. 226 (General rules and essential level for the second cycle of the education and training system, in accordance with article 2 of the Law 28 March 2003, n.53) 2005 [Norme generali e livelli essenziali delle prestazioni relative al secondo ciclo del sistema educativo di istruzione e formazione, a norma dell'articolo 2 della legge 28 marzo 2003, n.53].

- Law decree n. 112/2008.
- Law decree n. 185/2008.
- Law decree n. 23/2011.
- Law decree n. 68/2011.
- Law decree n. 201/2011.
- Law Decree n. 138 (Urgent measures for financial stabilization and for development) 2011 [Misure urgenti per la stabilizzazione finanziaria e per lo sviluppo].
- Law decree n. 5/2012.
- Law Decree n. 16 (tax decree) 2012 [Decreto fiscale].
- Law Decree 179/2012 (Decreto Sviluppo-bis).
- Law Decree n. 69/2013 (Decreto del Fare).
- Law Decree n. 76/2013 (Decreto Occupazione).
- Law decree n. 101 (Urgent measures for rationalisation in public administrative authorities) 2013 [Disposizioni urgenti per il perseguimento degli obiettivi di razionalizzazione nelle pubbliche amministrazioni].
- Law n. 183/2014 (Jobs Act).
- Legislative Decree n. 198 (Code of equal opportunities between men and women) April 2006 [Codice delle pari opportunità tra uomo e donna].
- Legislative Decree n. 5 (Implementation of Directive 2006/54 / EC of equal opportunities between men and women relating to employment and job) [Attuazione della direttiva 2006/54/CE relativa al principio delle pari opportunità e della parità di trattamento fra uomini e donne in materia di occupazione e impiego].
- Ministerial Directive (Measures for pupils with special educational needs and local organisations for school inclusion) 27 December 2012 [Strumenti di intervento per alunni con bisogni educativi speciali e organizzazione territoriale per l'inclusione scolastica].
- Ministry decree 10 January 2013.

- Presidential Decree n. 180 (law on assignment of salary) January 1950 [Testo Unico delle Leggi concernenti la Cessione dello stipendio].
- Presidential decree (Official guidelines for public health services dealing with disabled pupils) February 24 1994 [Atto di indirizzo e coordinamento relativo ai compiti delle unità sanitarie locali in materia di alunni portatori di handicap].
- Presidential Decree n. 275 (Regulation on school autonomy under Art. 21 of Law n, 59, March 15, 1997) 1999 [Regolamento recante norme in materia di autonomia delle istituzioni scolastiche ai sensi dell'art. 21, della legge 15 marzo 1997, n.59].
- Presidential decree n. 394 (Regulation to implement the Consolidated Law provisions governing immigration and the status of foreigners, according to article 1, paragraph 6, of the legislative decree 25 July 1998, n.298) 1999 [Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, a norma dell'articolo 1, comma 6, del decreto legislativo 25 luglio 1998, n.298].
- Prime Minister Decree n.185 (Regulation to determine pupils with disabilities under Art.35(7) of Law n. 279, December 27 2002) 2006 [Regolamento recante modalità e criteri per l'individuazione dell'alunno come soggetto in situazione d'handicap, ai sensi dell'articolo 35, comma 7, della legge 27 dicembre 2002, n. 279].
- Prime Minister decree n.139 (Regulation concerning the revision of the procedures for determining and application fields of the equivalent economic situation indicator) 2013 [Regolamento concernente la revisione delle modalità di determinazione e i campi di applicazione dell'Indicatore della Situazione Economica Equivalente "ISEE"].
- Resolution No. 167/2010.

10. BIBLIOGRAPHY AND ONLINE RESOURCES

10.1. English Titles

10.1.1. Books

- Norberto Bobbio, *The Age of Rights* (Polity Press 1995).

10.1.2. Articles

- Ales E., The Italian Reform of Labour Market in a Growth Perspective, *European Labour Law Journal*, 1/2012, 70-85.

10.1.3. Reports

- European Committee of Social Rights, *Conclusions 2013 (Italy)*.
- Italy, *National Strategy Report on Social Protection and Social Inclusion 2008-2010*.
- Oxfam International, *A cautionary tale – The true cost of austerity and inequality in Europe*, 2003.
- Pastore F, 'Youth unemployment in Italy at the time of a new great depression' (Friedrich Ebert Stiftung, November 2012) <<http://library.fes.de/pdf-file/id/09476.pdf>> accessed 15 March 2015 [English].
- Rota S and Fabrizi S, Country sheet on youth policy in Italy 2013[English].

10.1.4. Websites

- Ceruzzi F, National Fund for vulnerable people needing long-term care (Interlinks.org 2013) <<http://interlinks.euro.centre.org/model/example/NationalFundForVulnerablePeopleNeedingNat>>
- Clyde & Co LLP, 'Italy: employment law reforms' (Lexology.com 2015) <<http://www.lexology.com/library/detail.aspx?g=e64bcef6-7a73-4aa8-8168-24343588c2bd>>
- ER.GO <<https://www.er-go.it/index.php?=5963>> accessed 23 March 2015 [English].
- European Commission <<http://ec.europa.eu/social/main.jsp?langId=10795>> accessed 15 March 2015 [English].
- Freshfields Bruckhaus Deringer LLP, Labour market reforms tracker February 2014 (Lexology.com 2014) <<http://www.lexology.com/library/detail.aspx?g=014cb5b2-0990-4a2e-9ccf-69828cba9831>>.

- Freshfields Bruckhaus Deringer LLP, The Italian labour market reform, what has changed? What is going to change? (Lexology.com 2014)
<http://www.lexology.com/library/detail.aspx?g=1f602744-9f35-4078-b0a3-90f03ffce65a>
- Manservigi S, Riforma delle pensioni 2015: le novità studiate dal governo Renzi (Forexinfo.it) <<http://www.forexinfo.it/Riforma-delle-pensioni-2015-governo-Renzi>>
- Valenti B., Termination of Employment in Italy under the Fornero Labour Reform Law N. 92/2012. Content and results one year after its introduction (Ssalex.com) <http://www.ssalex.com/file_load/salvisaponara_24_139_file.pdf>-
- Social and Employment Situation in Italy, (Europarl.europa.eu, 2014) <[http://www.europarl.europa.eu/thinktank/it/document.html?reference=IPOL-EMPL_NT\(2014\)518757](http://www.europarl.europa.eu/thinktank/it/document.html?reference=IPOL-EMPL_NT(2014)518757)>.
- The World Bank <<http://data.worldbank.org/topic/education>> accessed 20 March 2015 [English].

10.2. Italian Titles

10.2.1. Books

- Bonardi O, Sistemi di welfare e principio di eguaglianza (Giappichelli, Torino 2012).
- Cortese F, Amministrazione e scuola. Snodi e crocevia del diritto scolastico italiano, (1st edn, Editoriale Scientifica, 2014) [Italian].
- Ianes D and Carmerotti S, Il piano educativo individualizzato. Progetto di vita (1st edn, Erickson, 2009) [Italian].
- Giugni G, Diritto Sindacale (3rd edn, Cacucci, 2010) [Italian].
- Latti G, I diritti esigibili. Guida normativa all'integrazione sociale delle persone con disabilità (1st edn, Franco Angeli 2010) [Italian].
- Mazzotta O, Diritto del Lavoro (5th edn, Giuffrè Editore, 2013) [Italian].
- Miriello C, Manuale di legislazione universitaria (1st edn, Maggioli Editore 2013) [Italian].

- Rossi Lucia S (ed.), *Le organizzazioni internazionali come strumenti di governo multilaterale* (Giuffrè, Milano 2006).
- Signorini E, *Diritto al lavoro. Crisi. Lavoro dei giovani* (1st edn, Giuffrè 2013) [Italian].
- Pototsching U, *Istruzione (diritto alla)* in *Enciclopedia giuridica*, (16th edn, Giuffrè 1973) 98 [Italian].
- Zullo S (ed.), *La dimensione normativa dei diritti sociali: Aspetti filosofico-giuridici* (Giappichelli 2013).

10.2.2. Articles

- Antonino Spadaro, *I diritti sociali di fronte alla crisi (necessità di un nuovo “modello sociale europeo”: più sobrio, solidale e sostenibile)*, *RivistaAIC* (available at <http://www.rivistaaic.it/>).
- Carinci F, *Jobs Act, atto I: la legge n. 78/2014 fra passato e futuro*, *Diritto delle Relazioni Industriali I/2015*.
- Ferraresi M, *L'articolo 18 dello Statuto dei lavoratori dopo la riforma Fornero: bilancio delle prime applicazioni in giurisprudenza*, *Diritto delle Relazioni Industriali, II/2013*.
- Oliveri F, *La Carta Sociale Europea come “strumento vivente”: Riflessioni sulla prassi interpretativa del Comitato Europeo dei Diritti Sociali*, *Jura Gentium II/2012*.
- Potestio P, *Employment Protection e assicurazione contro la disoccupazione: dal modello di Blanchard e Tirole al Jobs Act*, *Diritto delle Relazioni Industriali I/2015*.
- Tullini P, *Riforma della disciplina dei licenziamenti e nuovo modello giudiziale di controllo*, *Rivista Italiana di Diritto del Lavoro*, 2013, XXXII.
- Treu T, *Flessibilità e tutele nella riforma del lavoro*, *Giornale di diritto del lavoro e di relazioni industriali, I/2013*.

10.2.3. Reports

- European Committee of Social Rights, addendum to 13th Report (Italy).
- European Committee of Social Rights, conclusions 2013 (Italy).

- European Committee of Social Rights, conclusions 2014 (Italy).
- Francescutti C, Documenti conclusivi della quarta conferenza nazionale sulle politiche delle disabilità svoltasi a Bologna dal 12 al 13 luglio 2013 [Italian].
- Giovanielli S, Documenti conclusivi della quarta conferenza nazionale sulle politiche delle disabilità svoltasi a Bologna dal 12 al 13 luglio 2013 [Italian].
- Ministry of Education, *The Italian Way for Multicultural Education and Integration of Foreigner Students 2007*.
- National Council for Economy and Work [Consiglio Nazionale dell'Economia e del Lavoro], *Report on Welfare 2012-2013*.
- Nocera S, Documenti conclusivi della quarta conferenza nazionale sulle politiche delle disabilità svoltasi a Bologna dal 12 al 13 luglio 2013 [Italian].

10.2.4. Websites

- Bellavista A, Il Patto per l'Italia e la riforma della disciplina dei licenziamenti (di-elle.it 2002) <<http://www.di-elle.it/45-approfondimenti/321-il-patto-per-l-italia-e-la-riforma-della-disciplina-dei-licenziamenti-di-alessandro-bellavista>> accessed 25 March 2015 [Italian].
- Casciano E, Il diritto senza norme: prospettive ed evoluzioni della rappresentanza sindacale (Filodiritto.it, 2014) <http://www.filodiritto.com/articoli/pdf/2014/02/il-diritto-senza-norme-prospettive-ed-evoluzioni-della-rappresentanza-sindacale?_id8=3> accessed 26 March 2015 [Italian].
- Guerzoni N, Il ruolo del Parlamento nella concertazione fra Governo e parti sociali (Camera.it, 1999) <http://documenti.camera.it/bpr/9609_testo.pdf> accessed 25 March 2015 [Italian].
- Il sole 24 ore <<https://www.ilssole24ore.com/art/notizie/2013-10-01/coldiretti-disoccupazione-record-400mila-10524.shtml?uuid=AbssGhI>> accessed 15 March 2015 [Italian].

- ISTAT <http://www.istat.it/file/2015/03/Occupati-e-disoccupati_2_marzo_2015.pdf?title=Occupati+e+disoccupati+28%mensili%29+-+02%2Fmar%2F2015+-+Testo+integrale.pdf> accessed 15 March 2015 [Italian].
- Italian Government <<http://leg.16.camera.it/465?area=18&tema=233%Politiche+giovanili#paragrafo2796>> accessed 15 March 2015 [Italian].
- Ministry of Work and Social Policies, <http://www.lavoro.gov.it/Pages/default.aspx>
- Ministry of Labour and Social Policy <<http://gioventu.gov.it>> accessed 20 March 2015 [Italian].
- MIUR, *Linee guida per il diritto allo studio degli alunni disabili e degli studenti con disturbi specifici dell'apprendimento* <<http://hubmiur.pubblica.istruzione.it>> accessed 14 February 2014 [Italian].
- Pandolfo A, Lavoro e produttività nell'economia globale. La contrattazione collettiva decentrata dopo la manovra di ferragosto 2011 (Federalismi.it, 2011) <<http://www.federalismi.it>> accessed 26 March 2015 [Italian].
- Prime Minister's Office, Department of Youth and National Civil Service <<http://www.garanziaGiovani.gov.it/Pagine/default.aspx>> accessed 15 March 2015 [Italian].
- Salta G, Vaccari G, L'efficacia erga omnes del contratto collettivo aziendale (Bollettinoadapt.it, 2011) <http://www.bollettinoadapt.it/old/files/document/10880salta_valcavi_16.pdf> accessed 25 March 2015 [Italian].
- Scacco A C, La nuova contrattazione aziendale dopo l'accordo interconfederale del 28 giugno (Diritto.it, 2011) <<http://www.diritto.it/docs/32412-la-nuova-contrattazione-aziendale-dopo-l-accordo-inteconfederale-del-28-giugno?page=2>> accessed 26 March 2015 [Italian].

- UNIBO,
<<https://www.unibo.it/en/attachments/tasse/FasceIndicatoriISEEeISPE.pdf/@@download/file/>> accessed 23 March 2015 [Italian].
- Viceconte M, L'accordo interconfederale 28 giugno 2011 (Diritto.it, 2011)
<<http://www.diritto.it/docs/32047-l-accordo-interconfederale-28-giugno-2011?page=3>> accessed 26 March 2015 [Italian].

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

Latvia ratified the European Social Charter on January 31 2002. Latvia has signed and ratified the Amending Protocol to the Charter on December 9 2003, but has neither signed nor ratified the Protocol providing for a system of collective complaints. Latvia ratified the Revised European Social Charter on March 26 2013, accepting 90 of the 98 paragraphs of the Revised Charter.

Provisions not accepted by Republic of Latvia:

- Art 4(1) (right of workers to a remuneration such as will give them and their families a decent standard of living);
- Art 12(3) (a progressive rising of the system of social security to a higher level);
- Art 12(4) (equal treatment of their nationals and nationals of other Parties in respect of social security rights);
- Art 19(2) (adoption of measures to facilitate the departure, journey and reception of migrant workers and their families; providing them appropriate services for health, medical attention and good hygienic conditions during the journey);
- Art 19(3) (promotion of co-operation between public/private social services in emigration and immigration countries);
- Art 23 (the right of elderly persons to social protection);
- Art 31(2) (prevention and reducing of homelessness with a view to its gradual elimination);
- 31(3) (making the price of housing accessible to those without adequate resources)¹

¹ Acceptance of provisions of the Revised European Social Charter (1996), situation in 26 March 2013 <http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ProvisionTableRevMarch2013_en.pdf> accessed 15 March 2015.

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

To deal with the financial crisis of 2008, from 2008 until 2011 Latvian government adopted consolidation measures in the total amount of 16.6% of GDP. The following austerity measures were taken:

1.2.1. Tax reforms

- Value added tax was raised from 18% to 21% and later to 22%. The reduced VAT was raised from 10% to 12%.
- Personal income tax base was expanded, including all capital income and applying a 10% tax rate for dividends and interest and a 15% tax rate for capital increases.² Personal income tax on worker's salary was raised from 23% to 26% and personal income tax from economic activity and royalties was raised from 15% to 26%. In 2011, personal income tax was minimized to 25%.³
- Non-taxable minimum of a worker's salary was increased to LVL 90 (EUR 128), then decreased to LVL 35 (EUR 50) by 2010, later to be increased to LVL 45 (EUR 64) by 2011.
- Real estate tax base was expanded to include residential buildings and construction.
- Car taxes were raised and a new tax was introduced for the use of company's car for private purposes. By 2011, car taxes were reduced for smaller cars and increased for bigger ones.
- Various excise taxes for cigarettes, alcohol and fermented beverages, as well as petrol and natural gas were reviewed and increased several times over years.⁴
- Social security contribution rate was increased from 33% to 35%.

² Inna Dovladbekova, *Austerity policy in Latvia and its consequences* (International policy analysis, 2012) <<http://library.fes.de/pdf-files/id-moe/09353.pdf>> accessed 20 March 2015.

³ State tax administration <http://www.vid.lv/lv/nodokli/03_iiin> accessed 20 March 2015 [Latvian].

⁴ Inna Dovladbekova *Austerity policy in Latvia and its consequences* (International policy analysis, 2012) <<http://library.fes.de/pdf-files/id-moe/09353.pdf>> accessed 20 March 2015.

- State revenues worth about 4% of GDP were shifted from direct to indirect taxes with the intention of enhancing economic efficiency.

1.2.2. Public expenditure

- 23,000 or 29% of civil servants were dismissed from 2008 to 2010.⁵
- Number of state agencies and their expenditure was cut by 50%.⁶
- Administration of ministries reduced their expenditure by 30%.
- Reforms concerning state owned companies were carried out. From 2009, state owned companies had to contribute 80% of their profits in dividends to state budget. The substantial fees that senior officials received for being members of boards of state corporations were eliminated.
- Military expenditures were reduced to 1% of GDP (instead of 2% of GDP as required by NATO).
- Public sector wages were cut on average from 25% to 40%. Private businesses followed the example and lowered the wages of employees on average by 10%.⁷

1.2.3. Social reforms

- A healthcare reform was carried through aimed to raise the productivity of the public healthcare system. Government went through with cuts in healthcare staff and reduction of public hospitals. By 2013 only 24 out of 59 hospitals were left. Public employment in healthcare was reduced by 2700 people or 8% in years 2008-2009.⁸
- A structural reform in education was carried out. Education system was reformed to a model of per student financing of education, providing state financing in relation to the number of students as means of redirecting funding to teachers. Thus, public schools that didn't have enough students (mostly schools in rural regions of Latvia) were closed.

⁵ Anders Åslund, Valdis Dombrovskis, *How Latvia Came Through the Financial Crisis*, (Peterson Institute 2011) 73.

⁶ *ibid* 83.

⁷ Andrew Higgins, *Used to Hardship, Latvia Accepts Austerity, and Its Pain Eases* (New York Times, 1 January 2013) <http://www.nytimes.com/2013/01/02/world/europe/used-to-hardship-latvia-accepts-austerity-and-its-pain-eases.html?hp&_r=1> accessed 16 March 2015.

⁸ Anders Åslund, Valdis Dombrovskis, *How Latvia Came Through the Financial Crisis*, (Peterson Institute 2011) 109.

From 2008 to 2010, 115 out of 992 schools (12% of all schools) were closed, public school staff was reduced by 4000 people or 14% from 2008 to 2009.⁹ Teacher's wages were also cut by about 20%. By the end of 2009, the austerity measures had resulted in the total reduction of the education budget by 50%.

- Pensions were slashed by 10% and by 70% for working pensioners. However, pension cuts were later ruled unconstitutional by the Constitutional court and government repaid the pensioners. Pensions were then frozen in nominal terms.
- From 2009 to 2012 state allowances and benefits were limited by a special law to provide social security to persons within the scope of available financing.

1.2.4. Other measures

- New insolvency law was enacted in 2010 to deal with private sector loans and problems arising from it.
- An approach for facilitation of micro enterprises was carried out by simplifying their accounting and tax payment requirements, as well as capital and business registration costs.
- Due to the personnel reduction in public sector and the following personnel reductions in private sector, unemployment rates rose from 6.6% in 2008 to 20.7% in the first quarter of 2010.¹⁰ To deal with that, government extended the unemployment benefits.

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

2.1.1. Article 5 of the ESC.

The social and collective bargaining rights are guaranteed by Article 102 and Article 108 of the Constitution. Article 102 of the Constitution provides that 'Everyone has the right to form and

⁹ *ibid* 73, 108

¹⁰ *ibid* 76

join associations' and Article 108 of the Constitution provides a special regulation guaranteeing that '[e]mployed persons have the right to a collective labour agreement [...] and '[t]he State shall protect the freedom of trade unions'. Thus Article 108 is a specific provision in respect to Article 102 that guarantees the freedom of association.¹¹

Article 108 of the Constitution guarantees the right to a collective labour agreement as a process and not the result – persons have the right to participate in negotiations in order to conclude a collective labour agreement. The state has to promote conclusion of collective labour agreements, but the state does not have an obligation to ensure that collective labour agreements are concluded. Thus the right to conclude collective labour agreements provided in Article 108 of the constitution and the social and collective bargaining rights provided in Article 5 of the ESC are synonyms.¹²

The freedom of trade unions is not absolute. Pursuant Article 116 of the Constitution it may be subject to restrictions in circumstances provided for by the law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals. Certain restrictions are applied to soldiers and members of the State security service.¹³ In this regard on 23 April 2014 the Constitutional Court of Latvia declared the restrictions to establish and join a trade union for the border guards being unconstitutional.¹⁴ The right of members of police to establish and to join a trade union is recognized since 1 January 2006.¹⁵

Although the Constitution is the leading legal act within the legal framework governing the right to organise, separate and more detailed provisions regarding the right to organise are provided in the following laws: the Trade Union Law, the Labour Law, the Associations and Foundations Law, the Law on Employer's Organisations and the Associations thereof.

¹¹ Anita Kovaļevska, '108. panta komentārs' in Autoru kolektīvs, *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības* (Latvijas Vēstnesis, 2011) 534 [Latvian].

¹² Ibid, 534.

¹³ Agnese Sermā, 'Arodbiedrību darbības tiesiskais regulējums' (Jurista Vārds, 10(862), 10 March 2015) <<http://www.juristavards.lv/doc/266275-barodbiedribu-darbibas-tiesiskais-regulejumsb/>> accessed 20 March 2015 [Latvian].

¹⁴ Case No 2013-15-01: On compliance of the words "joining in trade unions" of Section 49(1) of Border Guard Law with Article 102 and the second sentence of Article 108 of the Satversme of the Republic of Latvia [2014].

¹⁵ Agnese Sermā, 'Arodbiedrību darbības tiesiskais regulējums' (Jurista Vārds, 10(862), 10 March 2015) <<http://www.juristavards.lv/doc/266275-barodbiedribu-darbibas-tiesiskais-regulejumsb/>> accessed 20 March 2015 [Latvian].

The general principles of the trade unions are regulated by the new Trade Union Law (adopted on March 6 2014, in force since November 1 2014). This law has replaced the previous Law on Trade Unions (adopted on December 13 1990, in force since January 2 1991), which had out-of-date rules. For example, the previous Law on Trade Unions still provided the reference to the legislation of collective farms although collective farms ceased to exist after Latvia regained its independence in 1991. The new Trade Union Law has sufficiently altered the previous regulation of trade unions.

Under Article 3 of the new Trade Union Law a trade union is defined as a union, which is formed in order to represent and to protect the economic, social and professional interests of the employed persons. Pursuant to Article 4 (1) of the Trade Union Law, every person has a right to freely, without discrimination to establish a trade union and to join a trade union according to its statutes or not to join a trade union. Article 4 (2) of the Trade Union Law provides that person's membership to a trade union or person's desire to join or not to join it cannot be the ground for limiting the rights of person.

The new Trade Union Law provides lower number of members required to form a trade union in comparison with the previous Law on Trade Unions. Thus according to Article 7 (2) of the new Trade Union Law the number of trade union founders in the undertaking shall not be less than 15 or less than one-quarter of employees working in the undertaking, but not less than 5 employees. Pursuant to Article 7 (3) of the Trade Union Law the number of founders of the trade union established outside the undertaking shall not be less than 50. Article 7 (4) of the Trade Union Law provides that the trade union association can be founded if at least three trade unions associate together and they have been registered at the procedure prescribed by Law.

The Constitutional Court of Latvia has not clarified for now whether the freedom of trade unions refers to employers too.¹⁶ Interesting that in contrast to the previous Law on Trade Unions the new Trade Union Law does not expressly provide the right for employers to form a

¹⁶ Anita Kovaļevska, '108. panta komentārs' in Autoru kolektīvs, *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības* (Latvijas Vēstnesis, 2011) 528 [Latvian]; Agnese Sermā, 'Arodbiedrību darbības tiesiskais regulējums' (Jurista Vārds, 10(862), 10 March 2015) <<http://www.juristavards.lv/doc/266275-barodbiedribu-darbibas-tiesiskais-regulejumsb/>> accessed 20 March 2015 [Latvian].

trade union.¹⁷ However, the right of the employers to unite is nevertheless guaranteed by Article 102 of the Constitution, which states that everyone has the right to form and join associations. In addition Article 8 of the Labour Law provides that both employees and employers have the right to unite in organisations and to join them. Employers' right to organize is as well envisaged by the Law on Employers' Organisations and the Associations thereof (adopted on April 29 1999, in force since June 2 1999). Thus it can be concluded that the social and collective bargaining rights are guaranteed for both – employees and employers.

A trade union within its competence and without any special authorization has a right to represent and to protect rights and interests of its members (Article 12 (4) of the Trade Union Law). Pursuant to Article 13 (1) of the Trade Union Law a trade union is represented by the body or authority that has been authorized in the trade union's statutes. Article 13 (2) provides that a trade union informs the employer in writing on the authorized representatives of the trade union who have rights and duties to represent the members of the trade union.

According to Article 15 of the Trade Union Law the representation of trade unions in the institutions of social dialogue shall be implemented on the basis of an agreement between trade unions and employers, their organizations or their associations. Pursuant to Article 16 (1) at the national level trade unions interests in relations with the Cabinet of Ministers represents the trade union association, which unites the largest number of employees in the country. However, according to Article 16 (2) at the sectoral, professional and administrative territory level in relations with state and local government institutions the interests of trade unions represents the trade union, which is a part of the association that unites the largest number of workers in the country. Article 16 (3) provides that when necessary, the state and local government institutions can cooperate with other trade unions or their associations.

Article 12 of the Trade Union Law provides the following ways how trade unions may represent the interests of their members within their working place: by carrying out collective bargaining; by receiving information from employers, employers' organizations and their associations and by consulting with the afore mentioned persons; by concluding collective agreements (or general agreements); by declaring strike; by participating in drafting legal acts and policy planning

¹⁷ Agnese Sermā, '*Arodbiedrību darbības tiesiskais regulējums*' (Jurista Vārds, 10(862), 10 March 2015) <<http://www.juristavards.lv/doc/266275-barodbiedribu-darbibas-tiesiskais-regulejumsb/>> accessed 20 March 2015 [Latvian].

documents; by giving opinions on the projects that affect or may affect economic, social and professional rights and interests of the employed persons; by requesting and receiving information from state and local government institutions to perform trade union's functions and achieve its objectives; by implementing other activities set in other laws and regulations.

2.1.2. Article 6 of the ESC

Article 108 of the Constitution provides that '[e]mployed persons have [...] the right to strike' and 'the State shall protect the freedom of trade unions'. The ways how social and bargaining rights are exercised in Latvia are elaborated further under separate paragraphs of Article 6 of the ESC.

2.1.2.1. Article 6 Para.1

The promotion of joint consultation between workers and employers is mainly regulated by the Labour Law. In this regard two amendments made to the Article 18 (1) and 11 (1) of the Labour Law should be mentioned that were indicated as well in the latest 9th Report on the implementation of the European Social Charter submitted by Latvia. While amendments to the Article 18 (1) will be envisaged further providing the answer to the question 2.2.2. due to their possible inconsistency with the ESC, amendments to the Article 11 (1) provide that employee representatives when performing their duties apart from having the rights to request and receive from the employer information regarding the current economic and social situation of the undertaking can now also request the information regarding the possible changes thereto and relevant information regarding the employment in the undertaking of an employee appointed by the work placement service. The aim of these amendments was to transpose the legal provisions of the Directive 2008/104/EC of the European Parliament and of the Council of November 19 2008 on temporary agency work.¹⁸

The leading role in promoting the joint consultation, however, plays the National Tripartite Cooperation Council (hereinafter NTCC). This is an institution of national level in Latvia, which consists of representatives from government, Employers' Confederation of Latvia (hereinafter LDDK) and Free Trade Union Confederation of Latvia (hereinafter LBAS). NTCC has 8 sub-councils that deal with the following issues: social security, professional education and

¹⁸ 9th National Report on the implementation of the European Social Charter submitted by the government of Latvia (Articles 5 and 6 for the period 01/01/2008 – 31/12/2011), 12.

employment, health care, environmental protection, regional development and transport, communications and information technologies, public safety and order.¹⁹ NTCC and its sub-councils take active part in the policy decision-making, its adoption and implementation.²⁰ Thus, all eventual decisions that directly or indirectly concern employees are discussed among social partners at 3 stages: at the stage of idea (at the level of ministries); in the Cabinet of Ministers and in the Parliament.²¹ Of particular importance is the activity of the Sub-council for Tripartite Cooperation in Labour Affairs (hereinafter STCLA). It has different functions to ensure and facilitate the cooperation and participation of the state, the employers' organizations and their unions in improvement of the fields of labour protection, legal labour relationships and equal opportunities in legal labour relationships.²² For example, STCLA takes active part in improving the legislation by reviewing proposals of conceptions, programs and different legislative documents and providing opinion before their revision in the committee of the Cabinet of Ministers and NTCC.²³

As regards the representatives of trade unions for the NTCC and their sub-councils, Article 17 (1) of the Trade Union Law provides that the trade union association, which unites the largest number of workers in the country nominates the representatives of trade unions for the NTCC and their sub-councils.

In order to promote joint consultation between employees and employers several European Social Fund (hereinafter ESF) projects have been implemented supporting and promoting the right to form trade unions and collective bargaining. Such projects are, for example, 'Practical implementation of the legislation of labour relations and occupational safety in sectors and undertakings'²⁴, 'Strengthening of the administrative capacity of Free Trade Union Confederation

¹⁹ 9th National Report on the implementation of the European Social Charter submitted by the government of Latvia (Articles 5 and 6 for the period 01/01/2008 – 31/12/2011), 26.

²⁰ 9th National Report on the implementation of the European Social Charter submitted by the government of Latvia (Articles 5 and 6 for the period 01/01/2008 – 31/12/2011), 26.

²¹ 5th National Report on the implementation of the European Social Charter submitted by the government of Latvia (Articles 5 and 6 for the period 01/01/2005 – 31/12/2008), 13 - 14.

²² 9th National Report on the implementation of the European Social Charter submitted by the government of Latvia (Articles 5 and 6 for the period 01/01/2008 – 31/12/2011), 27.

²³ The Sub-council for Tripartite Cooperation in Labour Affairs
<http://www.lbas.lv/social_dialogue/national_level/work> accessed 25 March 2015 [Latvian].

²⁴ Practical implementation of the legislation of labour relations and occupational safety in sectors and undertakings
<<http://www.lddk.lv/projekts/darba-attiecibu-un-darba-drosibas-normativo-aktu-praktiska-piemerosana-nozares-un-uznemumos/>> accessed 25 March 2015 [Latvian].

of Latvia²⁵, 'Strengthening of the Employers' Confederation of Latvia administrative capacity in regions'²⁶, 'Practical implementation of the legislation of labour relations and occupational safety in sectors and undertakings'²⁷. In addition other projects have been implemented, for example, a project 'Improvement of sectorial social dialogue in Latvia'²⁸ that was co-financed by the Global Fund for Decent Work and Tripartite Dialogue, and Baltic Sea Labour Network Project for promoting social dialogue that was partly financed by the European Regional Development Fund.²⁹

In addition various conferences are organized in Latvia with the aim to promote the joint consultations and social dialogue. For example, within Latvian Presidency of the Council of the European Union the social partners' forum 'Role of Social Dialogue in Ensuring the Economic Growth and Qualitative Work Places' in Riga on March 31 2015 took place. Another international conference on employers involvement in education will take place in Riga in May 2015 as well.

2.1.2.2. Article 6 Para. 2

The legal framework for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements is mainly provided by the Labour Law. Pursuant to Article 17 (1) of the Labour Law the following matters may be negotiated in a collective agreement: organisation of work remuneration and labour protection; establishment and termination of employment legal relationships; skills development; work arrangement; social protection of employees. Other issues related to employment legal relationships may as well be negotiated and mutual rights and duties may be determined.

²⁵ Strengthening of the administrative capacity of Free Trade Union Confederation of Latvia <http://www.lbas.lv/projects/strengthening_of_capacity> accessed 25 March 2015 [Latvian].

²⁶ Strengthening of the Employers' Confederation of Latvia administrative capacity in regions <<http://www.ddd.lv/projekts/ddd-administrativas-kapacitates-stiprinasana-regionos-2/>> accessed 25 March 2015 [Latvian].

²⁷ Practical implementation of the legislation of labour relations and occupational safety in sectors and undertakings <<http://www.ddd.lv/projekts/darba-attiecibu-un-darba-drosibas-normativo-aktu-praktiska-piemerosana-nozares-un-uznemumos/>> accessed 25 March 2015 [Latvian].

²⁸ Improvement of sectorial social dialogue in Latvia <<http://www.ddd.lv/projekts/nozaru-sociala-dialoga-uzlabosana/>> accessed 25 March 2015 [Latvian].

²⁹ Project BSLN – Baltic Sea Labour Network <http://www.lbas.lv/projects/innovation_norway?locale=en> accessed 25 March 2015 [Latvian].

As regards the hierarchy between the terms and conditions of employment found in the labour contract, in the collective agreement and the law, at the top of the hierarchy stands the Labour Law. The terms and conditions under the collective agreement shall not contradict the law (be less advantageous to the employees in comparison with the law). However, the collective agreement may freely determine more favourable terms and conditions for the employees than the law provides that in principle conforms with the aim of the collective agreement. The terms and conditions under the labour contract, in turn, must comply with the terms and conditions under the law and the collective agreement. Only in case the concrete terms and conditions are more beneficial to the employee, they will prevail.

Under Article 19 (1) of the Labour Law a collective agreement shall be concluded for a specified period of time or for a certain period of time required for the performance of specific work. According to the same provision if a collective agreement does not specify a time of effect, the collective agreement is deemed to have been entered into force for one year.

Pursuant to amendments to Article 22 (1) of the Labour Law from March 4 2010 for a collective agreement entered into by an undertaking to be valid, its approval at a general meeting (conference) of employees is required, except those collective agreements which have been entered into by an employer and employee trade union which represents at least 50% of employees of the undertaking.

As regards the legal framework applicable to the public sector, of particular importance is the Law on Remuneration of Officials and Employees of State and Local Government Authorities (adopted on December 1 2009, in force since January 1 2010). Article 3 (1) provides that the state or local government authority shall when developing regulatory enactments and collective agreements consult the representatives of officials (employees) regarding remuneration in accordance with the regulatory enactments regulating employment legal relations, position legal relations or course of the service.

2.1.2.3. Article 6 Para. 3

Conciliation and arbitration processes are governed by Article 25, 26 and 27 of the Labour Law and by the Labour Dispute Law. Besides the collective disputes might be settled by the new Arbitration Law if parties agree in writing on settlement of the collective disputes in arbitral

tribunal (Article 12 (1) of the Labour Dispute Law). On June 18 2014 the Mediation Law came into force and it also governs the mediation process in labour rights.

2.1.2.4. Article 6 Para. 4

The provisions regarding the right to strike are provided in the Strike Law. Pursuant to Article 16 of the Strike Law members of certain professions do not have right to strike. This right is prohibited to judges, prosecutors, members of the police, fire-protection, fire-fighting and rescue service employees, border guards, members of the State security service, warders and persons who serve in the National Armed Forces.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

2.2.1. Article 5 of the ESC.

There have been no substantial changes to the legal framework governing the right to association in Latvia.³⁰ The most important step lately was the adoption of the new Trade Union Law (please see the response under 2.1.1). However, as already mentioned the main reason for adopting the new Law was the out-dated previous regulation, not austerity measures.

As it was stated above under 2.1.1 by adopting the new Trade Union Law now the lower number of members is required to form a trade union (Article 7 of the Trade Union Law). In such a way the conformity with the requirements of the Social Charter is sought to be ensured taking into account the Conclusions XVII-2, XVIII-2 and XIX-3 of the Committee stating that the high number of members to form a trade union constitutes an unreasonable obstacle to the right to organize.³¹

2.2.2. Article 6 of the ESC.

As regards Article 6 (3) of the ESC, on January 1 2015 the new Arbitration Law came into force. Pursuant to amendments made to the Article 20 (2), (3) of the Labour Dispute Law the

³⁰ 9th National Report on the implementation of the European Social Charter submitted by the government of Latvia (Articles 5 and 6 for the period 01/01/2008 – 31/12/2011), 5.

³¹ Ibid, 22.

collective disputes shall be arbitrated and the arbitral tribunal has to be set up pursuant to the Arbitration Law. However, these changes are not made due to the austerity measures but the improvement of the arbitration process. No other amendments to the Labour Dispute Law have been made since it came into force on January 1 2003.

As regards negotiation procedures (Article 6 (2) of the ESC) the Committee noted that the measures described in the 9th National Report on the implementation of the European Social Charter submitted by the government of Latvia failed to contribute to increasing the number of workers covered by collective agreements during the reference period.³² In this respect it must be explained that the main reason why the number of collective agreements has decreased is that due to economic crisis, firstly, a significant increase of unemployment was observed. Secondly, the main objective for employers was therefore to retain labour and social guarantees in already existing collective agreements. Thirdly, during this time period a significant number of micro-enterprises has increased in Latvia and in small companies employees may effectively represent their interests by themselves.³³ Thus, the decrease of collective agreements concluded might have been mainly affected by the objective circumstances described before not by the failure of the state to provide sufficient measures to promote the conclusion of collective agreements.³⁴

The other aspect that must be focused on is concern of the Committee regarding the collective bargaining in public administration in Latvia. The Committee noted that collective bargaining in public administration might be formal procedure with no real substance, since all employment conditions are fixed by law, having based this statement on the 2009 ITUC Survey of violations of trade union rights.³⁵ Originally the Law 'On Remuneration of State and Local Government Institutions' Officials and Employees in 2009' (adopted on January 1 2009, entered into force on January 1 2010) has been developed mostly due to the requirements of the International Monetary Fund to restrict budget expenditures of officials (employees) remuneration in State

³² European Social Charter European Committee of Social Rights Conclusions XX-3 (2014) (LATVIA) Articles 5 and 6 of the 1961 Charter, 7.

³³ 9th National Report on the implementation of the European Social Charter submitted by the government of Latvia (Articles 5 and 6 for the period 01/01/2008 – 31/12/2011), 34.

³⁴ Ibid, 34.

³⁵ European Social Charter. European Committee of Social Rights Conclusions XX-3 (2014) (LATVIA) Articles 5 and 6 of the 1961 Charter, 7 - 8.

and Local Government budget funded institutions.³⁶ In this regard it should be explained that the new Law on Remuneration of Officials and Employees of State and Local Government Authorities (adopted on January 1 2009, entered into force on January 1 2010) provides only frame for remuneration and all provisions of collective agreements are not fixed by law.³⁷ Besides on October 14 2010, the amendments to this law have been made providing that additional fee related activities might be provided by collective agreements within the framework of the financial resources of state or local government institution.³⁸

The last legal amendment that might raise a question of possible inconsistency with the Article 6 (2) of the ESC is the amendment to Article 18 (4) of the Labour Law from March 2010. Thus, pursuant Article 18 (4) of the Labour Law if the members of an organisation of employers, or an association of organisations of employers, or an association of organisations of employers, employ more than 50% of the employees in a given sector, a general agreement between the above-mentioned organisation or association and a trade union or trade unions' association will be binding on all employers and their employees within the sector. The Committee is concerned whether such regulation complies with the principle that 'the extension of collective agreements should take place subject to tripartite analysis of the consequences it would have on the sector to which it is applied'.³⁹ In this regard it should be mentioned that the aim of these amendments itself was to align social security differences within one industry.⁴⁰ Therefore although the lack of tripartite analysis might be observed, the aim of such a regulation should in principle improve the situation of employees and lead to the protection of their rights and interests.

There have been no substantial changes regarding paragraph 4 of the Article 6 of the ESC affected by the austerity measures. No amendments have been made to the Strike Law.

³⁶ 9th National Report on the implementation of the European Social Charter submitted by the government of Latvia (Articles 5 and 6 for the period 01/01/2008 – 31/12/2011), 35.

³⁷ Ibid, 34.

³⁸ Ibid, 35.

³⁹ European Social Charter. European Committee of Social Rights Conclusions XX-3 (2014) (LATVIA) Articles 5 and 6 of the 1961 Charter, 8 - 9.

⁴⁰ The annotation to the Amendments to the Labour Law 2009
<<http://titania.sacima.lv/LIVS/SacimaLIVS.nsf/0/2114A900FCDFEFDDC22575A2004CA892?OpenDocument#>> accessed 20 April 2015 [Latvian].

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

Till the year 2013 Article 4 ESC has not been binding on Latvia. On February 14 2013 Latvia has ratified paragraphs 2, 3, 4 and 5 of Article 4 of the ESC.⁴¹ There have been no substantial changes in law regarding the Article 4 of the ESC affected by the austerity measures.

3. SOCIAL PROTECTION

There are several legal acts that regulate social issues in Latvia, but regarding to this topic it is important to focus only to the ones that deal with social protection issues.

The Law on Social Security contains basic principles of social security scheme. The Law on State Social Insurance regulates the state social insurance system, as the social insurance is a part of the State social security system. The Act that regulates social assistance is the Law on Social Services and Social Assistance that was mainly adopted because of the necessity to fulfil the obligations of the European Social Charter. Also there are several Cabinet of Ministers Regulations regulating the same matters. The responsible authority for these issues is The State Social Insurance Agency that is a state institution under supervision of the Ministry of Welfare, performing the public administration function in the area of social insurance and social services.

3.1. Has the social security scheme in your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by their own efforts or from other sources?

In Latvia these people have the right to have the state social assistance. There are several ways how the assistance is provided:

Benefit for ensuring the guaranteed minimum income level — a benefit in cash and kind or a benefit in cash or kind which is granted to families or separately living persons who, due to objective circumstances, do not gain sufficient income and who are recognised to be needy. This

⁴¹ Law on the Revised European Social Charter 2013 [Par pārskatīto Eiropas Sociālo hartu].

benefit shall ensure the guaranteed minimum income level for each family member (According to the Section 1 10) of the Law on Social Services and Social Assistance). Cabinet of Ministers Regulation No. 299 “Regulations Regarding the Recognition of a Family or Person Living Separately as Needy” regulates person’s recognition as needy. According to Paragraph 2 a family or a person can be recognised as needy if its average monthly income during the last three months does not exceed EUR 128.06 and also if:

- It does not own monetary accumulations, securities or property, except that referred to in Paragraph 19⁴² of this Regulation;
- It has not entered into a maintenance contract;
- It does not receive services of a long-term social care and social rehabilitation institution or is not imprisoned;
- The person has not registered with the State Employment Agency as an unemployed person in accordance with Section 37, Paragraph one of the Social Services and Social Assistance Law.

There is an exception in the Paragraph 10¹ of this regulation – “If the income of a family (person) does not exceed the amount referred to in Paragraph 2 of this Regulation, however, other conditions of this Regulation are not met, the social service office of the local government may take a decision on conformity with the status of a family (person) in need for a time period – one month. In such case the family (person) shall ensure the fulfilment of all conditions within one month from taking of the decision.”

⁴² Paragraph 19: „Within the meaning of this Regulation the following shall not be deemed property:

19.1. the immovable property or a part thereof where the submitter and other persons who have a joint household with the submitter have declared their place of residence and reside;

19.2. the immovable property and savings of monetary funds of a child in credit institutions, if there is no permission of the Orphan’s Court to take actions with them;

19.3. apartment or house equipment, clothing, household objects, children’s accessories, as well as other property and objects which belong to the submitter and other persons who have a joint household with the submitter and against which recovery according to execution documents cannot be directed in accordance with Annex 1 to the Civil Procedure Law, except the monetary funds indicated in Paragraph 3 of the referred-to Annex;

19.4. the movable and immovable property stated in the binding regulations of the local government;

19.5. capital shares and stock, if the owner has no possibilities of taking actions with such property due to insolvency proceedings or according to an adjudication of other competent authorities.”

The section 35 of the Law on Social Services and Social Assistance obliges local government to disburse a benefit for the provision of the guaranteed minimum income level from the basic budget.

State Social Security Benefit - shall be granted to a person who does not have the right to receive a State pension (except the pension received by a disabled person for the loss of a provider) or insurance compensation for damages related to an occupational accident or occupational disease if a person (According to the Article 13 of Law on State Social Allowances).

There are three groups of persons to whom this benefit can be granted:

- A person who is not employed and has exceeded by five years the age which, in accordance with the Law on State Pensions, has been specified for a person in order for him or her to obtain the right to the old age pension – the benefit is granted for life;
- A person who has been recognized as a disabled person and has exceeded the age of 18 years – the benefit is granted for the time of the specified disablement;
- A person who has not attained the age of legal majority, has lost one or both providers and has not entered into marriage – the benefit is granted:
 - (i) Until a person attains of the age of legal majority;
 - (ii) If a person is studying at an institution of general education or vocational - until the age of 20;
 - (iii) If a person is studying in the day division (full time studies) at an institution of higher education - until the age of 24.

3.1.2. Persons who are unable to secure adequate resources either by their own efforts or from other sources due to illness?

There are several ways how the assistance is provided. The Law on Maternity and Sickness Insurance regulates the Sickness benefit. According to the Section 11 of The Law „A sickness benefit shall be granted if a person is absent from work and thereby paid labour income or if a self-employed person loses income due to the following reasons:

- Loss of capacity for work due to sickness or injury;
- A need to receive medical assistance of therapeutic or prophylactic nature;

- Isolation is necessary due to quarantine;
- Treatment in a medical treatment institution during the period of recuperation after a sickness or injury, if such treatment is required in order to restore capacity for work;
- Nursing of a sick child aged up to 14 years; and/or
- Prosthetics or orthotics in a hospital.”

Grounds for Granting of Sickness Benefit are regulated in Section 12 of the Law:

A sick-leave certificate issued in accordance with the procedures prescribed by the Cabinet, an employer certification regarding the absence of an employee from work or a certification of a self-employed person regarding incapacity to work shall be the grounds for granting a sickness benefit. In the case specified in Section 15⁴³, Paragraph one of this Law – a sick-leave certificate only.

Time period for disbursement of sickness benefit is regulated in Section 13 of the Law:

A sickness benefit shall be granted and disbursed for the time period from the 11th day of incapacity for work until the day the capacity for work is restored, but not longer than for 26 weeks, counting from the first day of incapacity for work if incapacity is continuous, or not longer than for 52 weeks in a period of three years if incapacity for work recurs with intervals.

On the basis of the State Medical Commission for Expert-Examinations of Health and Working Ability opinion, a sickness benefit, if it is necessary for the provision of wholesome treatment, shall be granted and disbursed also for a continuous period of incapacity for work which continuous after the 26 weeks specified in Paragraph one of this Section, but not longer than 52 weeks, counting from the first day of incapacity for work.

⁴³ Section 15.” Granting of Sickness Benefit to Persons whose Incapacity for Work Occurred within a Period of One Month after the Expiry of the Period of State Social Insurance Contributions

(1) A sickness benefit for the time period from the 11th day of incapacity for work shall be granted and disbursed to a person whose incapacity for work occurred within a period of one month after the expiry of the period of State social insurance contributions if such person has been insured for the last two months prior to the expiry of the period of such contributions.

(2) Paragraph one of this Section is not applicable to cases where incapacity for work has occurred due to the nursing of a sick child.

(3) If a person specified in Paragraph one of this Section has the right to sickness benefit and unemployment benefit at the same time, only the sickness benefit shall be disbursed until recovery of capacity for work.”

According to the Section 15 of The Law „If incapacity for work has occurred as a result of contraction of tuberculosis, a sickness benefit shall be granted and disbursed for the time period until the restoration of the capacity for work or the day disability is determined.”

According to the Section 17 of the Law „A sickness benefit shall be granted in an 80% amount of the average wage of the benefit recipient that is subject to insurance contributions”.

Section 16 of the Law regulates situation for persons whose incapacity for work occurred during annual leave or when such persons were on leave without maintaining remuneration for work.

Cases when sickness benefit is not granted: „A sickness benefit shall not be granted if:

- A person gains income as an employee or self-employed person during incapacity for work;
- Incapacity for work has occurred to a person while such person was committing a crime, or as a result of such crime and such fact has been determined by a court;
- A person has deliberately and significantly harmed his or her own health or the health of persons under care and such fact has been determined by a doctor; or
- A person has attempted to obtain the benefit by fraud and such fact has been determined by a doctor or the state social insurance agency.

If a person has lost his/her ability to work, he/she can receive compensation for the loss of ability to work, that is regulated in the Law on Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases. According to Section 20 of the Law “depending on the loss of ability to work determined by the State Medical Commission, insurance compensation for the loss of ability to work shall be determined for the insured person; the amount of such compensation shall be specified as a percentage of the average monthly wage subject to insurance contributions in the following amounts:

- 80% – if the loss of ability to work is 100%;
- Up to 80% – if the loss of ability to work is 80 - 90%;
- Up to 65% – if the loss of ability to work is 50 –79%;
- Up to 50% – if the loss of ability to work is 25 – 49%”.

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

Austerity measures resulted in adaptation of Law On Payment of State Allowances during the time period from 2009 to 2012 (With amendment on April 14 2011 the duration of measures described in the Law was extended to 2014). On December 1 2009 Saeima (Latvian legislator) amended it with the Section 12: „During the time period from January 1 2010 to December 31 2012 the sickness benefit granted in accordance with Section 17 of the Law On Maternity and Sickness Insurance, the sickness benefit granted in accordance with Section 19 of the Law On Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases, and the maternity benefit and the paternity benefit granted in accordance with Section 11 of this Law shall be disbursed in the following amount:

- If the amount of the granted benefit per one calendar day is up to LVL 11.51 (EUR 16.38)(including), – in the amount granted; or
- If the amount of the granted benefit per one calendar day exceeds LVL 11.51, – per one calendar day LVL 11.51 and 50% of the amount of the granted benefit, which in one calendar day exceeds LVL 11.51, shall be disbursed.”

The rest of the austerity measures that had impact on the Sickness Benefit, the benefit for ensuring the guaranteed minimum income level and to the compensation for the loss of ability to work are reflected in the table below.

Amount of the benefit for ensuring the guaranteed minimum income level in 2008 ⁴⁴	Amount of the benefit for ensuring the guaranteed minimum income level after austerity measures – in 2009 ⁴⁵	Conclusion
Amount was calculated by using the following formula:	Amount is calculated using by the following formula:	The new regulation includes the first LVL 50 (EUR 71) of the allowance

⁴⁴ It was regulated in Cabinet of Ministers Regulation No 96 „Procedures for the Granting, Calculation and Disbursement of the Benefit for Ensuring the Guaranteed Minimum Income Level” Adopted February 25 2003.

⁴⁵ Regulated in Cabinet of Ministers Regulation No 550 „Procedures for the Calculation, Granting, Disbursement of the Benefit for Ensuring the Guaranteed Minimum Income Level and for the Entering into an Agreement Regarding Participation” Adopted June 17 2009.

<p>$P = GMI \times n - I$, where</p> <p>P – the amount of the benefit GMI – the guaranteed minimum income level specified by the Cabinet n – the number of family members I – the average monthly income of the family during the time period of 3 months (not including the first LVL 50 (EUR 71) of the allowance for child care, which is received by a person in accordance with the Law on State Social Benefits, who is taking care of a child at the age up to 1 year, and the social benefits of the local government).</p>	<p>$P = GMI \times n - I$, where</p> <p>P – the amount of the benefit; GMI – the guaranteed minimum income level stipulated by the Cabinet or the local government; n – the number of family members; I – the average monthly income of the family (person) which have been evaluated in accordance with the laws and regulations regarding recognition of a family (person) as needy.</p>	<p>for child care, which is received by a person in accordance with the Law on State Social Benefits, who is taking care of a child at the age up to 1 year, and the social benefits of the local government in the average monthly income of the family, so the total amount of the benefit is decreased.</p>
<p>Compensation for the Loss of Ability to Work in 2008</p>	<p>After amendments on June 16 2009</p>	<p>Conclusion</p>
<p>Depending on the loss of ability to work determined by the State Medical Commission, insurance compensation for the loss of ability to work shall be determined for the insured person; the amount of such compensation shall be specified as a percentage of the average monthly wage subject to insurance contributions in the following amounts:</p>	<ol style="list-style-type: none"> 1) 80% – if the loss of ability to work is 100%; 2) up to 80% – if the loss of ability to work is 80 - 90%; 3) up to 65% – if the loss of ability to work is 50 –79% 4) up to 50% – if the loss of ability to work is 25 – 49%; 	<p>Since January 2010 insurance compensation is given only to persons starting with 25% loss of ability of work</p>

<p>1) 80% – if the loss of ability to work is 100%;</p> <p>2) up to 80% – if the loss of ability to work is 80 - 90%;</p> <p>3) up to 65% – if the loss of ability to work is 50 –79%;</p> <p>4) up to 50% – if the loss of ability to work is 25 – 49%;</p> <p>and</p> <p>5) up to 30% – if the loss of ability to work is 10 – 24%</p>		
The Sickness Benefit in 2008	The Sickness Benefit after amendment on June 16 2009	Conclusion
<p>Section 18 1) of the Law: „A sickness benefit shall not be granted if:</p> <p>1) a person gains income at his/her workplace during incapacity for work.”</p>	<p>„A sickness benefit shall not be granted if:</p> <p>1) a person gains income as an employee or self-employed person during incapacity for work..”</p>	<p>Since 2009 self- employed persons can't receive Sickness Benefit, if they gain income as self-employed person during time of sickness.</p>

Table 1.

Because of the austerity measures and the economic situation social rights has been one of top issues in The Constitutional Court's decisions. It is worth to mention that there was a case⁴⁶ before the Constitutional Court where the compliance of this amendment of Law On Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases with Articles 1⁴⁷, 91⁴⁸ and 109⁴⁹ of the Constitution of the Republic of Latvia was challenged. The

⁴⁶ *On Compliance of Section 20 (9) of the Law “On Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases” with Article 1, Article 91, Article 105 and Article 109 of the Satversme of the Republic of Latvia and Compliance of Section 14 of the Same Law and Section 20 (9) of the Law “On Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases” (Wording of the Law from 25 November 2004 to 16 June 2009) and Section 6 Paragraph 1 of the Law “Amendments to the Law “On Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases” with Article 1, Article 91 and Article 109 of the Satversme of the Republic of Latvia [2010] Constitutional Court of Latvia.*

⁴⁷ Article 1 of the Constitution of the Republic of Latvia: „Latvia shall be an independent and democratic Republic.”

⁴⁸ Article 91 of the Constitution of the Republic of Latvia: „All persons within the Latvia are equal before the law and the courts. Human rights shall be implemented without any discrimination.”

Court ruled, that the amendment does comply with Article 1, Article 91 and Article 109 of the Constitution of the Republic of Latvia.

Certainly the austerity measures had an impact on the social security scheme. Although there have been additional restrictions and reduction, it is clear that such state action was necessary and motivated. Still the social protection was ensured, and there is no reason to doubt that it is in compliance with the ESC.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

In Latvia according to the Section 13 of the Law on Social Security there are social services that are ensured by State or local government monies or material support or other type of service, in order to promote the full implementation of a person's social rights.

The Section 14 of the Law describes duties of Social Service Providers: „The duty of a social service provider is to ensure the following:

- That everyone receives free consultations regarding their social rights, their implementation and their duties thereof;
- That everyone, who has the rights thereof, shall duly receive the relevant social services and in their full extent; and,
- That the requesting and receiving of social services is as straightforward as possible.

Social service providers shall co-operate with other institutions in the interests of social service recipients.”

We can observe that the State executes Article 13 (3) of the ESC through social service providers, which provide advice and personal help to persons in need.

There have not been any amendments in the Law on Social Security during the period of austerity measures.

⁴⁹ Article 109 of the Constitution of the Republic of Latvia: „Everyone has the right to social guarantees for old age, work disability, unemployment and other cases determined by law.”

According to Section 10 of the Law on Social Services and Social Assistance: “In order to ensure the professional assessment of inhabitants’ needs and the qualitative provision of social services and social assistance, each local government shall have at least one social work specialist per every thousand inhabitants.

In order to ensure the provision of social services and social assistance and the administration of services, each local government shall establish a local government institution – a social service office.”

There have not been any amendments in the Law on Social Services and Social Assistance during the period of austerity measures.

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

4.1. Summary of the Situation in Latvia.

On 14 February 2013 Latvia ratified the Revised European Social Charter (furthermore – ESC), which came into force on 26 February accepting 90 of the 98 paragraphs of the Revised Charter. By means of this ratification procedure *inter alia* Latvia undertook the task to ensure the right to protection against poverty and social exclusion provided by Article 30 of the ESC. The ratification of Article 30 was the result of long-term discussions between the coalition parties of the Parliament. As the Minister of Welfare noted at the time of the ratification process: “*After overcoming the economic crisis now is the real time to act regarding a new strategy of discouraging poverty in the State*”.⁵⁰

⁵⁰ *Ratificē Eiropas Sociālo hartu, bet neatzīst tiesības uz pienācīgu atalgojumu* <<http://www.ir.lv:889/2013/2/15/ratificē-eiropas-socialo-hartu-bet-neatzīst-tiesības-uz-pienācīgu-atalgojumu>> accessed 17 April 2015 [Latvian].

Over the past two years since the ratification, the statistics show no major changes regarding the poverty levels and risk of being socially excluded in Latvia. The latest inquiries of Central Statistical Bureau of Latvia indicate that 32.7% of people in Latvia have been at risk of poverty or social exclusion in 2013. It is by 2.5% less than year before. At the same time, 21.2% of the people in Latvia have been only at risk of poverty, which is by 1.8% more than in 2012, which means that every fifth person in Latvia is at risk of poverty.

When describing the measures taken by Latvia to promote the effective access of persons who live or risk living in a situation of poverty several factors have to be taken into account. Firstly, there are no statistics available for 2014, which could be decisive for proper conclusions. Secondly, social exclusion and poverty are subjects, which include many observable aspects, which cannot be researched due to the limited extent of this work. Thirdly, most of the measures which can be considered as providing assistance to persons who live or risk living in a situation of poverty in Latvia were introduced already before the ratification of Article 30.

4.2. Measures Taken by Latvia.

The Ombudsman of Latvia has pointed out that the key-problem regarding human and social rights in Latvia is the high poverty level.⁵¹

Employment issue is one of the key reasons for poverty and social exclusion not only in Latvia but all over EU. The registered unemployment rate in Latvia was 9% as of January 31, 2015 as provided by the statistics of State Employment Agency of Latvia.⁵² State Employment Agency is a State administration institution under the supervision of the Ministry of Welfare that implements State policy to decrease unemployment and number of unemployed, support program for job-seekers and persons under risk of unemployment. With means of the Law on “Support for Unemployed Persons and Persons Seeking Employment” Latvia is providing support for unemployed persons, persons seeking employment and persons subject to the risk of unemployment in order to facilitate their ability to compete in the labour market. This means that State Employment Agency is also responsible for organising training courses for the unemployed, which include language courses, driving courses as well as several specific –

⁵¹ Viktors Avotiņš, *Juris Jansons: Pamatproblēma ir nabadzība* <<http://nra.lv/latvija/130033-juris-jansons-pamatproblema-ir-nabadziba.htm>> accessed 16 April 2015 [Latvian].

⁵² Reģistrētais bezdarba līmenis valstī <<http://nva.gov.lv/index.php?cid=6>> accessed 12 March 2015 [Latvian]

profession related courses. Also Latvia has taken measures by increasing the minimum wage to EUR 360 and reducing the personal income tax to 23% since 1 January 2015.

According to Article 15 of the law “On Local Governments” ensuring social care to residents (social assistance for poor families and socially vulnerable persons, ensuring places for old people in old-age homes, ensuring places for orphans and children without parental care in training and educational institutions, provision of overnight shelters for the homeless, and others) is the autonomous function of local governments in Latvia. This means that all activities related to housing of homeless persons are provided by institutions of local governments. This function includes maintaining rest-houses and pensions as well as allocating social flats according to law. Similarly it is the autonomous function of a local government to provide educational, social and cultural assistance to persons in need.

The main focuses regarding the reduction of poverty levels in Latvia (as set out by the government) 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.⁵³

Additionally the European Commission has approved that Latvia will receive EUR 41 million in the period from 2014 to 2020 from the Fund for European Aid to the Most Deprived to support the provision of food and other basic hygiene and household items to those most in need in the country.⁵⁴ This sum will be complemented by EUR 7.2 million from national resources.

On 20 December 2012 the “National Development Plan of Latvia for 2014-2020” (furthermore – Development Plan) was approved by Saeima.⁵⁵ Requirement of the Development Plan is stipulated by a number of laws and regulations, as it is the main medium term planning document in Latvia. One of the main goals of the Development Plan is implementing the measures to raise the standard of living of employed persons by reducing the proportion of

⁵³ *Nacionālais sociālais ziņojums: Latvija*
<http://www.lm.gov.lv/upload/sociala_aizsardziba/sociala_ieklausana/nsr_fin2_lv.pdf> accessed 12 March 2015 [Latvian].

⁵⁴ Poverty: Commission adopts Latvian programme to spend €41 million from Fund for European Aid to the Most Deprived <http://europa.eu/rapid/press-release_IP-14-1234_en.htm> accessed 13 March 2015.

⁵⁵ *National Development Plan of Latvia for 2014 – 2020*
<http://www.pkc.gov.lv/images/NAP2020%20dokumenti/NDP2020_English_Final.pdf> accessed 15 June 2015.

employees exposed to the risk of poverty in the 18 to 64 age group from 9.5% in 2010 to 5% in 2020. Also it is planned to reduce the poverty risk of children from 25% in 2010 to 20% in 2020 in way of a comprehensive family support system that encourages a reconciliation of professional and family life. The existence of such government strategy as provided in the Development Plan indicates that the reduction of poverty levels in Latvia is one of the main nation wide goals in social sphere.

4.3. The Impact of Austerity Measures

The austerity measures and the activities carried out by the government regarding the financial crisis have had serious impact on social rights in Latvia. Situation has changed since 2008 which can be considered as the start of implementing austerity measures in Latvia but still, as provided by statistics – huge amount of people in Latvia are at risk the of poverty or social exclusion. From the other side, the continuous amendments in law, as well as initiatives from state and local governments indicate that the situation could change. Objective reasoning for the impact of ratification of Article 30 would ask for statistics of 2014, but the overview of the latest initiatives of the Latvian government shows that situation regarding risk of poverty or being socially excluded in Latvia is being reduced.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

Latvia has a large number of people with disabilities. The legal framework for the persons with disabilities is based on three different sources of law – national law, EU law and international

public law⁵⁶, namely, mostly the UN Convention on the Rights of Persons with Disabilities (hereinafter – the “UN Convention”). Such a wide range of applicable law provides the possibilities of misinterpreting the regulations and discrepancies between the meanings of different terms.

Latvia has a large number of people with disabilities. The legal framework for the persons with disabilities is based on three different sources of law – national law, EU law and international public law⁵⁷, namely, mostly the UN Convention on the Rights of Persons with Disabilities (hereinafter – the “UN Convention”). Such a wide range of applicable law provides the possibilities of misinterpreting the regulations and discrepancies between the meanings of different terms.

The Constitution of the Republic of Latvia has only one specific article regarding the persons with disabilities, namely, Article 110 where the fundamental right for children with disabilities is granted. Article 91 provides general prohibition of the unequal treatment and prohibition of discrimination. The Latvian Disability Law, namely, the most specific law regarding the disability, describes the persons with disabilities in a medical manner. It states that person, for whom a disability has been determined in accordance with the specific procedure (dividing persons with disabilities in 3 different groups), is a person with disability. On the national level persons with disabilities are also protected by the Latvian Labour Law, however, no separate legal definition for persons with disabilities has been introduced there. Therefore sometimes the scope of protection is limited with the strict and purely medical understanding of “persons with disabilities” within the Disability Law.

From the legal perspective of EU law, persons with disabilities are protected in the field of employment by the Council Directive 2000/78/EC (hereinafter – the “Directive”), and by the Charter of Fundamental Freedoms of the European Union, where Article 21 explicitly forbids the discrimination on the grounds of disability. It must be taken into account that the Charter is primary source of law, therefore is directly applicable in Latvia, when exercising EU Law.

⁵⁶ Dupate Kristine, „The concept of disability in international law and its impact on the EU and Latvian law in the field of employment”, *72th International Scientific Conference “The Quality of Legal Acts and its Importance in Contemporary Legal Space”*. University of Latvia, p.357.

⁵⁷ Dupate Kristine, „The concept of disability in international law and its impact on the EU and Latvian law in the field of employment”, *72th International Scientific Conference “The Quality of Legal Acts and its Importance in Contemporary Legal Space”*. University of Latvia, p.357.

According to the UN Convention persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

By comparing the definition of persons with disabilities from the Latvian Disability Law with the Directive and UN Convention, it is evident, that the EU law legal framework and UN Convention has a much broader definition of persons with disabilities. Such approach in local legislation leads to misunderstandings and unclear status of a lot of persons with disabilities, which maybe have not received their status according to the Latvian Disability Law but should be considered as persons with disabilities according to the UN Convention and within the meaning of Directive 2000/78/EC. However, it should be noted that additionally there is alternative Latvian understanding of persons with disabilities which was introduced in the Latvian Labour Law quite recently and is aimed to ensure social security and not so much to ensure legal aid in the area of labour law.

Since not only Latvia, but also the European Union has acceded to this UN Convention, the understanding of the term, as well as the scope of application of rights should be seen in the light of UN Convention.

Latvian ombudsmen has initiated examinations on the issue of persons with disabilities and their access to the society, but due to lack of binding power of the reports and opinions of ombudsmen, as well as not so high activity from the society, there are overall only six reports and opinions, which provide the analysis of the situation concerning the persons with disabilities.⁵⁸

In frame of Latvian presidency of the Council of the EU, significant part of the programme as well as part of the focus of presidency has been introduced in regards to the persons with disabilities. Numerous conferences, workshops and discussions, as well as having promotion of persons with disabilities being organized and commitments to establish disability policy has been announced.⁵⁹

⁵⁸ Opinions and legal reports of the Latvian Ombudsmen available online <<http://www.tiesibsargs.lv/atzinumi-modulis?theme=&q=invalid>> accessed 25 June 2015.

⁵⁹ The Programme of the Latvian Presidency of the Council of the European Union <https://eu2015.lv/images/PRES_prog_2015_EN-final.pdf> accessed 15 March 2015.

Ministry of Welfare in Latvia is responsible for the implementation of measures concerning the persons with disabilities. In general, Latvia has introduced different measures for persons with disabilities: 1) economic (allowances, compensations etc.); 2) special measures for education; 3) special measures for employment; 4) social care; and finally, - 5) vocational rehabilitation.

Article 112 of the Constitution of the Republic of Latvia provides a fundamental right to education. The state shall ensure free primary and secondary school education. Unfortunately the Law on Education does not provide any provisions for the children and youth with disabilities but Article 2 provides a general statement that every resident of Latvia has the opportunity to develop his or her mental and physical potential, in order to become an independent and a fully developed individual, a member of the democratic State and society of Latvia. Article 4 of the Law on Social Security states that each person, who wishes to acquire an education that corresponds with their interests and abilities has the right to individual support for their education, if they themselves do not have access to the necessary resources. Moreover, a person who is working or wishes to work in paid employment has the right to the following:

- A free consultation, on choosing an education and an occupation;
- Individual support for the continuation of vocational education;
- Assistance in the finding of a suitable workplace; and,
- Material security in the event of unemployment or the insolvency of their employer.

Article 110 of The Constitution of the Republic of Latvia expressly provides that the state shall provide additional assistance to the children with disabilities. Such a fundamental right is granted to all residents of Latvia. The Law on General Education (primary and secondary school education) provides the definition of “special education programmes”. Such special education programmes are designed for children and youth with disabilities to acquire the education, although linguistically the law does not have any reference to disabilities but special needs, disorders etc. The Cabinet of Ministers Regulation No 710 from 16 October 2012 “On the provision of general primary and secondary educational institutions for the students with special needs” provide the support for schools, depending on the chosen type of inclusion of children with disabilities in the educational programme. Namely, the support consists not only of financial nature, but also of the professionals for the work with children and youth with

disabilities, doctors, teachers, and psychotherapists and other specialists as well as setting up of special inventory and appropriate environment.

There are approximately 12,000 children with disabilities in Latvia, who are in a need of additional support from the state, namely, in form of special educational programmes or other activities, which would provide such kids with integration in the society and respective level of education.

In Latvia there are 65 schools where children with disabilities have the possibility to receive proper education, including special schools, special classes in ordinary schools and private schools. The aforementioned number is approximate and entails both ordinary schools with special programmes for children with disabilities and schools, which are specialized only for children with disabilities. Only one third of all children with disabilities are going to the ordinary schools. In ordinary schools additional attention and assistants for the children are provided. In practice, schools are requesting financial assistance from the respective authorities individually. Achievements, which a student with special needs has attained during his or her studies, shall be evaluated in conformity with the requirements of a special education programme and taking into account the state of health, skills and development of the student.

According to the law the lessons within this special education programmes are also set up to be shorter than in the ordinary school – instead of 40 minutes the lesson is 30 minutes long. Special schools, especially the ones, which are provided by local municipalities, by its definition, shall provide education for the children, living in the neighbourhood of respective municipality. By assessing the geographic proximity of the schools it should be concluded that they are accessible, especially the ones which are supported by the local municipality, however special schools are rather geographically separated and are not quite accessible for everybody.

Persons with disabilities (adults) may receive help of special institution called the Social Integration State Agency and one high school with vocational education. The Social Integration State Agency provides professional adequacy and job simulation tests, which consists of training programmes; psycho-social assistance; assistance in placement and job search; driving lessons and car adaptation. The Social Integration State Agency as a state institution implements a lot of projects with EU Funding. With assistance of the Social Integration State Agency persons with disabilities may attend following professional programmes and become accountant, computer

systems technician, secretary, as well as learn retail and wholesale work, hospitality service, bookkeeping, cooking and baking. At the college level persons with disabilities may become human resource manager, accountant, marketing and sales manager, hotel service manager, computer system and network administrator, programmer and sign language interpreter.

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

In the area of employment Latvia has made changes in the legislation, as well as prepared special programmes for encouraging employers and employees to promote employment relationship with persons with disabilities.

Based on the Directive, as well as UN Convention the Latvian Labour Law has specific legal norms, which are designed for persons with disabilities.

By taking into account that in Latvia there is only one definition for persons with disabilities, which is not as wide as provided in the Directive and UN Convention, quite often it is so that in the area of employment persons with disabilities do not gain the same protection as it should be. Such problems arise when as it is in Latvia persons with disabilities are understood in a very narrow sense, namely, only according to Latvian Disability Law. However, based on the provisions of the Directive, which includes broader definition of persons with disabilities, as well as UN Convention, in the area of employment persons with disabilities should be understood in much broader sense.

Not only are the rights to work of persons with disabilities protected by the Article 106 of The Constitution of the Republic of Latvia, but also Article 91 provides for prohibition of discrimination. The Latvian Labour law entails clear prohibition of discrimination of persons with disabilities. It must be noted that the Latvian Labour law clearly states that both direct and indirect discrimination is prohibited. Notwithstanding general provisions on the prohibition of discrimination, the Latvian Labour law provides also other advantages for persons with

disabilities. In particular, in case of group dismissal before the dismissal the persons with disabilities should take into consideration and chosen preferentially for continuation of work before the persons who are no recognised as persons with disabilities

Cabinet of Ministers Regulation No 75 “Regarding the Procedures for Organising and Financing of Active Employment Measures and Preventative Measures for Unemployment Reduction and Principles for Selection of Implementers of Measures” from January 25 2011 is the legal framework for the employers to set up and customize the workplace for the persons with disabilities. For instance, the aforementioned The Constitution of the Republic of Latvia Regulation No 75 are implementing the obligations of the Member State according to the Regulation No 1407/2013, No 1379/2013, No 717/2014, No 1408/2013. The State Employment Agency together with employers on a separate agreement basis shall implement measures and provide financial support set in these regulations and are implementing measures for inclusion in the labour market of persons with disabilities. Based on aforementioned Cabinet of Ministers Regulations also the youth with disabilities are motivated to be included in the labour market of Latvia.

The State Employment Agency implements a special programme in order to provide integration of persons with disabilities into to the labour market, which is also funded by the EU. Within the programme persons with disabilities receive consultations, advice and career planning, as well as professional assistance for persons with disabilities. The State Employment Agency financially supports employers, who want to employ persons with disabilities, by splitting the salary costs with the employer, and professional help for persons with disabilities to work from their home, as well as setting a goal to help young people with disabilities to start a business or to get integrated faster into the labour market.

It should be also noted that according to Latvian Labour Law the principle of reasonable accommodation is implemented. The aforementioned right of persons with disabilities is based on the Directive 2000/78/EC the employer is obliged to reasonably adjust the workplace for the persons with disabilities.

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

To sum up austerity measures in Latvia did not manifestly influence the legal situation of persons with disabilities. As previously noted the legal definition of persons with disabilities in Latvia is very narrow and it does not correspond to the meaning of persons with disabilities, mentioned in the Directive and the UN Convention. This leads to narrower scope of assistance and support to persons with disabilities and may limit their rights. Such situation is not in line with the EU law; therefore adjustments in the legal framework of the Republic of Latvia shall be taken as soon as possible.

In regards the financial situation, the austerity measures have influenced the amount of financial support, provided by the state to persons with disabilities. Thus those projects, which were mainly financed by the EU funds, have not been influenced. However, due to fiscal consolidations and other austerity measures the financing of technical equipment for persons with disabilities was so limited, that people should wait in lines for them and there were almost constitutional complaints in this regard to the Constitutional Court of Latvia. Similar situation was with other social and economic support for persons with disabilities. However, at the moment austerity measures do not have such an important effect on the rights of persons with disabilities.

As mentioned above the Latvian Presidency of the Council of the EU in 2015 is a really big hope and step forward for persons with disabilities. The Minister of Welfare of Latvia has promised that there will be a new disability policy in Europe, which means that the whole system of support of persons with disabilities shall be changed in order to provide those more possibilities, more options and more effective ways to enter to labour markets and be integrated in the society more easily. It must be also noted that in Latvia there are some very active associations of persons with disabilities who also provide assistance, guidance and consultations, as well as support by implementation of rights, granted by law.

5.2. Children and Young Persons (Article 17 ESC)

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the

training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

The state has provided access to early childhood education and care for children. There are many state and municipality funded institutions along with private institutions, however there have been problems with long queues in order to attend kindergartens - especially in cities a place in the kindergarten is not guaranteed, when parents cannot stay with the child after the parental leave expires.⁶⁰

State has created a system of public schools - there were 832 General schools at the beginning of the school year 2013/2014 of which 358 were secondary schools (1st - 12th grades). There were 29197 teachers and 209130 students, thus making 7 students per teacher.⁶¹

Children have a constitutionally protected right to free primary (1st - 9th grade) and secondary education. Furthermore, primary education is obligatory. Schools should provide children with basic school gear, e.g., necessary books and other materials, children only need to provide their own personalised gear, such as training suits etc.⁶²

Early school leaving is in the average EU level (10%). Only 10% of early leavers can find employment.⁶³

The state has provided access to free bilingual secondary education. Even though some improvements are necessary, the level of education is adequate.⁶⁴ However, Roma community experiences serious problems as there is a lack of special programmes to integrate Roma pupils.

⁶⁰ Edīte Brikmāne, 'Bērnudārzu rindas. Vai tiešām bez tām nevar?' (13 March 2014) <<http://m.lvportals.lv/visi/viedokli/261521-bernudarzu-rindas-vai-tiesam-bez-tam-nevar/>> accessed 28 April 2015 [Latvian].

⁶¹ 'Vispārizglītotojās skolās un pedagoģisko darbinieku skaits' (24 April 2015) <<http://www.csb.gov.lv/statistikas-temas/izglitiba-galvenie-raditaji-30273.html>> accessed 28 April 2015 [Latvian].

⁶² 'Papildināts skaidrojums par mācību līdzekļu iegādi' (21 August 2014) <<http://www.tiesibsargs.lv/sakumlapa/papildinats-skaidrojums-par-macibu-lidzeklu-iegadi/>> accessed 28 April 2015 [Latvian].

⁶³ European Commission/EACEA/Eurydice/Cedefop, 2014. 'Tackling Early Leaving from Education and Training in Europe: Strategies, Policies and Measures. Eurydice and Cedefop Report', Luxembourg: Publications Office of the European Union.

⁶⁴ Latvijas Republikas Tiesībsargs, *Pētījums: bilingvālā izglītība* (Rīga, 2014) [Latvian].

The age of 38% of children does not correspond their education levels, and 23% interrupt their studies before acquiring basic education.⁶⁵

Pupils with special needs are integrated in general education institutions or placed in special schools or classes. There are also special social or pedagogical correction institutions for children from unfavourable families or young offenders.⁶⁶

Ministry of Education and Science together with governments of local municipalities is responsible for education in Latvia, including organizing and controlling pre-school, basic and secondary education; vocational, continuing education; juvenile correctional education; education for children and young people with special needs.⁶⁷

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

Custody courts are in charge of choosing the appropriate means of extra-familial care. Available means of extra-familial care are - guardians, foster families, guest families, and special extra-familial care facilities (e.g. orphanages)⁶⁸. The goal of the system is to keep the family environment and choose available means that most closely resemble normal family situation. The system seems to have significant problems that are not directly linked with lack of financing, such as, lack of foster families, problems with the quality of custody, impossibility to provide individual approach to children in orphanages, and most importantly a family environment; however, there have been no recent and thorough researches in this field since 2008⁶⁹.

⁶⁵ *Romu kopienas izglītības vajadzības: secinājumi un ieteikumi romu kopienas atbalsta pasākumu plānošanai.* (Sabiedrības integrācijas fonds, 2014, Rīga) [Latvian].

⁶⁶ General Education Law of the Republic of Latvia, Latvijas Vēstnesis, 30.06.1999., Nr.213/215 (1673/1675).

⁶⁷ Education Law of the Republic of Latvia, Latvijas Vēstnesis, 17.11.1998., Nr.343/344 (1404/1405).

⁶⁸ Protection of the Rights of the Child Law of the Republic of Latvia, Latvijas Vēstnesis, 08.07.1998., Nr.199/200 (1260/1261).

⁶⁹ *Ārpusģimenes aprūpes (ārpusģimenes aprūpes iestādes, audžuģimenes, aizbildnība) un adopcijas sistēmas izpēte un ieteikumi tās pilnveidošana* (SIA „Analītisko pētījumu un stratēģiju laboratorija”, 2008, Rīga) [Latvian].

Asylum seeking children can attend general educational establishments and there are practically no special regulations. Lack of these special regulation and programmes may hinder access to education for these children.⁷⁰

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

The right to education is guaranteed by the Constitution of the Republic of Latvia Article 112.⁷¹ Although content of the Article is often interpreted narrowly - mainly as an opportunity to go to school for free and to get textbooks,⁷² there has been some problems arisen in the matters of education in Latvia about the access to education in practice.

According to the Latvia's Population Register Statistics on July 1 2014, there were 365,093 children in the age between 0 and 18 years.⁷³ According to the Central Statistical Bureau data, in the school year of 2013/2014, 333,718 persons attended educational institutions. There is a tendency that the number of persons in pre-school educational institutions is increasing, while the number in other education institutions is decreasing, compared to previous academic years.⁷⁴ The number of children, who do not attend school, is unknown.⁷⁵

Pre-school, elementary, primary and secondary education in Latvia, are financed from State or local municipality's budget. Private educational institutions can determine the cost of education.⁷⁶ Large part of the municipalities in Latvia, at the beginning of the academic year 2013/2014, did

⁷⁰ Pētījums par patvēruma meklētāju, bēgļu un personu, kurām piešķirts alternatīvais statuss, piekļuvi izglītībai Latvijā <http://cilvektiesibas.org.lv/media/attachments/29/01/2012/Gala_zinojums_ped.pdf> accessed 10 June 2015 [Latvian].

⁷¹ The Constitution of the Republic of Latvia, Latvijas Vēstnesis, 01.07.1993., Nr.43.

⁷² Aija Cālīte, "Ko nozīmē tiesības uz bezmaksas izglītību?" (13 December, 2011), <<http://m.lvportals.lv/visi/likumi-prakse/241200-ko-nozime-tiesibas-uz-bezmaksas-izglitibu/>> accessed 20 February 2015 [Latvian].

⁷³ "Bērnu vecuma un dzimuma struktūra pašvaldībās" (1 July, 2014), <http://www.pmlp.gov.lv/lv/assets/images/statistika/iedzivotaju%20reg.statistika%2001072014/ISPB_Pasvaldibas_bernu_skaits_pagasti.pdf> accessed 20 February 2015 [Latvian].

⁷⁴ "Izglītība - Galvenie rādītāji. Vispārīgā izglītībā skolās un pedagoģisko darbinieku skaits." (8 November 2012), <<http://www.csb.gov.lv/statistikas-temas/izglitiba-galvenie-raditaji-30273.html>> accessed 18 February 2015 [Latvian].

⁷⁵ The Protection of children's rights and the measures to improve the situation in Latvia, 2003, 17 [Bērnu tiesību aizsardzības stāvoklis Latvijā un pasākumi tā uzlabošanai].

⁷⁶ Izglītības sistēma Latvijā <<http://www.niid.lv/node/9>> accessed 3 May 2015 [Latvian].

not have enough financial resources to purchase the necessary resources for studies, but these institutions could not ask parents to pay the costs.⁷⁷

Major problem in education is permanent closing of small schools in villages and countryside. Students have to move or go to larger cities far away from home. The number of pupils in classes increases, thus the quality of education is decreasing. According to the information from the Latvia's Ministry of Education and Science - in the academic year 2013/2014 there were 982 secondary schools in Latvia, but the number in academic year 2009/2010 the number was 877 schools.⁷⁸

There are difficulties in ensuring high level of education and professional training for disabled children and children with special needs. In many cases, the educational environment even harms the physical development of the child.⁷⁹ Special boarding school can adversely affect emotional and physical development of the child, because everyone has the right to grow up in a family.⁸⁰

Another problem is the low level of salaries for Latvian teachers – among the lowest in Europe. While teachers' salaries are tied with student numbers and workload, the difference in pay is not high⁸¹. Teachers' profession is losing prestige and more young people do not choose to study pedagogy, there is a noticeable lack of teachers in certain subjects.

There are also problems with catering - not all children are guaranteed with a free lunch at school, prices in schools cafeterias are too high, while there is not a wide choice of dishes for children, who have various allergies or are vegetarians.

According to provisional data of the Central Statistical Bureau (CSB), in academic year 2014/2015 29 200 thousand students undertook studies in 60 higher education institutions, out

⁷⁷ The Report of the Ombudsman of the Republic of the Latvia, 2013, 11 [Latvijas Republikas tiesībsarga 2013. gada ziņojums].

⁷⁸ "Izglītības iestādes un izglītojamo skaits (mācību gada sākumā)" <<http://izm.izm.gov.lv/registri-statistika/statistika-vispareja/11069.html>> accessed 3 May 2015 [Latvian].

⁷⁹ The Protection of children's rights and the measures to improve the situation in Latvia, 2003, 17, 18 [Bērnu tiesību aizsardzības stāvoklis Latvijā un pasākumi tā uzlabošanai].

⁸⁰ The Report of the Ombudsman of the Republic of the Latvia, 2013, 16 [Latvijas Republikas tiesībsarga 2013. gada ziņojums].

⁸¹ "Education in Crisis. Monitoring, analysis and resources for education activists. Country profile - Latvia" <<http://www.educationincrisis.net/country-profiles/europe/item/420-latvia>> date of accessed 16 February 2015.

of which 25 were colleges, which is less by 6.6% than in academic year 2013/2014.⁸² In Higher Education programmes, State bears the cost of education for a certain number of places in universities and colleges in the relevant academic year, meaning that the students receive a state grant. Each higher education institution may impose fees for education, but each student may receive State's credit. European Union nationals and their children are eligible to obtain Latvian tuition fees, which are determined and covered in the same manner as for the Latvian citizens and permanent residents.⁸³ Many young people choose not to study in higher education institutions, because of the high tuition fees, which continue to increase, and as well as due to the reduced budget places in study programs.

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue

According to the Central Statistical Bureau (CSB) data, in 2014 in Latvia about 10.8% out of economically active population were unemployed. The percentage of unemployment amongst young people in the age group of 15-19 years reached 33.3%, but in the age group of 20-24 years – 18.4%.⁸⁴ According to the information from the State Employment agency (NVA), there is a project called Youth Guarantee measures, which aims to help young unemployed persons during the transition to employment. The State Employment Agency is going to help young people integrate into the modern labour market by teaching the skills in demand in today's labour market. The project targets young people aged between 15 and 29 years, who do not study at a full-time program in high education institutions.⁸⁵ State Employment Agency also offers a variety of other measures for young people, that help preventing the youth unemployment problem in Latvia. For example, „Career advice”⁸⁶, „Competitiveness improvement measures”⁸⁷,

⁸² "The Number of students in higher education institutions of Latvia is decreasing" <<http://www.csb.gov.lv/en/notikumi/number-students-higher-education-institutions-latvia-decreasing-40981.html>> accessed 18 February 2015.

⁸³ "Izglītības sistēma Latvijā" <<http://www.niid.lv/node/9>> accessed 3 May 2015 [Latvian].

⁸⁴ "NBG02. Activity Rate, Employment and Unemployment rate (%) Statistics" <http://data.csb.gov.lv/pxweb/en/Sociala/Sociala_ikgad_nodarb/NB0020.px/table/tableViewLayout1/?rxid=562c2205-ba57-4130-b63a-6991f49ab6fe> accessed 22 February 2015.

⁸⁵ "Jauniešu garantijas pasākumi" <<http://nva.gov.lv/index.php?cid=2&mid=491>> accessed 20 February 2015 [Latvian].

⁸⁶ "Jauniešu garantijas atbalsta pasākums "Karjeras konsultācijas" <<http://nva.gov.lv/index.php?cid=433&mid=440&txt=3639>> accessed 24 February 2015 [Latvian]

„Workshops for young people”⁸⁸, „The first work experience for...”⁸⁹, „The development of skills, which are necessary for work in non-governmental sector”⁹⁰, „Support to regional mobility of young people”⁹¹ etc.

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

Austerity measures had a large impact on the problems, which arose from the rights to free education, especially by closing many small schools and decreasing teachers' salaries. Since the beginning of crisis many schools have been closed. E.g., in 2008/2009 there were 982 secondary schools, however in there were only 877 left.⁹² The problem is more visible in rural areas, because schools are usually the cultural centres of rural areas, so closing of them impacts also the cultural life of the whole populated place. Due to wage cuts and small wages there are shortage of teachers in some subjects, e.g., Russian, physics and chemistry.⁹³ Although the crisis is over, State still does not provide right to education adequately.

6. OTHER ISSUES

Are there any other relevant issues regarding the ESC, and not covered by the questions above, in your MS? Please describe the applicable legal framework and explain how it is not in compliance with the ESC

⁸⁷ "Konkurētspējas paugstināšanas pasākumi" <<http://www.nva.gov.lv/index.php?cid=433&mid=440&txt=3640>> accessed 24 February 2015 [Latvian]

⁸⁸ "Darbnīcas jauniešiem" <<http://www.nva.gov.lv/index.php?cid=433&mid=440&txt=3641>> accessed 24 February 2015 [Latvian].

⁸⁹ "Pirmā pieredze jauniešiem" <<http://www.nva.gov.lv/index.php?cid=433&mid=440&txt=3646>> accessed 24 February 2015 [Latvian].

⁹⁰ "Darbam nepieciešamo iemaņu atbilstība nevalstiskajā sektorā" <<http://www.nva.gov.lv/index.php?cid=433&mid=440&txt=3649>> accessed 24 February 2015 [Latvian].

⁹¹ "Atbalsts jauniešu reģionālajai mobilitātei" <<http://www.nva.gov.lv/index.php?cid=433&mid=440&txt=3651>> accessed 24 February 2015 [Latvian].

⁹² Izglītības iestādes un izglītojamo skaits (mācību gada sākumā) <http://data.csb.gov.lv/pxweb/lv/Sociala/Sociala_ikgad_izgl/IZ0010.px/table/tableViewLayout1/?rxid=562c2205-ba57-4130-b63a-6991f49ab6fe> accessed 28 April 2015 [Latvian].

⁹³ 'Skolām trūkst fizikas, ķīmijas un krievu valodas skolotāju' (6 March 2012) <http://www.tvnet.lv/zinas/latvija/413320-skolam_trukst_fizikas_kimijas_un_krievu_valodas_skolotaju> accessed 28 April 2015 [Latvian].

One of the issues in Latvia that has not been covered in previous sections is related to family and more precisely to mothers and their children. As ESC provides in its preamble part I paragraph 16 “The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.” Also it is mentioned, “Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection.”

To start, in Latvia 1/3 of all families have only one parent. In 97% of cases that is a woman, who is the single parent. The biggest problem is that the help that the state provides for single parents is very limited. Notwithstanding whether the family consists of both or only one parent, the monthly payment that the family receives, is starting from EUR 11.38 if there is one child in family, if there are two children in the family then for second child the family receives EUR 22.76 and for third and fourth EUR 34.14⁹⁴. This is not an appropriate economic protection, especially if the children are raised by single parents, bearing in mind that most of the time those are single mothers, who are often in the risk zone of being protected. The family state benefit and supplement to the family state benefit for a disabled child is granted in accordance with Section 6 of the Law on State Social Allowances and Cabinet Regulation No 1517 Regulations Regarding the Amount of the Family State Benefit and the Supplement to the Family State Benefit for a Disabled Child, the Review Procedure Thereof, and the Procedures for Granting and Payment of the Benefit and Supplement. To continue, nowadays, for EUR 11,38 you can buy only food for a few days. How we can speak about full development for children, if there are so limited possibilities for mother to support their children. ESC provides law on how things should be, but in this specific case, Latvia is far from appropriate social and economic protection. For example, relative wage in Latvia is quite small, about EUR 500 and we take this amount of money as an option that one mother earns in month, but she also has two children in age 8 and 13. This is the time when kids grows fast, they need new clothes quite often, the bills for housing needs to be paid, and the question is how a single mother can appropriately provide her family with everything they need if she gets so small amount of money per kid and the wage is obviously not big.

⁹⁴ Ģimenes valsts pabalsts <<http://www.vsaa.gov.lv/lv/pakalpojumi/vecakiem/gimenes-valsts-pabalsts>> accessed 28 February 2015 [Latvian].

In Latvia there is law for protection of children, namely, Protection of the Rights of the Child Law⁹⁵. In this law's Article 2 paragraph 3 it is prescribed that "Protection of the rights of the child is an integral part of State policy. The State and local governments shall organise and monitor the protection of the rights of the child throughout the territory of the State". As law states itself every child gains rights for protection, but how protected a child can be if mother of this child gets such a small amount of money. By protection is meant to understand also the social protection (because children is a part of society), as defined by the United Nations Research Institute For Social Development, social protection is concerned with preventing, managing, and overcoming situations that adversely affect people's well being. Social protection consists of policies and programs designed to reduce poverty and vulnerability by promoting efficient labour markets, diminishing people's exposure to risks. As it is said every country needs to reduce poverty, care for people well being, but if state does not support the youngest citizens with it, and parents cannot afford by themselves to decrease the poverty, because of low salaries that Latvia (the minimal wage in Latvia is 360EUR), the who else will except the state? Moreover, the same law's article 10 paragraph 1 states:

A child has the right to such living conditions and benevolent social environment as will ensure his or her full physical and intellectual development. Every child shall receive adequate nourishment, clothing and accommodation.

Taking into account that the Articles 16 and 17 of the European Social Charter determine the effective exercise of the right of mothers and children to social and economic protection, and also the Latvian law prescribes it, it seems that Latvian Law is not in contradiction with ESC, however, knowing the current situation in Latvia, and based on facts how low is the amount of money the mothers get for the child it does not seem appropriate.

To conclude, overall Latvian Law is in contradiction with Article 16 and 17 of ESC, because as mentioned and explained above, in Latvia mothers do not receive adequate and appropriate benefit for their children, thus they are economically under protected and as a result children cannot have access to developmental opportunities according to their intellectual (educational) level.

⁹⁵ Republic of Latvia. Protection of the Rights of the Child Law <<http://likumi.lv/doc.php?id=49096>>accessed 30 April 2015 [Latvian].

7. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

When a Member State chooses to ratify and sign an international agreement or an international treaty, which is in accordance with European Union legislation, it is possible not to accept any of the non-mandatory provisions and this is what Latvia did with the European Social Charter, more precisely part D, which is "collective complaint system".

Latvia ratified both the original European Social Charter and the revised version, as well as the Amending Protocol to the Charter, but has neither signed nor ratified the Protocol providing for a system of collective complaints.⁹⁶

Therefore European Social Charter's collective complaint system did not alleviate impact of austerity measures in Latvia, however there has been discussion about the collective complaint system when the Director of Latvian Human Rights Centre Anhelita Kamenska had publicly announced her opinion about the benefits that part D of the European Social Charter would bring to Latvia and its citizens. She mentioned the positive aspect of allowing national and international organizations to bring a collective complaint for not complying with provisions of European Social Charter.⁹⁷ Despite the discussions, there has been no further development from the government side on improving ratification of the protocol, which would provide collective complaint system in the Member State.

8. CONCLUSIONS

- Latvia has ratified the European Social Charter and almost all provisions of the Revised European Social Charter, excluding only few that mainly concern the level of social security and the level of social protection offered to migrant workers.

⁹⁶ *Latvia and the European Social Charter*. <http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Latvia_en.pdf> accessed 28 April 2015.

⁹⁷ *European Social Charter and possibilities of Latvia*. <<http://www.lvportals.lv/visi/likumi-prakse/242981-eiropas-sociala-harta-un-latvijas-iespejas/>> accessed 28 April 2015 [Latvian].

- To overcome the financial crisis of 2008, Latvian government adapted extensive austerity measures that were mainly executed by implementing reforms in public expenditure, taxes and social sphere.
- Austerity measures were mostly directed towards cutting the spending of the state while doing as little harm to the socially less protected part of society as possible. However, some reforms were carried through in healthcare and education, which caused closing of schools and hospitals and cutting the wages of the staff working there.
- The right to collective bargaining and respect of social dialogue has not been substantially affected by the austerity measures in Latvia. However, some problems have been faced. As a result of the economic crisis the number of collective agreements has decreased. Some doubts as regards the effectiveness of the collective bargaining in public administration in Latvia lately has been raised, as well as concern of the regulation that ensures the extension of general agreements to all employers and employees in one sector in certain occasions and its conformity with the ESC has been expressed.
- The most important recent change in the legal framework regarding the right to collective bargaining and respect of social dialogue in Latvia has been the adoption of the new Trade Union Law. However, the main reason for adoption of the new Trade Union Law was the out-dated previous regulation. Still the new regulation seeks to ensure the conformity with the requirements of the ESC. Besides, the rules of the newly adopted Mediation Law and Arbitration Law to certain extent are applicable to the mediation and arbitration process in labour rights now as well.
- Till the year 2013 Article 4 ESC has not been binding on Latvia. No substantial changes in law regarding the Article 4 of the ESC affected by the austerity measures have been observed.
- There are several legal acts that regulate social issues in Latvia. The Law on Social Security contains basic principles of social security scheme. The Law on State Social Insurance regulates the state social insurance system, as the social insurance is a part of the State social security system. The Act that regulates social assistance is the Law on Social Services and Social Assistance that was mainly adopted because of the necessity to

fulfil the obligations of the European Social Charter. Also there are several Cabinet of Ministers Regulations regulating the same matters. The responsible authority for these issues is The State Social Insurance Agency that is a state institution under supervision of the Ministry of Welfare, performing the public administration function in the area of social insurance and social services.

- In Latvia persons who are unable to secure adequate resources either by his/her own efforts or from other sources have the right to have the state social assistance. There are several ways how the assistance is provided. Firstly, providing such persons the right have benefit for ensuring the guaranteed minimum income level or State Social Security Benefit.
- There are several ways how the assistance is provided for persons who are unable to secure adequate resources either by his/her own efforts or from other sources due to illness: the sickness benefit, if a person has lost his/her ability to work, he/she can receive compensation for the loss of ability to work.
- Certainly the austerity measures had an impact on the social security scheme. Although there have been additional restrictions and reduction, it is clear that such state action was necessary and motivated. Still the social protection was ensured, and there is no reason to doubt that it is in compliance with the ESC.
- There are social services that are ensured by State or local government monies or material support or other type of service, in order to promote the full implementation of a person's social rights.
- We can observe that the State executes Article 13 (3) of the ESC through social service providers, which provide advice and personal help to persons in need.
- Generally, poverty and social exclusion is a serious problem in Latvia according to statistical data. At the same time government led projects and national strategies involving several sectors from the government are aiming at tackling these issues.
- The main focuses regarding the reduction of poverty levels in Latvia (as set out by the government) 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.

- However, even taking into account the government efforts, the statistics show no major changes regarding the poverty levels and risk of being socially excluded in Latvia over the past two years since the ratification,.
- The EU law legal framework and UN Convention has a much broader definition of persons with disabilities as it is stated in the Latvian Disability Law, which leads to misunderstandings and unclear status and rights of a lot of persons with disabilities in Latvia, which maybe have not received their status according to the Latvian Disability Law but should be considered as persons with disabilities according to the UN Convention and within the meaning of Directive 2000/78/EC.
- The Latvian understanding and protection provided for persons with disabilities in the area of labour market is covered by the Latvian Labour Law, where it was introduced quite recently and is aimed to ensure social security and not so much to ensure legal aid in the area of labour law.
- The Latvian Law on Education does not provide any provisions for the children and youth with disabilities. Article 2 of Latvian Law on Education, however, provides a general statement that every resident of Latvia has the opportunity to develop his or her mental and physical potential, in order to become an independent and a fully developed individual, a member of the democratic State and society of Latvia.
- The support for children and youth with disabilities in Latvia consists not only of financial nature, but also of the professionals for the work with children and youth with disabilities, doctors, teachers, and psychotherapists and other specialists as well as setting up of special inventory and appropriate environment.
- By assessing the geographic proximity of the schools with the special education programmes for children and youth with disabilities in Latvia it should be concluded that they are accessible, especially the ones which are supported by the local municipality, however special schools are rather geographically separated and are not quite accessible for everybody.

- For adults as persons with disabilities the assistance from the state is provided with help of special institution called the Social Integration State Agency and one high school with vocational education.
- The legal situation in Latvia is still on the way of progress and different legal examinations, such as performed by the Latvian ombudsmen and set priorities by the Latvian presidency of the Council, as well as constant developments in the legislation in this area provide hope that the legal and factual situation of the persons with disabilities in Latvia soon will be protected on the corresponding level in accordance with the UN Convention and the EU law.
- The state has provided access to free secondary education, including free bilingual education for national minorities. However, Roma community experiences serious problems, as there is a lack of special programmes to integrate Roma pupils. That is also a problem with asylum seeking children, i.e., they can attend general educational establishments and there are practically no special regulations.
- System for protection and special aid for children and young persons' temporarily or definitively deprived of their family's support seems to have significant problems with providing a family environment, and it is not directly linked to financing.
- Austerity measures, such as closing schools and reducing teachers' wages, have had an impact on the problems, which arose from the rights to free education; however, there are no major issues that could amount to breach of the Charter.
- The number of persons in pre-school educational institutions is increasing, while the number in other education institutions is decreasing, compared to previous academic years. The number of children, who do not attend school, is unknown.
- Major problem in education is permanent closing of small schools in villages and countryside. Students have to move or go to larger cities, far away from home. The number of pupils in classes increases, thus the quality of education is decreasing.
- Major problem is the low Latvian teachers salaries, which are among the lowest in Europe. Teacher's profession is losing prestige and younger people do not choose to study pedagogy, there is a noticeable lack of teachers in certain subjects.

- There are difficulties in ensuring high level of education and professional training for disabled children and children with special needs. In many cases, education environment even harms physical development of the child.
- Problems are also with catering - not all children are guaranteed with free lunch at school, prices in schools cafeterias are too high, while there is not a wide choice of dishes for children, who have various allergies or for vegetarians.
- The State Employment Agency helps young people integrate into the modern labour market by offering labour market needs adequate skills and competencies.
- Latvian Law is in contradiction with Article 16 and 17 of ESC, because mothers do not receive adequate and appropriate benefit for their children, thus they are economically under protected and as a result children cannot have access to developmental opportunities according to their intellectual (educational) level.
- Despite discussions in public, Latvia has neither signed nor ratified the Protocol providing system of collective complaints, therefore collective complaint system did not alleviated impact of austerity measures in Latvia.

9. CASE LAW, LEGISLATION, BIBLIOGRAPHY AND ONLINE RESOURCES

9.1. Legislation

- Protection of the Rights of the Child Law of the Republic of Latvia, Latvijas Vēstnesis, 08.07.1998., Nr.199/200 (1260/1261).
- Education Law of the Republic of Latvia, Latvijas Vēstnesis, 17.11.1998., Nr.343/344 (1404/1405).
- The Constitution of the Republic of Latvia, Latvijas Vēstnesis, 01.07.1993., Nr.43.
- General Education Law of the Republic of Latvia, Latvijas Vēstnesis, 30.06.1999., Nr.213/215 (1673/1675).
- Law of the Republic of Latvia on the Revised European Social Charter, Latvijas Vēstnesis, 26.02.2013, Nr.40 (4846).
- Cabinet of Ministers Regulation No 96 'Procedures for the Granting, Calculation and Disbursement of the Benefit for Ensuring the Guaranteed Minimum Income Level' Adopted February 25 2003.
- Cabinet of Ministers Regulation No 550 'Procedures for the Calculation, Granting, Disbursement of the Benefit for Ensuring the Guaranteed Minimum Income Level and for the Entering into an Agreement Regarding Participation' Adopted June 17 2009.

9.2. Case Law

9.2.1. Constitutional Court of the Republic of Latvia

- Case No 2010-17-01: On Compliance of Section 20 (9) of the Law 'On Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases' with Article 1, Article 91, Article 105 and Article 109 of the Satversme of the Republic of Latvia and Compliance of Section 14 of the Same Law and Section 20 (9) of the Law 'On Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases' (Wording of the Law from 25 November 2004 to 16 June 2009) and Section 6 Paragraph 1 of the Law 'Amendments to the Law 'On Compulsory Social Insurance in

Respect of Accidents at Work and Occupational Diseases' with Article 1, Article 91 and Article 109 of the Satversme of the Republic of Latvia [2010].

- Case No 2013-15-01: On compliance of the words "joining in trade unions" of Section 49(1) of Border Guard Law with Article 102 and the second sentence of Article 108 of the Satversme of the Republic of Latvia [2014].

9.3. Books and articles

9.3.1. English titles

- Åslund A, Dombrovskis A, How Latvia Came Through the Financial Crisis, (Peterson Institute 2011).
- Dowladbekova I, 'Austerity policy in Latvia and its consequences (International policy analysis, 2012) <<http://library.fes.de/pdf-files/id-moe/09353.pdf>> accessed 20 March 2015.
- Dupate K, 'The concept of disability in international law and its impact on the EU and Latvian law in the field of employment', 72th International Scientific Conference 'The Quality of Legal Acts and its Importance in Contemporary Legal Space'. University of Latvia.
- Higgins A, 'Used to Hardship, Latvia Accepts Austerity, and Its Pain Eases (New York Times, 1 January 2013) <http://www.nytimes.com/2013/01/02/world/europe/used-to-hardship-latvia-accepts-austerity-and-its-pain-eases.html?hp&_r=1> accessed 16 March 2015.

9.3.2. Latvian titles

- Avotiņš V, Jansons J, 'Pamatproblēma ir nabadzība <<http://nra.lv/latvija/130033-juris-jansons-pamatproblema-ir-nabadziba.htm>> accessed 16 April 2015 [Latvian].
- Brikmāne E, 'Bērnudārzu rindas. Vai tiešām bez tām nevar?' (13 March 2014) <<http://m.lvportals.lv/visi/viedokli/261521-bernu-darzu-rindas-vai-tiesam-bez-tam-nevar/>> accessed 28 April 2015 [Latvian].

- Cālīte A, 'Ko nozīmē tiesības uz bezmaksas izglītību?' (13 December 2011), <<http://m.lvportals.lv/visi/likumi-prakse/241200-ko-nozime-tiesibas-uz-bezmaksas-izglitiba/>> accessed 20 February 2015 [Latvian].
- Kalns J, 'Eiropas Sociālā harta un Latvijas iespējas' <<http://www.lvportals.lv/visi/likumi-prakse/242981-eiropas-sociala-harta-un-latvijas-iespejas/>> accessed 28 April 2015 [Latvian].
- Kovaļevska A, '108. panta komentārs' in Autoru kolektīvs, Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības (Latvijas Vēstnesis, 2011) [Latvian].
- Sermā A, 'Arodbiedrību darbības tiesiskais regulējums' (Jurista Vārds, 10(862), 10 March 2015) [Latvian].

9.4. Internet sources

9.4.1. English titles

- Acceptance of provisions of the Revised European Social Charter (1996), situation in 26 March 2013 <http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ProvisionTableRevMarch2013_en.pdf> accessed 15 March 2015.
- 'Education in Crisis. Monitoring, analysis and resources for education activists. Country profile - Latvia' <<http://www.educationincrisis.net/country-profiles/europe/item/420-latvia>> date of accessed 16 February 2015.
- Improvement of Sectoral Social Dialogue in Latvia <<http://en.lddk.lv/projekts/improving-sectorial-social-dialogue/>> accessed 25 March 2015.
- Labour law and safety at work <<http://en.lddk.lv/projekts/labour-law-and-safety-at-work/>> accessed 25 March 2015.

- Latvia and the European Social Charter.
<http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Latvia_en.pdf> accessed 28 April 2015.
- National Development Plan of Latvia for 2014 – 2020
<http://www.pkc.gov.lv/images/NAP2020%20dokumenti/NDP2020_English_Final.pdf> accessed 15 June 2015.
- ‘NBG02. Activity Rate, Employment and Unemployment rate (%) Statistics’
<http://data.csb.gov.lv/pxweb/en/Sociala/Sociala_ikgad_nodarb/NB0020.px/table/tableViewLayout1/?rxid=562c2205-ba57-4130-b63a-6991f49ab6fe> accessed 22 February 2015.
- Poverty: Commission adopts Latvian programme to spend €41 million from Fund for European Aid to the Most Deprived <http://europa.eu/rapid/press-release_IP-14-1234_en.htm> accessed 13 March 2015.
- Project BSLN – Baltic Sea Labour Network
<http://www.lbas.lv/projects/innovation_norway?locale=en> accessed 25 March 2015.
- Strengthening the Administrative Capacity of the LDDK in Latvia’s Regions
<<http://en.lddk.lv/projekts/strengthening-the-administrative-capacity-of-the-lddk-in-latvias-regions/>> accessed 25 March 2015.
- Strengthening of the Administrative Capacity of Free Trade Union Confederation of Latvia <http://www.lbas.lv/projects/strengthening_of_capacity?locale=en> accessed 25 March 2015.
- ‘The Number of students in higher education institutions of Latvia is decreasing’
<<http://www.csb.gov.lv/en/notikumi/number-students-higher-education-institutions-latvia-decreasing-40981.html>> accessed 18 February 2015.
- The Programme of the Latvian Presidency of the Council of the European Union
<https://eu2015.lv/images/PRES_prog_2015_EN-final.pdf> accessed 15 March 2015.

9.4.2. Latvian titles

- Anotācija likumprojektam ‘Grozījumi Darba likumā’ 2009
<<http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/2114A900FCDFEFDDC22575A2004CA892?OpenDocument#>> accessed 20 April 2015 [Latvian].
- ‘Atbalsts jauniešu reģionālajai mobilitātei’
<<http://www.nva.gov.lv/index.php?cid=433&mid=440&txt=3651>> accessed 24 February 2015 [Latvian].
- ‘Bērnu vecuma un dzimuma struktūra pašvaldībās’ (1 July 2014)
<http://www.pmlp.gov.lv/lv/assets/images/statistika/iedzivotaju%20reg.statistika%2001072014/ISPB_Pasvaldibas_bernu_skaitis_pagasti.pdf> accessed 20 February 2015 [Latvian].
- Darba lietu trīspusējās sadarbības apakšpadome
<http://www.lbas.lv/social_dialogue/national_level/work?locale=lv> accessed 25 March 2015 [Latvian].
- ‘Darbam nepieciešamo iemaņu attīstība nevalstiskajā sektorā’
<<http://www.nva.gov.lv/index.php?cid=433&mid=440&txt=3649>> accessed 24 February 2015 [Latvian].
- ‘Darbnīcas jauniešiem’
<<http://www.nva.gov.lv/index.php?cid=433&mid=440&txt=3641>> accessed 24 February 2015 [Latvian].
- ‘Ģimenes valsts pabalsts’ <<http://www.vsaa.gov.lv/lv/pakalpojumi/vecakiem/gimenes-valsts-pabalsts>> accessed 28 February 2015 [Latvian].
- ‘Izglītība - Galvenie rādītāji. Vispārīzglītojošās skolas un pedagoģisko darbinieku skaits.’ (8 November 2012) <<http://www.csb.gov.lv/statistikas-temas/izglitiba-galvenie-raditaji-30273.html>> accessed 18 February 2015 [Latvian].
- ‘Izglītības iestādes un izglītojamo skaits (mācību gada sākumā)’
<<http://izm.izm.gov.lv/registri-statistika/statistika-vispareja/11069.html>> accessed 3 May 2015 [Latvian].

- 'Izglītības sistēma Latvijā' <<http://www.niid.lv/node/9>> accessed 3 May 2015 [Latvian].
- 'Jauniešu garantijas atbalsta pasākums 'Karjeras konsultācijas'' <<http://nva.gov.lv/index.php?cid=433&mid=440&txt=3639>> accessed 24 February 2015 [Latvian].
- 'Jauniešu garantijas pasākumi' <<http://nva.gov.lv/index.php?cid=2&mid=491>> accessed 20 February 2015 [Latvian].
- 'Konkurētspējas paaugstināšanas pasākumi' <<http://www.nva.gov.lv/index.php?cid=433&mid=440&txt=3640>> accessed 24 February 2015 [Latvian].
- Latvijas Republikas Tiesībsarga viedokļi un juridiskie atzinumi <<http://www.tiesibsargs.lv/atzinumi-modulis?theme=&q=invalid>> accessed 25 June 2015 [Latvian].
- Nacionālais sociālais ziņojums: Latvija <http://www.lm.gov.lv/upload/sociala_aizsardziba/sociala_ieklausana/nsr_fin2_lv.pdf> accessed 12 March 2015 [Latvian].
- Pētījums par patvēruma meklētāju, bēgļu un personu, kurām piešķirts alternatīvais statuss, piekļuvi izglītībai Latvijā <http://civektiesibas.org.lv/media/attachments/29/01/2012/Gala_zinojums_ped.pdf> accessed 10 June 2015 [Latvian].
- 'Pirmā pieredze jauniešiem' <<http://www.nva.gov.lv/index.php?cid=433&mid=440&txt=3646>> accessed 24 February 2015 [Latvian].
- 'Ratificē Eiropas Sociālo hartu, bet neatzīst tiesības uz pienācīgu atalgojumu' <<http://www.ir.lv:889/2013/2/15/ratifice-eiropas-socialo-hartu-bet-neatzist-tiesibas-uz-pienacigu-atalgojumu>> accessed 17 April 2015 [Latvian].
- 'Reģistrētais bezdarba līmenis valstī' <<http://nva.gov.lv/index.php?cid=6>> accessed 12 March 2015 [Latvian].

- ‘Skolām trūkst fizikas, ķīmijas un krievu valodas skolotāju’ <<http://www.tvnet.lv/zinas/latvija/413320-skolam-trukst-fizikas-kimijas-un-krievu-valodas-skolotaju>> accessed 28 April 2015 [Latvian].
- ‘Vispārīzglītojošās skolas un pedagoģisko darbinieku skaits’ (24 April 2015) <<http://www.csb.gov.lv/statistikas-temas/izglitiba-galvenie-raditaji-30273.html>> accessed 28 April 2015 [Latvian].
- Valsts ieņēmumu dienesta administrētais Iedzīvotāju ienākuma nodoklis <http://www.vid.lv/lv/nodokli/03_iiin> accessed 20 March 2015 [Latvian].

9.5. Other sources

9.5.1. English titles

- 5th National Report on the implementation of the European Social Charter submitted by the government of Latvia (Articles 5 and 6 for the period 01/01/2005 – 31/12/2008).
- 9th National Report on the implementation of the European Social Charter submitted by the government of Latvia (Articles 5 and 6 for the period 01/01/2008 – 31/12/2011).
- European Commission/EACEA/Eurydice/Cedefop, 2014. ‘Tackling Early Leaving from Education and Training in Europe: Strategies, Policies and Measures. Eurydice and Cedefop Report’, Luxembourg: Publications Office of the European Union.
- European Social Charter European Committee of Social Rights Conclusions XX-3 (2014) (LATVIA) Articles 5 and 6 of the 1961 Charter.

9.5.2. Latvian titles

- Ārpusģimenes aprūpes (ārpusģimenes aprūpes iestādes, audžuģimenes, aizbildnība) un adopcijas sistēmas izpēte un ieteikumi tās pilnveidošana (SIA ‘Analītisko pētījumu un stratēģiju laboratorija’, 2008, Rīga) [Latvian].
- Latvijas Republikas tiesībsarga 2013. gada ziņojums (Rīga, 2014) [Latvian].

- Latvijas Republikas tiesībsarga biroja papildināts skaidrojums par mācību līdzekļu iegādi' (Rīga, 2014) [Latvian].
- Latvijas Republikas tiesībsarga biroja pētījums: bērnu tiesību aizsardzības stāvoklis Latvijā un pasākumi tā uzlabošanai (Rīga, 2013) [Latvian].
- Latvijas Republikas tiesībsarga biroja pētījums: bilingvālā izglītība (Rīga, 2014) [Latvian].
- Romu kopienas izglītības vajadzības: secinājumi un ieteikumi romu kopienas atbalsta pasākumu plānošanai. (Sabiedrības integrācijas fonds, 2014, Rīga) [Latvian].

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

Yes.¹ Malta ratified the European Social Charter on 04 October 1988 and also the Amending Protocol to the Charter on 16 February 1994. Malta ratified the Revised European Social Charter on 27 May 2005, welcoming 72 of the Revised Charter's 98 paragraphs. It is notable to point out that Malta has not signed or ratified the Additional Protocol catering for a system of Collective Complaints.²

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

In the year 2009, Malta registered a deficit which amounted to 3.8% of its GDP.³ Thus, it was deemed by government officials that Malta did not need to implement and enforce any harsh austerity measures.⁴ Alternatively, Malta's main focus has been on creating and preserving employment.⁵ Malta has always held that it did not have to implement austerity measures to combat the negative effects which resulted from the global international financial crisis and which consequently resulted in a worldwide recession. Nonetheless a few minor reform

¹ Signatures and Ratifications of the European Social Charter, its Protocols and the European Social Charter (revised) (April 2012)
<https://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/SignaturesRatifications_en.pdf>
accessed 2 February 2015.

² Department of the European Social Charter: Directorate General of Human Rights and the Rule of Law, 'Malta and the European Social Charter' (January 2015)
<http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Malta_en.pdf> accessed 3 February 2015.

³ Editorial, 'Defecit equivalent to 3.8% of GDP' *Times of Malta* (22 October 2010)
<<http://www.timesofmalta.com/articles/view/20101022/local/defecit-equivalent-to-3-8-of-gdp.332566>>
accessed 16 March 2015.

⁴ Gordon Cordina and Stephanie Vella, 'Malta: Surviving and Thriving through Times of Austerity' in Vít Novotný (ed), *From Reform to Growth: Managing the Economic Crisis in Europe* (Eburon Academic Publishers 2013) 292.

⁵ Jennifer Pietras, 'European Affairs: Austerity Measures in the EU – A Country by Country Table'
<<http://www.europeaninstitute.org/index.php/component/content/article?id=1180:austerity-measures-in-the-eu>> accessed 6 February 2015.

measures and cutbacks had to be resorted to.⁶ Essentially, the government introduced a handful of reforms which consisted of family-oriented measures such as providing for childcare centres and after-school care for working parents. Additionally the government presented a couple of tax credits for those women who returned to work after being absent from the work force.

Malta was able to avoid the negative effects of the crisis due to the fact that Malta enjoys one of the most stable banking systems in Europe and it exercises cautious risk-preventative measures. Furthermore Malta's economy is centralised 'in the indigenous real estate market and is not highly leveraged'. Additionally production by the local workforce fell less than the Eurozone median and unemployment rate only increased slightly. This was partially possible due to the backing provided for by the government.⁷

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

Locally, the level at which collective bargaining takes place is at the company level. The law states that collective agreements are to be settled between trade unions acting for the employees and an employer, or a trade union for employers.⁸ It is vital to point out that currently it is rather popular for different unions to act for the different sectors of the labour force and consequently to agree to distinct agreements.

These agreements typically lapse once three years have passed. However, in particular situations, when considered to be well-founded by the company concerned, an agreement might terminate after a year or two. Moreover, during 2012, the government struck a deal for the entire public sector where an agreement was decided upon to last for six years.⁹

⁶ European Trade Union Confederation, 'Malta' (2013) <<http://www.etuc.org/malta>> accessed 6 February 2015.

⁷ International Monetary Fund, Malta: 2010 Art IV Consultation - Staff Report; Public Information Notice on the Executive Board Discussion; and Statement by the Executive Director for Malta (IMF Country Rep no 11/29, 2011).

⁸ Laws of Malta, Chapter 452, Employment and Industrial Relations Act 2002, art 2.

⁹ L Fulton, 'Collective Bargaining' in *Worker Representation in Europe* (Labour Research Department and ETUI, 2013) <<http://www.worker-participation.eu/National-Industrial-Relations/Countries/Malta/Collective-Bargaining>> accessed 3 February 2015.

Agreements often deal with a wide range of matters, namely, working time, pay, sick pay, health and safety, complaints and disciplinary actions and ancillary benefits.¹⁰ The minimum wage concept is a common feature which crops within collective agreements. The national minimum wage is fixed by the government according to the advice given by the Employment Relations Board, which includes government representatives, employers, the various trade unions and independent experts.¹¹ Furthermore, the issue of “cost of living” adjustments often arises when promulgating agreements. Thus, naturally, this particular issue should feature in collective agreements and the necessary adjustments should be implemented.

Those who are not protected by a collective agreement are offered the protection of any one of the corresponding wage orders, which vary according to the particular industry. A wage order puts forth minimum terms and substantial ancillary arrangements.¹²

It ought to be pointed out that the number of employees protected by collective bargaining is marginally over the level of union density. In fact, it is estimated that a genuine assessment for the scope of collective bargaining is 61%. Additionally, there is no legal obligation bestowed upon the employers to negotiate with the union to grant it sole recognition. Nonetheless, in practice, an employer will often grant sole recognition to a union in a specific workplace if it has more than half of its employees in that workplace as its members. Recently, many trade unions have been set up for the various types of work sectors. Thus there is a trend of union diversification.

Figures published by the Department of Industrial and Employment Relations demonstrate that in the year 2011 fewer agreements were reached than in previous years. In fact, there were five new collective agreements, seventeen renewals or extensions and no amendments were made to existing collective agreements.¹³

¹⁰ *ibid.*

¹¹ Employment and Industrial Relations Act 2002, *supra* (n 8) art 3.

¹² Ann Bugeja, ‘Myth Busting – Taking a Closer Look at Malta’s Working Time Regulations’ (14 May 2012) <<http://www.csb-advocates.com/malta-law-articles/myth-busting-taking-closer-look-malta-s-working-time-regulations>> accessed 3 February 2015.

¹³ Dr N Vella, ‘Department of Industrial and Employment Relations Annual Report’ (2011) <<http://www.industrialrelations.gov.mt/download.aspx?id=1771>> accessed 4 February 2015.

A large amount of individuals who are not assured by collective agreements are on the other hand protected by minimum conditions of employment promulgated by the government.¹⁴ These conditions are mostly provided for through wage regulation orders which have a narrow scope of application or through national standard orders which have a more general application. Wage regulation orders are issued after proposals are tabled from the board for the particular industry. A board is usually made up of employers, unions and government designated specialists.¹⁵

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

Collective bargaining and social dialogue were somewhat left unaffected. However, a collective agreement for the public sector was signed by the government for a total of six years. This six year collective agreement was introduced to give employees working within the public sector a salary increase of 2.5% per annum.¹⁶ On the other hand, employees in the private sector are normally governed by collective agreements which run for two to three years.¹⁷

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

Malta's main strong point is its economic strategy and its advanced preparatory expertise. The proper distribution of tasks amongst the governmental institutions has also proved to be important for Malta's overall economic stability.¹⁸ There are significant links between the economic planning ministry and social partners along with the public sector. Furthermore, the government enjoys the utmost power when taking decisions. Nonetheless, varied discussions

¹⁴ L Fulton, supra (n 9).

¹⁵ *ibid.*

¹⁶ Jurgen Balzan, '€190 Million Collective Agreement for 'more efficient' Public Sector Signed' *MaltaToday* (15 October 2012) <http://www.maltatoday.com.mt/news/national/21859/190-million-collective-agreement-for-more-efficient-public-sector-signed-20121015-.VQctF47F_T8> accessed 16 March 2015.

¹⁷ European Trade Union Confederation, supra (n 6).

¹⁸ Godfrey A Pirota, Isabelle Calleja and César Colino, *Sustainable Government Indicators: 2014 Malta Report* (2014) <http://www.sgi-network.org/docs/2014/country/SGI2014_Malta.pdf> accessed 6 February 2015.

with social partners via the Malta Council for Economic and Social Development occur routinely. During these discussions, agreements are reached with regards to fiscal incentives, budget proposals and issues relating to the country's work force.

As a result this solid system of governance meant that Malta managed to avoid the economic crisis which was a global phenomenon. It not only managed to resist the negative effects of the crisis but it also tackled the economic downturn better than most member states within the European Union. Notably, various sectors contributed towards this resilience during the crisis, such as the tourism industry, financial services and the maritime and aviation sectors.

The European Economic Forecast confirmed Malta's success. It accentuated the fact that Malta's work force is strong and that unemployment rates are low within the Eurozone. Moreover, Malta's reliable banking sector along with a varied economy meant that few austerity measures were resorted to.¹⁹

Nonetheless a few minor reforms and adjustments had to be made to uphold Malta's stability. During the last twelve years, employment within the public sector decreased significantly to cut back on costs. Cost-cutting mostly included privatisation, and contracting out security and cleaning services. Between 2003 and 2009, employment positions within the public sector were cut down by 28%.²⁰

Till this very day, the Maltese government is still implementing positive initiatives to curb unemployment. The LEAP Project (Valletta) was set up by the Ministry for the Family and Social Solidarity to help persons who are at risk of poverty. One of the aims of this centre is to motivate and provide individuals with the necessary clothing which would be suitable to wear for job interviews. This initiative is in line with Article 14 of the European Social Charter, since the signatories are encouraged to "promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment." Thus, more people are encouraged to integrate within the local workforce and consequently the economy will continue

¹⁹ Godfrey A Pirootta, Isabelle Calleja and César Colino, *supra* (n 18).

²⁰ Vincent Marmara, 'Malta: Industrial Relations in Central Public Administration – Recent Trends and Features' (30 June 2014) <<http://eurofound.europa.eu/nl/observatories/eurwork/erm/comparative-information/national-contributions/malta/malta-industrial-relations-in-central-public-administration-recent-trends-and-features>> accessed 5 February 2015.

to thrive and move forward.²¹ (Further information about the LEAP Project is given in Section 5.1.)

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by his/her own efforts or from other sources?

The Social Security Act,²² in Article 30, makes provisions that cater for the granting of social assistance to persons who are unable to secure adequate resources. Such persons could be eligible for social assistance, which is payable to the head of household, and is subject to a means test. The benefit received varies according to the household's means level, and the number of persons in the particular household.²³

3.1.2. Persons who are unable to secure adequate resources either by his/her own efforts or from other sources due to illness?

Under the Maltese social security regime, cash sickness benefits are paid to employed and self-employed workers who have not yet reached retirement age for any day of incapacity for work. The Sickness Benefit can be claimed in accordance with the provisions of the Social Security Act, which provide that in order for a person to qualify for these benefits, an insured person needs 50 weeks of paid contributions and 20 weeks of paid or credited social security contributions during the two contribution years prior to the year in which the claim for benefits is made.²⁴

²¹ Ruth Castillo, 'Imniedi Boutique li jsellef Hwejjeg ghax-Xoghol lil Persuni FRiskju ta' Faqar' *TVM* (20 February 2015) <<http://www.tvm.com.mt/news/imniedi-boutique-li-jsellef-hwejjeg-ghax-xoghol-lil-persuni-friskju-ta-faqar/>> accessed 5 February 2015 [Maltese].

²² Laws of Malta, Chapter 318, Social Security Act 1987.

²³ European Commission, 'Your Social Security Rights in Malta' (July 2013) <http://ec.europa.eu/employment_social/empl_portal/SSRinEU/Your_social_security_rights_in_Malta_en.pdf> accessed 7 February 2015.

²⁴ Social Security Act, supra (n 22) art 18.

Benefits are payable from the fourth day of incapacity and for up to 156 benefit days per year, or up to a maximum of 312 benefit days per year if the person undergoes major surgery or suffers severe injury (not work-related), or is affected by a serious illness that requires a long period of treatment before the person may resume work. The total number of benefit days granted over two years cannot exceed 468. Under no circumstances may the total number of days on which this benefit is received exceed the total number of contributions paid since the person's first entry into the scheme. The employer pays the difference between the wage and the benefit, if the latter is lower.

For the unemployed, sickness benefit is paid on the basis of a six-day week in any period of sickness during unemployment.

A person may be disqualified from receiving the sickness benefit if he has refused medical examination without good reason, or has refused such medical treatment as may have been appropriate in his case without good medical reason, or otherwise behaved in such a way as would have delayed his recovery.²⁵

The Maltese social security framework also makes provisions to cater for home-care/home-help services for the elderly or other persons suffering from illnesses.²⁶ This aid comprises of such personal assistance as may be required, such as daily shopping needs, personal errands, bed-making, and personal attention such as dressing-up, washing, cooking and feeding as may be required in the particular circumstances of the case.

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

Whenever the Government awards a cost-of-living increase in the rate of the national minimum wage payable to persons aged eighteen and over in accordance with the provisions of the Employment and Industrial Relations Act, social assistance or other pensions which are payable under national social security schemes shall also automatically be increased by an amount equal to two-thirds of this increase.²⁷ It has been reported that in the years immediately following the

²⁵ Government of Malta, 'Social Security and Health Services' (2013) <https://www.gov.mt/en/LifeEvents/Looking_for_a_Job/Pages/Social-Security-and-Health-Services.aspx> accessed 7 February 2015.

²⁶ Social Security Act, supra (n 22) art 131(1)(a)(iii).

²⁷ Social Security Act, supra (n 22) art 90A.

financial crisis of 2008, the average annual increase made to the national minimum wage was of EUR 3.84 throughout the years 2008-2013.²⁸ This wage increase recorded would thus indicate an analogous, proportionate increase made to social assistance benefits in the aftermath of the financial crisis, and substantiating our conclusion that no significant impact has been recorded on the social security schemes under Maltese legislation as a result of austerity measures taken. These provisions bring Malta's social security scheme in line with the social protections which the European Social Charter seeks to guarantee.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

The Foundation for Social Welfare Services is a government foundation that was established in 1998, with responsibility in the fields of social services, inter alia, overseeing the work of agencies of the said Foundation in relation to the work of national agencies such as Aġenzija Appoġġ.²⁹

Aġenzija Appoġġ, as the national agency for children, families and the community, safeguards and promotes the well-being of these persons through the development and provision of psycho-social welfare services.³⁰ Its policies seek to ensure support for families and/or individuals at risk of poverty and social exclusion, in order to empower them to attain the best quality of life possible.

Recent challenges highlighted in a report³¹ prepared by the Foundation for Social Welfare Services in regard to the operations of Aġenzija Appoġġ are a notable lack of sufficient human resources. In the opinion of this researcher, this could indicate administrative burdens hindering the provision of social welfare services resulting from austerity measures in recent years.

²⁸ Kevin Schembri Orland, 'PN: COLA 2008–2013 average was €3.84; 'Muscat protested in the streets when increase was €1.16' *The Malta Independent* (23 October 2014) <<http://www.independent.com.mt/articles/2014-10-23/local-news/Cola-2008-2013-average-was-3-84-PN-says-Muscat-organised-public-protests-when-rise-was-1-16-6736124286>> accessed 8 February 2015.

²⁹ Foundation for Social Welfare Services, 'Overview' (2012) <<http://www.fsws.gov.mt/en/fsws/Pages/fsws-overview.aspx>> accessed 23 February 2015.

³⁰ *ibid.*

³¹ Foundation for Social Welfare Service, *FWSWS Biennial Report 2012-2013* (2014) <<http://www.fsws.gov.mt/en/fsws/Pages/research.aspx>> accessed 8 February 2015.

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

Malta has witnessed a steady increase in the number of people living at risk of falling into poverty and social exclusion. 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.³²

The approach taken by the State to tackle this social and economic challenge is to create policies promoting inclusivity and accessibility of the services contributing to a quality life of its citizens and residents. The measures taken by Malta to promote the effective access of persons living at risk of living in a situation of poverty have been entrenched on the principles of providing children and youth with adequate education opportunities to ensure access to personal and professional development. The wellbeing of individuals has also been tackled by means of healthcare services for the elderly or injured who are not in a position to participate in gainful employment. Moreover, to further promote employment, lifelong training schemes have been implemented and mentoring programmes established to empower people to further their careers. Policy-making being largely focused on the three main age groups – children, adults and the elderly, it touches upon all strata of the Maltese society, thus ensuring cohesion and uniformity in the benefits provided to ensure effective access to the services provided by a State based on the principles of the welfare system.

Malta's problem with destitution is relatively well-regulated however very little research has been carried out in terms of the causes leading up to destitution, and the repercussions this has on the

³² Angele Deguara, 'Faces of the Poor: A Sociological Review of Poverty in Contemporary Europe and Malta' <http://www.um.edu.mt/europeanstudies/books/CD_CSP4/pdf/adeguara.pdf> accessed 10 February 2015.

State. Despite the State's efforts to implement schemes ensuring that vacant housing undergoes a process of restoration and that energy consumption is as efficient as possible in order to minimize expenses, it has not tackled the issue in an efficient manner. One of the most tangible and directly applicable measures implemented by the government is the scheme implemented to provide benefits related to housing.³³

The Maltese State considers education as the foundation of a prosperous society. In order to safeguard family life, the state provides free childcare centres for working parents and families in order to further assist with and encourage parents to engage in gainful employment in order to support their families. This has a two-fold benefit for the education of children as well as with the possibility of parents to be able to engage in gainful employment and further their career prospects. In order to further allow for this possibility, the State has also implemented a project providing a one-hour care service before the school opens, all in an attempt to assist with the care of young children in their formative years.

One of the main challenges which come with education is the prospect of finding gainful employment after the time required to spend in school elapses. For this reason the State has created work and training exposure schemes to improve the chances of students to create links with the workplace. This is especially effective in providing young people with a direct engagement in an environment they would not be in contact with if none of their family members or educators can provide with this opportunity. Incentivised work placements further encourage young people to pursue gainful employment and professional development.

In an effort to promote the concept of life-long learning, the State has dedicated both time and resources in empowering various institutions and public corporations to provide training to those wishing to widen their repertoire of skills. The promotion of quality public training and education and work-based training to upgrade skills in all age groups is deemed to be one of the main solutions to the problem of the increasing percentage of people living at risk of poverty.

Evidently, employment and job creation is also one of the focuses of the State in an attempt to stop the rate at which people are falling below the red line of poverty. Malta has been

³³ Ministry for the Family and Social Solidarity, *Struttura għal Tnaqqis fil-Faqar u għal Inkluzjoni Soċjali* (Green Paper, 2014) <http://mfss.gov.mt/en/MJDF/Press_Releases/Documents/Green_PaperFaqar.pdf> accessed 17 March 2015.

encouraging job creation for the disadvantaged and has facilitated the formation of cooperatives and micro-enterprises in an attempt to close the gap between the employed and the unemployed. Furthermore, provisions are also made to reintegrate vulnerable persons in the labour market – and this includes single parents who have been out of the workforce for a number of years, people with physical or mental disabilities, migrants, and people who have been out of the workforce due to imprisonment. This puts less strain on welfare benefits and enables people to contribute to the economic sustainability of the state. Lastly, one of the main challenges faced by the state is the monitoring of the minimum wage to ensure that all employees are guaranteed fair compensation of the work that they put in. Oftentimes this is challenging when the level of irregular workers and black-market employment is not fully known.

The healthcare system has also become an increasing focus for the State, which has prioritized equal access to quality health regardless of economic or social background. As a sub-focus of health, measures have been implemented to prevent cancer, obesity and sexual diseases as well as the increasing awareness of mental and physical disabilities. The latter is a measure to maximize the dignity, well-being and productivity of people who are faced with various challenges.

Due to Malta's increasingly multicultural society, there has been a growing interest in the promotion, active participation, inclusion of underprivileged communities in the cultural and creative industries. Access to culture is being promoted by low prices and incentives being set up to ensure that those who are most at risk of poverty to be able to engage in community life.

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 elderly are entitled to assistance from the Government. European Union funds are to be spent on projects and initiatives addressing social objectives and aiding vulnerable groups of society. The goal is not to ensure that people are equipped with the skills needed to sustain themselves and their families and as a result create the foundation of a strong society.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

In Malta, the National Commission Persons with Disability (KNPD)³⁴ is the body which primarily tackles the problems which persons with disability face in their day-to-day lives. It 'works in order to eliminate any form of direct or indirect social discrimination against persons with disability and their families while providing them with the necessary assistance and support'.³⁵ It is important to note that as a general rule, all programmes mentioned hereunder focus on being flexible so that the programmes in question are developed according to the individual's specific needs. Such an approach is adopted so as to ensure that the full potential of the specific person is developed.

The Parliamentary Secretariat For Rights of Persons with Disability and Active Ageing in collaboration with the National Commission Persons With Disability and *Kumitat Azzjoni Lejn Soċjeta' Ġusta* (Action Towards a Just Society Committee) published a booklet which discusses in detail practically all aspects of a disabled person. This booklet sets out all the policy standards which will be enforced and implemented. With regard to education, the pamphlet holds that education, in whatever form, is generally tied with the issue of employment. This guidance, education and/or vocational training has to be of such quality that the people whom it targets attain 'the necessary skills-set to be able to make informed judgments, and to develop their potential, abilities and talents'.³⁶

³⁴ This Commission is established under Art 21 of the Equal Opportunities (Persons with Disability) Act 2000 (Laws of Malta, Chapter 413).

³⁵ Directorate for Lifelong Learning, 'Adult Education Provision in Malta' (17 May 2013) <<http://euagenda.skola.edu.mt/?p=60>> accessed 19 February 2015.

³⁶ Parliamentary Secretariat for Rights of Persons with Disability and Active Ageing in collaboration with the National Commission Persons with Disability and *Kumitat Azzjoni Lejn Soċjeta' Ġusta*, 'National Policy on the Rights of Persons with Disability', 24 <http://www.activeageing.gov.mt/en/Documents/Bookdesign_english.pdf> accessed 19 February 2015 (hereafter referred to as 'The Booklet').

Access to all levels of formal, non-formal and lifelong learning education should be provided to disabled persons just the same as non-disabled individuals. Persons with disability shall also be provided with inclusive education to cater for their needs. Hence, sign language, Braille and other tools are to be made use of, and teachers trained in making use of such tools and who act as mentors are to be allocated, after taking into consideration the needs of specific individuals. Resources such as transportation and assistive technology apparatus also need to be made available. The coursework in question needs to be modified in such a way so as to ensure that the capabilities of the individual are identified. Any attempts at the betterment of education should be framed in such a manner 'as to promote socialisation, active participation of persons with disability, breaking down of prejudices and stereotyping and new ways to facilitate improved communication and learning'.³⁷

The National Policy on the Education of Persons with Disability holds that the State is 'to ensure the existence of a system of schools and institutions accessible to all Maltese citizens catering for the full development of the whole personality including the ability of every person to work'.³⁸ The choice as to whether special education will be administered remains within the discretion of the parents of the disabled person; however, the State 'has a duty to provide special schools to cater for their development'.³⁹

In this regard the Special Education Unit within the Education Department has implemented a set of measures. Counselling and home service will be provided. Seven special schools cater for the needs of children with learning disabilities, whether severe or mild, emotional and/or physical. Peripatetic teachers and kindergarten assistants cater for deaf or blind students and children with disability respectively. Moreover, the St. Luke's Hospital educational service caters for the needs of children (including disabled children) who need to stay in hospital for a prolonged period of time.

The National Policy enlists other points which need to be followed in order to ensure the provision of a more inclusive system of education. This requires that schooling of disabled children takes place as much as possible together with children without disability, that is, 'in the

³⁷ *ibid*, 29.

³⁸ Kummissjoni Nazzjonali Persuni b'Dizabilita', 'National Policy on the Education of Persons with Disability', para A.3 <<http://www.knpd.org/pubs/edupole.shtml>> accessed 19 February 2015.

³⁹ *ibid*, para A.4.

least restrictive environment⁴⁰ possible, unless the provision of education cannot take place successfully without separation. A multi-disciplinary team is allocated to each child and a plan is mapped out according to the needs of the child. Moreover, schools are equipped in such a manner that they can accommodate the needs of disabled individuals, both with regards to access, as well as with regards to equipment to facilitate learning. Parents are kept up-to-date with the progress of their child and are offered the necessary support whilst being allowed to voice their opinion and concern as to what they deem to be the best approach for their child. Hence, for instance, 'Students with disabilities should be encouraged to continue their education even at tertiary level and for this reason have to be given all the necessary facilities to do so'.⁴¹ In this regard, the University of Malta is working towards making the University fully accessible to disabled students, both with regards to its physical structures, but also by providing educational services catered for disabled individuals, that is by implementing the necessary regulations, including those with regards to examination, which work towards making 'the University more accessible to persons with disability'.⁴² In this regard, the 'ACCESS-Disability Support Committee' coordinates all matters targeted at improving the quality of education for persons with disability, all this in order to motivate persons with disability, 'to sit for the University's examinations and to read for its degrees'.⁴³

Furthermore, necessary focus needs to be ensured with regard to the vocational education of children with disabilities and the education of adult persons with disabilities. Vocational education paves the way for the transition to the labour market. Such education 'shall be an integral part of his or her general education and has to be undertaken in liaison with all concerned, including professionals from outside the education field'.⁴⁴

The Malta College of Arts, Science & Technology (MCAST) provides vocational education and training. However it is particularly its 'Pathway to Independent Living Programme' which 'provides an opportunity for applicants with mild to moderate intellectual disability in possession of the school leaving certificate to follow a structured programme of study focusing on the

⁴⁰ *ibid*, para C.3

⁴¹ Kummissjoni Nazzjonali Persuni b'Dizabilita', *supra* (n 38) para C.12.

⁴² ACCESS – Disability Support Unit (10 January 2014) <<http://www.um.edu.mt/about/services/support/access>> accessed 19 February 2015.

⁴³ *ibid*.

⁴⁴ Kummissjoni Nazzjonali Persuni b'Dizabilita', *supra* (n 38) para C.13.

individual students' needs'.⁴⁵ The Inclusive Education Unit focuses on providing individuals with special needs, disabilities or learning difficulties with the required backing. The programme 'is particularly designed to help them acquire the skills required to gain and maintain employment'.⁴⁶ Students are subjected to supervised placements, different workplaces and 'opportunities to experience hands-on learning in all subjects'.⁴⁷

Another interesting measure is the course 'Key Skills for Independent Living' provided within the Institute of Tourism Studies (ITS) Malta. It is 'intended for students with intellectual disability but with a strong commitment to learn and to be socially and economically independent'.⁴⁸ Apart from helping the student to acquire skills regarding food and beverage service and housekeeping operations (hence providing the individual with the necessary education and training information), the course also aims to ensure that the individual is more capable of living independently. Communication skills and the carrying out of certain tasks in a more professional manner are also two other factors which are focused upon.

The Foundation for Information Technology Accessibility (FITA) was set up via the Malta Information Technology Agency (MITA) and the National Commission Persons with Disability (KNPD). Such foundation has 'the aim of addressing the digital divide and empowering disabled persons to make the most effective use of information communications technology (ICT)'.⁴⁹ One of its main aims is to promote equal opportunities for all through ICT and to provide training services in ICT for disabled people.⁵⁰

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible

⁴⁵ Directorate for Lifelong Learning, supra (n 35).

⁴⁶ Pathway to Independent Living Programme <<http://www.mcast.edu.mt/MainMenu/Full-TimeCourses/PathwaytoIndependentLiving.aspx>> accessed on 19 February 2015.

⁴⁷ *ibid.*

⁴⁸ Institute of Tourism Studies Malta, 'Key Skills For Independent Living' (2014) <<http://www.its.edu.mt/courses-admission/full-time-courses/key-skills-for-independent-living.html>> accessed 19 February 2015.

⁴⁹ Foundation for Information Technology Accessibility, 'About FITA' (2012) <<http://www.fitamalta.eu/home2/about-fita/>> accessed 19 February 2015.

⁵⁰ Foundation for Information Technology Accessibility, 'FITA Malta' (2012) <<http://www.fitamalta.eu/>> accessed 21 March 2015.

by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

Disabled persons shall be given work opportunities just like any other non-disabled persons and in no manner are they to be discriminated against.⁵¹ On the other hand, attention needs to be given to the capabilities and limitations of disabled persons, ensuring thus that working conditions are adjusted accordingly.

Within the national framework, the Disablement Resettlement Unit and the Employment Training Corporation (ETC) work towards integrating disabled persons in the labour market. The ETC tries to 'generate positive attitudes in prospective employers, through contact and communication'⁵² and 'provide training schemes or assistance in facilitating employment'. Furthermore, there are several centres which 'help disabled persons to develop mentally, emotionally and physically by occupying themselves with light employment, in order to prepare themselves for a work-oriented life and environment'.⁵³ Such centres include governmental and non-governmental ones, the latter including Inspire which is set to provide 'individuals and their families with educational, therapeutic and leisure services'.⁵⁴

Though legislation and policy measures are essential in framing out the projected working method, the actual measures that are implemented are what actually make a difference. The afore-mentioned LEAP Project put into practice by the Ministry for the Family and Social Solidarity is a project 'co-financed by the European Union through the European Social Fund (ESF)'.⁵⁵ Through this project, the Ministry 'is providing experience within the workplace, as well as training opportunities and mentoring'.⁵⁶ Hence it puts into practice the mission statement of the LEAP Project, that is, to 'combat social exclusion and poverty through training and mobility

⁵¹ The Booklet, supra (n 36) 30.

⁵² Kummissjoni Nazzjonali Persuni b'Dizabilità, 'National Employment Policy' para (b) <http://www.knpd.org/pubs/empol_e.shtml> accessed 19 February 2015.

⁵³ *ibid* para (c).

⁵⁴ Inspire Foundation, 'What We Do' (2013) <<http://inspire.org.mt/what-we-do/>> accessed 19 February 2015.

⁵⁵ Ministry for the Family and Social Solidarity, 'ESF 3.234 – LEAP Project: Building the future together: Promoting Social Mobility: Call for Project Beneficiaries' (2014) <<http://mfss.gov.mt/leap/PublishingImages/AdvertEN.pdf>> accessed 19 February 2015.

⁵⁶ *ibid*.

processes'.⁵⁷ The project focuses on generating employment for individuals who are more at risk of becoming poor, particularly because of their disadvantaged position. Job positions for such persons are singled out within non-governmental organizations (NGOs) and the local public sectors in order 'to reinforce efforts of integration within society and serve as opportunities for these groups which benefit from work experience complemented by the necessary guidance and social mentoring support'.⁵⁸ This integration helps them 'to manage more effectively their personal life through measures that will empower them'.⁵⁹ It is interesting to note that this project also aims to create a cluster-based network system where pooling of information can take place.

One of the targeted traineeship beneficiaries are 'Individuals who are registered with any recognized entity as disabled individuals and who have a recognized physical, mental or psychological impairment and are inactive or registered as unemployed'.⁶⁰ The individuals admitted to such project are subjected to supervision provided by the host organization, which then communicates with 'social mentors that will be appointed through the project so as to assess the beneficiary's progress'.⁶¹ In such a manner, 'a skills passport'⁶² is created so as to facilitate the individuals' entry into the labour market. The project may cover public transportation costs. Certificates are given to individuals who successfully complete the traineeship.

Another measure is the Me2 project:

Co-financed by the European Union – European Social Fund, coordinated by *Aġenzija Support* (Support Agency), within the Foundation for Social Welfare

⁵⁷ Ministry for the Family and Social Solidarity, 'ESF 3.234 – LEAP! Project' <<http://mfss.gov.mt/leap/Pages/default.aspx>> accessed 19 February 2015.

⁵⁸ *ibid.*

⁵⁹ Malta Council for the Voluntary Sector, 'ESF 3.234 – LEAP! Project: Building the Future Together: Promoting Social Mobility: Traineeship Scheme Information Sheet' (2014) <<http://www.maltacvs.org/wp-content/uploads/2014/06/2014-06-13-Information-Sheet-Traineeship-Scheme.pdf>> accessed 19 February 2015.

⁶⁰ *ibid.*, 3.

⁶¹ *ibid.*, 1.

⁶² *ibid.*

Services, in collaboration with the Employment and Training Corporation (ETC) and the National Commission Persons with Disability (KNPD).⁶³

The success of such a project is evident as many participants eventually succeed in finding full or part-time employment.⁶⁴ The Me2 Coop Ltd stems from such a project and is essentially a social cooperative which 'continuously works for persons with special needs'⁶⁵ and tries to provide disabled persons with work which can be done under supervision. This cooperative, which is in fact also run by persons with disability, tries to raise 'awareness among employers'.⁶⁶ However, it is primarily targeted at aiding 'people with disability to develop their skills and improve their work prospects'.⁶⁷ Just like its predecessor programme, the cooperative works towards ensuring that employment for disabled persons is identified both within the public and the private sector.

Another programme which is still underway is the Employment Aid Programme.⁶⁸ This programme provides financial assistance to employers so as to motivate them to employ disabled persons. Essentially, 'employers receive a subsidy equivalent to 50% of the wage costs'.⁶⁹ Such an approach has the effect of ensuring that disadvantaged individuals (thus including disabled persons) become more financially independent and thus 'social exclusion and marginalisation'⁷⁰ is avoided.

The ETC, through the Inclusive Employment Services, is committed towards helping individuals in disadvantaged situations 'to enter the labour market'⁷¹, which individuals include persons with disability. Individuals enlisted with the ETC Register of Disabled Persons are assessed by an

⁶³ Foundation for Social Welfare Services, 'Me too! Integration of Persons with Disability into the Labour Market'. <<http://fsws.gov.mt/en/fsws/Pages/EU%20Projects/Me-too!-Integration-of-Persons-with-Disability-into-the-Labour-Market.aspx>> accessed 19 February 2015.

⁶⁴ *ibid.*

⁶⁵ Koperattivi Malta, 'Me2Coop Ltd' (2015) <<http://cooperatives-malta.coop/me-2-coop-ltd/>> accessed 19 February 2015.

⁶⁶ Editorial, 'Me2! Cooperative for people with disability' *Times of Malta*, (22 April 2012) <<http://www.timesofmalta.com/articles/view/20120422/business-news/Me2-cooperative-for-people-with-disability.416507>> accessed 19 February 2015.

⁶⁷ *ibid.*

⁶⁸ Parliamentary Secretariat for the EU Presidency 2017 and EU Funds, 'ESF 3.64: Employment Aid Programme' <<https://investinyourfuture.gov.mt/project/private-sector/employment-aid-programme-33947766>> accessed 19 February 2015.

⁶⁹ The Malta Chamber of Commerce, Enterprise and Industry, 'Employment Aid Programme – Reimbursement Process Session' <<http://www.maltachamber.org.mt/content.aspx?id=262353>> accessed 19 February 2015.

⁷⁰ *ibid.*

⁷¹ Employment and Training Corporation, 'Persons in Disadvantaged Situations' (2010) <<http://etc.gov.mt/Category/3/43/searchresult.aspx>> accessed 19 February 2015.

occupational therapist, who, together with the employment advisor, ensures the best match between the person with a disability seeking employment, and the available vacancies. Training courses are also made available. In order to provide the necessary help, job coaches and learning support assistants are allocated to such individuals in order to help them whilst at work and during training courses. Moreover, this state entity works in liaison with private organizations such as Inspire and Richmond Foundation.

Another programme steered by the ETC is the 'Job Bridge Programme', 'targeted for jobseekers with intellectual disability between the ages of 16 to 25 and who have completed compulsory education'.⁷² The programme focuses on the acquisition of employability, social and independent living skills, and gives an opportunity to jobseekers to experience a number of jobs.

The 'Bridging the Gap Scheme', administered by the Supported Employment Section within ETC, also focuses on facilitating the integration of disadvantaged groups into the labour market. With regards to the individual, it equips him with the 'counselling and placement services together with referrals to adequate training'.⁷³ On the other hand, it 'allows the employer to evaluate the performance of the client in the workplace, prior to proper engagement'.⁷⁴ The work exposure in such cases allows the individual to understand what kind of skills s/he needs to attain in order to become employed in such a sector, as the individual 'is placed on the scheme with the prospect of employment'.⁷⁵ Measures are also specifically designed to encourage such employment. The individual receives a percentage of the minimum wage whilst still being able to receive social security benefits, unless the placement is longer than 28 weeks. The employer is not obliged to pay national insurance contributions, salaries and sick leave benefits, and can truly evaluate whether the individual can fulfil the job position in question.

Furthermore, the ETC together with the NGO Inspire have embarked upon the provision of 'free sheltered employment training to persons with different disabilities with the aim of

⁷² Employment and Training Corporation, 'Job Bridge Programme' (2013) <<http://etc.gov.mt/Page/91/job-bridge.aspx>> accessed 19 February 2015.

⁷³ Employment and Training Corporation, 'Bridging the Gap Scheme' (2010) <<http://etc.gov.mt/Page/64/bg-jobseekers.aspx>> accessed 19 February 2015.

⁷⁴ *ibid.*

⁷⁵ *ibid.*

improving their employability'.⁷⁶ Job coaches, practical employment training and free transport is provided.

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

In 2012, the Malta Federation of Organizations Persons with Disability (MFOPD) was 'concerned at the news that the government is to reduce about EUR 1,000,000 from the budgets of Appoġġ and Support agencies'⁷⁷, agencies which 'make a big difference in the lives of vulnerable people who turn to these agencies to live a decent life and to be able to participate in the community as the rest of the Maltese population'.⁷⁸ In such light it was argued that such cuts could be implemented elsewhere. The same arguments were put forward by several associations such as the Down Syndrome Association.⁷⁹

Such a negative measure was also reported in the document *National disability policies in European countries in the context of the 2012 National Social Reports (NSRs)*.⁸⁰ However, the same report also held that 'people receiving a severe disability pension will be allowed to earn up to the minimum wage without losing benefit'.⁸¹

The Mental Health Europe NGO, in 2012, held that no changes had been recorded with regards to 'social assistance and disability benefits'.⁸² Nevertheless, protective measures were implemented by the Maltese community mental health services wherein housing was provided to persons suffering from mental health problems at reduced and subsidized rates. With regards to

⁷⁶ Employment and Training Corporation, 'Sheltered Employment Training' <<http://www.etc.gov.mt/NewsDetails.aspx?NewsID=89>> accessed 19 February 2015.

⁷⁷ Joe Borg, 'Budget Cuts' *The Malta Independent* (28 February 2012) <<http://www.independent.com.mt/articles/2012-02-28/newspaper-letters/Budget-Cuts-306444>> accessed 19 February 2015.

⁷⁸ *ibid.*

⁷⁹ Pio Fenech, 'The Disabled Disadvantaged (2)' *Times of Malta* (19 March 2012) <<http://www.timesofmalta.com/articles/view/20120319/letters/The-disabled-disadvantaged-2-411760>> accessed 19 February 2015.

⁸⁰ Mark Priestley on behalf of the Academic Network of European Disability experts, *National disability policies in European countries in the context of the 2012 National Social Reports (NSRs)* (University of Leeds, 2012) <http://www.disability-europe.net/content/aned/media/ANED_2012_-_Task_5_-_NSR_synthesis_report_FINAL.doc> accessed 19 February 2015.

⁸¹ *ibid.*, 16.

⁸² Mental Health Europe, 'Impact of the Crisis and Austerity Measures on Health Systems and Vulnerable People', (2012), 16 <<http://old.mhesme.org/assets/files/documents/30.%20MHE%20Contribution%20to%20EPA%20on%20Impact%20of%20the%20Crisis%20and%20Austerity%20Measures%20on%20Health%20Systems%20and%20Vulnerable%20People.pdf>> accessed 19 February 2015.

employment and training no changes were recorded vis-à-vis individuals having mental health programmes. Employers were still aided in their employment of such persons, via government programmes which were co-financed by the EU.

More recent budgets have done away with the 'tax on transfer "causa mortis" for disabled persons'⁸³ and the expedition of 'succession procedures for children with special needs'⁸⁴ is also being focused upon.

Moreover with the 2015 Budget, the European Social Fund is to be put into force again. Employers will be able to make use of such a fund 'when they employ disadvantaged persons or provide training for their employees'.⁸⁵ The government will also extend the Disability Pension in such a manner so that such a pension can cover the Neuro Myelitis Optica diseases.⁸⁶ Other measures include the development of resident homes, betterment of respite services and day care centers, the increase in chances for a disabled person 'in employment earning more than a minimum wage to get the full disability pension'⁸⁷ and fiscal incentives for trusts and foundations set up to help disabled persons. In order to ensure that more disabled persons enter the labour market, 'an employer who employs a disabled person will be exempt from paying social security contributions for such employee, and he can also be eligible to claim a tax deduction on profits equivalent to the disabled person's wage'.⁸⁸ Nevertheless, the 'maximum credit cannot exceed EUR 4,500 for each disabled employee'.⁸⁹ Furthermore, the government is keen on enforcing a 1967 law wherein companies employing more than 20 people are required 'to employ 2% of their workforce from among individuals with a disability'.⁹⁰ Companies who fail to employ such

⁸³ Caritas Europa, *Country Report for Malta: Europe 2020 Shadow Report 2014* (2014), 5 <http://www.caritas.eu/sites/default/files/shadowreport2014_malta.pdf> accessed 19 February 2015.

⁸⁴ *ibid.*

⁸⁵ Ministry for Finance, *Budget Document 2015* (Government Press, 2014) 31.

⁸⁶ *ibid.*, 44.

⁸⁷ *ibid.*, 59.

⁸⁸ *ibid.*

⁸⁹ *ibid.*

⁹⁰ Editorial, 'Budget 2015 | Eco tax out, lower deficit and new tax rebates' *Malta Today* (16 November 2014) <http://www.maltatoday.com.mt/news/budget_2015/46210/in_tomorrows_budget_eco_tax_out_lower_deficit_new_tax_rebates-.VOYBUIPF-5J> accessed 19 February 2015.

measures 'will be obliged to contribute EUR 2,400 p.a. for every individual they should have been employing, up to a maximum amount of EUR 10,000'.⁹¹

5.2. Children and Young Persons (Article 17 ESC)

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

The education of children is the responsibility of both the parents and the state. Article 28 of the United Nations Convention to the Rights of the Child, which Malta has ratified, holds that 'State Parties recognize the right of the child of education', mentioning compulsory primary education which is free to all, encouraging secondary education, making higher education and educational guidance accessible to all, and adopting measures to encourage school attendance.⁹²

The education of children and young persons is also a right protected by Article 2 of the European Convention on Human Rights. The Maltese Education Act sheds more light on this right in Article 3 because it states that: 'It is the right of every citizen of the Republic of Malta to receive education and instruction without any distinction of age, sex, beliefs or economic means.' Moreover, Article 3B(1) of the Maltese Civil Code states that parents are obliged to 'instruct and educate the children of the marriage taking into account the abilities, natural inclinations and aspirations of the children'.

In Malta, there is a State kindergarten and primary school in every town and village, ensuring a fair distribution of schools in Malta's geographic areas.⁹³ Secondary schools are spread around Malta, although the majority of the schools are in the central region. Higher education establishments in Malta are few, due to Malta's small population, and therefore such institutions are a handful. As for tertiary education, there is only one university in Malta, accommodating the population of Malta and Gozo. In terms of teacher-pupil ratio, Malta was one of the best

⁹¹ IURIS Management Limited, *Budget Report 2015*, 2 <<http://iurismalta.com/assets/files/Budget-2015.compressed.pdf>> accessed 19 February 2015.

⁹² United Nations Convention on the Rights of the Child (1989) art 3.

⁹³ Just Landed, 'Schools: State and Private Schools in Malta' (2015) <<https://www.justlanded.com/english/Malta/Malta-Guide/Education/Schools>> accessed 2 April 2015.

countries according to 2012 Eurostat data for the ISCED levels 1-3, Malta having a ratio of 9.6, being ahead of many European Union countries.⁹⁴

Education in Malta begins in childcare centres, which are all registered with the Department for Social Welfare Standards and follow all standards set by the Policy for Child Care Facilities.⁹⁵ This service is offered to children of ages between three months and three years.⁹⁶ The National Standards for Child Day Care Facilities⁹⁷ of 2006 is followed. The next step is Kindergarten classes, between the age of three and five years old, but this is not compulsory. At this stage children start developing basic literary and social skills as they are eased into the educative system.⁹⁸

Primary and secondary school follow, where, in the course of 11 years, children develop their reading and writing skills, study mathematics and science, develop creatively, and participate in sports.⁹⁹ There are many schools to choose from - State schools, Church schools, and independent schools. Until 2010, an exam had to be taken by primary school children in their last year, to be admitted into secondary schools, separating students according to their accomplished mark.¹⁰⁰ This was replaced by a National Exam which provides for a more inclusive learning system. At the end of secondary education, a set of exams is taken, regulated by the Matriculation and Secondary Education Certificate Examination Board, MATSEC.¹⁰¹ After these exams, students can choose either to stop studying, having reached the age of sixteen years, or else to pursue their career further. The Junior College in Malta provides two years of further education, which prepares the students 'to develop the attributes needed for tertiary level

⁹⁴ Eurostat, 'Pupil/Student – Teacher Ratio and Average Class Size (ISCED 1-3)' (05 August 2014) <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=educ_iste&lang=en> accessed 2 April 2015.

⁹⁵ Ministry for Education and Employment, 'Early Years' (2013) <<http://education.gov.mt/en/education/Pages/Early-Years.aspx>> accessed 1 April 2015.

⁹⁶ *ibid.*

⁹⁷ Technical Committee on Child Day Care, 'National Standards for Child Day Care Facilities' (July 2006) <<http://www.snapadministration.com/snapdatafiles/files/ETC/633488648114023750.pdf>> accessed 1 April 2015.

⁹⁸ Government of Malta, 'Early Years' (2013) <https://www.gov.mt/en/Services-And-Information/Business-Areas/Education_and_Learning/Pages/Early-Years.aspx> accessed 1 April 2015.

⁹⁹ Government of Malta, 'Primary and Secondary Education' (2013) <https://www.gov.mt/en/Services-And-Information/Business-Areas/Education_and_Learning/Pages/Primary-and-Secondary-Education.aspx> accessed 1 April 2015.

¹⁰⁰ Editorial, 'Last Junior Lyceum Exam Held' *Times of Malta* (6 May 2010) <<http://www.timesofmalta.com/articles/view/20100506/local/last-junior-lyceum-exam-held.306138>> accessed 1 April 2015.

¹⁰¹ Laws of Malta, Chapter 327, Education Act 1988.

status'.¹⁰² Private and Church institutions provide substitutes for the Junior College. Alternatively, the Malta College of Arts, Science and Technology (MCAST) provides vocational education and training to interested students after finishing their secondary school.¹⁰³ The Institute for Tourism Studies (ITS) provides higher education with the aim of accommodating the fluctuating necessities of the tourism industry to students.¹⁰⁴ Finally, the University of Malta provides tertiary education in various courses to thousands of Maltese students for free, and for foreigners.

'The Education Act – Chapter 327 of the Laws of Malta – lays down the principles underlying Malta's educational system and policy.'¹⁰⁵ This Act establishes various bodies and structures which provide for the establishment and maintenance of educational institutions. The Education Act provides for the establishment of the National Curriculum Framework, to be applicable to all schools at compulsory education level.¹⁰⁶

The Directorate for Quality and Standards in Education (DQSE), as established in Article 8 of the Education Act, aims to provide quality education and good practises for all.¹⁰⁷ The concept of the National Curriculum Framework was introduced in Malta by the Education Act (1998), to ensure a minimum standard level education. The DQSE has the responsibility to update this framework, implement it, and to review this implementation process regularly. This applies to all schools, state schools or not.¹⁰⁸ Several representatives from the Directorates of Education, the Faculty of Education, the MATSEC Examinations Board, the Church, and private schools were

¹⁰² University of Malta, 'G.F. Abela Junior College: Mission Statement' <<http://www.jc.um.edu.mt/>> accessed 1 April 2015.

¹⁰³ Malta College of Arts, Science & Technology, 'Overview' <<http://www.mcast.edu.mt/TopMenu/Aboutus/Overview.aspx>> accessed 1 April 2015.

¹⁰⁴ Institute of Tourism Studies Malta, 'About Us' (2014) <<http://www.its.edu.mt/abouts-us-its.html>> accessed 1 April 2015.

¹⁰⁵ Ministry for Education and Employment, 'Consultation document on reforms to the Education Act' (2014) <http://education.gov.mt/en/Documents/Consultation_document_on_reforms_to_the_Education_Act.pdf> accessed 19 February 2015.

¹⁰⁶ Education Act, supra (n 101) art 2.

¹⁰⁷ *ibid*, art 9.

¹⁰⁸ Education Act, supra (n 101) art 8.

involved in this review. Moreover, experts in curriculum from the Ministry of Education in New Zealand and Learning and Teaching Scotland were essential in refining the draft document.¹⁰⁹

When the National Curriculum Framework was drafted and published, the Director General of the DQSE held that:

At a time when, like other EU member states, Malta is overcoming the economic crisis in the context of demographic changes and social cohesion, this NCF should ensure that future generations acquire skills which will enrich their lives and secure economic growth, sustainability and the foundations of a knowledge society.¹¹⁰

Among the key ideas that the National Curriculum Framework promotes, we find a 'clear focus on improving the quality of education and raising student achievement levels' and:

Flexible learning programmes providing diverse and integrated learning experiences that cater for a wide spectrum of learners and which suit the interests and capabilities of individual learners within nationally accepted parameters.¹¹¹

It is the right of the State to establish a National Curriculum Framework of studies for all schools, to establish the national minimum conditions for all schools and to secure compliance with the National Curriculum Framework of studies and the national minimum conditions for all schools.¹¹²

The DQSE is to propose the National Curriculum Framework to the Minister.¹¹³ The DQSE is to 'plan, provide and allocate the resources, human and otherwise, services and learning tools' while continuously collaborating with the Colleges and schools. The DQSE must, in conjunction with the Colleges and schools, ensure that these are operating as intended, while supporting the functions and targets of the DQSE, most importantly that the students' potential and skills are developing and the implementing of the National Curriculum Framework.¹¹⁴

¹⁰⁹ Grace Grima, 'A Quality Education for All' *Times of Malta* (19 June 2011) <<http://www.timesofmalta.com/articles/view/20110605/education/A-quality-education-for-all.368955>> accessed 19 February 2015.

¹¹⁰ *ibid.*

¹¹¹ Ministry for Education and Employment, 'A National Curriculum Framework for All' (December 2012) <[http://education.gov.mt/en/Documents/A National Curriculum Framework for All - 2012.pdf](http://education.gov.mt/en/Documents/A%20National%20Curriculum%20Framework%20for%20All%20-2012.pdf)> accessed 19 February 2015

¹¹² Education Act, *supra* (n 101) art 7.

¹¹³ *ibid.*, art 9.

¹¹⁴ *ibid.*, art 11.

The Minister has to establish the National Curriculum for all schools at the compulsory educational level, after receiving proposals and advice from entities established by the Education Act, while the schools have to fulfil this curriculum.¹¹⁵

The Education Act has always provided, even before the economic crisis, for a Permanent Committee for Education, to be presided by the Minister of Education, which has to:

Discuss and evaluate the policy, the strategy and the direction and the developments in the education sector, to facilitate and ensure the effective collaboration and coordination between the entities established under this Act, their agencies, and other public and private educational institutions, and to monitor and follow the implementation of the educational policy and strategy adopted by the Government.¹¹⁶

This Permanent Committee for Education was created to oversee the overhaul in the education sector in Malta. Dr Louis Galea, the Minister for Education, Youth and Employment in 2006, stated that millions were being invested in this educational reform, showing how committed the Government was to implement this reform.¹¹⁷

The state has to start providing for the establishment and maintenance of institutions and services adequate for education in Malta, as from the very beginning of the child's educational journey. The State has the duty to provide for the primary education of children of Maltese citizens that are of a compulsory school age.¹¹⁸ The compulsory school age in Malta is that from five years old¹¹⁹ to sixteen years old.¹²⁰ The parents of a minor have the duty to make sure that the minor continues to attend school till the end of the last compulsory scholastic year.¹²¹

The compulsory school age starting from the age of five puts Malta among only a few other European countries where formal education starts early. From data collected by Eurydice in *Compulsory Education in Europe 2014/15*, in the majority of the European countries, compulsory

¹¹⁵ *ibid*, art 47.

¹¹⁶ Education Act, *supra* (n 101) art 17(1).

¹¹⁷ Editorial, 'Permanent Committee for Education Holds First Meeting' *Times of Malta* (21 July 2007) <<http://www.timesofmalta.com/articles/view/20070721/local/permanent-committee-for-education-holds-first-meeting.10646>> accessed 21 February 2015.

¹¹⁸ Education Act, *supra* (n 101) art 43(1).

¹¹⁹ *ibid*, art 2.

¹²⁰ Malta Union of Teachers, 'State Schools' (2012) <[http://www.mut.org.mt/state_schools_\(info\).htm](http://www.mut.org.mt/state_schools_(info).htm)> accessed 20 February 2015.

¹²¹ Education Act, *supra* (n 101) art 5(b).

education starts at the age of six¹²², placing Malta below the average compulsory starting age.¹²³ Although enrolling children in childcare centres before the age of five is not mandatory, the trend indicates that there is a steady increase in the amount of children attending these facilities every year.¹²⁴

There are government-run facilities, organised through the Foundation for Educational Services (FES). The first facility goes back to 2001, and the rest emerged post-2007, at the same time when the financial crisis was affecting many European Union Member States. However, in Malta, such 'financial turmoil and consequent credit crunch, which in most EU countries followed on from the 2008 crisis, have been notable by their absence in Malta'.¹²⁵ Therefore, today, there are twelve centres setup and maintained through FES. 'These centres are registered with the Department for Social Welfare Standards and strictly follow all criteria set up by the Policy for Childcare Facilities.'¹²⁶

The Directorate for Educational Services, created by Education Act, before the economic crisis, retains the mission of ensuring 'the effective and efficient operation and delivery of services to the Colleges and State schools within an established framework of decentralisation and autonomy'.¹²⁷

The law provides for a School Council to be comprised of parents and teachers and a Student's Council, to have the powers that the Minister may from time to time establish.¹²⁸

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

¹²² European Commission, 'Compulsory Education in Education 2014/15: Eurydice – Facts and Figures' (2014) <http://eacea.ec.europa.eu/education/eurydice/documents/facts_and_figures/compulsory_education_EN.pdf> accessed 19 February 2015

¹²³ Eurydice at National Foundation for Educational Research Unit for England, Wales and Northern Ireland, 'Compulsory age of starting school in European countries, 2013' (January 2013). <https://www.nfer.ac.uk/shadomx/apps/fms/fmsdownload.cfm?file_uid=3B48895C-E497-6F68-A237-BCD7AB934443&siteName=nfer> accessed 27 February 2015.

¹²⁴ Ministry for Education and Employment, *Early Childhood Education & Care in Malta: The Way Forward* (White Paper, 2013).

¹²⁵ Cordina and Vella, *supra* (n 4) 291.

¹²⁶ Government of Malta, *supra* (n 98).

¹²⁷ Education Act, *supra* (n 101) art 10.

¹²⁸ *ibid*, art 61(2).

In Malta, the Government and various institutions, including the Church, strive to provide protection and aid to children and young persons, especially those in need, such as those temporarily or definitely deprived of their family's support. Malta, in 2009, was not considered to be in need of austerity measures, and therefore the services and measures provided before the economic crisis in the European Union and after the economic crisis, remained the same and there were no austerity measures in this regard.¹²⁹

The State has a duty to intervene when the parents cannot or do not want to exercise parental responsibility for their children. The family should receive all available support in order to be aided and stay together, but sometimes the state has no option but to interfere. Where possible, if circumstances change, the child is to be reintegrated back with his family. When these circumstances are unlikely to happen, there are long-term solutions to be opted for, such as alternative forms of care, including residential care, foster care and possibly even adoption. The basic point is that the best interests of the child need always be considered.¹³⁰

The Foundation for Social Welfare Services was established in 1998, with responsibilities in the social services fields. Through this Foundation, Malta takes various measures, inter alia, providing social welfare services particularly in relation to problems such as family welfare. Aġenzija Appoġġ is the national agency that caters for children, families and the community, taking care and promoting the well-being of such persons through welfare services. The agency encompasses more than 30 services, focusing on children and young persons, families and adults, in a vulnerable position, which may be at the risk of social exclusion.¹³¹

This Foundation provides an Out-of-Home Care Programme, to ensure the best interest of all children and young persons who for various reasons are unable to live with their birth families. This programme tries to offer options which promote a family-like environment. Three services are provided: specialised home-based care; freeing children for adoption; and co-management of residential homes. Prime among the objectives of this programme there is the identification of those needing this service: matching children and young persons in need of specialized care with

¹²⁹ Pietras, supra (n 5)

¹³⁰ Ruth Farrugia, 'Child Law' in Aaron Schwabach and Arthur John Cockfield (eds), 'Law' in *Encyclopedia of Life Support Systems* (Developed under the Auspices of the UNESCO, Eolss Publishers, 2004).

¹³¹ Foundation for Social Welfare Services, supra (n 29).

families who may satisfy and provide such care; implementing procedures for child adoption; and providing support to adoptive parents.¹³²

The Specialised Home-based care offered by this agency encompasses a package of benefits, ranging from financial benefits to others, in order to encourage individuals and/or families to offer accommodation to a child or young person, who is unable to continue living with their birth family and for whom current care is insufficient to cater for his/her needs for several reasons. Thus, children and young persons are exposed to a family background, promoting their potential development.¹³³

The Freeing Children for Adoption service is aimed to examine sensitively those cases of children and young persons who are unable to live with their birth families and whose circumstances are likely to remain the same in the future. Children and young persons have a right to live in a good family environment, and if their natural family cannot provide this, their right has to be safeguarded still, and therefore the law, through this service, ensures that the best interests of the child or young person are protected.¹³⁴

The agency works hard to find families and individuals to offer care to children and young persons in need but the services are not always appropriate for the child's or young person's needs, for several reasons, including but not limited to, difficult challenges that the child or young person is experiencing, or having dangerous behaviour. The Church, a powerful institution in Malta, has been contributing in this area of residential services. Since the needs of children and young persons are ever-hanging and ever-increasing the State had to intervene and collaborate with residential homes, to ensure that residential services continue to be offered.¹³⁵

The Co-Management of Residential Homes attempts to resolve challenges as regards improving the care for children and young persons, while utilizing the Church's experience in this area.

¹³² Foundation for Social Welfare Services, 'Out-of-Home Care Programme' (2012) <<http://www.fsws.gov.mt/en/appogg/Pages/out-of-home-care-program.aspx>> accessed 23 February 2015.

¹³³ Foundation for Social Welfare Services, 'Specialised Home-Based Care' (2012) <http://www.fsws.gov.mt/en/appogg/Pages/Out_of_Home_Care/Specialised-Home-Based-Care.aspx> accessed 23 February 2015.

¹³⁴ Foundation for Social Welfare Services, 'Freeing Children for Adoption' (2012) <http://www.fsws.gov.mt/en/appogg/Pages/Out_of_Home_Care/Freeing-Children-for-Adoption.aspx> accessed 24 February 2015.

¹³⁵ Foundation for Social Welfare Services, 'Co-Management of Residential Homes' (2012) <http://www.fsws.gov.mt/en/appogg/Pages/Out_of_Home_Care/Co-Management-of-Residential-Homes.aspx> accessed 24 February 2015.

Under this service we find children and young persons under Care Orders. Care Orders are catered for by Maltese law in the Children and Young Persons (Care Orders) Act, which provides that when the Minister is satisfied that a child or young person is in need of care, protection or control, he shall, by an order, take him into his care, after representations are made to him in writing by the Director of the Department responsible for Social Welfare, and after the parents or guardians are given the opportunity to express their views.¹³⁶ This service tries to place the residential home in the centre of the community, to reduce social exclusion, while making children and young persons feel as part of the community. The purpose is to make them feel that they belong to the community.¹³⁷

The agency also protects children and adolescents who have been abused or neglected or are in such a risk. The Child Protection Services deal with these cases, where this family support is temporarily or permanently being deprived, by investigating referrals through social workers. Follow-up work is also provided with children and their families, as are consultations and information.¹³⁸

Malta provides children and young persons temporarily or permanently deprived of their family's support with the monitoring of their health, for those living in residential homes, foster care, cases of suspected abuse and others. A paediatrician works with social workers to provide for the medical needs of such individuals.¹³⁹

Through the Children's Fund, Malta ensures that the State provides assistance in those situations where immediate material care is required for children and young persons, but their carers are unable to provide it. Those using the agency's services are eligible to benefit from this fund.¹⁴⁰

¹³⁶ Laws of Malta, Chapter 285, Children and Young Persons (Care Orders) Act 1985, art 4.

¹³⁷ Foundation for Social Welfare Services, 'Co-Management of Residential Homes' (2012) <http://www.fsws.gov.mt/en/appogg/Pages/Out_of_Home_Care/Co-Management-of-Residential-Homes.aspxht> accessed 26 February 2015.

¹³⁸ Foundation for Social Welfare Services, 'Child Protection Services' (2012) <<http://www.fsws.gov.mt/en/appogg/Pages/Intake-and-Protection-Services/Child-Protection-Services.aspx>> accessed 26 February 2015.

¹³⁹ Foundation for Social Welfare Services, 'Social Paediatrics' (2012) <<http://www.fsws.gov.mt/en/appogg/Pages/Intake-and-Protection-Services/Social-Paediatrics.aspx>> accessed 27 February 2015.

¹⁴⁰ Foundation for Social Welfare Services, 'Children's Fund' (2012) <<http://www.fsws.gov.mt/en/appogg/Pages/Intake-and-Protection-Services/Children%27s-Fund.aspx>> accessed 27 February 2015.

The Adoption Services provided by the State through Aġenzija Appoġġ have several responsibilities, including providing training to prospective adoptive process, assessing suitability to adopt, providing guidance through the procedural process of adoption to the prospective adoptive parents, and providing supporting before, during and after adoption. In Malta, adopted children may be followed for up to two years or more after adoption by a social worker. For a prospective adoptive parent to be recognized as eligible to adopt a child there are a number of criteria to be satisfied. The process begins with informing the prospective adoptive parents on adoption legislation and the procedures to be followed.¹⁴¹

Among the criteria to be satisfied, one finds that in a prospective adoptive couple, one of the parents must be at least 28 years of age or older - this also applies to a single person; and there must not be a higher discrepancy in age than 45 years between the prospective adoptive parent and child, for instance. When criteria are satisfied, an application is submitted, and preparation sessions ensue. Next come home visits and meetings, and a Home Study Report is generated. Finally, the Adoption Board accepts or refuses the adoption.¹⁴² Maltese and foreign children can be adopted, with the latter requiring further procedures. Social workers review adopted children's progress, particularly as regards foreign adoptions.¹⁴³

Malta offers fostering services through this agency, to those children and young persons who cannot live with their birth parents, due to a death of a parent, or abuse or neglect, among other reasons. There is an opportunity to live in a family environment, while leaving reintegration open, if the situation with the natural family improves. The agency requires interested foster carers to attend courses, submit to assessments, and cooperate in reports, while social workers monitor, supervise, guide and support the family. The State provides for the Fostering Board, through the Foster Care Act, which is to examine Home Study Reports, to determine the suitability or otherwise of prospective foster carers, to keep an updated register of foster carer, and other functions.¹⁴⁴

¹⁴¹ Laws of Malta, Chapter 495, Adoption Administration Act, art 20.

¹⁴² *ibid*, art 22(3).

¹⁴³ Foundation for Social Welfare Services, 'Adoption Services' (2012) <<http://www.fsws.gov.mt/en/appogg/Pages/Health-and-Family-Services/Adoption-Services.aspx>> accessed on 20 February 2015.

¹⁴⁴ Laws of Malta, Chapter 491, Foster Care Act 2007, art 4.

The State provides to support services through this same agency for children and adolescents, and also for their families, who are faced with different problems in their life. These services promote well-being, protection of rights and potential enhancement. Social workers develop care plans and take action to protect the rights of the children and give support, while making sure that the wellbeing of children and young persons are at the priority. The agency provides a supportline, to offer support and information to children and young persons, especially in times of difficulty.¹⁴⁵

Another similar service is that provided by *Kellimni* (Talk to Me), aimed at children and young persons needing someone to talk to or to guide them. This agency provides for court services and supervised access visits in cases when access is not possible otherwise. Through this service, supervisors are present during access visits, to make sure that children are in the best environment possible during the visit.¹⁴⁶

Malta provides for circumstances where a child or young person whose parents are dead or the parent exercising parental responsibility is dead, has to be found a substitute. Hence, the law caters for tutors.¹⁴⁷ Maltese law provides that more than one tutor may be appointed¹⁴⁸ and also provides a list of persons who may not be tutors such as undischarged bankrupts and persons who are not vested with the free administration of their property¹⁴⁹ and those persons who may be excused from the office of tutors such as Members of the House of Representatives.¹⁵⁰

The Department for Social Welfare Standards formed a working group to draw up National Standards for Out-of-Home Child Care.¹⁵¹ The standards describe what each and every child or young person should expect from those who are responsible for out-of-home child care. The process starts at the time where the decision is taken, and it covers the period of care that the

¹⁴⁵ Foundation for Social and Welfare Services, 'Supportline 179' (2012) <<http://www.fsws.gov.mt/en/appogg/Pages/support-line-179.aspx>> accessed 20 February 2015.

¹⁴⁶ Foundation for Social Welfare Services, 'Kellimni' (2012) <<http://www.fsws.gov.mt/en/appogg/Pages/Children-and-Young-Parents-Support-Services/Kellimni.aspx>> accessed 2 March 2015.

¹⁴⁷ Laws of Malta, Chapter 16, Civil Code 1870, art 158.

¹⁴⁸ *ibid*, art 161.

¹⁴⁹ *ibid*, art 163.

¹⁵⁰ *ibid*, art 165.

¹⁵¹ Department for Social Welfare Standards, 'National Standards For Out-Of-Home Child Care' (Ministry for Social Policy, 2009) <<https://mfss.gov.mt/en/DSWS/Documents/Out-of-home-child-care/national-standards.pdf>> accessed 10 February 2015.

child receives within the foster care family or the residential home, as well as the period following such care. The fundamental principle in these standards is that the child should always be the primary consideration. In 2009, after the consultation ended, the final document and the Model Policies and Procedures for Out-of-Home Child Care¹⁵² were launched as drafted by experts in the respective fields.

The State has taken various family-friendly measures that may benefit children and young persons who are temporarily or permanently deprived of their family support when the Public Service granted adoption leave and leave to foster children. Malta provides for the possibility of one year unpaid leave for fostering and 5 weeks paid leave in the case of adoption, which measures in the long run benefit and aid the children and young persons.¹⁵³

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

In a report by the Malta Chamber of Commerce, Enterprise and Industry, it was highlighted that Malta did not have to adopt austerity measures during the financial crisis, unlike other countries:

The economic diversification strategy and financial direction adopted by Malta has enabled it, to a large extent, to successfully weather the economic and financial tsunami that has engulfed the world and more extensively the Euro Zone since 2008. Whilst Malta's neighbours in Southern Europe as well as other Member State of the EU have had to adopt austerity policy measures, Malta has been one of the better performing economies.¹⁵⁴

Therefore Malta continued providing the same, if not more, measures vis-à-vis education as before the financial crisis of 2008.

Education is one of those sectors and institutions in Malta, like health, which each Government tries to improve and develop the services provided to the members of society, while keeping them free. The State tries to provide an equal playing field as regards education, so that all

¹⁵² Working Group on Residential and Foster Care, 'Model Policies and Procedures for Out-of-Home Child Care' (Ministry for Social Policy, 2009) <https://mfss.gov.mt/en/DSWS/Documents/Out-of-home-child-care/model_policies_procedures.pdf> accessed 10 February 2015.

¹⁵³ Malta Council for Economic and Social Development, 'Family Friendly Measures in Malta' (MCESD News, 1 May 2011) <<http://www.ncwmalta.com/file.aspx?f=280>> accessed 10 February 2015.

¹⁵⁴ The Malta Chamber of Commerce, Enterprise and Industry, Economic Vision for Malta 2014-2020 (2014).

children, including those in and in risk of poverty, have an equal access to education. In fact, the Education Act provides that: 'It is the right of every citizen of the Republic of Malta to receive education and instruction without any distinction of age, sex, belief or economic means'.¹⁵⁵

According to information updated on the Government of Malta's website, State schools are free to all students, in Malta and Gozo. The transport to and from school is free. Books are also available and provided for free. Other school material is provided for free as well. However, parents need to buy their children's school uniform.¹⁵⁶

Church schools in Malta, fall under the responsibility of the Maltese Curia. Due to an agreement with the Government, Church schools do not charge school fees because the Government pays for the salaries of the employees of these schools, although the parents would be asked to give an annual monetary donation in order to aid the school in its costs. However, families with financial difficulties may be exempted from paying this donation. Despite the aid that the Government gives to the Church schools, transport fees, school supplies and uniforms are to be paid and provided for by the parents.¹⁵⁷ The Church of Malta through the Holy See and the Republic of Malta in 1991 entered into an agreement as to the financial support to be given by the State to the Church school.¹⁵⁸

As regards independent schools, which are increasing in Malta, amounting to 20% of schools, compared to 30% Church schools and 50% State schools, parents pay for the school fees and are also required to buy the school supplies such as books, uniforms and pay transport fees.¹⁵⁹

Where education is concerned in Malta, various governments have tried to improve, change and develop where is needed, to have an education sector that puts Malta at the forefront. Recently, regarding the issue of children's uniform, Evarist Bartolo, Minister for Education and Employment, initiated public consultation as to whether uniforms are to be removed or not, or

¹⁵⁵ Education Act, supra (n 101) art 3.

¹⁵⁶ Government of Malta, 'Education' (2013) <<https://www.gov.mt/en/Life%20Events/Moving-to-Malta/Pages/Education.aspx>> accessed 25 February 2015.

¹⁵⁷ Government of Malta, supra (n 156).

¹⁵⁸ Ministry for Education and Employment, *Early Childhood Education & Care in Malta: The Way Forward* (White Paper, 2013).

¹⁵⁹ *ibid.*

if they ought to be simplified, to get a general feedback on what the way forward is.¹⁶⁰ After the consultation, a statement was published whereby it resulted that the majority of the parents were of the opinion that uniforms should remain but with reduced prices of the uniforms, while retaining the quality of the uniforms.¹⁶¹

As regards attendance of children at school, the State, through the Education Act, stipulates that it shall be the duty of every parent of a minor to cause him 'to attend school regularly on each scholastic day, unless the minor has a good and sufficient cause to be absent from school'.¹⁶² When a parent fails to ensure the regular school attendance of children, such parent 'shall be guilty of an offence and shall, on conviction, be liable to the punishments established for contraventions and to a fine for each day during which the offence continues'.¹⁶³ In case that there is a second or subsequent conviction, the Court may deprive parental authority, de jure or de facto, over the minor, and appoint a tutor for that purpose.¹⁶⁴

The Ministry for Education and Employment, in October 2014, published 'Addressing Attendance in Schools Policy' which policy is aimed to increase school-completion for all students; to increase achievement by students and to reduce gaps in the students' performance; to identify attendance patterns so that attendance improvement efforts can be generated; to ensure that students are abiding by the law relating to compulsory school attendance; and to promote the value of education. This policy builds upon recommendations from the 'School Attendance Improvement' Report of 2005. This policy acknowledges that absenteeism puts students at risk to be unable to achieve their overall potential, placing them at a disadvantage in their life choices. This policy elaborates on problems that students with severe absenteeism experience, including physical and mental health problems, learning difficulties and disabilities,

¹⁶⁰ Claudia Calleja, 'Public consultations on school uniforms, college line-ups, launched' *Times of Malta* (30 July 2013) <<http://www.timesofmalta.com/articles/view/20130730/local/school-uniforms-college-line-ups.480141>> accessed 17 February 2015.

¹⁶¹ Editorial, 'Prices of school uniforms reduced by 10%' *The Malta Independent* (25 July 2014) <<http://www.independent.com.mt/articles/2014-07-25/news/prices-of-school-uniforms-reduced-by-10-5967478785/>> accessed 10 February 2015.

¹⁶² Education Act, supra (n 101) art 5(c).

¹⁶³ *ibid*, art 129(b).

¹⁶⁴ *ibid*, art 133(1).

phobia from attending school, peer pressure, failure to learn, amongst others. Bullying and lack of motivation are some of the problems faced at school.¹⁶⁵

The European Union set five targets to be reached by 2020, one of which is the reduction of early school leavers to that of less than 10%, and this has been adopted as Malta's target¹⁶⁶. As from data published by the national authorities and available on the European Commission's website, in 2013, the percentage of early leavers from education and training was 20.8%¹⁶⁷. This policy holds that for absenteeism to be effectively dealt with, the responsibility is to be shared by all the stakeholders involved.¹⁶⁸ Malta aims at having more apprenticeship and traineeships, green jobs, digital jobs and additional funds to combat youth unemployment, as highlighted in the 2014 National Employment Policy.¹⁶⁹

In a Green Paper published by the Ministry for Family and Social Solidarity, the issue of absenteeism was tackled among other issues. This Green Paper acknowledged that absenteeism is one of the challenges that Malta faces in the need to fight poverty and social exclusion. It was recognized that the absenteeism rates are to be addressed.¹⁷⁰

Hon. Michael Farrugia, Minister for the Family and Social Solidarity stated in a press conference that parents of children who do not have school attendance record of a minimum of 95% would be ineligible for a EUR 400 child supplement that was introduced in Malta. This supplement would have families that earn a maximum net income of EUR 11,000, to receive EUR 400 for the first three children and a further EUR 200 for the rest of the children. Hon. Evarist Bartolo, Minister for Education, held that this measure was being taken so as to show that absenteeism is not tolerated.¹⁷¹

Education at the University of Malta is funded publicly and is free, with students receiving stipend and an allowance, previously known as 'maintenance grant', for expenses related to the

¹⁶⁵ Ministry for Education and Employment, *Addressing Attendance in Schools Policy* (2014).

¹⁶⁶ Ministry for Education and Employment, *The National Employment Policy* (2014) 50.

¹⁶⁷ European Commission, 'Europe 2020 in Malta' (November 2013) <http://ec.europa.eu/europe2020/europe-2020-in-your-country/malta/progress-towards-2020-targets/index_en.htm> accessed 17 March 2015.

¹⁶⁸ Ministry for Education and Employment, *supra* (n 165).

¹⁶⁹ Ministry for Education and Employment, *supra* (n 166) 51-2.

¹⁷⁰ Ministry of the Family and Social Solidarity, *supra* (n 33).

¹⁷¹ Ivan Martin, 'Parents to lose child supplement if children do not have good school attendance record' *Times of Malta* (1 October 2014) <<http://www.timesofmalta.com/articles/view/20141001/local/parents-to-lose-child-supplement-if-children-do-not-have-good-school-attendance-record.538046>> accessed 20 February 2015.

tertiary course the student is enrolled in.¹⁷² Gozitan students are aided by the Government of Malta through a subsidy scheme¹⁷³, through which payments of EUR400 are effected for each of the three scholastic quarters.¹⁷⁴

The State provides access to tertiary education by the laying of laws and curricula, through the Education Act and through a series of examinations. The MATSEC Board was established in 1991, entrusted with the development of examinations to replace the previous system of the GCE Ordinary and Advanced level examinations that were made by United Kingdom examination boards.¹⁷⁵¹⁷⁶

Through the agency's Children's Fund, Malta provides assistance to children and young persons requiring material support, where carers are unable to. This fund was created in 2003, encompassing various needs: food, clothing, books, uniforms, and more. This service helps more than 300 children in need every year. A Fundraising Committee, constituted of employees of the Foundation for Social Welfare Services organize fundraising activities to provide for this fund, and several local establishments contribute periodically.¹⁷⁷ Social workers identify the children and families already receiving help from the agency and who requires aid from this fund, and then formal send a request to the committee.¹⁷⁸

The same agency offers another service, 'Proġett Tagħlim' (*Educational Project*), offering children a space where they can do their homework after school. Through the 'Colours of Life' project, adolescents between of ages between 14 and 16, from difficult family situations or exhibiting

¹⁷² *ibid.*

¹⁷³ Ministry for Gozo, 'Subsidies Section' (2013) <http://mgoz.gov.mt/en/Pages/Departments/DG_Operations/Custom_Services/Subsidies-Section.aspx> accessed 10 March 2015.

¹⁷⁴ Ministry for Gozo, 'Government Allowance to Students Permanently Resident in Gozo Attending Full Time Courses In Malta Not Available In Gozo And Who Are Not In Receipt Of Any Other Allowance/Stipend Application Form' <https://mgoz.gov.mt/en/Documents/Downloads/Government_Allowance_to_students_permanently_resident_in_GozoVER2.pdf> accessed 10 March 2015.

¹⁷⁵ University of Malta, 'MATSEC Examinations Board' <<http://www.um.edu.mt/matsec>> accessed 10 March 2015.

¹⁷⁶ Education Act, *supra* (n 101).

¹⁷⁷ Editorial, 'BOV Employees in a Dress Down for Appoġġ Children's Fund' *The Malta Independent* (15 February 2005) <<http://www.independent.com.mt/articles/2015-02-13/company-news/BOV-employees-in-a-dress-down-for-Appogg-Children-s-Fund-6736130578>> accessed 20 February 2015.

¹⁷⁸ Foundation for Social Welfare Services, 'Children's Fund' (2012) <<http://www.fsws.gov.mt/en/appogg/Pages/Intake-and-Protection-Services/Children%27s-Fund.aspx>> accessed 5 March 2015.

behavioural problems, are given a chance to integrate in their own community, where they are taught how to become independent and deal with typical adolescent problems.¹⁷⁹

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures has your MS taken to address this issue

According to published information by the National Statistics Office of Malta, in a document analysing unemployment between the periods 2005 and 2013, both years inclusively, percentages for unemployment for the ages between 15 and 24 are higher than for other ages. Youth unemployment between 2005 and 2013 peaked at 16.1% in 2005, with a bottom low of 11.6% in 2008. In 2013 statistics place youth unemployment at 13.0%, 15.2% males and 10.4% females, as a percentage of the active population. The long term unemployment rate was an average of 3% during the periods of 2005 and 2013.¹⁸⁰ The youth unemployment rate, for persons under 25 years of age has been averaged at 13.0% by Eurostat in its 'Eurostatistics Data for short-term economic analysis'.¹⁸¹ In 2014 Malta had the third lowest unemployment rate in the European Union, standing at 5.7%, surpassed only by Germany's and Austria's 4.9%. The youth unemployment rate according to statistics of Eurostat were 21.7% in the EU28 and 23.2% in the euro area, lower than in 2013.¹⁸²

In contrast, according to the same Eurostat source, Malta had a total of 5.8% unemployment rate across the board, for all stages of employability, in December 2014. This demonstrates that the youth unemployment rate is significantly higher than the total unemployment rate.¹⁸³ Adding to this, a local newspaper, the 'Malta Independent', revealed that the unemployment rate in May 2014 was 5.7%, similar to the Eurostat data for December 2014. This newspaper article highlighted the fact that Malta's unemployment rate is less than half that of 11.6%

¹⁷⁹ Foundation for Social Welfare Services, 'Current Projects' (2012) <<http://www.fsws.gov.mt/en/appogg/Pages/Community-Services/Current-Projects.aspx>> accessed 25 February 2015.

¹⁸⁰ National Statistics Office Malta, 'Key Indicators on the Labour Market: 2005-2013' (*National Statistics Office – Malta News Release*, 11 December 2014) <http://nso.gov.mt/en/News_Releases/View_by_Unit/Unit_C2/Labour_Market_Statistics/Documents/2014/News2014_234.pdf> accessed 22 February 2015.

¹⁸¹ Eurostat, Eurostatistics: Data for Short-Term Economic Analysis (Issue Number 02/2015, 2015)

¹⁸² Editorial, 'Malta retains Third Lowest Unemployment Rate across EU' *Malta Today* (29 August 2014) <http://www.maltatoday.com.mt/business/business_news/42915/malta_retains_third_lowest_unemployment_rate_across_the_eu_-_VOpiq_nF_Is> accessed 22 February 2015.

¹⁸³ Eurostat, *supra* (n 181).

unemployment rate recorded in the euro area and also lower than the 10.3% unemployment rate of the entire European Union.¹⁸⁴

The European Union Youth Guarantee scheme was launched in Malta by the Ministry for Education and Employment, aiming at dealing with the issue of youth unemployment, to ensure that young people, below the age of 25 years old, independent as to whether they are registered with employment services or not, get a good quality offer within four months from leaving formal education or as from becoming redundant. Hon. Minister Evarist Bartolo stated that the Ministry will be responsible for this EUR 2.8 million scheme, with students falling short of required SEC exams grades being assisted in the summer months to improve. This scheme targets around 2,000 Maltese students, with the aim of reducing youth unemployment.¹⁸⁵

According to Education Minister, Hon. Evarist Bartolo, the main issue in Malta is not unemployment but matching skills to jobs because Maltese youths were unequipped with necessary skills needed to meet job standards. Bartolo acknowledged that youth unemployment in Malta stands at 13% in 2014, which is lower than the average in the European Union.¹⁸⁶

The Youth in Focus Service is one method how the State tries to deal with adolescent employability issues of those with emotional and behavioural problems. This service provides social work intervention to address the needs of young persons between the ages of 13 and 18, addressing their needs and ensuring a better development.¹⁸⁷ Through 'Proġett Familja' (*Family Project*), single mothers between the ages of 18 and 30, are taught to run a household and become employable.¹⁸⁸

¹⁸⁴ Editorial, 'Malta registers Lowest Unemployment Rate since EU Accession' *The Malta Independent* (3 July 2014) <<http://www.independent.com.mt/articles/2014-07-03/news/malta-registers-lowest-unemployment-rate-since-eu-accession-5692882944/>> accessed 23 February 2015.

¹⁸⁵ The Malta Chamber of Commerce, Enterprise and Industry, 'Youth Guarantee Scheme launched in Malta' (2014) <<http://www.maltachamber.org.mt/content.aspx?id=374730>> accessed 22 February 2015.

¹⁸⁶ Daniel Mizzi, 'Skills Gap, not Unemployment, is Malta's Biggest Stumbling Block – Evarist Bartolo' *Malta Today* (12 April 2014) <http://www.maltatoday.com.mt/news/national/37937/skills_gap_not_unemployment_is_biggest_stumbling_block_to_malta_evarist_bartolo_-_VOpiqPnF_Is> accessed 22 February 2015.

¹⁸⁷ Foundation for Social Welfare Services, 'Youth in Focus Services'(2012) <<http://www.fsws.gov.mt/en/appogg/Pages/Children-and-Young-Parents-Support-Services/Youth-in-Focus-Service.aspx>> accessed 20 February 2015.

¹⁸⁸ Foundation for Social Welfare Services, 'Current Projects' (2012) <<http://www.fsws.gov.mt/en/appogg/Pages/Community-Services/Current-Projects.aspx>> accessed 1 March 2015.

Through the Education+ Project, the Ministry for Education and Employment proposes a strategy to promote lifelong learning opportunity from the very beginning, to make sure that everyone has the chance to obtain the necessary skills to become successful citizens. This project is in line with the Framework for the Education Strategy for Malta 2014-2024, bringing a partnership between many interests, so that education and employment sectors understand each other's needs. This project considers the four UNESCO education pillars, that is, learning to know, learning to do, learning to live together, and learning to be. Education+ aims at developing skills, attitudes and values important in the 21st century, while empowering people to become active and employable in this society and economy.¹⁸⁹

6. OTHER ISSUES

Are there any other relevant issues regarding the ESC, and not covered by the questions above, in your MS? Please describe the applicable legal framework and explain how it is not in compliance with the ESC

One may add that there has been a change in our pension system, however the changes were discussed prior to the financial crisis and as a means to have a sustainable pension system.¹⁹⁰ In the long run it may be the health system and long-term health that might be influenced due to the economic climate; however, this is a matter of speculation.¹⁹¹

7. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

¹⁸⁹ Ministry for Education and Employment, 'Framework for the Education Strategy for Malta 2014-2024' (2014) <<http://education.gov.mt/en/Pages/Plus.aspx>> accessed 3 March 2015.

¹⁹⁰ PricewaterhouseCoopers, 'Malta' (*Newsalert: Tax and Legal Services*, February 2007) <http://www.pwc.com/en_MT/mt/publications/tax-legal/assets/Changes_To_Pensions_System_-_Feb_2007.pdf> accessed 12 March 2015.

¹⁹¹ Gordon Cordina and Amanda Borg, *Annual National Report 2012: Pensions, Health Care and Long-term Care* (Analytical Support on the Socio-Economic Impact of Social Protection Reforms, 2012) <http://socialprotection.eu/files_db/1267/asisp_ANR_2012_MALTA.pdf> accessed 13 March 2015.

The matter had never been on the Agenda of previous administrations and, until now, is not on the Agenda of the present administration.¹⁹² From our research we didn't find any calls from any stakeholders, for this procedure to be adopted. Malta has not signed nor ratified the Additional Protocol providing for a Collective Complaints system.¹⁹³

8. CONCLUSION

The fundamental principles employed by Malta in its policy making is to safeguard the interests of the most vulnerable ensuring that families, youth, adults and elderly are entitled to assistance from the Government. European Union funds are spent on projects and initiatives addressing social objectives and aiding vulnerable groups of society.

As we have discussed, Malta ratified the European Social Charter on 04 October 1988 and also the Amending Protocol to the Charter on 16 February 1994. With regards to the 2008 financial crisis, the Maltese government had clearly concluded that Malta did not have to undertake any severe austerity measures. These conclusions were deduced from the fact that during the crisis Malta had a stable banking system and an efficient work force, which were both backed up by the government. This meant that Malta had steered clear from the harsh realities of the economic crisis.

Malta's social security scheme is in line with the social protections which the European Social Charter seeks to guarantee. Our Social Security Act makes provisions to cater for persons in need of Social Assistance and social security schemes increase according to the cost-of-living increase. Our Act caters for home-care and home-help for elderly persons and benefits may be given for sickness on basis of insurance and varies for unemployed persons. It had been reported that in the years immediately following the financial crisis of 2008, the average annual increase made to the national minimum wage was of EUR 3.84 throughout the years 2008-2013.

Malta has however witnessed a steady increase in the number of people living at risk of falling into poverty and social exclusion. The measures taken by Malta to promote the effective access of persons living at risk of living in a situation of poverty have been entrenched on the principles

¹⁹² Bernice Saliba, Interview with Mr Edward Buttigieg, Director Contributory Benefits, Contributory Benefits Directorate, Ministry for Family and Social Solidarity (Valletta, 2 April 2015).

¹⁹³ Department of the European Social Charter, supra (n 2).

of providing children and youth with adequate education opportunities to ensure access to personal and professional development. Policy-making being largely focused on the three main age groups – children, adults and the elderly - it touches upon all strata of the Maltese society, thus ensuring cohesion and uniformity in the benefits provided to ensure effective access to the services provided by a state based on the principles of the welfare system.

One of the most tangible and directly applicable measures implemented by the government is the scheme implemented to provide benefits related to housing. Evidently, employment and job creation is also one of the focuses of the State in an attempt to stop the rate at which people are falling below the red line of poverty. Malta has been encouraging job creation for the disadvantaged. Furthermore gainful employment is also a challenge and the State has created work and training exposure schemes to improve the chances of students to create links with the workplace.

Collective bargaining in Malta is dealt with at the company level and the agreements reached deal with a wide array of matters. According to local laws, collective agreements are to be negotiated between employees through their own organisations and on the other hand the employers are often represented by their own organisations. Since Malta did not really suffer from the negative effects of the global economic crisis, the areas of collective bargaining and social dialogue remained unaffected.

Where it comes to persons with disability, the Parliamentary Secretariat For Rights of Persons with Disability and Active Ageing in collaboration with the National Commission Persons With Disability and 'Kumitat Azzjoni Lejn Soċjeta' Ġusta' (*Action Towards a Just Society Committee*) published a booklet which discusses in detail practically all aspects of a disabled person. With the 2015 Budget, the European Social Fund is to be put into force again. Employers will be able to make use of such a fund when they employ disadvantaged persons or provide training for their employees. The State also 'has a duty to provide special schools to cater for their development' and there have been many schools which have introduced changes to cater for persons with special needs, disabilities or learning difficulties. A lot of projects were commenced in order the train and encourage person with special needs, disabilities and learning difficulties to join the working world.

Due to a lack of austerity measures observed in Malta, there was no reduction in measures taken by the Member State in the field of aid and protection of children and young persons. The Foundation for Social Welfare Services, established in 1998, provides many services throughout Malta, through Aġenzija Appoġġ (the national agency catering and promoting well-being of children, families and the community through welfare services). There are many services provided for by this foundation, including financial benefits, adoption services, residential home care, family support, fostering services, and others.

With a lack of austerity measures, Malta could not only continue to provide children and young persons with free primary and secondary education but also strive to provide more. Free State schools, free transport and free books are indicative of this, and recently, a decrease in the price of uniforms. Through agreements with the Maltese Curia, the Government manages to reduce costs to parents sending their children to Church schools. Absenteeism is dealt with through the Education Act by using fines, for instance, and by trying to reach EU's 2020 target of having less than 10% early school leavers. Tertiary education is provided for freely by Malta, to Maltese students, while students receive a stipend and an allowance, to be encouraged to study.

Youth unemployment in Malta in 2013 stood at 13%, as compared with 5.8% unemployment rate in general, therefore being significantly higher. Malta tries to combat this issue through various means, such as through the European Union Youth Guarantee, which tries to ensure youth employment below the age of 25 years old. Malta provides other services like Youth in Focus Service and lifelong learning opportunities, among other means, to address youth unemployment.

The two subsequent Maltese governments have contributed to keep Social Rights into place after the financial crisis of 2008. Measures taken are all to ensure that access to education, health care and the workplace remain unhindered.

9. TABLE OF LEGISLATION

9.1. Laws of Malta

- Adoption Administration Act, Chapter 495 of the Laws of Malta.
- Children and Young Persons (Care Orders) Act, Chapter 285 of the Laws of Malta.
- Civil Code, Chapter 16 of the Laws of Malta.
- Employment and Industrial Relations Act, Chapter 452 of the Laws of Malta.
- Equal Opportunities (Persons with Disability) Act, Chapter 413 of the Laws of Malta .
- Foster Care Act, Chapter 491 of the Laws of Malta.
- Social Security Act, Chapter 318 of the Laws of Malta.

9.2. International Law

United Nations Convention on the Rights of the Child (20 November 1989).

10. BIBLIOGRAPHY AND ONLINE RESOURCES

10.1. Contributions to Edited Books

- Cordina G. and Vella S., ‘Malta: Surviving and Thriving through Times of Austerity’ in Vít Novotný (ed), *From Reform to Growth: Managing the Economic Crisis in Europe* (Eburon Academic Publishers, 2013)
- Farrugia R., ‘Child Law’ in Aaron Schwabach and Arthur John Cockfield (eds), ‘Law’ in *Encyclopedia of Life Support Systems* (Developed under the Auspices of the UNESCO, Eolss Publishers, 2004)

10.2. Papers and Reports

- Caritas Europa, *Country Report for Malta: Europe 2020 Shadow Report 2014* (2014) <http://www.caritas.eu/sites/default/files/shadowreport2014_malta.pdf> accessed 19 February 2015.

- Cordina G. and Borg A., *Annual National Report 2012: Pensions, Health Care and Long-term Care* (Analytical Support on the Socio-Economic Impact of Social Protection Reforms, 2012) <http://socialprotection.eu/files_db/1267/asisp_ANR_2012_MALTA.pdf> accessed 13 March 2015.
- Eurostat, *Eurostatistics Data for Short-Term Economic Analysis* (Issue Number 02/2015, 2015).
- Foundation for Social Welfare Service, *FSWS Biennial Report 2012-2013* (2014) <<http://www.fsws.gov.mt/en/fsws/Pages/research.aspx>> accessed 8 February 2015.
- International Monetary Fund, *Malta: 2010 Article IV Consultation - Staff Report; Public Information Notice on the Executive Board Discussion; and Statement by the Executive Director for Malta* (IMF Country Report No. 11/29, 2011).
- IURIS Management Limited, *Budget Report 2015* <<http://iurismalta.com/assets/files/Budget-2015.compressed.pdf>> accessed 19 February 2015.
- Mark Priestley on behalf of the Academic Network of European Disability Experts, *National Disability Policies in European Countries in the Context of the 2012 National Social Reports (NSRs)* (University of Leeds, 2012) <<http://www.disability-europe.net/content/aned/media/ANED%202012%20-%20Task%205%20NSR%20synthesis%20report%20FINAL.doc>> accessed 19 February 2015.
- Ministry for Education and Employment, *Addressing Attendance in Schools Policy* (2014).
- Ministry for Education and Employment, *Early Childhood Education & Care in Malta: The Way Forward* (White Paper, 2013).
- Ministry for Education and Employment, *The National Employment Policy* (2014).
- Ministry for Finance, *Budget Document 2015* (Government Press, 2014).
- Ministry of the Family and Social Solidarity, *Struttura Għal Tnaqqis Fil-Faqar U Għal Inkluzjoni Soċjali* (Green Paper, 2014) <<http://mfss.gov.mt/en/MJDF/Press%20Releases/Documents/Green%20Paper%20Faqar.pdf>> accessed 17 March 2015.

- Pirotta G., Calleja I. and Colino C., *Sustainable Government Indicators: 2014 Malta Report* (2014) <http://www.sgi-network.org/docs/2014/country/SGI2014_Malta.pdf> accessed 6 February 2015.
- The Malta Chamber of Commerce, Enterprise and Industry, *Economic Vision for Malta 2014-2020* (2014).
- Vella N., *Department of Industrial and Employment Relations Annual Report* (2011) <www.industrialrelations.gov.mt/download.aspx?id=1771> accessed 4 February 2015.

10.3. Articles

- Malta Council for Economic and Social Development, 'Family Friendly Measures in Malta' (*MCESD News*, 1 May 2011) <www.ncwmalta.com/file.aspx?f=280> accessed 10 February 2015.
- National Statistics Office Malta, 'Key Indicators on the Labour Market: 2005-2013' (*National Statistics Office – Malta News Release*, 11 December 2014) <http://nso.gov.mt/en/News_Releases/View_by_Unit/Unit_C2/Labour_Market_Statistics/Documents/2014/News2014_234.pdf> accessed 22 February 2015.
- PricewaterhouseCoopers, 'Malta' (*Newsalert: Tax and Legal Services*, February 2007) <http://www.pwc.com/en_MT/mt/publications/tax-legal/assets/Changes_To_Pensions_System_-_Feb_2007.pdf> accessed 12 March 2015.

10.4. Websites and Blogs

- ACCESS – Disability Support Unit (10 January 2014) <<http://www.um.edu.mt/about/services/support/access>> accessed 19 February 2015.
- Bugeja A., 'Myth Busting – Taking a Closer Look at Malta's Working Time Regulations' (14 May 2012) <<http://www.csb-advocates.com/malta-law-articles/myth-busting-taking-closer-look-malta-s-working-time-regulations>> accessed 3 February 2015.
- Deguara A., 'Faces of the Poor: A Sociological Review of Poverty in Contemporary Europe and Malta' <http://www.um.edu.mt/europeanstudies/books/CD_CSP4/pdf/adeguara.pdf> accessed 10 February 2015.

- Department of the European Social Charter: Directorate General of Human Rights and the Rule of Law, 'Malta and the European Social Charter' (January 2015) <http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Malta_en.pdf> accessed 13 March 2015
- Department for Social Welfare Standards, 'National Standards for Out-Of-Home Child Care' (Ministry for Social Policy, 2009) <https://mfss.gov.mt/en/DSWS/Documents/Out-of-home-child-care/national_standards.pdf> accessed 3 February 2015.
- Directorate for Lifelong Learning, 'Adult Education Provision in Malta' (17 May 2013) <<http://euagenda.skola.edu.mt/?p=60>> accessed 19 February 2015.
- Employment and Training Corporation, 'Bridging the Gap Scheme' (2010) <<http://etc.gov.mt/Page/64/bg-jobseekers.aspx>> accessed 19 February 2015.
- Employment and Training Corporation, 'Job Bridge Programme' (2013) <<http://etc.gov.mt/Page/91/job-bridge.aspx>> accessed 19 February 2015.
- Employment and Training Corporation, 'Persons in Disadvantaged Situations' (2010) <<http://etc.gov.mt/Category/3/43/searchresult.aspx>> accessed 19 February 2015.
- Employment and Training Corporation, 'Sheltered Employment Training' <<http://www.etc.gov.mt/NewsDetails.aspx?NewsID=89>> accessed 19 February 2015.
- European Commission, 'Compulsory Education in Education 2014/15: Eurydice – Facts and Figures' (2014) <http://eacea.ec.europa.eu/education/eurydice/documents/facts_and_figures/compulsory_education_EN.pdf> accessed 19 February 2015.
- European Commission, 'Europe 2020 in Malta' (November 2013) <http://ec.europa.eu/europe2020/europe-2020-in-your-country/malta/progress-towards-2020-targets/index_en.htm> accessed 17 March 2015.
- European Commission, 'Your Social Security Rights in Malta' (July 2013) <http://ec.europa.eu/employment_social/empl_portal/SSRinEU/Your%20social%20security%20rights%20in%20Malta_en.pdf> accessed 7 February 2015.
- European Trade Union Confederation, 'Malta' (2013) <<http://www.etuc.org/malta>> accessed 6 February 2015.

- Eurostat, 'Pupil/Student – Teacher Ratio and Average Class Size (ISSCED 1-3) (05 August 2014) <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=educ_iste&lang=en> accessed 2 April 2015.
- Eurydice at National Foundation for Educational Research Unit for England, Wales and Northern Ireland, 'Compulsory Age of Starting School in European Countries, 2013' (January 2013) <https://www.nfer.ac.uk/shadomx/apps/fms/fmsdownload.cfm?file_uuid=3B48895C-E497-6F68-A237-BCD7AB934443&siteName=nfer> accessed 27 February 2015.
- Foundation for Information Technology Accessibility, 'About FITA' (2012) <<http://www.fitamalta.eu/home2/about-fita/>> accessed 19 February 2015.
- Foundation for Information Technology Accessibility, 'FITA Malta' (2012) <<http://www.fitamalta.eu/>> accessed 21 March 2015.
- Foundation for Social Welfare Services, 'Adoption Services' (2012) <<http://www.fsws.gov.mt/en/appogg/Pages/Health-and-Family-Services/Adoption-Services.aspx>> accessed on 20 February 2015.
- Foundation for Social Welfare Services, 'Child Protection Services' (2012) <<http://www.fsws.gov.mt/en/appogg/Pages/Intake-and-Protection-Services/Child--Protection-Services.aspx>> accessed 26 February 2015.
- Foundation for Social Welfare Services, 'Children's Fund' (2012) <<http://www.fsws.gov.mt/en/appogg/Pages/Intake-and-Protection-Services/Children%27s-Fund.aspx>> accessed 27 February 2015.
- Foundation for Social Welfare Services, 'Co-Management of Residential Homes' (2012) <<http://www.fsws.gov.mt/en/appogg/Pages/Out%20of%20Home%20Care/Co-Management-of-Residential-Homes.aspx>> accessed 24 February 2015.
- Foundation for Social Welfare Services, 'Current Projects' (2012) <<http://www.fsws.gov.mt/en/appogg/Pages/Community-Services/Current-Projects.aspx>> accessed 25 February 2015.

- Foundation for Social Welfare Services, 'Freeing Children for Adoption' (2012) <<http://www.fsww.gov.mt/en/appogg/Pages/Out%20of%20Home%20Care/Freeing-Children-for-Adoption.aspx>> accessed 24 February 2015.
- Foundation for Social Welfare Services, 'Kellimni' (2012) <<http://www.fsww.gov.mt/en/appogg/Pages/Children-and-Young-Parents-Support-Services/Kellimni.aspx>> accessed 2 March 2015.
- Foundation for Social Welfare Services, 'Me too! Integration of Persons with Disability into the Labour Market' <<http://fsww.gov.mt/en/fsww/Pages/EU%20Projects/Me-too!-Integration-of-Persons-with-Disability-into-the-Labour-Market.aspx>> accessed 19 February 2015.
- Foundation for Social Welfare Services, 'Social Paediatrics' (2012) <<http://www.fsww.gov.mt/en/appogg/Pages/Intake-and-Protection-Services/Social-Paediatrics.aspx>> accessed 27 February 2015.
- Foundation for Social Welfare Services, 'Specialised Home-Based Care' (2012) <<http://www.fsww.gov.mt/en/appogg/Pages/Out%20of%20Home%20Care/Specialised-Home-Based-Care.aspx>> accessed 23 February 2015.
- Foundation for Social Welfare Services, 'Out-of-Home Care Programme' (2012) <<http://www.fsww.gov.mt/en/appogg/Pages/out-of-home-care-program.aspx>> accessed 23 February 2015.
- Foundation for Social Welfare Services, 'Overview' (2012) <<http://www.fsww.gov.mt/en/appogg/Pages/overview-appogg.aspx>> accessed 23 February 2015.
- Foundation for Social and Welfare Services, 'Supportline 179' (2012) <<http://www.fsww.gov.mt/en/appogg/Pages/support-line-179.aspx>> accessed 20 February 2015.
- Foundation for Social Welfare Services, 'Youth in Focus Services' (2012) <<http://www.fsww.gov.mt/en/appogg/Pages/Children-and-Young-Parents-Support-Services/Youth-in-Focus-Service.aspx>> accessed 20 February 2015.

- Fulton L., ‘Collective Bargaining’ in *Worker Representation in Europe* (Labour Research Department and ETUI, 2013) <<http://www.worker-participation.eu/National-Industrial-Relations/Countries/Malta/Collective-Bargaining>> accessed 3 February 2015.
- Government of Malta, ‘Early Years’ (2013) <<https://www.gov.mt/en/Services-And-Information/Business-Areas/Education%20and%20Learning/Pages/Early-Years.aspx>> accessed 27 February 2015.
- Government of Malta, ‘Education’ (2013) <<https://www.gov.mt/en/Life%20Events/Moving-to-Malta/Pages/Education.aspx>> accessed 25 February 2015.
- Government of Malta, ‘Primary and Secondary Education’ (2013) <<https://www.gov.mt/en/Services-And-Information/BusinessAreas/Education%20and%20Learning/Pages/Primary-and-Secondary-Education.aspx>> accessed 1 April 2015.
- Government of Malta, ‘Social Security and Health Services’ (2013) <<https://www.gov.mt/en/Life%20Events/Looking%20for%20a%20Job/Pages/Social-Security-and-Health-Services.aspx>> accessed 7 February 2015.
- Inspire Foundation, ‘What We Do’ (2013) <<http://inspire.org.mt/what-we-do/>> accessed 19 February 2015.
- Institute of Tourism Studies Malta, ‘About Us’ (2014) <<http://www.its.edu.mt/abouts-us-its.html>> accessed 1 April 2015.
- Institute of Tourism Studies Malta, ‘Key Skills For Independent Living’ (2014) <<http://www.its.edu.mt/courses-admission/full-time-courses/key-skills-for-independent-living.html>> accessed 19 February 2015.
- Just Landed, ‘Schools: State and Private Schools in Malta’ (2015) <<https://www.justlanded.com/english/Malta/Malta-Guide/Education/Schools>> accessed 2 April 2015.
- Koperattivi Malta, ‘Me 2 Coop Ltd’ (2015) <<http://cooperatives-malta.coop/me-2-coop-ltd/>> accessed 19 February 2015.
- Kummissjoni Nazzjonali Persuni b’Dizabilità, ‘National Employment Policy’ <http://www.knpd.org/pubs/empol_e.shtml> accessed 19 February 2015.

- Kummissjoni Nazzjonali Persuni b'Dizabilita', 'National Policy on the Education of Persons with Disability' <<http://www.knpd.org/pubs/edupole.shtml>> accessed 19 February 2015.
- Malta College of Arts, Science & Technology, 'Overview' <<http://www.mcast.edu.mt/TopMenu/Aboutus/Overview.aspx>> accessed 1 April 2015.
- Malta Council for the Voluntary Sector, 'ESF 3.234 – LEAP! Project: Building the Future Together: Promoting Social Mobility: Traineeship Scheme Information Sheet' (2014) <<http://www.maltacvs.org/wp-content/uploads/2014/06/2014-06-13-Information-Sheet-Traineeship-Scheme.pdf>> accessed 19 February 2015.
- Malta Union of Teachers, 'State Schools' (2012) <[http://www.mut.org.mt/state%20schools%20\(info\).htm](http://www.mut.org.mt/state%20schools%20(info).htm)> accessed 20 February 2015.
- Marmara V., 'Malta: Industrial Relations in Central Public Administration – Recent Trends and Features' (30 June 2014) <<http://eurofound.europa.eu/nl/observatories/eurwork/erm/comparative-information/national-contributions/malta/malta-industrial-relations-in-central-public-administration-recent-trends-and-features>> accessed 5 February 2015.
- Mental Health Europe, 'Impact of the Crisis and Austerity Measures on Health Systems and Vulnerable People' (2012) <<http://old.mhe-sme.org/assets/files/documents/30.%20MHE%20Contribution%20to%20EPHA%20on%20Impact%20of%20the%20Crisis%20and%20Austerity%20Measures%20on%20Health%20Systems%20and%20Vulnerable%20People.pdf>> accessed 19 February 2015.
- Ministry for Education and Employment, 'A National Curriculum Framework for All' (December 2012) <<http://education.gov.mt/en/Documents/A%20National%20Curriculum%20Framework%20for%20All%20-%202012.pdf>> accessed 19 February 2015.
- Ministry for Education and Employment, 'Consultation document on reforms to the Education Act' (2014)

- <http://education.gov.mt/en/Documents/Consultation%20document%20on%20reforms%20to%20the%20Education%20Act.pdf>> accessed 19 February 2015.
- Ministry for Education and Employment, 'Early Years' <https://education.gov.mt/en/education/Pages/Early-Years.aspx>> accessed 1 April 2015.
 - Ministry for Education and Employment, 'Framework for the Education Strategy for Malta 2014-2024' (2014) <http://education.gov.mt/en/Pages/Plus.aspx>> accessed 3 March 2015.
 - Ministry for the Family and Social Solidarity, 'ESF 3.234 – LEAP! Project' <http://mfss.gov.mt/leap/Pages/default.aspx>> accessed 19 February 2015.
 - Ministry for the Family and Social Solidarity, 'ESF 3.234 – LEAP Project: Building the Future Together: Promoting Social Mobility: Call for Project Beneficiaries' (2014) <http://mfss.gov.mt/leap/PublishingImages/Advert%20EN.pdf>> accessed 19 February 2015.
 - Ministry for Gozo, 'Government Allowance to Students Permanently Resident in Gozo attending Full Time Courses in Malta not available in Gozo and who are not in Receipt of any Other Allowance/Stipend Application Form' <https://mgoz.gov.mt/en/Documents/Downloads/Government%20Allowance%20to%20students%20permanently%20resident%20in%20Gozo%20%20%20VER2.pdf>> accessed 10 March 2015.
 - Ministry for Gozo, 'Subsidies Section' (2013) <http://mgoz.gov.mt/en/Pages/Departments/DG%20Operations/Custom%20Services/Subsidies-Section.aspx>> accessed 10 March 2015.
 - Parliamentary Secretariat for the EU Presidency 2017 and EU Funds, 'ESF 3.64: Employment Aid Programme' <https://investinginyourfuture.gov.mt/project/private-sector/employment-aid-programme-33947766>> accessed 19 February 2015.
 - Parliamentary Secretariat for Rights of Persons with Disability and Active Ageing in collaborataion with the National Commission Persons with Disability and Kumitat Azzjoni Lejn Soċjeta' Gusta, 'National Policy on the Rights of Persons with Disability'

- <http://www.activeageing.gov.mt/en/Documents/Book%20design%20english.pdf>> accessed 19 February 2015.
- Pathway to Independent Living Programme
<<http://www.mcast.edu.mt/MainMenu/Full-TimeCourses/PathwaytoIndependentLiving.aspx>> accessed on 19 February 2015.
 - Pietras J., 'European Affairs: Austerity Measures in the EU – A Country by Country Table'
<<http://www.europeaninstitute.org/index.php/component/content/article?id=1180:austerity-measures-in-the-eu>> accessed 6 February 2015.
 - Signatures and Ratifications of the European Social Charter, its Protocols and the European Social Charter (revised) (4 April 2012)
<https://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/SignaturesRatifications_en.pdf> accessed 2 February 2015.
 - Technical Committee on Child Day Care, 'National Standards for Child Day Care Facilities (July 2006)
<<http://www.snapadministration.com/snapdatafiles/files/ETC/633488648114023750.pdf>> accessed 1 April 2015.
 - The Malta Chamber of Commerce, Enterprise and Industry, 'Employment Aid Programme – Reimbursement Process Session'
<<http://www.maltachamber.org.mt/content.aspx?id=262353>> accessed 19 February 2015.
 - The Malta Chamber of Commerce, Enterprise and Industry, 'Youth Guarantee Scheme launched in Malta' (2014)
<<http://www.maltachamber.org.mt/content.aspx?id=374730>> accessed 22 February 2015.
 - University of Malta, 'G.F. Abela Junior College: Mission Statement'
<<http://www.jc.um.edu.mt/>> accessed 1 April 2015.
 - University of Malta, 'MATSEC Examinations Board'
<<http://www.um.edu.mt/matsec>> accessed 10 March 2015.

- Working Group on Residential and Foster Care, 'Model Policies and Procedures for Out-of-Home Child Care' (Ministry for Social Policy, 2009)
<https://mfss.gov.mt/en/DSWS/Documents/out-of-home-child-care/model_policies_procedures.pdf> accessed 10 February 2015.

10.5. Newspaper Articles

- Balzan J., '€190 Million Collective Agreement for 'more efficient' Public Sector Signed' *MaltaToday* (15 October 2012)
<http://www.maltatoday.com.mt/news/national/21859/190-million-collective-agreement-for-more-efficient-public-sector-signed-20121015#.VQctF47F_T8> accessed 16 March 2015.
- Borg J., 'Budget Cuts' *The Malta Independent* (28 February 2012)
<<http://www.independent.com.mt/articles/2012-02-28/newspaper-letters/Budget-Cuts-306444>> accessed 19 February 2015.
- Calleja C., 'Public Consultations on School Uniforms, College Line-Ups, Launched' *Times of Malta* (30 July 2013)
<<http://www.timesofmalta.com/articles/view/20130730/local/school-uniforms-college-line-ups.480141>> accessed 17 February 2015.
- Castillo R., 'Imniedi Boutique li jsellef Hwejjeg ghax-Xoghol lil Persuni f'Riskju ta' Faqar' *TVM* (20 February 2015) <<http://www.tv.mt/news/imniedi-boutique-li-jsellef-hwejjeg-ghax-xoghol-lil-persuni-friskju-ta-faqar/>> accessed 5 February 2015 [Maltese].
- Editorial, 'BOV Employees in a Dress Down for Appoġġ Children's Fund' *The Malta Independent* (15 February 2005) <<http://www.independent.com.mt/articles/2015-02-13/company-news/BOV-employees-in-a-dress-down-for-Appogg-Children-s-Fund-6736130578>> accessed 20 February 2015.
- Editorial, 'Budget 2015 | Eco tax out, lower deficit and new tax rebates' *Malta Today* (16 November 2014)
<http://www.maltatoday.com.mt/news/budget_2015/46210/in_tomorrows_budget_ec

- [o_tax_out_lower_deficit_new_tax_rebates#.VOYBUIPF-5J](#)> accessed 19 February 2015.
- Editorial, 'Deficit equivalent to 3.8% of GDP' *Times of Malta* (22 October 2010) <<http://www.timesofmalta.com/articles/view/20101022/local/deficit-equivalent-to-3-8-of-gdp.332566>> accessed 16 March 2015.
 - Editorial, 'Last Junior Lyceum Exam Held' *Times of Malta* (6 May 2010) <<http://www.timesofmalta.com/articles/view/20100506/local/last-junior-lyceum-exam-held.306138>> accessed 1 April 2015.
 - Editorial, 'Malta retains third lowest unemployment rate across EU' *MaltaToday* (29 August 2014) <http://www.maltatoday.com.mt/business/business_news/42915/malta_retains_third_lowest_unemployment_rate_across_the_eu#.VOpiq_nF_Is> accessed 22 February 2015.
 - Editorial, 'Malta registers lowest unemployment rate since EU accession' *The Malta Independent* (3 July 2014) <<http://www.independent.com.mt/articles/2014-07-03/news/malta-registers-lowest-unemployment-rate-since-eu-accession-5692882944/>> accessed 23 February 2015.
 - Editorial, 'Me2! Cooperative for People with Disability' *Times of Malta* (22 April 2012) <<http://www.timesofmalta.com/articles/view/20120422/business-news/Me2-cooperative-for-people-with-disability.416507>> accessed 19 February 2015.
 - Editorial, 'Permanent Committee for Education Holds First Meeting' *Times of Malta* (21 July 2007) <<http://www.timesofmalta.com/articles/view/20070721/local/permanent-committee-for-education-holds-first-meeting.10646>> accessed 21 February 2015.
 - Editorial, 'Prices of School Uniforms reduced by 10%' *The Malta Independent* (25 July 2014) <<http://www.independent.com.mt/articles/2014-07-25/news/prices-of-school-uniforms-reduced-by-10-5967478785/>> accessed 10 February 2015.
 - Fenech P., 'The Disabled Disadvantaged (2)' *Times of Malta* (19 March 2012) <<http://www.timesofmalta.com/articles/view/20120319/letters/The-disabled-disadvantaged-2.411760>> accessed 19 February 2015.

- Grima G., 'A Quality Education for All' *Times of Malta* (19 June 2011) <<http://www.timesofmalta.com/articles/view/20110605/education/A-quality-education-for-all.368955>> accessed 19 February 2015.
- Martin I., 'Parents to lose child supplement if children do not have good school attendance record' *Times of Malta* (Malta, 1 October 2014) <<http://www.timesofmalta.com/articles/view/20141001/local/parents-to-lose-child-supplement-if-children-do-not-have-good-school-attendance-record.538046>> accessed 20 February 2015.
- Mizzi D., 'Skills Gap, not Unemployment, is Malta's biggest Stumbling Block – Evarist Bartolo' *Malta Today* (12 April 2014) <http://www.maltatoday.com.mt/news/national/37937/skills_gap_not_unemployment_is_biggest_stumbling_block_to_malta_evarist_bartolo#.VOpiqPnF_Is> accessed 22 February 2015.
- Schembri Orland K., 'PN: COLA 2008-2013 average was €3.84; 'Muscat protested in the streets when increase was €1.16' *The Malta Independent* (23 October 2014) <<http://www.independent.com.mt/articles/2014-10-23/local-news/Cola-2008-2013-average-was-3-84-PN-says-Muscat-organised-public-protests-when-rise-was-1-16-6736124286>> accessed 8 February 2015.

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

Norway has ratified both the 1961 and the revised 1996 European Social Charter (ESC).

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

Norway did not introduce any austerity measures in response to the 2008 financial crisis. The national state budget was increased in both 2008 and 2009 in order to protect and encourage the labour market.

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

This report will open with a summary presentation on how Article 5 ESC is implemented and exercised in Norway.

According to the State Report on Implementation of Social Charter in Norway, Norwegian legislation complies with Article 5 ESC and there is no limitation to who can form interest organisations.¹

To form, join or not to join organisations is a human right that is established in the Constitution of the Kingdom of Norway article 101 para. 1. This right is being exercised in most of the areas of the life of Norwegian citizens, which includes labour markets.

¹ 'COE State report, Norway' <http://www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/Norway11_en.pdf>, page 18, accessed 10 April 2015.

Trade unions are defined in the Labour Disputes Act of 2012 Article 1 litra c, whilst employers' interest organisations are defined in the same Article under litra d. The only restriction that the organisations are met with is that they should aim to protect employees' interest over their employers or vice versa.

The right to form, join, or not join trade unions or employers' interest organisations is not explicitly listed in the Norwegian Working Environment Act, but the rights that the organisations themselves, or its members have are listed in the several Articles of the abovementioned Act. For example, Article 5 ESC established that the freedom to join or not join organisations for the protection of their economic and social interests should not be impaired, and as such should be ensured by national laws and regulations. Norway complies with these regulations by ensuring that workers are not discriminated against while exercising their rights and freedoms. This is underlined in the Norwegian Working Environment Act of 2005 Chapter 13, particularly Article 13-1, which prohibits direct or indirect discrimination based on the membership in trade unions. As follows from Article 13-2 para. 3, the additional provisions in Chapter 13 apply accordingly to trade unions as well as employers' interest organisations.

To exemplify further, how the rights to form, join or not join organisations for the protection of their economic and social interests are exercised in Norway, this report will present an overview of the largest trade unions and employers' interest organisations. The information about those organisations is assembled from the report on labour relations in Norway, which was conducted by Fafo Institute for Labour and Social Research in 2009 and revised in 2013.²

There are four trade unions' confederations in Norway: *LO* (The Norwegian Confederation of Trade Unions), *YS* (The Confederation of Vocational Unions), *Unio* (The Confederation of Unions for Professionals, Norway), and *Akademikere* (The Federation of Norwegian Professional Associations). These umbrella organisations consist of approximately 90 trade unions. Both *LO* and *YS* represent workers in all sectors – this means that any employee can join them. *Unio* consists of trade unions, that offer membership exclusively to employees in the public sector, whereas *Akademikere* solely consists of trade unions for employees with extensive academic educations.

² Fafo, 'Labour Relations in Norway' <<http://www.faf.no/images/pub/2013/20299.pdf>> accessed 20 March 2014.

Existing restrictions do not contradict with the rights and freedoms stated in Article 5 ESC.

The Norwegian Working Environment Act applies to members of armed forces as well with exception to military aviation, which is regulated by Norwegian Aviation Act Part Two; see Norwegian Working Environment Act Article 1-2 and 1-6 litra c.

The following will illustrate how the right to bargain collectively (Article 6 ESC) is implemented and exercised in Norway.

The main regulation in this area is Labour Disputes Act of 2012.³ Joint consultation between workers and employers as follows from Article 6 para 1 ESC is regulated in Labour Disputes Act Chapter 3. These consultations are held through mediations.

A National Mediator is appointed by the Government, and holds his or her position for three years. At the same time, a permanent mediator for each of the districts is appointed (Article 11). Mediators take part in disputes of interest between trade unions and employers or employers' interest organisations. Their task is to achieve a reasonable compromise between the parties (Article 12). A possibility of giving a notice of collective work stoppage is described more thoroughly later in the report, under exemplification of implementation of Article 6 para 4 ESC. A National Mediator can decide to prohibit a strike or lockout if it causes serious damage to the society (Article 19). In this case, the parties will be invited to continue mediation with the same or a different mediator (Article 20). A duty of confidentiality applies to mediation meetings but does not apply to meetings for the Labour Court (Article 23).

The fact that mediations are regulated enables a clear mechanism for joint consultations in the labour sector. This has no effect of the number of work cessations. This number is in fact related to the type of settlements conducted and type of years. For example '(Y)ears with mid-term settlements, such as 2013, have fewer work stoppages than years with main settlements... which means that two-year agreements are signed in most areas'.⁴

Voluntary negotiations between employers and workers with a view to the regulation of terms and conditions of employment, by means of collective agreements are regulated in the Labour Disputes Act Chapter 2.

³ LOV-2012-01-27-9 Lov om arbeidstvister (arbeidstvistloven).

⁴ 'Statistisk Sentralbyrå, Work stoppages, 2013' <<http://www.ssb.no/en/arbeid-og-lonn/statistikker/arbkonfl/aar/2014-05-08#content>> accessed 11 April 2015.

Article 3 of the Labour Disputes Acts give trade unions, employers and employers' interest organisations a right to demand negotiations, to enter or revise collective agreements. If the counterparty does not accept this demand, the demanding party may go on strike or lockout (for this, conditions in Article 18 should be fulfilled). Collective agreements are in force for three years from the day they are signed, if nothing else is agreed upon (Article 5). As previously stated most collective agreements in Norway are in force for two years.⁵ Collective agreements in Norway have a strictly hierarchical order. Therefore company agreements cannot breach the sector-level agreements, which includes basic agreements (Article 6).⁶ In the case of a member of a trade union or employers' interest organisation or its branch withdrawing or becoming excluded from the association, such a party will not be subsequently released from their obligations stated in the agreement. (Article 7).

The Labour Disputes Act provides a *fredsplikt* (peace obligation) for the parties so that disputes concerning collective agreements are not solely solved through strike or lockout, unless meeting the conditions in Article 18. If a strike or lockout occurs, the collective agreement will remain in force during this time (Article 8).

According to the quoted results of the Labour Force Survey in the report by Fafo Institute for Labour and Social Research, only 54% of all employees in the private sector are currently covered by collective agreements, compared to 100% of workers in the public sector.⁷ This indicates that 70% of all employees in Norway are covered by collective agreements. There is enabled by detailed regulations, enabling workers and employers to demand the negotiation of collective agreements, as well as taking measures that are more drastic in the event the counterparty rejects such a demand.

Article 6 para 3 ESC requires MS 'to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes'. Arbeidsretten (Labour Court) which is established by the Labour Disputes Act Chapter 4 conducts these tasks. The Labour Court shall only process law disputes between a trade union and an employer or employers' interest organisation in relation to validity, interpretation and/or

⁵ *ibid.*

⁶ Fafo, 'Labour Relations in Norway' <<http://www.faf.no/images/pub/2013/20299.pdf>> accessed 20 March 2015

⁷ *ibid.*

existence of a collective agreement or other demands originating from a collective agreement (Article 33). Labour Court consists of three expert judges and four other judges (Article 37).

According to the official website of the Labour Court, in the year of 2014 the bench reached a decision in 20 cases between trade unions and employers' interest organisations.⁸ Of those twenty, 12 cases ended with judgement, seven ended with a settlement, and one case was dropped.

As almost half of the cases in 2014 ended in a settlement between two parties, we can infer that the Labour Court system in Norway is working effectively.

The right of workers and employers to enter strike or lockout (Article 6 para 5 ESC) is regulated in Chapter 3 of the Labour Disputes Act.

An individual worker or his or her trade union should provide a notice of collective work stoppage in writing for the employer; or by the employer for the individual worker. Regulations allow a collective notice of collective work stoppage, if such a right is stated in the collective agreement (Article 15). Such notice should also be forwarded to the National Mediator (Article 16). The strike or lockout has effect for those employees who are covered by the notice of collective work stoppage, unless the parties agree (Article 17).

As mentioned above both employees and employers have a peace obligation, according to Article 8. Therefore, the number of work stoppages is rather low in Norway. For reference, see the enclosed table:⁹

	2010	2011	2012	2013
Work stoppages	12	2	11	6
Wage earnings in work stoppages	66,938	114	41,820	1,385
Working days lost	500,009	526	360,643	10,849

⁸ 'Arbeidsretten, ferdigbehandlede saker' <<http://www.arbeidsretten.no/index.php?module=Pagesetter&tid=8&filter1=avsluttetdato:notnull&filter2=slutt dato:le:@now,utsatt:null&orderby=slutt dato:desc&tpl=avgjortlist&pubcnt=20>>, accessed 11 April 2015.

⁹ 'Statistisk Sentralbyrå, Work stoppages, 2013, table' <<http://www.ssb.no/en/arbeid-og-lonn/statistikker/arbkonfl/aar/2014-05-08?fane=tabell-content>>, accessed 11 April 2015.

In summary, it can be said that the Norwegian system is a well-regulated system of collective agreements with a peace clause that remains in force outside the negotiation period every second year. The nationwide collective agreements are supplemented by extensive agreements at the undertaking level that make it possible to adjust to local needs in a flexible way.¹⁰

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

The right to collective bargaining was not affected by austerity measures. As mentioned in the report's part 1.2 the national state budget increased in both 2008 and 2009 to encourage the labour market.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

Austerity measures have not affected labour rights as stated in Article 4 ESC. Norway does not have statutory minimum wage. However, minimum pay rates are usually a part of a collective agreement.¹¹

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by his/her own efforts or from other sources?

The Norwegian Labour and Welfare Service shall form and organise labour relations to allow citizens to maintain their employment relations in an ordinary work life.¹²

¹⁰ Fafo, 'Labour Relations in Norway' <<http://www.faf.no/images/pub/2013/20299.pdf>> accessed 11 April 2015.

¹¹ Fafo, 'Labour Relations in Norway' <<http://www.faf.no/images/pub/2013/20299.pdf>> accessed 20 March 2015.

¹² A. Kjønstad, A. Syse, *Velferdsrett 1 (welfare law)*, 5. Edition (Gyldendal 2012) 140.

In accordance to Article 18 in Norwegian Social Services Act¹³ persons unable to secure adequate resources for their livelihood have a right to economic benefit (social assistance). This benefit should be aimed towards making a person self-sufficient (self-reliant). As a result of this provision, this type of economic benefit is considered to be temporary.¹⁴ Such economic benefits can be qualified by special conditions, e.g. obligation to undertake tasks in resident's municipality (Article 20). Economic benefit can be given in form of payment but also as a loan (Article 21).

In case a person is unable to provide for him or herself, the municipality where this person resides has an obligation to find a place for them to stay (Article 27).

Articles 29 to 40 regulates the so-called *kvalifiseringsprogram* (qualification programme) and *kvalifiseringsstønad* (qualification benefits).

Municipalities have an obligation to offer the qualification programme to persons who fulfil conditions in abovementioned Articles.¹⁵ The aim of this programme is that a participant will, in cooperation with Norwegian Labour and Welfare Service become qualified to participate in the ordinary labour life and therefor would not need to continue receiving social assistance.¹⁶ Qualification programme should be individually prepared, according to Article 30 para 3 and Article 33. Such a programme contains measures aimed toward labour and work placements. It is possible for the programme to contain other measures such as training (educational measures), coping training as well as health care. (Article 30 para 1 and 2).

The program has a maximum duration one year and, but can be subjected to expansion for up to one more year; after a special assessment a programme can be prolonged for more than two years (Article 32).

While participating in the abovementioned programme a person receives qualification benefits. On a yearly basis benefits equal two times the minimum living wage (Article 35).¹⁷ In the case where the participant in the programme has an income, the qualification benefits are reduced accordingly (Article 37). The same applies to other types of benefits (Article 38).

¹³ LOV-2009-12-18-131 Lov om sosiale tjenester i arbeids- og velferdsforvaltningen.

¹⁴ *ibid*, 433 and 446.

¹⁵ *ibid* 457.

¹⁶ *ibid* 456.

¹⁷ Per May 2014 this equals NOK 176,740 (approx. EUR 20,500) acc. Norwegian Insurance Act Art 1-4.

To provide an example of the usage of social assistance and the qualification programme in Norway, this analysis will present statistical information.

“In 2013, there were 120,800 recipients of social assistance; 5 per cent more than the year before. Payments were up 12 per cent when controlled for the general increase in prices”.¹⁸

	2013
Recipients of social assistance	120,775
Single males total	47,621
Single females total	27,886
Social assistance as primary source of income	49,152
Expenditure on social assistance (1,000 NOK)	5,122,169

The qualification programme (KVP) and most other programmes place a significant emphasis on work placements. There has been a recognised decrease in the number of participants dropping out from the programme. However, the percentage of “the participants in 2013” who “interrupted their programme due to absence” is almost the same as previous year.¹⁹

	2012	2013
Participants under 20 years	1	1
Participants 20-24 years	19	18
Social assistance as major income 2 months before KVP	50	49
Participants completed programme 31/12	29	29

¹⁸ ‘Statistisk Sentralbyrå, Social assistance, 2013’ <<http://www.ssb.no/en/sosiale-forhold-og-kriminalitet/statistikker/soshjelpk>>, accessed 11 April 2015.

¹⁹ ‘Statistisk Sentralbyrå, Social assistance, 2014’ <<http://www.ssb.no/en/sosiale-forhold-og-kriminalitet/statistikker/kvalstonad/aar/2014-06-25>>, accessed 11 April 2015

3.1.2. Persons who are unable to secure adequate resources either by his/her own efforts or from other sources due to illness?

Measures to enable assistance for persons who are unable to secure adequate resources due to illness are regulated in National Insurance Act²⁰ Chapter 8, 11 and 12.

Chapter 8 regulates sickness benefits for actively working citizens who are unable to secure resources by their own efforts due to illness or injury (Article 8-1). One of the conditions to get this type of benefits is to have worked at least 4 weeks prior to being incapacitated (Article 8-2). Labour and Welfare Authorities shall monitor a person who receives sickness benefits in order to investigate if it is necessary to start introduction of work related measures (Article 8-7a).

In 2013 there was 115,689 citizens receiving sickness benefits in Norway, see attached table:²¹

	2011	2012	2013
Input			
Own production (NOK million)	10,010	10,806	11,499
Transfers (NOK million)	357,978	378,064	397,851
Activities and services			
Recipients of unemployment benefits (yearly average)	59,765	53,120	53,685
Recipients of sickness benefits (per 30 June)	122,332	118,392	115,689
Recipients of disability pension	306,653	309,887	305,886
Old age pensioners	718,667	760,025	800,350
People on unemployment measures	75,512	75,166	72,716
Related indicators			
Employed persons aged 15-74 (LFS) (1,000 persons)	2,543	2,591	2,610
Unemployed persons aged 15-74 (LFS) (1,000 persons)	86	86	95

²⁰ LOV-1997-02-28-19 Lov om folketrygd (folketrygdloven).

²¹ 'Statistisk Sentralbyrå, Number of old age pensioners up in 2013' <http://www.ssb.no/en/sosiale-forhold-og-kriminalitet/statistikker/nav_statres/aar/2014-12-09 - content>, accessed 11 April 2015.

Another measure that Norway has implemented in relation to persons who are unable to secure adequate resources either by his or her own efforts or from other resources due to illness is called *arbeidsavklaringspenger* (rehabilitation benefits). These benefits are regulated in the Norwegian Insurance Act Chapter 11.

This type of benefit is based on the aim to make recipients of governmental support self-reliant. Persons who are sick or disabled shall have access to treatment, training, education and other labour measures so that they can improve their functional state and eventually be able to secure an income through working.²²

To access rehabilitation benefits a person must be a member of the Norwegian state insurance, be a resident in Norway and be between 16 and 67 years old (Articles 11-2 to 11-4). The recipients capacity to work must have been reduced by at least 50% due to illness or injury and fulfil at least one of the conditions in Article 11-6, e.g. gets active treatment (Article 11-13).

The recipient of such benefits should be actively take measures to get back into labour market, e.g. participate in compilation of a plan for getting back into work (Article 11-8).

Four years is the maximum duration of rehabilitation benefits, but in special cases it is possible to get an extension (Article 11-10). Persons who receive rehabilitation benefits shall be monitored by the Labour and Welfare Authorities (Article 11-11).

During 2014 there were 165.903 citizens receiving rehabilitation benefits.²³

The final measure addressed in this report is the disability pension. The Norwegian Insurance Act, Chapter 12, regulates this measure. The aim of the disability pension is to secure income for persons who had suffered a lasting injury, and a decrease in their ability to secure income and adequate resources (Article 12-1).

A recipient of the disability pension must be between 18 and 67 years old and comply with the condition that they hold a membership in the Norwegian state insurance (Articles 12-2 to 12-4).

An additional condition is that an applicant has been through appropriate treatment and labour measures before he or she can receive disability pension (Article 12-5).

²² A. Kjønstad, A. Syse, *Velferdsrett 1 (welfare law)*, 5. Edition (Gyldendal 2012) 283

²³ 'Statistisk Sentralbyrå, Personer som mottar arbeidsavklaringspenger (AAP)' <https://www.ssb.no/statistikkbanken/SelectVarVal/Define.asp?MainTable=StatResNav33&KortNavnWeb=nav_statres&PLanguage=0&checked=true>, accessed 11 April 2015

The recipient should have a lasting disease or injury and this condition should be the main cause for lasting decrease in or loss of employability and work capacity (Article 12-6).

In the case where a recipient of disability pension supports children, he or she has a right to child support. Child support is 40% of the minimum living wage for each child the recipient supports (Article 12-5).²⁴

In 2013, there were 305,886 citizens receiving disability pension, see table under 3.1.2, footnote 17.

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

The minimum living cost has been steadily increasing by at least NOK 2,000 (approx. EUR 240) per year, therefore there has been no financial impact nor have they caused a reduction in the number and or type of measures provided.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

The Norwegian Labour and Welfare Service provide information, advice and guidance to prevent, remove or alleviate social problems. The Labour and Welfare Authorities also monitor some of the areas. Municipalities have the obligation to inform persons in need about the measures provided by Norwegian Labour and Welfare Services.²⁵

Austerity measures have not had any impact on the provision of those services.

²⁴ Per May 2014 this equals NOK 35.348 (approx. EUR 4.110), acc. Norwegian Insurance Act Art 1-4.

²⁵ A. Kjønstad, A. Syse, *Velferdsrett 1 (welfare law)*, 5. Edition (Gyldendal 2012), p. 457.

4. SOCIAL EXCLUSION

4.1. Article 30 of the European Social Charter

Article 30 of the ESC regulates the protection against poverty and social exclusion. The European Committee of Social Rights has stated that article 30 requires an ‘overall and coordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access fundamental social rights’.²⁶

Because there seem to be a specific focus on policies, government projects and programmes in relation to article 30, this will be the main focus in the following assessment. The Government has underlined in its previous national reports the importance of financial support in order to combat poverty and social exclusion.²⁷ Because of this, a majority of the implemented policies include the Government providing financial support to municipalities, who then manages the different projects on a local level. Another important part is different funds, to which NGOs can apply to for financial support for different projects.

4.2. Employment

4.2.1. Legislation

The right to employment is enshrined in *Kongeriket Norges Grunnlov* (the Norwegian Constitution)²⁸ article 110 and in *Sosialtjenesteloven* (the Social Services Act).²⁹ The purpose of the latter is to improve living conditions for the disadvantaged, contribute to social and economic security, ensuring that the individual gets the opportunity to live independently, and promote the transition to employment, social inclusion and active participation in society.

Article 18 states that those who cannot support themselves financially through work or by exercising other financial rights are entitled to financial support. The support is given with the aim to make the person self-reliant.

²⁶ Digest of the Case Law of the European Committee of Social Rights, 2008. Page 167.

²⁷ 10th National Report on the implementation of the European Social Charter, submitted by the Government of Norway 81,83.

²⁸ LOV-1814-05-17 Kongeriket Noregs Grunnlov.

²⁹ LOV-2009-12-18-131 Lov om sosiale tjenester i arbeids- og velferdsforvaltningen.

The same act states that the municipality shall provide information, advice and guidance that can solve or prevent social problems. The local social services offices provide help and guidance for registered job seekers. Some of the initiatives offered to help persons get a job, consists of courses, qualification programs, mentors, job seeking training etc.

4.2.2. Policies

The qualification programme is meant for those who have been dependent upon social care for a long time, or who find themselves in a risk of entering such a situation. The programme includes training, education and follow-up, with the object of returning to work or meaningful activity. The program also provides an opportunity to clarify any other income rights you might have if you do not have the opportunity to perform regular work.

Other measures include different labour market programmes, such as work practice, wage subsidies, different follow-up measures, shielded and adapted work practice, work practice in sheltered sectors and permanently adapted work.³⁰

For further reading, see 4.4. for different measures for improving access to education. See also further under chapter 5 for measures aimed at persons with disabilities.

4.3. Housing

4.3.1. Legislation

As mentioned above under 4.1.1, those who cannot support themselves financially are entitled to support. Payment for housing is an expense that is included within this provision.

Sosialtjenesteloven (the Social Services Act) also states that each municipality is obliged to find temporary housing for those who cannot manage to do so themselves.³¹ In practice, the municipalities often have specific housing intended for this purpose. In 2013, Norway had over 105 000 registered municipal housing units.³²

³⁰ 'Regjeringen, Arbeidsrettede tiltak' <<https://www.regjeringen.no/nb/tema/arbeidsliv/arbeidsmarked-og-sysselsetting/innsikt/arbeidsmarkedstiltak/hvilke-arbeidsrettede-tiltak-finnes/id2076683/>> accessed 5 April 2015.

³¹ Art 15. See also helse- og omsorgstjenesteloven (The Social Services Act), article 3-7

³² 'Statistisk Sentralbyrå, Kommunale boliger, 2013' <http://www.ssb.no/bygg-bolig-og-eiendom/statistikker/kombolig_kostraaar/2014-06-25>, accessed 10 April 2015.

4.3.2. Policies

One can seek financial support to housing from several subsidy schemes. The Norwegian State Housing Bank manages these. This is the most important initiative put forward by the State in order to help individuals to get safe housing.³³

Housing support is a means-tested government support for those who have low incomes and high housing expenses. The housing support depends on the income and assets of the person and those they live with. Persons over 18 years can apply, except for students and people in military service. These limitations do not apply to students with children, persons under 18 years with children and students without children when the study is a part of a public vocational measure.³⁴

Start loans provides an opportunity for households that do not qualify for a regular mortgage or are having financial problems, and want to remain in their homes. In order to be eligible for this programme, one must have had long-term difficulties in financing owned housing. To get the loan, one needs to be able to service the loan over time, and still have enough left over for other necessary expenses. If there are children in the household or particular social or health challenges, the municipality shall also consider this in the assessment. The loan can be used for buying housing, for renovation or customisation purposes or for the construction of a new home.³⁵

Other subsidy schemes include grants to refinance debt, grants for setting up their own home and grants where there is a special need to customise the house because of disability in the household. The two first grants require low income over time and that one household member is not able to service regular loans. Thus, these schemes involve strict means testing of an applicant's finances, and only the most disadvantaged.³⁶

The local municipalities also provide economic counselling in case of financial difficulties.

4.4. Training and Education

³³ Meld. St. 30 (2010–2011) Fordelingsmeldingen.

³⁴ 'Husbanken, Bostøtte' <<http://www.husbanken.no/bostotte/>> accessed 9 April 2015.

³⁵ 'Husbanken, Startlån' <<http://www.husbanken.no/startlaan/>> accessed 9 April 2015.

³⁶ 'Husbanken, Tilskudd' <<http://www.husbanken.no/tilskudd/>> accessed 9 April 2015.

4.4.1. Legislation

The right to education is enshrined in *Norges Grunnlov* (the Norwegian Constitution), Article 109. *Opplæringslova* (The Education Act)³⁷ gives rules that are more specific when it comes to the right to education. As of Article 2-1, the right to education is not only a right – it is also a duty.

Compulsory public school is free from the age of six years and up to 15 years (first through tenths grade), and the school cannot demand that parents pay for teaching materials or activities like excursions and school trips (Article 2-15). If a student has special requirements, the school shall provide this (Article 2-16).

From the age of 15, adolescents have the right to upper secondary education (Article 3-1). This is also free. When it comes to teaching materials, the school has to provide for the necessary printed and digital educational resources, including digital equipment. The school can require that the student acquire other individual equipment that is necessary for the education.

For students whose parents learn less than a certain amount, *Lov om utdanningsstøtte* (the Educational Support Act)³⁸ states that they have the right to financial support from the Norwegian Loan Fund. This is meant to cover financial costs of individual equipment as mentioned in the section above.

For further information about special measures for children and young person's participation in education, see chapter 5.

4.4.2. Policies

Beyond the right to education, the Government has designed several programmes with the aim of making education and training available for those who wish to participate in such programmes.

The Education Directorate has a programme for adults over 25 years who want to complete primary and/or secondary education, with the aim of participation in employment and/or further education. This programme includes counselling, specific educational programmes for adults and in addition, each has the right to an assessment of whether they have practical experience or education that can be considered to assist an applicant in meeting the general entry

³⁷ LOV-1998-07-17-61 Lov om grunnskolen og den vidaregåande opplæringa (opplæringslova).

³⁸ LOV-2005-06-03-37 Lov om utdanningsstøtte.

requirements for general entry requirements for university admission. *Opplæringslova* (the Education Act) states that adult education shall be adapted to the adults' abilities, aptitudes and needs.³⁹

Another programme available for persons who wants to utilize their crafts certificate to demonstrate experience they have gained from working life. The practical experience should be relevant and versatile, covering the most significant portions of the curriculum for that particular subject and be 25 per cent longer than the stipulated apprenticeship, i.e. five years.⁴⁰

Furthermore, Norway is a part of Erasmus+ in the same way as EU member states. This is the EU programme for education, training, youth and sport.

4.4.2.1. Languages

There exist several policies and subsidies for measures to improve language understanding among minorities. This includes language training for children in preschool, the right to language training for pupils from linguistic minorities during all stages of the education.

4.5. Culture

4.5.1. Legislation

The purpose of *Kulturlova* (The Norwegian Culture Act)⁴¹ is to promote and facilitate a broad range of cultural activities, so that everyone can get an opportunity to participate in cultural activities and see a diversity of cultural expressions.

4.5.2. Policies

There are several national initiatives to promote culture, aimed at different groups. Library services are free, and there are some museums with free entrance.

Norsk kulturfond (The Norwegian Culture Fund) is a fund that primarily provides support for individual projects and experimental activities in the arts and culture area. One of the three main objectives of the grants is to make art and culture accessible to as many as possible.⁴²

³⁹ Utdanningsdirektoratet, Voksenopplæring' <<http://www.udir.no/Spesielt-for/Voksne/>> accessed 5 April 2015.

⁴⁰ *ibid.*

⁴¹ LOV-2007-06-29-89 Lov om offentlege styresmaktens ansvar for kulturverksemd (kulturlova).

Den kulturelle skolesekken (The Cultural Rucksack) is a national initiative to get all students (regardless of what school they go to and what economic, social, ethnic and religious backgrounds they have) from 6 – 19 years old to experience art in different genres by different artists. It is managed on a local level, and receives financial support from the Government.⁴³

Den kulturelle spaserstokken (The Cultural Walking Stick) is another initiative where the municipalities can apply for financial support to provide elderly with professional art and culture of high quality.⁴⁴ One important aspect here is that the cultural offerings should often occur in venues where the elderly reside, so that they are easily accessible.

Barne- og ungdomstiltak i større bysamfunn (The national grant scheme against child poverty) aims to prevent and / or mitigate poverty problems among children and adolescents. The subsidy is an instrument to improve opportunities for more children and adolescents to participate in important social arenas, leisure and recreational activities regardless of parental income and social situation.⁴⁵

Some of the policies that received financial support in 2015 include grants to projects by different NGOs (Red Cross, Relatives of Prisoners, and Antiracist Centre etc.) on areas like vacation for everybody, summer camps, activities for families in poverty etc.

Fordelingsutvalget (the Distribution Committee) is a body under the Ministry of Children, Equality and Social Inclusion Ministry, and its main task is to allocate grants to Norwegian children and youth organisations.⁴⁶ In the allocations of 2014, 89 organisations received support.⁴⁷

4.6. Social and Medical Assistance

4.6.1. Legislation and Policies

Helse- og omsorgstjenesteloven (the Patient's and User's Rights Act)⁴⁸ is designed to help ensure the population has equal access to good quality services by giving patients and users the equal right

⁴² 'Norsk kulturfond' <<http://www.kulturradet.no/norsk-kulturfond/om-norsk-kulturfond>> accessed 8 April 2015.

⁴³ 'Den kulturelle skolesekken' <<http://www.kulturradet.no/den-kulturelle-skolesekken>> accessed 10 February 2015.

⁴⁴ 'Den kulturelle spaserstokken' <<https://www.regjeringen.no/nb/dep/kud/tilskudd/om-kulturdepartementets-tilskuddsordninger/Redaksjonell-artikkel-Den-kulturelle-spaserstokken/id764969/>> accessed 8 April 2015.

⁴⁵ Barne- og ungdomstiltak i større bysamfunn.

⁴⁶ 'Fordelingsutvalget' <<http://www.fordelingsutvalget.no/>> accessed 8 April 2015.

⁴⁷ 'Fordelingsutvalget, Statistikk' <<http://www.fordelingsutvalget.no/Statistikk/>> accessed 10 April 2015.

to health care. Furthermore, the legislation focuses on preventing social problems by means of providing information, counselling and guidance.⁴⁹

Local municipalities have the overall responsibility for health care services. This responsibility covers all patient and user groups. This includes persons with physical or mental illness, injury or disorder, substance abuse problem, social problems or disabilities.⁵⁰

Folketrygdloven (the National Insurance Act) ensures financial security by providing income and compensations for special expenses during unemployment, maternity, childcare, illness and injury, disability, old age and death. Chapter 5 regulates financial support for health care services, including full or partial compensation for necessary expenses for healthcare because of disease, injury, defect etc.

There is a fixed deductible that applies to everyone, and everything that exceeds the deductible is covered by the State. In 2015, the deductible is 2185 NOK. This includes expenses to medical assistance (both physical and mental), important medicines and special medical equipment, travel expenses, to name a few.⁵¹

Another measure to ensure equal access to health care is a right to a professional interpreter. This service is free, and is used to secure that everyone gets information about health status and treatment in a language they understand.⁵²

4.7. Austerity Measures

As mentioned in the introduction, Norway did not impose any austerity measures in response to the 2008 financial crisis. Because there have not been any austerity measures, the mentioned legal framework and policies have not been amended or altered as such.

The legislation mentioned under chapter four on social exclusion seems to be in line with article 30 of the ESC. However, as mentioned initially, article 30 requires an overall assessment and a more overall, coordinated approach where policies are even more important. Throughout the assessment, many policies have been mentioned. The list is not exhaustive. As a whole, there

⁴⁸ LOV-2011-06-24-30 Helse- og omsorgstjenesteloven.

⁴⁹ *ibid*, art 3-3.

⁵⁰ *ibid*, art 3-1.

⁵¹ *Folketrygdloven* (the National Insurance Act) LOV-1997-02-28-19, articles 5-1 and 5-3.

⁵² 'Helsenorge, rett til tolk' <<https://helsenorge.no/rettigheter-som-syk/rett-til-tolk>> accessed 10 April 2014.

does not seem to be any serious deficiencies in the assessment of the measures taken by the Norwegian Government to meet the requirements after article 30 – neither when it comes to legislation or policies. The conclusion is therefore that the current legal framework is in line with the Charter.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

Norway ratified the Convention on the Rights of Persons with Disabilities adopted by the UN General Assembly in 2006 on 3 June 2013.⁵³

Definition: Disability or impairment exists when a body part or one of the body's physical or cognitive functions are lost, damaged or otherwise impaired.

A disability can occur in a meeting between the individual and the society, where the individual participation is limited and this caused by the person's disability.⁵⁴

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

5.1.1.1 Anti-Discrimination and Accessibility Act⁵⁵

The Anti-Discrimination and Accessibility Act entered into force on 1 January 2014. The acts main goal is to promote equality regardless of disabilities, and the law shall contribute to dismantle societal barriers and prevent new ones from forming. The act main purpose is to provide protection against discrimination based on disability in schools and educational institutions.

⁵³ 'FNs konvensjon om rettighetene til personer med nedsatt funksjonsevne' <<http://www.fn.no/Bibliotek/Avtaler/Menneskerettigheter/FNs-konvensjon-om-rettighetene-til-personer-med-nedsatt-funksjonsevne>> accessed 10 April 2015.

⁵⁴ NOU 2005:8 Chapter 8-3.

⁵⁵ LOV-2013-06-21-61 (diskriminerings- og tilgjengelighetsloven).

Public businesses shall work actively and targeted to promote universal design within the business. This also applies for private businesses that are open to the public. The businesses are required to arrange this to the possible extent.

Children with disabilities that attend day-care, have the right for a suitable individual facilitation so that the child gets equal development and activity opportunities. The day-care centres are required to facilitate this for the disabled to the possible extent. Students and pupils that attend an educational institution also have the right to suitable individual facilitation of the teaching institution, teaching aids and exams so that equal training and educational opportunities are equal. The educational institutions are also required to arrange for this to the possible extent.

The purpose with the Act is that pupils and students are able to attend the ordinary schools and institutions, and that these institutions have a universal design. If an institution is in breach of the Act, the person who has been discriminated has the right to compensation. The compensation shall cover the economic losses caused by the discrimination, or the discriminated may be entitled to reparation for non-pecuniary damage.

The Equality and Anti-Discrimination Ombudsman and Tribunal shall enforce and contribute to the implementation of the law. The Ombudsman has received a number of complaints based on, among other cases, the lack of universal design of educational buildings or the individual facilitation. In the case no. 40/2010⁵⁶ in the Equality and Anti-Discrimination Tribunal, the Tribunal said that the obligation regarding universal design applied both to new and existing buildings. In the case no. 50/2014⁵⁷ in the Equality and Anti-Discrimination Tribunal the question was if a high school had acted in breach of the duty of individual adaption. The Tribunal concluded that the high school did not give the pupil a reasonable individual facilitation, and they noted that even though a pupil is assigned to special groups, this does not imply that the school necessarily have given a reasonable individual facilitation.

5.1.1.2 *The Education Act*⁵⁸

⁵⁶ Sak nr. 40 [2010] Likestillings- og diskrimineringsnemnda [Norwegian]. <http://www.ssb.no/bygg-bolig-og-eiendom/statistikker/kombolig_kostr/aar/2014-06-25> accessed 10 April 2014.

⁵⁷ Sak nr. 50 [2014] Likestillings- og diskrimineringsnemnda [Norwegian]. <<http://www.diskrimineringsnemnda.no/sites/d/diskrimineringsnemnda.no/files/e10deb5ff9079e291f0f71f1fd03563f.pdf>> accessed 10 April 2014.

⁵⁸ LOV-1998-07-17-61 Lov om grunnskolen og den vidaregåande opplæringa (opplæringslova).

It follows from the Norwegian Education Act that every child have the right to primary education, and that youths have the right to secondary education. It also states that the education shall be adapted to the ability and aptitudes to each individual pupil.

Pupils and students with disabilities have the right to special education, if they are unable to benefit satisfactorily from ordinary education. Children under school age may have the right to a special educational assistance.

5.1.1.3 Educational Psychological Service⁵⁹

Educational Psychological Service is a municipal or county advisory service. The service shall help children, youth and adults who are struggling in their development, or who have difficulties in the educational situation.

The service shall give schools advice and guidance to facilitate for children and young people who need it, and assist schools to facilitate the education better for pupils with special needs. The service may also assist adults who need primary education. The schools shall collect advices from the service when pupil's necessary provisions for special education is under consideration. The service also considers whether children under school age shall receive special educational assistance.

5.1.1.4. Measures regulated in the Regulations on Work-Related Measures⁶⁰

Regulations on Work-Related Measures entered into force on 1 January 2009. Some of the measures in this Regulation concerns measures on education and vocational training. NAV determines who is relevant for the participation in work-related measures.

The Norwegian Labour and Welfare Administration (NAV), established on 1 July 2006. NAV administers a third of the national budget through schemes such as unemployment benefit, work assessment allowance, sickness benefit, pensions, child benefit and cash-for-care benefit. One of the main goals for NAV is more people active and in work, fewer people on benefits.

Training

⁵⁹ 'Pedagogisk-psykologisk tjeneste' <<http://www.udir.no/Regelverk/tidlig-innsats/Skole/Oversikt-over-aktorene/PP-tjenesten/>> accessed 10 April 2014.

⁶⁰ FOR-2008-12-11-1320 Forskrift om arbeidsrettede tiltak mv.

The training can take place through the ordinary educational system, through customized courses or through the measure 'Qualifying in labour business'. Training measures shall contribute so that job seekers are qualified for available jobs. Furthermore, the training measures shall prevent the exclusion of people are in danger of falling out of the work life or are in an uncertain employment situation and need qualification.

– Ordinær utdanning⁶¹(Ordinary education)

This measure shall contribute so that jobseekers qualify for jobs and prevent the exclusion of people who are in danger of falling out of the working life, or are in an insecure employment situation and needs qualification. The measure normally last up to three years, but may be extended after an individual assessment, and is meant for persons over 26 years. It can be given an exception for persons under 26 years, and most of the exceptions are given to youth who, because of illness will have substantially higher costs to education than other youths, and/or to youth who have already taken an education that they cannot make use of because of a disability. 'Ordinary education' shall be understood as public or private education that is open to everyone and give formal competencies; the competencies are documented in a diploma or other official papers from school and education institutions.

– 'AMO'⁶² (Labour Market Training)

'Labour market training' is in the form of a course and is aimed at people who need qualifications and who have difficulties entering the labour market. The course may also be offered to maintain and strengthen the competence of employees in businesses that have adjustment problems of particular serious nature. The measure is for persons over 19 years who have difficulties entering the labour market or have disabilities. The course is organised by NAV, and last up to ten months, but may be extended up to six months. The 'labour market training' are customized courses and are not a part of the ordinary education. The course will often contain a combination of a practical and theoretical training, and may include work practices in an ordinary business.

*Kvalifisering i arbeidsmarkedsbedrift*⁶³ (Qualification in Labour Market Business) The purpose of the measure is to provide participants with higher real and formal skills through facilitated education

⁶¹ NOU 2012:6 Chapter 5.

⁶² NOU 2012:6 Chapter 5.

and job training. The measure shall be conducted in real work environment. Real work environment means that all rehabilitation companies that arrange the measure shall have internal services within the production of goods and services that contribute to the purpose of the measure. This measure last up to two years, but with the possibility of extension if necessary to achieve a certificate. The measure is aimed at people who have their employability reduced in such an extent that he is being prevented from obtaining or retaining gainful employment. The goal with the measure is dissemination to ordinary work or to self-financed education.

5.1.1.5. Higher Education

In Norway you don't have the right to higher education, but it follows from the Anti-Discrimination and Accessibility Act that the educations institutions are committed to facilitate for the disabled to the best possible extent.

Measures to Attend Higher Education for Persons with Disabilities: It is possible to apply for a special consideration if it is possible that the pupils results from secondary school is lower than what is required for an education and this is because of a disability.⁶⁴ In Norway you have to receive a general admission to get into higher education. If a person is under 25 years and can document that they due to a disability are unable to complete the requirement of general admission it is possible to get an exemption.⁶⁵ Other measures for persons with disabilities are for example that you may be entitled to aids, an interpreter and literacy help.⁶⁶ The student welfare organization must also ensure that at least 20 % of the student housing is facilitated for persons with disabilities.

Scholarship.⁶⁷ Students in higher and other education who cannot work alongside education because of disabilities may be granted an extra scholarship. Students who cannot work during

⁶³ NOU 2012:6 Chapter 7-6-3.

⁶⁴ 'Samordna opptak, Særskilt vurdering' <<http://www.samordnaopptak.no/info/opptak/poengberegning/serskilt-vurdering/index.html>> accessed 10 April 2014.

⁶⁵ 'Samordna opptak, Dispensasjon' <<http://www.samordnaopptak.no/info/opptak/unntak-fra-gsk/dispensasjon/index.html>> accessed 10 April 2014

⁶⁶ 'Ung, Rettigheter i høyere utdanning for personer med nedsatt funksjonsevne' <http://www.ung.no/utdanning/houtd/977_Rettigheter_i_h%C3%B8yere_utdanning_for_personer_med_nedsatt_funksjonsevne.html> accessed 10 April 2014.

⁶⁷ 'Lånekassen, nedsatt funksjonsevne eller funksjonshemming' <<http://www.lanekassen.no/nb-NO/Stipend-og-lan/Hoyere-utdanning/Hvor-mye-kan-du-fa/Nye-stotteordninger-for-elever-og-studenter-med-nedsatt-funksjonsevne/om-ordningen/>> accessed 10 April 2014.

the summer holidays because of disabilities can also apply for support for twelve months, and not ten months which is the norm. If the learning environment or your study situation at your institution does not accommodate disability and study progress are delayed because of this, students can get extra support for one year.

5.1.1.6. *Traineeship*⁶⁸

The state has a trainee program for persons with disabilities. The program is available for persons with higher education and disabilities. Some of the purposes with the program is to get skilled employees and to provide government agencies experience with recruiting and facilitating for people with disabilities and higher education.

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

5.1.2.1. *Employment of Persons with Disabilities*

According to Statistics Norway⁶⁹, in 2014, there were:

- 539,000 persons with disabilities between the age of 15 and 66;
- 232,000 employed persons with disabilities between the age of 15 and 66;
- 15,000 unemployed persons with disabilities between the age of 15 and 66;

5.1.2.2. *Anti-Discrimination and Accessibility Act*⁷⁰

⁶⁸ 'Regjeringen, Nytt traineeprogram i staten for personer med nedsatt funksjonsevne' <<https://www.regjeringen.no/nb/tema/arbeidsliv/Statlig-arbeidsgiverpolitikk/arbeidsgiverpolitikk/inkludering-og-mangfold-i-staten/nytt-traineeprogram-i-staten-for-personer-med-nedsatt-funksjonsevne/id2402176/>> accessed 10 April 2014.

⁶⁹ <<https://www.ssb.no/arbeid-og-lonn/statistikker/akutu/aar/2014-09-04#content>> accessed 10 April 2015.

⁷⁰ LOV-2013-06-21-61 Diskriminerings- og tilgjengelighetsloven.

The Anti-Discrimination and Accessibility Act was entered into force on 1 January 2014. The Act aims to prevent discrimination on the basis of disabilities in the work environment. The employee or jobseeker with a disability has the right to an individual adaption of the workplace. The employers is also obliged to work actively to promote the Acts goals within their business, and report on equality measures that are being implemented or are planned to be implemented.

The Act therefore provides that employers shall, within reason, individually adapt workplaces and tasks in order to ensure that employees or job seekers with disabilities can obtain or retain a job. The purpose is to contribute so that persons with disabilities may participate in the ordinary working life.

The Labour Inspection Authority monitors whether the businesses comply with the obligation under the Act and may issue orders if employers do not act according to their duty.⁷¹

5.1.2.3. Regulations to the Civil Service Act⁷²

It follows from the Regulations to the Civil Service Act that if there is a vacant position and there is an applicant with disabilities, the government agencies are obliged to interview at least one applicant with disabilities if this applicant is qualified for the position. The government agencies may also hire an applicant with disabilities even though there are applicants that are better qualified for the vacant position.

5.1.2.4. Measures Regulated in the Regulations on Work-Related Measures⁷³

Regulations on Work-Related Measures came into force on 1 January 2009. The main purpose of this regulation is to strengthen the participant's opportunities to obtain or retain employment. This is attempted by determining how different work-related measures will operate and the design of other services. NAV determines who is eligible for participation in work-related measures.

a) Measures in the early phase⁷⁴

⁷¹ 'Arbeidstilsynet, Internkontroll' <<http://www.arbeidstilsynet.no/fakta.html?tid=207426>> accessed 10 April 2014.

⁷² FOR-1983-11-11-1608 Forskrift til lov om statens tjenestemenn m.m.

⁷³ FOR-2008-12-11-1320 Forskrift om arbeidsrettede tiltak mv.

This measure begins when a person contacts NAV, completes a needs assessment and if necessary an employability assessment. These assessments will map the person's wants or needs and capacity, and will include an assessment of which measures are needed.

– *Avklaring* (Clarification)⁷⁵

The purpose of the measure “Clarification” is to map and consider the individual's employability and the need for assistance to enter the labour market or to retain work. ‘Clarification’ can also be a part of an employability assessment. The measure shall give an offer for clarification of professional and social competence, systematic mapping of employability, clarification of the need for further assistance, and motivation and coping activities. ‘Clarification’ can last up to four weeks with a possible extension of up to eight weeks. The organizer of the measure is usually shielded businesses, but the measure may also be tenders based.

– *Arbeidspraksis i skjermet virksomhet* (Work practice in sheltered businesses)⁷⁶

The measure “work practice in sheltered businesses” shall give persons with disabilities facilitated job training with follow-up with the purpose to figure out the individual's abilities, and potential on the labour market and to strengthen their opportunities to get a job or education. An individual training plan is made that may include for example social training, guidance and motivation. “Work practice in sheltered businesses” is a more extensive than the measure “Clarification”, and it can last up to one year, with a possible extension for another year.

– *Arbeidsrettet rehabilitering* (Work-oriented rehabilitation)⁷⁷

Shall provide an offer for rehabilitation to users with complex and unclear disorders, with a need for work training in combination rehabilitation with and individual support to improve the coping and working capacity. The measure can last up to 12 weeks. This measure is meant to contribute to strengthening the individual's ability to work and to cope with health and social issues that may preclude participation in the workplace. The difference between this measure and

⁷⁴ NOU 2012:6 Chapter 7-5.

⁷⁵ NOU 2012:6 Chapter 7-5-1.

⁷⁶ NOU 2012:6 Chapter 7-5-2.

⁷⁷ NOU 2012:6 Chapter 7-5-3.

“work practice in sheltered businesses” is that this measure has a health focus as part of the content.

b) Work Practices

- *Arbeidspraksis i ordinær virksomhet* (Work practice in ordinary businesses)⁷⁸

This measure shall work to assess the individuals possibilities on the labour market, strengthen the participant’s opportunities to get a job or education and provide work experience. The measure last up to one year, but with the possibility for persons with disabilities to extend the measure by two years. A training plan will be created with a goal for the practice, and a permanent mentor will follow up this plan.

- *Tilrettelagt arbeid i arbeidsmarkedsbedrift* (Facilitated work in a labour market business)⁷⁹

This measure is aimed at people who have had their employability permanently and substantially impaired and need special arrangements and close follow-up. Most of them do not manage in the ordinary working life, at the same time they do not qualify or want disability benefits. The main objective for the participants in the measure are many but include, among others that the participants shall have a meaningful job. The measure is implemented in real business environments, and it does not have a time limit. However, their ability to participate in the regular working life are regularly assessed. The participants in the measure get a regular salary.

- *Varig tilrettelagt arbeid* (Permanently adapted work)⁸⁰

This measure is permanent, and offers persons work in a sheltered business with work tasks adapted to the individual’s employability. “Permanently adapted work” may also be offered in ordinary businesses. NAV shall evaluate periodically whether it may be appropriate to transfer to other measures or education, or a return to ordinary working life. The measure is aimed at persons who have or in the near future is expected to be granted a permanent disability pension under the National Insurance Act, and who needs special facilitation and close monitoring. The work shall develop resources among the participants through personalized tasks and qualification through production of goods and services.

⁷⁸ NOU 2012:6 Chapter 7-7-1.

⁷⁹ NOU 2012:6 Chapter 7-7-2.

⁸⁰ NOU 2012:6 Chapter 7-7-3.

c) *Formidlingsrettede tiltak* (Dissemination oriented Measures)⁸¹

Dissemination measures are measures aimed at giving users assistance and guidance related to contact with possible employer, aimed at employment in ordinary work.

- “Follow-up measures”⁸²

The purpose of the ‘Follow-up measure’ is to provide each participants individually adapted follow-up assistance that is necessary to retain employment, increase opportunities to enter into the working life or to be able to carry out a work-oriented measure. The measure last up to six months, but can be extended by another six months, and by special needs up to three years. In the workplace, the measure can include advice and guidance to both employees and employers, as well as assistance for facilitating work and work situation.

- *Tidsbegrenset lønnstilskudd* (Time-limited Wage Subsidies)⁸³

These measures are given to employers who hire people who have difficulties entering the labour market on ordinary wage and working conditions with a view to permanent employment. Participants shall perform ordinary tasks in a public or private business, in a full or part-time position. They will get individual support and assistance along the way. The employer in accordance with the agreements that applies for their business will pay the participants and this requires employment on ordinary wage and working conditions. The wage subsidies cover a maximum of 50% of the salary for up to one year. For persons with disabilities these subsidies can cover up to 60% of the salary up to three years.

5.1.2.5. *Regulations on Indefinite Wage Subsidies*⁸⁴

Regulations on Indefinite Wage Subsidies entered into force on 3 May 2007. These are the regulations on the measure ‘indefinite wage subsidies’, and the main purpose is to help increase the opportunities for ordinary work among persons with disabilities and contribute to preventing disability retirement.

⁸¹ NOU 2012:6 Chapter 7-8

⁸² NOU 2012:6 Chapter 7-8-2

⁸³ NOU 2012:6 Chapter 7-8-3

⁸⁴ FOR-2007-05-03-495 Forskrift om forsøk med tidsbestemt lønnstilskudd

– *Tidsubestemt lønnskudd* (Indefinite wage subsidies)⁸⁵

Employers receive compensation for the participants' reduced employability in the form of a wage subsidy. The size of the subsidy is assessed individually for each case and will contribute to reduce the financial risk the employer undertakes when hiring persons with disabilities. The wage subsidies can be paid as long as necessary and appropriate, but the subsidies size and duration shall be evaluated regularly by NAV every six months in cooperation with the business.

5.1.2.6. *“Adaption Guarantee”*⁸⁶

The ‘Adaption guarantee’ exists so that more people with disabilities shall obtain or keep a job, and to support employers who includes people with disabilities. NAV will, together with the disabled and the employer consider what kinds of measures that are necessary so that the disabled will obtain or keep a job. These measures will be enshrined in a written service guarantee between the disabled as a job seeker or employee and the employer. NAV is committed to support in the form of monitoring, grants or aids. All available instruments and measures are included in the adaption guarantee. The guarantee is important to maintain a higher rate of employment, and is a security for both the employee and the employer.

5.1.2.7. *IA-agreement (Inclusive Workplace-Agreement)*⁸⁷

The IA-agreement is an agreement between the government and the parties to the work life, and they work towards a more inclusive work life. The main goal of the agreement is to improve the work environment, strengthen job presence, and prevent exclusion and withdrawal from the working life. The parties are the government and mainly businesses in the public sector. One of the part goals is to prevent dropout rate and increase employment of persons with disabilities. The current agreement is for the period from 2014 to 31 December 2018, and it is the fourth such agreement.

– ‘Prevention and Adaption Grants’⁸⁸

⁸⁵ NOU 2012:6 Chapter 7-8-4

⁸⁶ NAV, ‘Tilretteleggingsgaranti’ <<https://www.nav.no/internett/no/Person/Arbeid/Oppfolging+og+tiltak+for+%C3%A5+komme+i+jobb/Tiltak+for+a+komme+i+jobb/Tilretteleggingsgaranti.805375336.cms>> accessed 10 April 2015.

⁸⁷ ‘Regjeringen, Inkluderende arbeidsliv 2014-2018’ <https://www.regjeringen.no/nb/tema/arbeidsliv/arbeidsmiljo-og-sikkerhet/inkluderende_arbeidsliv/id947/> accessed 10 April 2015.

Prevention and adaption grants shall stimulate employers to adopt preventive and facilitating measures so that employees of IA businesses can work despite disabilities. An IA business can apply for prevention and adaption grants when appropriate and necessary facilitation for an employee leads to additional expenses.

5.1.2.8. Employment Strategy for Persons with Disabilities⁸⁹

Employment Strategy for Persons with Disabilities is a political strategy, aimed at people under the age of 30 with disabilities, who need help to get into work. This strategy includes both physical and mental health problems. One of the main priorities with the strategy is the transition between education and work. The strategy contains a number of measures applied to assist job seekers and employers who employ persons with disabilities or offer internships, including the “adaption guarantee” and several follow-up measures.

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

There have not been taken any austerity measures on the measures described above for persons with disabilities. The main reason for this is an increased use of the Oil Fund during the financial crises to prevent cuts in measures.⁹⁰

5.2. Children and Young Persons (Article 17 ESC)

Article 17 – The right of mothers and children to social and economic protection

With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services.

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the

⁸⁸ ‘NAV, Forebyggings- og tilretteleggingstilskudd for IA-virksomheter og BHT-honorar’ <<https://www.nav.no/813.cms>> accessed 10 April 2015.

⁸⁹ ‘Regjeringen, Jobbstrategi for personer med nedsatt funksjonsevne’ <<https://www.regjeringen.no/nb/dokumenter/jobbstrategi/id657116/>> accessed 10 April 2014.

⁹⁰ ‘Finans Norge, 05 October 2010, Innstramning i Statsbudsjettet’ <<http://www.fnh.no/templates/pages/article.aspx/?id=13544>> accessed 10 April 2014.

training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

The establishment and maintenance of The Norwegian State Educational Loan Fund (*Lånekassen*) has efficiently provided for everyone who applies in upper secondary school and higher education.⁹¹ The Norwegian State Educational Loan Fund established in 1947, as a result of the extension of a number of welfare schemes for students, has since approximately 1970 abolished the testing of parents before giving support to student at higher education.

For upper secondary school, the level of support is conditioned by the income of the receiving child's parents. The State Educational Loan Fund also provides loans and scholarships for Norwegian students, regardless of the income of parents. The only limitation is the income of the student receiving the measures.

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

'The families support' will in the following be understood as an overall support, and not just the economic.

Pursuant to the Child Welfare Services Act of 1992⁹², Norway has a well-functioning childcare. The main principle in the Norwegian Child Welfare Services Act is that all decision must be according to what is in the best interest for the child pursuant to the acts § 4-1.⁹³

In some cases, adequate protection will be a relocation to foster homes. The main purpose of foster homes is to protect children and their future. Although the state, at the moment has adequate child welfare services in this area in the sense of foster care, there are currently more foster children than foster homes.⁹⁴

⁹¹ 'Lånekassen, About the Norwegian State Educational Loan Fund' <<http://www.lanekassen.no/nb-NO/Toppmeny/Languages/About-the-Norwegian-State-Educational-Loan-Fund/>> accessed 10 April 2015.

⁹² Lov om barneverntjenester (LOV-1992-07-17-100).

⁹³ 'Barn uten omsorg fra foreldre' <<http://press.no/politikk/politiske-hovedtemaer/helse-og-utvikling/barn-uten-omsorg-fra-foreldre>> accessed 10 April 2015.

⁹⁴ *ibid.*

There are different kinds of homes that the child can be placed in, depending on the individual need.⁹⁵ Among the possible options, there are ordinary foster homes, temporary homes, so-called 'family homes', and 'relief care'. The families who either take in children or are temporary supporting them, cooperates with the child's family, and the child welfare services.

Temporary homes or so-called preparation homes are families that on short notice are able to provide a stable home for foster children until a better and more lasting solution can be found.

Relief cares may also be used for the protection and well-being of the child. This is a branch of child care which includes the child staying with a family one or several weekends in the month.

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

Norway provides free education from primary to tertiary school, according to the Education Act from 1998.⁹⁶ The Act not only gives children the right to free primary school, but makes it mandatory they attend. Primary school lasts for 10 years, from when the child is 6 years old until it is 16. From then on there is secondary school for 3 more years.⁹⁷ Every student has the right to free secondary school, and although it is not obligatory, it is highly encouraged.

Tertiary – here understood as higher education – is also free, and strongly encouraged, and is statutory in the Act relating to universities and university colleges.⁹⁸ The purpose of the Act relating to universities and university colleges is to provide high international academic level for universities and university colleges in Norway.⁹⁹

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures has your MS taken to address this issue

⁹⁵ 'Barne, Ungdoms og familiedirektoratet, Fosterhjem' <http://www.bufdir.no/Fosterhjem/Ulike_typer_fosterhjem/> accessed 10 April 2015.

⁹⁶ LOV-1998-07-17-61 Lov om grunnskolen og videregåendeopplæring.

⁹⁷ 'Store Norge leksikon, Utdanning i Norge' <https://snl.no/Skole_og_utdanning_i_Norge> accessed 10 April 2015.

⁹⁸ LOV-2005-04-01-15 Lov om universiteter og høyskoler.

⁹⁹ 'Regjeringen, Act relating to universities and university colleges' <<https://www.regjeringen.no/en/dokumenter/act-relating-to-universities-and-univers/id213307/>> accessed 10 April 2015.

According to the statistics (*Statistisk Sentral Byrå*) there is less youth unemployment compared to the general unemployment rate.¹⁰⁰ The unemployment rate in percentage of the workforce being 3.0 the youth unemployment rate (until the age of 19) is only 1.5.¹⁰¹

Since the crisis did not affect Norway as much as our neighbouring countries, the state did not have to take any measures to address the matter.

Looking further on the matter, the unemployment rate for the ages 20-29 is higher than the general rate, is assumed to be due to the high number of people in higher education in Norway.

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

The state has not made any austerity measures in the fields described in 5.2.1, 5.2.2. and 5.2.3. Because of the stability in these areas, there has not been any notable impact.

6. OTHER ISSUES

Are there any other relevant issues regarding the ESC, and not covered by the questions above, in your MS? Please describe the applicable legal framework and explain how it is not in compliance with the ESC

As illustrated throughout this report, social rights are extensively incorporated into Norwegian legislation. The main focus of this project have to illustrate how the provisions in the ESC are implemented in national law, and whether they have been impacted by the international financial crisis. As the financial crisis had little negative effect on the Norwegian national economy our researchers have found no other relevant issues regarding the ESC, not covered by the report.

¹⁰⁰ 'NAV, Statistics on unemployment'
<<https://www.nav.no/no/NAV+og+samfunn/Statistikk/Arbeidssokere+og+stillinger+-+statistikk/Helt+ledige>> accessed 10 April 2015

¹⁰¹ 'NAV, Statistics on unemployment'
<https://www.nav.no/no/NAV+og+samfunn/Statistikk/Arbeidssokere+og+stillinger+-+statistikk/Helt+ledige/_attachment/409907?_download=true&_ts=14c08f38ba8> accessed 10 April 2015.

7. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

Norway has ratified the Additional Protocol providing for a system of collective complaints on 20 March 1997.¹⁰² The collective complaint system means that labour organizations at national and international levels and other important international organizations may make a complaint. Norway has not recognized that national NGOs can submit complaints.¹⁰³ Because Norway has not taken any austerity measures, the ESC's collective complaint system has not contributed to alleviating the impact of the austerity measures.

8. CONCLUSION

As stated in the introduction to this national report Norway has ratified both the 1961 and the revised 1996 European Social Charter (ESC). The background for this project is the financial crisis in Europe, and the impacts it has had on the compliance with the Charter. There were not introduced any austerity measures in Norway in response to the 2008 financial crisis, rather the national state budget was increased both in 2008 and 2009 in order to protect and encourage the labour market.

The focus of our national report has therefor been to illustrate how national laws and provisions complies with the rights guaranteed in the treaty. This summary conclusion will present some of our main findings and the focus of our submission.

Under the heading 'Labour Rights' we have described how Norwegian legislation complies with the right to organise under Article 5 ESC. The National Constitution establishes the right to form, join or not to join organisations. This is further underlined in the Norwegian Working Act of 2005, which prohibits direct or indirect discrimination based on membership in trade unions.

¹⁰² 'COE, Norway and the Social Charter'
<http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Norway_en.pdf> accessed 12 April 2015.

¹⁰³ Ot.prp.nr. 44 (2007-2008) Chapter 5-3-2.

The Labour Disputes Act of 2012 implements the right to bargain collectively in accordance with Article 6 (ESC). Consultations are held through mediations, and are regulated to enable clear mechanisms for joint consultations in the labour sector. Approximately 70% of all employees in Norway are, per 2013 covered by collective agreements. Most of these agreements are negotiated every second year.

Under the heading 'Social Protection', national legislation regulating the Labour and Welfare Service is described. The right to economic benefits (social assistance) for persons unable to secure adequate recourses is accorded by the National Social Services Act. Measures to enable assistance for persons who are unable to secure adequate resources due to illness are regulated in National Insurance Act, which also regulates disability pension to secure income for persons who had suffered a lasting injury, and a decrease in their ability to secure income and adequate resources.

Under the heading 'Social Exclusion' measures taken through legislation and policies to secure employment, housing, training and education access to cultural activities and social and medical assistance are illustrated. The findings of this report is that the current national framework is in line with article 30 (ESC).

The right to employment is enshrined in the Norwegian Constitution and in the Social Services Act. The Social Services Act further states that each municipality is obliged to find temporary housing for those who cannot manage to do so themselves. There are also several subsidy schemes providing financial support to housing.

The right to education is enshrined in the Norwegian Constitution article 109, and further regulated in the Education Act. From age six and up to 15, grades one through ten is not only a right – it is also a duty. The necessary teaching material, printed and digital resources are provided by the school. Upper secondary school is not compulsory; however, students have a legal right to attend. The Educational Support Act further states that students in upper secondary school have a right to financial support from the Norwegian Loan Fund.

The Norwegian Culture Act promotes and facilitates access to cultural activities. There are also several national initiatives funded in part by the Norwegian Culture Fund to promote a broader access to cultural activities.

The Patient's and User's Rights Act ensures equal access to services by giving patients and users the equal right to health care. There are also programs regulated by the National Insurance Act to ensure financial security by providing temporary income and compensations for medical expenses through a fixed deductible. Necessary expenses exceeding this are covered by the state.

In regards to compliance with article 15 (ESC) the legal framework and initiatives focused on promoting the situation of persons with disabilities are illustrated. The Anti-Discrimination and Accessibility Act entered into force on 1 January 2014. The focus of this act is to promote equality regardless of disabilities, and the law shall contribute to dismantle societal barriers, and provide protection against discrimination based on disability in work environment and educational institutions.

The Equality and Anti-Discrimination Ombudsman and Tribunal oversee the enforcement and implementation of this law.

Under heading 5.1.1 and 5.1.2 legislation and policies aimed at dismantling social barriers resulting from disabilities are extensively described.

In regards to Article 17 (ESC), children and young persons' access to education and training in Norway is the focus under the heading 5.2.1. Attendance to Primary education (grades one through ten) is free, and compulsory. Financial support for students in upper secondary school is subject to application, and mean tested in reference to their parents' economy. In higher education, the mean test is in relation to an upper limit for wage-earnings of the student.

Protection and special aid provided to children and young persons deprived of their family support is described under the heading 5.2. The central legal provision in this regard is the Child Welfare Services Act of 1992. Pursuant to the best interests of the child the Child Welfare Service provide both short and long-term support programs depending on the individual need.

In regards to youth unemployment, national statistics show that the youth unemployment rate is in fact lower than the national average.

9. TABLES OF LEGISLATION AND CASE LAW

9.1. Norwegian Statutes

- Act of May 17 1814 no. 17 (The Norwegian Constitution) [Kongeriket Noregs Grunnlov].
- Act of August 17 1992 no. 100 (Child Welfare Services Act) [Lov om barneverntjenester].
- Act of February 28 1997 no. 19 (National Insurance Act) [Lov om folketrygd (folketrygdloven)].
- Act of July 17 1998 no. 61 (Education act) [Opplæringslova].
- Act of April 01 2005 no. 15. (Act relating to universities and university colleges) [Lov om universiteter og høyskoler].
- Act of June 03 2005 no. 37 (The Educational Support Act) [Lov om utdanningsstøtte].
- Act of June 24 2011 no. 30 (Patient's and User's Rights Act) [Helse- og Omsorgstjenesteloven].
- Act of December 18 2009 no. 131 (Social Services Act) [Lov om sosiale tjenester i arbeids- og velferdsforvaltningen].
- Act of January 27 2012 no. 9 (Labour disputes Act) [Lov om arbeidstvister (arbeidstvistloven)].
- Act of June 21 2013 no. 61 (Anti-Discrimination and Accessibility Act) [Lov om forbud mot diskriminering på grunn av nedsatt funksjonsevne (diskriminerings- og tilgjengelighetsloven)].

9.2 Norwegian Regulations

- Regulation of November 11 1983 (on state officials) [Forskrift om statens tjenestemenn m.m].

- Regulation of May 03 2007 (on indefinite wage subsidies) [Forskrift om forsøk med tidsubestemt lønnstilskudd].
- Regulation of December 11 2008 no. 1320 (on Work-Related Measures) [Forskrift om arbeidsrettede tiltak mv].

9.3 Table of Case Law

- Sak nr. 40 [2010] Likestillings- og diskrimineringsnemnda [Norwegian]. <http://www.diskrimineringsnemnda.no/sites/d/diskrimineringsnemnda.no/files/a9ef2a6011c1fd4f53a662a4e15d1df1.pdf>.
- Sak nr. 50 [2014] Likestillings- og diskrimineringsnemnda [Norwegian]. <http://www.diskrimineringsnemnda.no/sites/d/diskrimineringsnemnda.no/files/e10deb5ff9079e291f0f71f1fd03563f.pdf>.

10. BIBLIOGRAPHY

10.1. Preparatory Works

10.1.1. Official Norwegian Reports

- NOU 2005:8, (Equality and Accessibility: Legal protection against discrimination on grounds the of disability. Improved accessibility for all) [Likeverd og tilgjengelighet. Rettslig vern mot diskriminering på grunnlag av nedsatt funksjonsevne. Bedret tilgjengelighet for alle].
- NOU 2012:6, (Work-oriented measures) [Arbeidsrettede tiltak].

10.1.2. Governmental Propositions to the Parliament

- Ot.prp.nr.44 (2007-2008), (Preperatory work for the amendments of prohibiting discrimination on the grounds of disability) [Om lov om forbud mot diskriminering på grunn av nedsatt funksjonsevne (diskriminerings- og tilgjengelighetsloven)].

10.1.3. Governmental Reports to the Parliament

- St.meld. nr 30 (2010–2011), (Recommendation by the Ministry of Finance concerning recourse distribution) [Fordelingsmeldingen].

10.2. Books

- Kjøenstad, A. Syse, *Velferdsrett 1 (welfare law), 5. Edition* (Gyldendal 2012).

10.3. International Reports

- Digest of the Case Law of the European Committee of Social Rights, 2008. Page 167.
- 10th National Report on the implementation of the European Social Charter, submitted by the Government of Norway, page 81, 83.

10.4. Electronic Sources

- ‘COE State report, Norway’
<http://www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/Norway11_en.pdf>, page 18, accessed 10 April 2015.
- Fafo, ‘Labour Relations in Norway’
<<http://www.faf.no/images/pub/2013/20299.pdf>> accessed 20 March 2015.
- ‘Statistisk Sentralbyrå, Work stoppages, 2013’ <<http://www.ssb.no/en/arbeid-og-lonn/statistikker/arbkonfl/aar/2014-05-08#content>> accessed 11 April 2015.
- ‘Arbeidsretten, ferdigbehandlede saker’
<<http://www.arbeidsretten.no/index.php?module=Pagesetter&tid=8&filter1=avsluttetdato:notnull&filter2=sluttdato:le:@now,utsatt:null&orderby=sluttdato:desc&tpl=avgjortlist&pubcnt=20>>, accessed 11 April 2015.
- ‘Statistisk Sentralbyrå, Work stoppages, 2013, table’ <<http://www.ssb.no/en/arbeid-og-lonn/statistikker/arbkonfl/aar/2014-05-08?fane=tabell#content>>, accessed 11 April 2015.

- <<http://www.ssb.no/en/sosiale-forhold-og-kriminalitet/statistikker/soshjelpk>>, accessed 11 April 2015.
- 'Statistisk Sentralbyrå, Social assistance, 2013' <<http://www.ssb.no/en/sosiale-forhold-og-kriminalitet/statistikker/kvalstonad/aar/2014-06-25>>, accessed 11 April 2015.
- 'Statistisk Sentralbyrå Number of old age pensioners up in 2013' <http://www.ssb.no/en/sosiale-forhold-og-kriminalitet/statistikker/nav_statres/aar/2014-12-09#content>, accessed 11 April 2015.
- 'Statistisk Sentralbyrå Personer som mottar arbeidsavklaringspenger (AAP)' <https://www.ssb.no/statistikbanken/SelectVarVal/Define.asp?MainTable=StatResNav33&KortNavnWeb=nav_statres&PLanguage=0&checked=true>, accessed 11 April 2015.
- 'Regjeringen, Arbeidsrettede tiltak' <<https://www.regjeringen.no/nb/tema/arbeidsliv/arbeidsmarked-og-sysselsetting/innsikt/arbeidsmarkedstiltak/hvilke-arbeidsrettede-tiltak-finnes/id2076683/>> accessed 5 April 2015.
- 'Statistisk Sentralbyrå Kommunale boliger, 2013' <http://www.ssb.no/bygg-bolig-og-eiendom/statistikker/kombolig_kostr/aar/2014-06-25> accessed 10 April 2015.
- 'Husbanken, Bostøtte' <<http://www.husbanken.no/bostotte/>> accessed 9 April 2015.
- 'Husbanken, Startlån' <<http://www.husbanken.no/startlaan/>> accessed 9 April 2015.
- 'Husbanken, Tilskudd' <<http://www.husbanken.no/tilskudd/>> accessed 9 April 2015.
- 'Utdanningsdirektoratet, Voksenopplæring' <<http://www.udir.no/Spesielt-for/Voksne/>> accessed 5 April 2015.
- 'Norsk kulturfond' <<http://www.kulturradet.no/norsk-kulturfond/om-norsk-kulturfond>> accessed 8 April 2015.
- 'Den kulturelle skolesekken' <<http://www.kulturradet.no/den-kulturelle-skolesekken>> accessed 10 February 2015.

- 'Den kulturelle spaserstokken' <<https://www.regjeringen.no/nb/dep/kud/tilskudd/om-kulturdepartementets-tilskuddsordninger/Redaksjonell-artikkel-Den-kulturelle-spaserstokken/id764969/>> accessed 8 April 2015
- 'Fordelingsutvalget' <<http://www.fordelingsutvalget.no/>> accessed 8 April 2015.
- 'Fordelingsutvalget, Statistikk' <<http://www.fordelingsutvalget.no/Statistikk/>> accessed 10 April 2015.
- 'Helsenorge, rett til tolk' <<https://helsenorge.no/rettigheter-som-syk/rett-til-tolk>> accessed 10 April 2015.
- 'FNs konvensjon om rettighetene til personer med nedsatt funksjonsevne' <<http://www.fn.no/Bibliotek/Avtaler/Menneskerettigheter/FNs-konvensjon-om-rettighetene-til-personer-med-nedsatt-funksjonsevne>> accessed 10 April 2015.
- 'Pedagogisk-psykologisk tjeneste' <<http://www.udir.no/Regelverk/tidlig-innsats/Skole/Oversikt-over-aktorene/PP-tjenesten/>> accessed 10 April 2014.
- 'About NAV' <<https://www.nav.no/en/Home/About+NAV/What+is+NAV>>.
- 'Samordna opptak, Særskilt vurdering' <<http://www.samordnaopptak.no/info/opptak/poengberegning/serskilt-vurdering/index.html>> accessed 10 April 2014.
- 'Samordna opptak, Dispensasjon' <<http://www.samordnaopptak.no/info/opptak/unntak-fra-gsk/dispensasjon/index.html>> accessed 10 April 2014.
- 'Ung, Rettigheter i høyere utdanning for personer med nedsatt funksjonsevne' <http://www.ung.no/utdanning/houtd/977_Rettigheter_i_h%C3%B8yere_utdanning_for_personer_med_nedsatt_funksjonsevne.html> accessed 10 April 2014.
- 'Lånkassen, nedsatt funksjonsevne eller funksjonshemming' <<http://www.lankassen.no/nb-NO/Stipend-og-lan/Hoyere-utdanning/Hvor-mye-kan-du-fa/Nye-stotteordninger-for-elever-og-studenter-med-nedsatt-funksjonsevne/om-ordningen/>> accessed 10 April 2014.

- 'Regjeringen, Nytt traineeprogram i staten for personer med nedsatt funksjonsevne' <<https://www.regjeringen.no/nb/tema/arbeidsliv/Statlig-arbeidsgiverpolitikk/arbeidsgiverpolitikk/inkludering-og-mangfold-i-staten/nytt-traineeprogram-i-staten-for-personer-med-nedsatt-funksjonsevne/id2402176/>> accessed 10 April 2015.
- 'Statistisk Sentralbyrå, arbeidskraftundersøkelsen, 2014, 2. kvartal' <<https://www.ssb.no/arbeid-og-lonn/statistikker/akutu/aar/2014-09-04#content>> accessed 10 April 2015.
- 'NAV, Tilretteleggingsgaranti' <<https://www.nav.no/internett/no/Person/Arbeid/Oppfolging+og+tiltak+for+%C3%A5+komme+i+jobb/Tiltak+for+a+komme+i+jobb/Tilretteleggingsgaranti.805375336.cms>> accessed 10 April 2015.
- 'Regjeringen, Inkluderende arbeidsliv 2014-2018' <https://www.regjeringen.no/nb/tema/arbeidsliv/arbeidsmiljo-og-sikkerhet/inkluderende_arbeidsliv/id947/> accessed 10 April 2015.
- 'NAV, Forebyggings- og tilretteleggingstilskudd for IA-virksomheter og BHT-honorar' <<https://www.nav.no/813.cms>> accessed 10 April 2015.
- 'Regjeringen, Jobbstrategi for personer med nedsatt funksjonsevne' <<https://www.regjeringen.no/nb/dokumenter/jobbstrategi/id657116/>>
- 'Finans Norge, 05. oktober 2010, Innstramning i Statsbudsjettet' <<http://www.fnh.no/templates/pages/article.aspx/?id=13544>> accessed 10 April 2015.
- 'Lånkassen, About the Norwegian State Educational Loan Fund' <<http://www.lanekassen.no/nb-NO/Toppmeny/Languages/About-the-Norwegian-State-Educational-Loan-Fund-/>> accessed 10 April 2015.
- 'Barn uten omsorg fra foreldre' <<http://press.no/politikk/politiske-hovedtemaer/helse-og-utvikling/barn-uten-omsorg-fra-foreldre>> accessed 10 April 2015.
- 'Barne, Ungdoms og familiedirektoratet, Fosterhjem' <http://www.bufdir.no/Fosterhjem/Ulike_typer_fosterhjem/> accessed 10 April 2015.

- 'Store Norge leksikon, Utdanning i Norge'
<https://snl.no/Skole_og_utdanning_i_Norge> accessed 10 April 2015.
- 'Regjeringen, Act relating to universities and university colleges'
<<https://www.regjeringen.no/en/dokumenter/act-relating-to-universities-and-univers/id213307/>> accessed 10 April 2015.
- 'NAV, Statistics on unemployment'
<<https://www.nav.no/no/NAV+og+samfunn/Statistikk/Arbeidssokere+og+stillinger+-+statistikk/Helt+ledige>> accessed 10 April 2015.
- 'NAV, Statistics on unemployment'
<https://www.nav.no/no/NAV+og+samfunn/Statistikk/Arbeidssokere+og+stillinger+-+statistikk/Helt+ledige/_attachment/409907?_download=true&_ts=14c08f38ba8> accessed 10 April 2015.
- COE, Norway and the Social Charter'
<http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Norway_en.pdf> accessed 10 April 2015.

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

The Republic of Poland has ratified the European Social Charter of October 18 1961 [hereinafter referred to as 'ESC' or 'the Charter']¹. In accordance with Article 20 of ESC, Poland is only bound by selected provisions of the Charter². On March 5 2010, the Polish Parliament passed an act modifying the scope of effectiveness of the Charter – Article 8(4)(b) ceased to be binding for Poland. The European Social Charter (revised) of May 3 1996 was signed on October 20 2005, however, it has not yet been ratified, which gives rise to some debate³. the following report shall pertain to the provisions of ESC. Wherever questions may concern ESC (revised), the issues subject to analysis are the actions of the State on which research could be conducted, even though Poland is not bound by its [ESC (revised)] provisions.

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

Poland is regarded as one of the few European countries that avoided the 2008 financial crisis. It was the only member of the EU whose GDP rose during the crisis⁴ (though its economy was by no means fully unaffected)⁵. in spite of the resistance to the effects of the crisis, the Polish legislator has introduced a number of measures aimed at alleviating the said effects. The most

¹ European Social Charter of October 18 1961, Dziennik Ustaw [Journal of Laws] 1999, No 8, item 67.

² *ibid.*

³ Interpellation no. 1803 to the Prime Minister on the ratification of the European Social Charter (revised), <<http://www.sejm.gov.pl/sejm7.nsf/InterpelacjaTresc.xsp?key=71986C2F>> accessed April 11 2015.

⁴ <http://forsal.pl/artykuly/367093,polska_jako_jedyna_w_ue_zanotuje_w_tym_roku_wzrost_pkb.html> [accessed on April 11 2015].

⁵ <<http://www.bankier.pl/wiadomosc/Mit-zielonej-wyspy-2199555.html>> accessed April 11 2015.

notable piece of legislation is the Act of July 1 2009 On Alleviating the Effects of the Economic Crisis for Employees and Employers⁶⁷. Changes brought about by its provisions included:

- Procedure of prolonging the settlement period of work duration,
- Procedure of setting an employee's individual work schedule,
- Restrictions of workload and the employment of temporary workers,
- The regulation of the rules of awarding, paying and returning benefits financed with the funds of Employees' Guaranteed Benefits Fund,
- The regulation of the rules of subsidising training courses and postgraduate studies for employees, as well as the payment of grants, financed from the Labour Fund, to employees,
- The suspension of the application of Article 25¹ of Labour Code by means of introducing a regulation allowing the parties of an employment relationship to establish any number of temporary employment agreements, provided that the total period of employment under the said agreement does not exceed 24 months.

The act, repealed on November 21 2013⁸ by the Act of October 11 2013 on Specific Workplace Protection Solutions, included provisions aimed at improving the welfare of employees and employers alike. Among other measures, employers were assigned extra funds with which the additional benefits were to be paid.

In accordance with the aforementioned act, entrepreneurs were able to receive aid in the form of a subsidy to the remuneration of employees. They could also be granted the possibility to decrease workload in periods of lower turnover. Furthermore, entrepreneurs were able to receive up to 80% refund of the costs of additional training taken up by employees during an idle period.

⁶ Act of July 1 2009 On Alleviating the Effects of the Economic Crisis for Employees and Employers [*Ustawa z dnia 1 lipca 2009 r. o łagodzeniu skutków kryzysu ekonomicznego dla pracowników i przedsiębiorców*], Dziennik Ustaw [Journal of Laws] 2009, No. 125, item 1035, as amended.

⁷ The statute was in power from August 22 2009 to November 21 2013.

⁸ Act of October 11 2013 on Specific Workplace Protection Solutions [*Ustawa z dnia 11 października 2013 r. o szczególnych rozwiązaniach związanych z ochroną miejsc pracy*], Dziennik Ustaw [Journal of Laws] 2013, item 1291, as amended.

In terms of financial policy, the Polish National Bank and the Ministry of Finance took actions to address the crisis. Seeing the decline in trust between banks as the cause of the financial crisis, Polish officials introduced, among others, the Regulatory Package and the Trust Package⁹.

The Polish National Bank had specified a set of goals which anti-crisis measures were meant to pursue. They included: the stabilisation of the financial system, the maintenance of economic activity and the mitigation of the effects of the economic crisis for employers and employees¹⁰ (the latter represented by an aforementioned statute)¹¹.

It must be noted that the measures implemented by Poland to combat the 2008 financial crisis are not essentially what could accurately be referred to as 'austerity measures'. The aforementioned measures prove that the Polish government did not resort just to intelligible yet controversial austerity measures. Many of the actions taken visibly improved the economic and social system, using the crisis merely as a stimulus for change. This was rendered possible partly due to the relatively mild effect the 2008 crisis had on Polish economy (see above).

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

The provisions of Articles 5 and 6 of ESC concerning the right to organise and collective bargaining are introduced into Polish legal system in Constitution (Article 59)¹², Labour Code (Article 18¹)¹³ and Acts of Parliament that regulate trade unions¹⁴ and employers' organisations¹⁵.

⁹ Ministerial response to an interpellation no. 5703, <<http://orka2.sejm.gov.pl/IZ6.nsf/main/76E0C4BC>> accessed April 11 2015.

¹⁰ <http://www.nbp.pl/aktualnosci/wiadomosci_2009/polska_wobec_swiatowego_kryzysu_gospodarczego_2009.pdf> pages 38-49, see also Attachment 1 accessed April 11 2015.

¹¹ Act of July 1 2009 On Alleviating the Effects of the Economic Crisis for Employees and Employers [*Ustawa z dnia 1 lipca 2009 r. o łagodzeniu skutków kryzysu ekonomicznego dla pracowników i przedsiębiorców*], Dziennik Ustaw [Journal of Laws] 2009, No 125, item 1035, as amended.

¹² The Constitution of the Republic of Poland of April 2 1997 [*Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*], Dziennik Ustaw [Journal of Laws] 1997, No 78, item 483, as amended.

¹³ The Labour Code of June 26 1974 [*Kodeks pracy*], Dziennik Ustaw [Journal of Laws] 2014, No. 0, item 1502, as amended.

¹⁴ Trade Union Act of May 23 1991 [*Ustawa z dnia 23 maja 1991 r. o związkach zawodowych*], Dziennik Ustaw [Journal of Laws] 1991, No 55, item 234, as amended.

Those Acts regulate establishment of trade unions and employers' organisations, their powers, the rules under which they operate, and responsibility for violation of the statutes.

2.1.1. Trade Unions

According to Article 2 paragraph 1 of Trade Unions Act, the right to establish and join trade unions (freedom of association) is limited to:

- Employees (irrespectively of the basis of employment relationship),
- Members of agricultural cooperatives,
- Persons performing work on the basis of an agency treatment, if they are not employers themselves.

The right to be a member of a trade union is also granted to:

- Pensioners, both retired and disabled, who may only join the trade union they had been members of before the retirement,
- Unemployed persons, who may only join the trade union they had been members of before gaining the status of unemployed persons,
- Home-workers, who may only join the trade union already existing in the work establishment they have a home-work agreement with. The postulate to allow persons providing services on the basis of civil agreements to join trade unions has been raised by trade unions, but as of today the right has not been granted.

There are exceptions from the freedom of association that are introduced directly by the Constitution. The freedom of association is not granted to judges (Article 178 paragraph 3) and Constitutional Tribunal judges (Article 195 paragraph 3).

The freedom of association is limited for members of uniformed services. The scope of the limitations is diverse, as some members of uniformed services enjoy almost full freedom of association, while others are almost prohibited from forming trade unions. The full freedom of association (excluding the right to go on strike) is granted to members of municipal police¹⁶,

¹⁵ Act of May 23 1991 on Employers' Organisations [Ustawa z dnia 23 maja 1991 r. o organizacjach pracodawców], Dziennik Ustaw [Journal of Laws] 1991, No. 55, item 235, as amended.

¹⁶ Act of August 29 1997 on Municipality Guard [Ustawa z dnia 29 sierpnia 1997 r. o strażach gminnych], Dziennik Ustaw [Journal of Laws] 2013, item 1383.

Custom Services, and State Fire Service. Members of Police¹⁷, Prison Guard¹⁸, and Border Guard¹⁹ are permitted to associate in one trade union each. The effect of such provisions is termed 'organisational monism', as members of those services may only join already established trade unions.

In a report verifying the execution of ESC in Poland (No. XIII, 2013) many negative comments concerning the execution of Article 5 of ESC in Poland were included. One of the comments concerned the restriction on civil servants' right to hold positions in trade union governing bodies. The restrictions violating Article 5 of ESC apply to the following civil servants: deputies of Regional Veterinary Physician, deputies of manager of organisational unit in the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products, and in the Office of Forest Seed Production. To rectify the problem, the Chief of the Custom Service issued a request (on 8 May 2013) to President of Committee of Government Works Planning to commence work on the amendment of Civil Service Act. The amendment was to remove the restrictions put on civil servants holding managerial positions to be part of trade union governing bodies. The restriction has not been removed as of the publication of the report²⁰.

If the trade union is not established in a workplace, the provisions of labour law may obligate the employer to enter into consultations with representatives of the employees. Such obligation is established by Articles 91, 23^{1a},⁶⁷⁶, 139, 145, 150, 151⁷, 225, 237^{11a}, and 237¹² of Labour Code.

2.1.2. Employers' organisations

The primary legal act regulating the employers' freedom of association is Employers' Organisation Act. Article 1 of the Act guarantees employers' freedom of association. Employers' organisations are self-governing and independent (in their statutory activities) from governmental organisations (both central and local) and other organisations. Employers' organisation are entitled to adopt internal by-laws and regulations, to elect their representatives

¹⁷ Police Act of April 6 1990 [Ustawa z dnia 6 kwietnia 1990 r. o Policji], Dziennik Ustaw [Journal of Laws] 2015, item 355, as amended

¹⁸ Prison Service Act of April 9 2010 [Ustawa z dnia 9 kwietnia 2010 r. o Służbie Więziennej], Dziennik Ustaw [Journal of Laws] 2014, item 1415, as amended

¹⁹ Border Guard Act of October 12 1990 [Ustawa z dnia 12 października 1990 r. o Straży Granicznej], Dziennik Ustaw [Journal of Laws] 2014, item 1402, as amended

²⁰ The report presented according to Art 21 of ESC by the Council of Ministers, concerning activities undertaken to introduce provisions of ESC, Articles 2, 4, 5, 6 for years 2009-2012.

and managing boards, and determine future plans for the organisation. Nevertheless, employers' organisations are not permitted to engage in activities that are aimed towards limiting the employees' right to associate or activities that are intended to exert pressure upon trade unions.

2.1.3. Collective bargaining

Collective bargaining in a work establishment is a procedure that regulates communication between an employer and an organisation of employees. It is conducted in order to determine the conditions of work and regulate relations between employers and employees. The parties of the bargaining strive to achieve consensus and solve existing conflicts in such areas as reimbursement, work time, occupational health and safety, protection of employees' rights. The negotiations lead to the establishment of labour law regulations and creation of collective labour agreements, while contributing to the increase in employees' participation in management of the work establishments. The negotiations can be conducted within a work establishment or national level (if they concern an entire sector of services or industry). An example of conducting collective bargaining are efforts to conclude a collective labour agreement that are conducted by means of negotiations. According to Article 241² § 3 of the Labour Code, a party entitled to conclude an agreement may not refuse another party's request to enter into negotiations:

- to conclude an agreement for employees not protected by any agreement;
- to amend an agreement whenever it is justified by a significant change in the economic or financial situation of the employer, or a deterioration in the material situation of the employees;
- if the request was made no earlier than 60 days prior to the expiry of the agreement, or after the date of the termination notice.

According to the above there are situations in which the party of the agreement is obligated to enter into negotiation concerning the conclusion of the collective labour agreement. Such obligation does not imply that the party is compelled to agree with the requests of the other party. It is worth mentioning that entering into negotiations should not be deemed as a guarantee to a conclusion of the agreement in a work establishment. The obligation to enter into negotiations is aimed at ensuring that the negotiations concerning the collective labour

agreement are started. Labour Code does not regulate the maximum period of time the negotiations can last.

Each party is obliged to negotiate in good faith and with respect of the just interests of the other party. This means, in particular:

- to make allowances for demands of a trade union justified by the economic situation of the employers;
- to refrain from making demands that obviously exceed the financial possibilities of the employer;
- to respect the interests of employees not covered by the agreement.

The employer is obligated to provide information on his or her economic situation to trade union negotiators while conducting the negotiations. If it is necessary to hold responsible negotiations²¹, at the request of any party, an expert may be appointed²². Agreements must be concluded in writing, for an indefinite or a definite period of time. Agreements must specify the scope of their validity as well as the registered offices of the parties to the agreement (employer and trade unions).

It is possible to validly conclude the agreement even if one of the trade unions does not agree to it, provided that the agreement is signed by a trade union representing the employees. Such measures are justified by the need to conclude the agreement, even if more radical of the trade unions do not agree to it.

The principles governing collective bargaining disputes in Poland are established in Collective Dispute Resolution Act²³. During the collective bargaining the interest and rights of employees are represented by trade unions (who have exclusive right to initiate collective bargaining procedure). The interests and rights of employers in collective bargaining are represented by

²¹ In particular, this obligation applied to information reported to the Main Statistical Office. Trade union representatives must not disclose information provided by the employer constituting corporate secrets within the meaning of provisions on combating unfair competition.

²² At the request of any party, an expert may be appointed to give his or her opinion on matters relating to the subject of negotiations. The costs of such expertise are covered by the party that requested that the expert be appointed, unless the parties decide otherwise.

²³ Act of May 23 1991 on the Settlement of Collective Disputes [Ustawa z dnia 23 maja 1991 r. o rozwiązywaniu sporów zbiorowych], Dziennik Ustaw [Journal of Laws] 2015, item 295, as amended.

appropriate employers' organisations. Collective Dispute Resolution Act defines the proper procedure of conducting collective bargaining.

The first stage involves negotiations between employer and employees without participation of third parties. According to Article 8 of the Act, the negotiations are obligatory and the employer is obligated to enter them without delay. The second stage involves mediation, conducted before the third party (mediator). After mediation, the dispute can be passed on to arbitration. Collective bargaining may be concluded either by an agreement or a report of differences.

In Polish legal system the right to go on strike (mass refusal of employees to work, performed in order to resolve a collective dispute) is guaranteed by Article 59 paragraph 3 of the Constitution. Labour strike is conducted in order to exert pressure on the employer and cannot be started before the stage of negotiation and mediation. Participation in legal labour strike does not constitute a violation of an employee's obligations, and participants retain the right to social security and any other rights related to their employment relationship (except remuneration).

In Poland employers are not permitted to use lockouts (forced closing of work establishment) as means of resolving collective disputes.

2.1.4. Social dialogue

Social dialogue in Poland is performed on national²⁴, sector²⁵, or regional level²⁶. The management of social dialogue for such issues as remuneration, social welfare benefits, and other social and economic issues (as well as other tasks defined in other legal acts) is delegated to Trilateral Commission competent for Social and Economic Issues²⁷. Trilateral Commission consists of representatives of government, trade unions and employers' organisations. Social partners on national level have played a significant role in the analysis of possible activities (later termed 'autonomous package of anti-crisis activities') that have been

²⁴ Performed by Trilateral Commission competent for Social and Economic Issues

²⁵ Performed by Trilateral Sector Committees

²⁶ Performed by Regional Social Dialogue Committees

²⁷ Act of November 19 2009 abolishing the Act on the Negotiation System of Calculating Average Remuneration [*Ustawa z dnia 19 listopada 2009 r. o uchyleniu ustawy o negocjacyjnym systemie kształtowania przyrostu przeciętnych wynagrodzeń u przedsiębiorców*], Dziennik Ustaw [Journal of Laws] 2009, No. 219, item 1707, as amended.

submitted to the Council of Ministers. The package served as the basis for the Council of Ministers to prepare and introduce Anti-Crisis Act.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

Polish labour law does not include any national austerity measures affecting the rights of social partners (trade unions and employers' organisations) to associate, conducting collective bargaining (the right to labour strike included) and initiating social dialogue. Nevertheless, Polish law contains provisions restricting the exercise of selected rights (i.e. the right to go on strike) on account of public interest and potential risk stemming from mass refusal to work of employees in critical sectors of economy²⁸. An analysis of the right to establish trade unions and its restrictions may not be complete without mentioning judicial decisions of the Constitutional Tribunal, which indicate the importance of the freedom to create trade unions guaranteed in the Constitution²⁹.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

Polish labour law does not stipulate national austerity measures affecting the rights of employees guaranteed in Article 4 of ESC. Such provisions were not introduced in Anti-Crisis Act, either.

It is worth mentioning that the government increased the minimum wage during the time of the crisis. Such action is aimed at meeting minimum requirements set in this matter by Council of Europe (even though Poland is not bound by the provisions of Article 4 of ESC)³⁰

²⁸ It is forbidden to organise strikes in Internal Security Agency, Foreign Intelligence Agency, Military Counterintelligence Agency, Military Intelligence Agency, Central Anticorruption Bureau, in units of Police, Armed Forces, Prison Guard, Border Guard, Custom Service and organisational units of fire department. The right to strike is not granted to persons employed in government (both central and local), courts and prosecutor office.

²⁹ Example: signature K. 45/04 'all restrictions of enjoying trade union freedoms may only be introduced in statutes, providing that they are necessary in a democratic state for its safety, public order, the protection of environment, health and public morality or freedoms and rights of other persons. The restrictions may not violate the essence of trade union freedoms.'

³⁰ <<http://www.zus.pl/default.asp?p=4&id=3405>> accessed April 14 2015.

the establishment of a minimum wage³¹ assures that the employer shall not pay the employee less than stipulated in provisions of law³². Minimum wage is determined yearly in a negotiation procedure between the government and social partners, on the basis of macroeconomic indexes such as inflation or GDP³³. As of 2015, the minimum wage is set to EUR 438 (with tax value added) for full-time monthly work (in 2013 minimal wage was set to EUR 420)³⁴. Average wage in Poland is EUR 945. In this case the minimal wage to average remuneration ratio equals 44%. European Committee of Social Rights has declared that on the basis of Article 5 paragraph 1 ESC minimal remuneration can be considered 'fair' if it is at least 60% of the average.

Concern was raised in reference to the performance of Article 4 paragraph 2 of ESC in Poland, in particular reimbursement for overtime work and amount of leave given to compensate for overtime work³⁵. Labour Code provisions introduce a minimal rate for extra reimbursement for overtime work (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 (if it is given without the employee's request additional 50% is added). There are no provisions of law that restrict the possibility of collective labour agreement or internal work regulation granting equivalents higher than those stipulated in statutes. European Committee of Social Rights considers the lack of extra reimbursement for overtime work for civil servants to be a violation of Article 4 paragraph 2 of ESC³⁶. Polish Constitutional Tribunal has declared that the apparent inequality does not violate the equal rights principle, as there is a material difference between employees that perform work on the basis of Labour Code and service provided by local government civil servants. The Constitutional Tribunal stated that Article 4 paragraph 4 of ESC pertains to all employees but is 'subjected to exceptions in particular cases'. Higher availability

³¹ Fair remuneration is mentioned in the Constitution, Labour Code and Minimum Wages Act.

³² In the employee's first workplace, the amount of minimum wage for the employee can be lowered to 80%.

³³ Minimum Wages Act of October 10 2002 [*Ustawa z dnia 10 października 2002 r. o minimalnym wynagrodzeniu za pracę*], Dziennik Ustaw [Journal of Laws] 2002, No. 200, item 1679, as amended.

³⁴ Minimum wage steadily increased during the crisis.

³⁵ The report presented according to Art 21 of ESC by Council of Ministers, concerning activities undertaken to introduce provisions of ESC, Articles 2, 4, 5, 6 for years 2009-2012.

³⁶ <http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf> accessed on April 14 2015.

of local government civil servants and their limited right to extra remuneration for overtime work are compensated by stability of the employment relationship, guarantee of regular payment and enhanced regulations concerning extra benefits, i.e. for long time-work, anniversary bonuses or redundancy payments.

2.3.1. Reasonable length of notice period

The change of minimum notice period for employees' agreements has raised concerns regarding its compliance with Article 4 of ESC. According to the provisions of Labour Code, the length of notice period is dependent on the type of agreement and (in the case of agreements established for an indefinite period of time) on the length of employment period. Maximum notice period is 3 months. There are no statutory restrictions pertaining to the extension of notice period, but it is forbidden to shorten it. On account of Court of Justice of the European Union judgment of March 13 2014 (file no. C-38/13)³⁷ Poland has been obligated to amend the regulations concerning notice periods for employment agreements for an indefinite period of time. The same notice periods will be established regardless of the type of the agreement. As of the date of the report the legislative procedure for the amendment is in progress.

3. SOCIAL PROTECTION

Poland, as a party of ESC since 1997, is bound by Article 13 with the exception of paragraphs 1 and 4. The ratification of those provisions is currently impossible mainly for financial reasons. Meeting the requirements included in Article 13(1) of ESC is contingent upon specifying the minimal income guaranteeing the right to health care. Reaching the level of 'enabling catering for basic needs' would entail the necessity to increase the amount of social aid benefits. Article 13(4) cannot be ratified either due to its financial consequences. Citizens of countries with which no agreements concerning social security or health insurance were signed by Poland, unless they meet the respective requirements present in Polish law, are guaranteed health care only in cases of danger to their life or health. Further medical care is available upon bearing additional

³⁷ <http://eur-lex.europa.eu/legal-content/PL/TXT/?uri=uriserv:OJ.C_.2014.135.01.0013.01.POL> accessed April 14 2015]

expenses. There are currently no plans to change the aforementioned provisions due to the excessive burden on the financial system.

On the basis of European Social Rights Committee's report of January 29 2014, actions taken by Poland were deemed compliant with ESC in the field of implementing Article 13(2) the provision pertains to ensuring that political and social rights of persons receiving social aid are not restricted. On the other hand, Polish legislation was assessed negatively in respect of Article 13(4) the unfavourable evaluation stems from the excessive length for which foreigners are obliged to stay in Poland in order to be eligible for certain benefits.

3.1. Has the social security scheme in your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by his/her own efforts or from other sources?

Following the ratification of the Charter, Poland undertook to ensure social assistance to persons unable to secure adequate resources by their own effort. In order to perform the obligation, the Polish legislator introduced a number of statutes³⁸. Social security³⁹ includes three legal institutions: social insurance, social policies and social assistance. In order to secure adequate resources, the State guarantees:

3.1.1.1. Social aid benefits

Social aid is an institution of state social policy whose main aim is granting aid to persons and families for them to overcome difficult life situations that they are otherwise not able to overcome. Social aid supports persons and families in efforts aimed at satisfying necessary needs and enables them the possibility of living in dignified conditions.

Article 36 of the Act on Family Benefits specifies types of benefits granted within the framework of social aid, divided into pecuniary and non-pecuniary benefits (the latter including: social work, shelter, necessary clothing and meal, aid in acquiring proper housing conditions).

³⁸ Social assistance is also mentioned in the Constitution, Art 67(2), which is a basis for more in-depth statutory regulations.

³⁹ Neither the Constitution nor ESC define the notion of 'social security'. According to a Judgement of the Constitutional Tribunal of September 29 1993, signature K. 17/92 it is a 'system of arrangements and allowances aimed at satisfying justified needs of citizens whose ability to work was restricted or rendered non-existent, or who were excessively burdened with the costs of family upkeep.

3.1.1.2. *Permanent allowance (Article 37)*

It is aimed at providing the entitled person means of subsistence on a legally defined level. The allowance is granted to an adult person keeping a single household or remaining within a family, incapable of working, whose income does not exceed the statutory threshold⁴⁰.

3.1.1.3. *Temporary allowance (Article 38)*

It is granted on the basis of a long-lasting illness, disability, unemployment, the possibility to maintain or acquire the right to other benefits. The allowance is granted for the period necessary for overcoming the entitled person's difficult life situation⁴¹. The length of the period is decided upon by a social aid centre. The amount of the allowance may not be lower than EUR 5 per month or lower than half of the difference between: the criterion of income of a person keeping a single household and his or her real income or the criterion of income of a person belonging to a family and the family's real income.

3.1.1.4. *Earmarked allowance (Article. 39 – 41)*

It is aimed at catering for current living needs. Apart from a basic earmarked allowance, the Act specifies a few separate types of the allowance⁴². The amount of the allowance is not fixed, as the legislator adjusts the amount of granted help to the actual needs and possibilities. Regulations defining the maximum amount of the allowance exist. The criteria of income are verified every three years, taking into account the social intervention threshold survey (Article 9) in 2014, the criterion of income amounted to EUR 136 per month for a person keeping a single household and EUR 114 for a person belonging to a family. The amount of a permanent allowance was set at EUR 132 per month⁴³.

⁴⁰ The amount of this benefit is the difference between the entitled person's (in this case – a person keeping a single household) income and the income included in the statute. For a person belonging to a family, the amount of the benefit is the difference between the family's income per person and the family income included in the statute. The minimum amount is set at EUR 8.

⁴¹ S. Nitecki, *Pravo do pomocy społecznej w polskim systemie prawnym*, Oficyna 2008.

⁴² Earmarked to cover losses suffered due to a misfortune, to cover natural disaster losses, a special earmarked benefit, a benefit covering health care expenses, an earmarked benefit in the form of a credited ticket and a returnable earmarked benefit.

⁴³ Regulation of July 17 2012 of the Council of Ministers on verified income criteria and the amounts of social aid benefits [Rozporządzenie Rady Ministrów z dnia 17 lipca 2012 r. w sprawie zweryfikowanych kryteriów dochodowych oraz kwot świadczeń pieniężnych z pomocy społecznej], Dziennik Ustaw [Journal of Laws] 2012, item 823.

3.1.1.5. *Unemployment benefit* ⁴⁴

Unemployment benefits may be granted to applicants who were unemployed while submitting the application and who had been employed for at least 365 days throughout the period of 18 months prior to application.

The amount of the benefit equals about EUR 200, the benefit may be received for 180 or 365 days⁴⁵.

3.1.1.6. *Family benefit* ^{46 47}

Family benefit is aimed at partially covering the expenses of bringing up a child. The entities entitled to the benefit are, as follows: both parents, a single parent, the factual guardian of the child or a studying person⁴⁸. Eligibility for the benefit is based on the family's income per person or a studying person's income. In 2014 the benefit was granted if the income did not exceed EUR 143, or EUR 166 for families with at least one disabled child. The amount of the benefit equals, on average, EUR 25 per month.

3.1.1.7. *Supplements to family benefits*

The Act on Family Benefits provides for supplements to the basic amount of a family benefit. Article 8 of the Act includes supplements for:

⁴⁴ Art 71 of Act on the Promotion of Employment.

⁴⁵ An amendment of May 27 2014 of Act on the Promotion of Employment and Institutions of the Labour Market changed the initial moment of receiving benefits. After the amendment, an unemployed person is entitled to a benefit for every day since registering, not – like before – from the seventh day after registration. On one hand, the acquisition of a benefit was made more difficult - the requirement of employment for at least 365 days has to be met within the last 18 months, provided that the period of 18 months directly precedes the day of registration. On the other hand, more and more periods are included in the required 365 days. In 2010 the following activities were included: preparatory service, professional military service or service performer in the event of mobilisation or war. The amount of a benefit was also increased. In 2010-2014 a benefit amounted to EUR 179 during the first three months and EUR 141 afterwards, while since 2014 it amounts to EUR 206 and EUR 162, respectively.

⁴⁶ Act of November 28 2003 on Family Benefits [*Ustawa z dnia 28 listopada 2003 r. o świadczeniach rodzinnych*], Dziennik Ustaw [Journal of Laws] 2003, No. 228, item 2255, as amended

⁴⁷ Family benefits are granted both on the basis of the right of disabled persons to receive help from the State in securing their existence, adapting to work and communicating with the society (Art 69 of the Constitution) and the right of families suffering economic and social hardships to receive help from the State (Art. 71(1) of the Constitution). Moreover, mothers before and shortly after giving birth to a child are entitled to aid of the State (Art 71(2) of the Constitution).

⁴⁸ Act of November 28 2003 on Family Benefits [*Ustawa z dnia 28 listopada 2003 r. o świadczeniach rodzinnych*], Dziennik Ustaw [Journal of Laws] 2003, No. 228, item 2255, as amended, Art 4.

- Giving birth to a child – 250 EUR paid once per child;
- Exercising care over a child during a childcare leave – 100 EUR per month;
- Raising a child alone: EUR 42 for a healthy child (no more than EUR 85 for all children), EUR 62 for a disabled child (no more than EUR 125 for all children);
- Raising a child in a numerous family – EUR 20 per child monthly;
- Education and rehabilitation of a disabled child – EUR 20 per child monthly.

3.1.1.8. Attendance benefits

The Act establishes attendance benefits, including:

Nursing allowance, granted for partial coverage of the expenses of providing care and aid to a person unable to subsist on his or her own (EUR 38 per month, Article 16).

Special attendance benefit, granted to persons burdened with an obligation to provide child support or who resigned from work or did not engage in any at all in order to exercise care for a disabled person (EUR 130 per month, Article 16(a))⁴⁹.

Nursing benefit, a form of recompense for resigning from work or not engaging in any in order to exercise care for a disabled person (EUR 100 per month, Article 17).

Family benefits may only be received on one basis. Moreover, receiving an attendance benefit debars the beneficiary from applying for a family benefit⁵⁰. What is more, the aforementioned allowances may only be received by one person per family⁵¹.

3.1.1.9. Allowances

The Act on Family Benefits provides for two one-time allowances granted upon the birth of a child:

- A one-time allowance paid by the municipality (Article 22(a)) and

⁴⁹ Amounts included in a Regulation of August 10 2012 of the Council of Ministers on family income or income of a studying person entitling to a family benefit and the amount of family benefits [*Rozporządzenie Rady Ministrów z dnia 10 sierpnia 2012 r. w sprawie wysokości dochodu rodziny albo dochodu osoby uczącej się stanowiących podstawę ubiegania się o zasiłek rodzinny oraz wysokości świadczeń rodzinnych*], Dziennik Ustaw [Journal of Laws] 2012, item 959.

⁵⁰ Judgement of Provincial Administrative Court in Gorzów Wielkopolski of February 19 2014, signature II SA/Go 33/14, LEX no. 1525613.

⁵¹ Judgement of Provincial Administrative Court in Kielce of October 30 2014, signature II SA/Ke 807/14, LEX no. 1565704.

- An allowance in the amount of EUR 250 for a child born alive if the family's income per person does not exceed EUR 480 (Article 15(b)).

3.1.1.10. The implementation of the provisions of European Social Charter by the Republic of Poland in the field of family benefits

According to the research conducted by the Central Statistical Office⁵² and the results of the report presented by the Polish Government on actions taken to implement the provisions of ESC⁵³, there is a downward trend in the number of family benefits granted on a monthly basis. From 2008 to 2013 it decreased by 1775.2 thousand. The number of supplements to the family benefit, nursing allowances and one-time allowances paid upon giving birth to a child also decreased. Therefore, Poland's expenditure on social aid purposes has dwindled.

3.1.2. Persons who are unable to secure adequate resources either by his/her own efforts or from other sources due to illness?

Basic provisions pertaining to benefits available to employees in the event of an illness are included in Act on Social Insurance System⁵⁴, Act on Social Aid Benefits in Cases of Illness and Maternity⁵⁵ and Act on Social Aid. Social security is implemented by means of granting a benefit to a person unable to work. The scope of protection is widened to encompass situations when aid is required by an ill family member⁵⁶.

3.1.2.1. Sickness benefit

⁵² <<http://stat.gov.pl/obszary-tematyczne/warunki-zycia/ubostwo-opieka-spoeczna/beneficjenci-swiadczen-rodziny-w-2013-r-,3,2.html>> accessed April 13 2015.

⁵³ <<http://www.mpips.gov.pl/spoeczne-prawa-czlowieka/rada-europy-europejska-karta-spoeczna/sprawozdania-polski-z-wykonwania-europejskiej-karty-spoecznej/sprawozdania-i-linki-doi-konkluzji/sprawozdanie-si-2012/>>> accessed April 13 2015.

⁵⁴ Act of October 13 1998 on the Social Insurance System [*Ustawa z dnia 13 października 1998 r. o systemie ubezpieczeń społecznych*], Dziennik Ustaw [Journal of Laws] 2015, item 121, as amended.

⁵⁵ Act of June 25 1999 on Social Aid Benefits Granted in Cases of Illness or Maternity [*Ustawa z dnia 25 czerwca 1999 r. o świadczeniach pieniężnych z ubezpieczenia społecznego w razie choroby i macierzyństwa*], Dziennik Ustaw [Journal of Laws] 2014, item 159, as amended.

⁵⁶ The Act on Social Aid Benefits Granted in Cases of Illness or Maternity includes benefits in cases of having to take care of: (1) a child until it is eight years of age in the case of the illness of an insured spouse taking care of the child, his or her stay in a hospital or a sudden closure of a nursery, kindergarten or school attended by the child, (2) an ill child until it is fourteen years of age, (3) another ill family member, providing that he/she and the insured share a household while care duties are performed.

The conditions of eligibility for a sickness benefit are as follows: the occurrence of sudden inability to work while insured or during a statutory protection period, as well as having an insurance period⁵⁷. Article 92 of the Labour Code⁵⁸ states that an employee is entitled to 80% of his or her remuneration for the period of inability to work lasting up to 33 days (or 14 days if the employee is aged over fifty) throughout a calendar year. Furthermore, according to Article 92 § 1 of the Labour Code, an employee is entitled to full remuneration in the event of inability to work due to an accident en route to or from the workplace or an illness during pregnancy. The Act of December 19 2008 amending the Act on the Promotion of Employment and Institutions of the Labour Market⁵⁹ shortened the period of paying sickness benefits to employees aged over fifty from 33 to 14 days. The solution is aimed at supporting employers who employ workers aged over fifty (and thus deserve preferential treatment). Article 11 of Act on Social Aid Benefits in Cases of Illness and Maternity⁶⁰ specifies various rates of interest of a sickness benefit. In most cases, the monthly amount of a sickness benefit equals 80% of base benefit level (or 70% if the sickness requires hospitalisation). An employee is entitled to a sickness benefit for the full period of his or her inability to work, up to 182 days. Exceptions include cases of tuberculosis and diseases occurring during pregnancy – where a patient may receive a benefit for up to 270 days⁶¹. An amendment to the aforementioned Act⁶² abolished provisions discriminating the insured on the basis of their age. Pursuant to the amendment, employees aged over 50 whose inability to work is linked to hospitalisation will receive the benefit on the same conditions as their younger colleagues (80% of base remuneration for the whole period of inability to work).

⁵⁷ Insurance period – the sum of periods when insurance premiums were paid.

⁵⁸ The Labour Code of June 26 1974 [*Kodeks pracy*], Dziennik Ustaw [Journal of Laws] 2014, item 1502.

⁵⁹ Act of December 19 2008 amending the Act on the Promotion of Employment and Institutions of the Labour Market [*Ustawa z dnia 19 grudnia 2008 r. o zmianie ustawy o swobodzie działalności gospodarczej oraz o zmianie niektórych innych ustaw*], Dziennik Ustaw [Journal of Laws] 2009, No. 6, item 33.

⁶⁰ Act of June 25 1999 on Social Aid Benefits Granted in Cases of Illness or Maternity [*Ustawa z dnia 25 czerwca 1999 r. o świadczeniach pieniężnych z ubezpieczenia społecznego w razie choroby i macierzyństwa*], Dziennik Ustaw [Journal of Laws] 2014, item 159, as amended.

⁶¹ The provisions of the Act also include a situation where the insured is deprived of the entitlement to a sickness benefit. This occurs when, above all, the insured deliberately (by means of a deliberate crime or offence) causes his or her own inability to work or takes advantage of a medical sick leave against its original purpose (or takes advantage of a forged leave).

⁶² Act of October 22 2010 amending the Act on Social Aid Benefits Granted in Cases of Illness or Maternity [*Ustawa z dnia 22 października 2010 r. o zmianie ustawy o świadczeniach pieniężnych z ubezpieczenia społecznego w razie choroby i macierzyństwa*], Dziennik Ustaw [Journal of Laws] 2010, No. 225, item 1463.

Occupational disease⁶³ is a disease mentioned in an appropriate list (included in the Regulation of June 30 2009 of the Government on occupational diseases).⁶⁴ It is pronounced if the assessment of the workplace discovered (beyond reasonable doubt) that the disease was influenced by harmful conditions prevalent in the workplace or 'occupational hazard'. In order to diagnose such a disease, a casual nexus between the sickness and work conditions has to be proven.⁶⁵ A benefit for inability to work caused by an occupational sickness may be granted to any insured person, so long as the aforementioned nexus is proved.⁶⁶ The insured person who is diagnosed with an occupational disease is eligible for benefits specified in Article 6(1) of Act of October 30 2002 on Social Insurance on Work Accidents and Occupational Diseases.⁶⁷

3.1.2.2. *Sickness benefits for members of uniformed services*

Another change in the field of social security was introduced by the amendment of January 24 2014 of Act on Public Prosecutors, Law on the System of Common Courts and Supreme Court Act, as well as other acts⁶⁸. The change pertains to uniformed services, public prosecutors and judges. The Act lowered their sickness benefits by 20%. Therefore, members of uniformed services, public prosecutors and judges using medical sick leaves will be treated on equal terms with other employees. Prior to the introduction of the aforementioned provisions, members of those services received full remuneration in the event of an illness. The previous amount of the benefit will remain in force if the illness stems from performing professional duties, e.g. occupational diseases and accidents that happened on duty.

3.1.2.3. *Sickness benefits for farmers*

⁶³ The definition of an occupational disease is included in Art 235¹ of the Labour Code.

⁶⁴ In a Regulation of June 30 2009 of the Council of Ministers on occupational diseases [*Obwieszczenie Prezesa Rady Ministrów z dnia 4 września 2013 r. w sprawie ogłoszenia jednolitego tekstu rozporządzenia Rady Ministrów w sprawie chorób zawodowych*], Dziennik Ustaw [Journal of Laws] 2013, No. 0, item 1367.

⁶⁵ The Labour Code of June 26 1974 [Kodeks pracy], Dziennik Ustaw [Journal of Laws] 2014, item 1502, Art 235¹.

⁶⁶ M. Barzycka-Banaszczyk, *Prawo Pracy*, 2011, C.H.Beck p. 332.

⁶⁷ Act of October 30 2002 on Social Insurance on Work Accidents and Occupational Diseases [*Ustawa z dnia 30 października 2002 r. o ubezpieczeniu społecznym z tytułu wypadków przy pracy i chorób zawodowych*], Dziennik Ustaw [Journal of Laws] 2002, No. 199, item 1673.

⁶⁸ Act of January 24 2014 amending the Act on Public Prosecutors, Law on the System of Common Courts and Supreme Court Act, as well as other acts [*Ustawa z dnia 24 stycznia 2014 r. o zmianie ustawy o Policji, ustawy o Straży Granicznej[...]*], Dziennik Ustaw [Journal of Laws] 2014, item 502.

Farmers are subject to separate rules of social security⁶⁹, set forth in the Act of December 20 1990 on the Social Insurance of Farmers⁷⁰. According to its provisions, the insurance may be granted to farmers and members of the household working with them (Article 1(1) of the Act). A sickness benefit is available to an insured person who is unable to work for at least 30 days continuously due to an illness. A benefit is granted for the full period of inability to work, up to 180 days. If the insured is unable to work for a period longer than 180 days and further treatment and rehabilitation enables anticipation of returning to work, the period is extended by 360 days. The Act of January 13 2012 on Farmer Health Insurance Premiums for Years 2012-2016⁷¹ settles the amount of a health insurance premium. The requirement to pay one and its amount depend, among other factors, on the size of the farm⁷². It deserves a mention that farmers pay their health insurance premiums quarterly (not monthly). Therefore, farmers may be considered a privileged group, which is observable in their premium exemptions and state-funded subsidies.

3.1.2.4. *The implementation of ESC in Poland*

The European Social Rights Committee [hereinafter referred to as 'ESRC'] issued a report on January 29 2014 in which the actions taken by Poland with the aim of implementing ESC in the field of social security were **assessed negatively**. As regards social security, social aid and medical aid, Poland is bound by the provisions of Article 12 and Article 13(2) and (3)⁷³. Polish authorities are obliged, by means of creating and improving laws, to improve the system of social security in order for it to work in a manner compliant with the provisions of ESC. In the Minister of Labour and Social Policy's past reports Polish health care system was assessed exceptionally negatively due to the deterioration of access to health care, long queues to specialist physicians cited as the main reason. According to the data presented by Supreme Chamber of Control in 2014, an average waiting time for medical care became longer⁷⁴. Examples include

⁶⁹ In Poland social insurance is divided into two categories: common social insurance and farmers' social insurance.

⁷⁰ Act of December 20 1990 on the Social Insurance of Farmers [*Ustawa z dnia 20 grudnia 1990 r. o ubezpieczeniu społecznym rolników*], Dziennik Ustaw [Journal of Laws] 2013, item 1403, as amended.

⁷¹ Act of January 13 2012 on Farmer Health Insurance Premiums for Years 2012-2016 [*Ustawa z dnia 13 stycznia 2012 r. o składkach na ubezpieczenie zdrowotne rolników za 2012 r.*], Dziennik Ustaw [Journal of Laws] 2012, item 123, as amended.

⁷² <www.krus.gov.pl/zadania-krus/ubezpieczenie-spoeczne-rolnikow/przepisy-ogolne/> accessed April 13 2015.

⁷³ <www.mpips.gov.pl/spoleczne-prawa-czlowieka/rada-europy-europejska-karta-spoeczna/sprawozdania-polski-z-wykonywania-europejskiej-karty-spoecznej/> accessed April 13 2015.

⁷⁴ <www.nik.gov.pl/aktualnosci/nik-sprawdzila-nfz.html> accessed April 13 2015.

the average waiting time to ophthalmologic clinics, which rose from 32 to 40 days, or computed-tomography laboratories, which rose from 25 to 43 days. Moreover, in comparison with the previous years, disparities between branches of the National Health Fund did not diminish.

Nevertheless, the presented data, however unfavourable, does not indicate a lack of effort made by the legislator. The situation of social security in Poland is gradually improving, the legal instruments introduced guarantee aid for persons unable to provide their own means of subsistence due to a disease. Polish social insurance and social aid system is based on the principle of universality. Social insurance has a public, administrative and legal nature, as opposed to voluntary insurance. A number of changes is being designed to improve the condition of Polish health care system, however, due to their long-term nature, the results will be evident in the future.

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

In response to the economic crisis of 2008, Poland took no actions changing or adjusting its legal system in the field of social insurance and social aid to the then-prevalent conditions. Poland is one of the few EU Member States that did not raise its expenditure on social aid in the discussed period. Nevertheless, around 20 per cent of Polish GDP is spent on social security, which is far below the EU average, which is around 29 per cent⁷⁵. The Republic of Poland increases its expenditure on health care on an annual basis. Yet, it is far lower than in other European countries⁷⁶.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

⁷⁵ <<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tps00098&plugin=1>> accessed April 11 2015.

⁷⁶ <http://stats.oecd.org/index.aspx?DataSetCode=HEALTH_STAT> accessed April 11 2015.

In accordance with Article 16 of the Social Aid Act, the implementation of social aid duties is the responsibility of public administration, both government and local. Direct help for families and persons in need is granted by social workers operating in their respective regions. Organs of government and local administration may assign social aid duties to non-governmental organisations that perform such activities, granting them subsidies. The Social Aid Act includes various forms of aid:

3.3.1. Social aid centres

Places of first contact for persons seeking social aid. They operate in every municipality and provide aid for both family-based and personal problems. Social aid centres cooperate with the police whenever domestic violence is the issue.

3.3.2. Crisis intervention centres

Those centres render complex psychological aid to families and persons undergoing a sudden or chronic mental crisis, intervene in sudden cases, as well as provide shelter to mothers with children affected with domestic violence. They also organise and animate support groups, as well as conduct preventive activity – by means of education and training.

3.3.3. Family assistant

The duties of family assistants include: motivating family members to broaden their qualifications, providing aid in finding and maintaining employment, assisting in solving social, psychological and educational problems, even helping with everyday duties. An assistant may be assigned to a family in need at a request of a social worker or under a court judgement. Assigning an assistant is preceded by a thorough analysis of the family's situation, conducted in the form of a background interview. This form of aid is awarded irrespectively of the income of the eligible family. Prior to the changes of January 2015, municipalities were allowed yet not obliged to employ family assistants. Most municipalities did exercise that option in the interim period, considering family assistants a necessary and effective form of social aid.

3.3.4. Municipal Programs of Preventing and Combating Alcohol Problems

Municipalities are obliged to create educational and preventive programs in respect to countering alcoholism and upbringing in sobriety⁷⁷. Duties centred around prevention and solving of alcohol problems include, above all, directing psychosocial and legal aid at families stricken with such difficulties, as well as preventing domestic violence stemming from alcohol overuse. Municipal Alcohol Problem Solving Committees may also conduct a background interview or summon perpetrators of violence for warning conversations, operating in cooperation with the police. The Committee may also issue a request to the court, so as to compel a person to undergo alcohol detoxication.

None of the austerity measures had an impact on these services.

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

In the beginning it should be emphasised that Poland did not ratify the Revised European Social Charter [hereinafter referred to as 'RESC'], thus it is not bound by Article 30. When it comes to the issue of ratification of Articles 30 and 31 of RESC, noteworthy is the view of prof. A. M. Świątkowski⁷⁸, who states that: 'Analysis of Social Law Committee's opinion on issues related to supervision of the performance of obligations of Member States arising from the aforementioned RESC provisions (Articles 23, 30 and 31) does not allow to recommend their ratification due to lack of possibility to sufficiently fulfil duties set forth there. More developed states decided to ratify said provisions: Finland, France, Ireland (excluding Article 31), Norway, Portugal, Slovenia, Sweden and Italy. However, ratification of these provisions would indisputably become a strong stimulus for certain actions, initiation of social programs and for

⁷⁷ <www.parpa.pl/images/file/NP%202011_2015.pdf> accessed April 11 2015.

⁷⁸ A. Świątkowski, Revised European Social Charter – ratification perspective, Monitor Prawa Pracy, 2/2006.

carrying out social policy, which would aim to improve the standard of living for the poorest population groups and to reduce social stratification in Poland'. It is also worth mentioning that the lack of ratification has not gone unnoticed in Poland. Examples of social involvement in this issue include, among others, the Defence Committee of Employees on RESC ratification and the Defence Committee of Tenants, which in 2010 began collecting signatures under a petition, addressed to the government, on RESC ratification. Both Committees are deeply convinced that only full ratification of RESC will secure full and effective protection of employees' and tenants' rights⁷⁹. The research below covers actions taken in accordance with the RESC's principles.

4.1. The issue of poverty and social exclusion in Poland

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 poverty⁸⁰. The extent of the problem becomes evident when the fact that members of this age group represent one-third of the population vulnerable to extreme poverty is taken into account. Thus it is the children and young people from families with financial difficulties who should be the target of actions against poverty. Information published by the Ministry of Labour and Social Policy, which in its report used European Statistical Office's research, states: 'In 2007 Poland, next to Slovakia, had the highest unemployment rate in EU. Since then, despite the crisis, Poland managed to lower it below EU average. In June 2014 in Poland it amounted to 9.5%, while in EU – 10.2%. the employment rates in years 2007-2013 rose from 62.7% to 64.9%, reaching the third highest position in EU'. A series of anti-crisis acts was to constitute Poland's response to the growing economic crisis. Social partners had raised objections as to the lack of fulfilment of the series' first item concerning supporting the poorest affected by the crisis. They had been given adequate information on possible use of existing legal means and help institutions. It was agreed upon that they were sufficient and that there was no need for extra regulations. There was also a possibility to launch special programs due to redundancies. The social aspect of anti-crisis solutions has not been used in practice in Poland. Mitigation of crisis' social effects was based exclusively on labour law regulations involving the sustainability of employment and enhancing the flexibility of

⁷⁹ <<http://skop.org.pl/>> accessed April 14 2015.

⁸⁰ Poverty in Poland in Central Statistical Office's research, Warsaw 2013.

working time. Legal doctrine distinguished the division of anti-unemployment actions (analysed below) into active and passive (mostly pecuniary aid, mentioned in point 4 above). The actions taken by Poland to counteract unemployment issues include:

4.1.1. Investment works⁸¹

The idea of investment works is employing an unemployed person, which is a result of an agreement between the employer and a county labour office. Its aim is to support people in difficult labour market situation by means of hiring them by an employer in return for the office's partial coverage of remuneration and social insurance costs. This kind of employment guarantees, among others: an employment contract, minimal remuneration, right to paid annual leave and sick leave, protection of particular groups of workers.

4.1.2. Socially useful work

Socially useful work is a labour market instrument addressed towards the unemployed. It is organised by the municipality in social care bodies or organisations and institutions whose statutory aim is charity or activity for the welfare of local society. The basis of such work is an agreement between a county governor and a municipality for the benefit of which the work will be done. The county labour office refunds up to 60% of the minimal sum to which the unemployed is entitled from the Labour Fund. The said institution provides aid to persons who:

Are not entitled to work benefits,

Receive social care benefits or participate in: a social contract, an individual emancipation programme, a local social care programme or an individual social employment programme (upon reference by the county labour office). Such a person works up to 10 hours a week, receiving EUR 1.5 per hour⁸².

4.1.3. Vocational traineeships⁸³

⁸¹ *ibid*, art 51.

⁸² *ibid*, art 73.

⁸³ *ibid*, art 53.

Traineeships enable gaining practical skills, which can be used later in work, by carrying out tasks in a workplace without being employed. Unemployed persons under 30 years of age can be referred to traineeships.

4.1.4. Vocational trainings⁸⁴

The idea of workplace vocational training is gaining new qualifications or work skills by carrying out work tasks in practice, in accordance with an established programme, agreed on by a labour office, the employer and employee. It is worth mentioning that in 2015 the Ministry of State Treasury, in cooperation with entrepreneurs and universities, launched a program for best graduates, in which they will have the opportunity to take part in paid traineeships in strategic companies with Treasury shareholding⁸⁵.

4.1.5. Training loans⁸⁶

Training loans are granted to the unemployed to cover costs of work training, in order to take up or maintain employment, other gainful activity or economic activity. Maximal sum of such a loan is 400% of average remuneration.

4.1.6. Social housing⁸⁷

Right to social housing is granted to people of modest means who have no legal title to any other living accommodation. It is provided mostly by city halls and housing associations. Low maintenance cost is undoubtedly its advantage. Each person who would like to apply for social housing has to submit an appropriate motion and wait for a decision. Poland has not introduced uniform social housing granting criteria, so each individual has to look for information and support in an appropriate municipality.

4.1.7. Housing allowances⁸⁸

⁸⁴ *ibid*, art 53a.

⁸⁵ <<http://www.msp.gov.pl/pl/pracuj-dla-nas/29331,O-programie.html>> accessed April 14 2015.

⁸⁶ Act of April 20 2004 on Promotion of Employment and Institutions of the Labour Market [*Ustawa z dnia 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy*], Dziennik Ustaw [Journal of Laws] 2015, No 0, item 149, Art 42.

⁸⁷ Act of June 21 2001 on Protection of Tenant's Rights [*Ustawa z dnia 21 czerwca 2001 r. o ochronie praw lokatorów*], Dziennik Ustaw [Journal of Laws] 2014, item 150, as amended.

It is a pecuniary benefit granted by a municipality, whose aim is to subsidize housing expenses incurred due to occupying a living accommodation.

4.1.8. Activation supplement⁸⁹

Activation supplement is granted to an unemployed person, registered in a labour office, who qualifies for an unemployment benefit. One can apply after taking up employment, but only if it is part-time and the remuneration is below the minimum. Maximal sum of the activation supplement amounts to EUR 100.

4.1.9. Food support⁹⁰

Food Support Operational Programme 2014-2020 is a state operational programme co-financed by the Fund for European Aid to the Most Deprived. Such aid is addressed towards individuals and families, who cannot sufficiently provide food for themselves due to low income, thus it is distributed among limited amount of individuals in the most difficult situation⁹¹, constituting a systematic support. Food and meals are given without charge to the most deprived.

4.1.10. National Program of Countering Poverty and Social Exclusion 2020⁹²

The planned policy on counteracting poverty and social exclusion was provided in this document. The main goal of the program is to permanently decrease the number of people at risk of poverty and social exclusion by 1.5 million and to raise social cohesion. It is to be carried out by implementing 5 operational objectives.

Although Poland has not ratified Articles 30 and 31 of RESC, it has undertaken a number of steps in order to eliminate poverty and social exclusion. It is seen in statistic research showing life quality improvement. In the period of 2005-2012 percentage of Poles living in extreme

⁸⁸ Act of June 21 2001 on Housing Allowances [*Ustawa z dnia 21 czerwca 2001 r. o dodatkach mieszkaniowych*], Dziennik Ustaw [Journal of Laws] 2013, item 966, as amended.

⁸⁹ Act of April 20 2004 on Promotion of Employment and Institutions of the Labour Market [*Ustawa z dnia 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy*], Dziennik Ustaw [Journal of Laws] 2015, No. 0, item 149, Art 48.

⁹⁰ <<http://www.mpips.gov.pl/pomoc-spoleczna/programy/programu-operacyjnego-europejskiego-funduszu-najbardziej-potrzebujacym-2014-2020/program-operacyjny-pomoc-zywnosciowa-2014-2020-po-pz/>> accessed April 14 2015.

⁹¹ Determined according to the provisions of art 7 of Act on Social Aid, and to the income level in relation to percent value of adequate income criterion set in this Act.

⁹² <<https://empatia.mpips.gov.pl/-/krajowy-program-przeciwdzialania-wykluczeniu-spolecznemu-2020>> accessed April 14 2015.

poverty decreased almost by half (from 12.5% in 2005 to 5.7% in 2010), although since 2011 a slow growth can be noticed⁹³. It is worth mentioning that frequent radical opinions appearing in the media on poverty drastically spreading among society do not find any confirmation in scientific research⁹⁴. Since the beginning of the crisis the poverty range remains at the same level. On the other hand, data regarding poverty structure is alarming, showing that children and youth are more exposed to poverty. Although the data seems gravely alarming from the perspective of economy of the state, it cannot be forgotten that elderly people also run the risk of poverty, which is even more dangerous to them as regards social exclusion. In the perspective of demographic forecasts showing the aging of the society, the issue of counteracting poverty and social exclusion of elderly people gains in significance⁹⁵.

The characterised actions undertaken by Poland are undoubtedly a plan of seeking a solution for dangers described in Article 30 of RESC.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

During the economic crisis the Polish state continued its policies concerning persons with disabilities, as well as introduced new solutions and further developed the existing institutions. Their right to education, upbringing and care were in no way restricted by their disability.

5.1.1.1. Education and career training of disabled persons

⁹³ '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.

⁹⁴ 'Poverty in Poland in Central Statistical Office's research', Warsaw 2013.

⁹⁵ 'Poverty and social exclusion of elderly people' – expertise prepared during the 'EAPN Poland – together for Social Europe'.

The Act on Education System⁹⁶ guarantees children and youth with disabilities the possibility to pursue education in all types of schools, according to their individual development and educational needs as well as predispositions. The education system allows them to pursue individualised studies, forms and syllabi. Thus, disabled persons enjoy conditions similar to other students from the very beginning. Special education is also available in justified cases⁹⁷.

In order to raise their vocational qualifications and increase the chance to gain or maintain employment, disabled persons may participate in vocational training courses organised by County Employment Offices, associations, and foundations⁹⁸.

The solutions introduced in the reform of higher education of 2011⁹⁹ enabled universities to aid students with disabilities and PhD students.

Since 2011 universities are obligated to provide proper conditions for the disabled to fully participate in the process of education and scientific research. Public universities receive a subsidy from State budget^{100 101}. The subsidy may be spent, among other purposes, on financing investments directed towards the education of disabled students, specialised training courses, the purchase of specialised equipment, devices and teaching materials suited to the needs of disabled students, as well as transport between facilities of the university. The subsidy may also be spent on: the remuneration of sign language interpreters, sign language courses for the faculty members, special trainings for the disabled students enhancing their

⁹⁶ Act of September 7 1991 on Education System [*Ustawa z dnia 7 września 1991 r. o systemie oświaty*], Dziennik Ustaw [Journal of Laws] 1991, No. 256, item 2572, as amended.

⁹⁷ Act of September 7 1991 on Education System [*Ustawa z dnia 7 września 1991 r. o systemie oświaty*], Dziennik Ustaw [Journal of Laws] 1991, No. 256, item 2572, as amended, Art 71(b); Regulation of the Minister of National Education of September 18 2008 on decisions and opinions issued by groups operating in public psychological and pedagogical counselling centres, Dziennik Ustaw [Journal of Laws] 2008, No. 173, item 1072.

⁹⁸ Act of April 20 2004 on Promotion of Employment and Institutions of the Labour Market [*Ustawa z dnia 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy*], Dziennik Ustaw [Journal of Laws] 2015, No. 0, item 149.

⁹⁹ Reform of higher education introduced with the Act of March 18 2011 amending the Higher Education Act, the Act on Scientific Degrees and Titles and Degrees and Titles in Art, and other Acts [*Ustawa z dnia 18 marca 2011 r. o zmianie ustawy - Prawo o szkolnictwie wyższym, ustawy o stopniach naukowych i tytule naukowym oraz o stopniach i tytule w zakresie sztuki oraz o zmianie niektórych innych ustaw*], Dziennik Ustaw [Journal of Laws] 2011, No. 84, item 455.

¹⁰⁰ Higher Education Act of July 27 2005 [*Ustawa z dnia 27 lipca 2005 r. Prawo o szkolnictwie wyższym*], Dziennik Ustaw [Journal of Laws] 2012, No. 0, item 572, as amended, Art 94(4)(a).

¹⁰¹ Realised mostly with the funds of the State budget, State earmarked funds or development funds acquired from the EU or other foreign sources, mentioned in the Act of December 6 2006 on Conducting Development Policies [*Ustawa z dnia 6 grudnia 2006 r. o zasadach prowadzenia polityki rozwoju*], Dziennik Ustaw [Journal of Laws] 2006, No. 227, item 1658.

spatial awareness at the campus, and raising awareness about the presence of disabled students within the university¹⁰². Universities themselves decide on the allocation of funds¹⁰³.

Moreover, students and PhD students may receive financial support in the form of a maintenance grant¹⁰⁴ upon presenting a certificate of disability. Regardless of the grant, disabled students may receive all other forms of financial support available to other students – chancellor's grant for the best students and PhD students, Minister's grant for exceptional achievements or an allowance¹⁰⁵. Material aid does not depend on the type of university and field of study. A student may apply regardless of whether he or she is participating in an intramural or extramural course, in a public or private university, in a university governed by a church or a religious union (provided it is subsidised from the State budget)¹⁰⁶.

5.1.1.2. Specialised institutions aimed at helping the disabled

Specialised public institutions aimed at providing aid to the disabled include Homes of Mutual Aid¹⁰⁷. They are designed for persons requiring more attention and care. There are numerous classes organized in these facilities: e.g. household, artistic and ceramic workshops. Unfortunately, due to the insufficient number of these Homes there is a waiting period for those interested in joining. Social Aid Centres^{108 109} helps the disabled in seeking employment – by searching for job offers, providing aid in writing CV and motivational letters, individual motivational talks, sharing job offers (e.g. via press or the Internet), providing information on

¹⁰² <<http://www.nauka.gov.pl/wsparcie-niepelnospprawnych-studentow-i-doktorantow/>> accessed April 12 2015.

¹⁰³ To be set forth in a regulation of Chancellor of the University.

¹⁰⁴ Higher Education Act of July 27 2005 [*Ustawa z dnia 27 lipca 2005 r. Prawo o szkolnictwie wyższym*], Dziennik Ustaw [Journal of Laws] 2012, no 0, item 572, as amended.

¹⁰⁵ *ibid.*

¹⁰⁶ A response of a Secretary of State of the Ministry of Science and Higher Education – authorised by the Minister – to interpellation no. 11912 regarding the access of the disabled to higher education.

¹⁰⁷ Operating under: Social Aid Act of March 12 2004 [*Ustawa z dnia 12 marca 2004 r. o pomocy społecznej*], Dziennik Ustaw [Journal of Laws] 2015, no 0, item 163, as amended; Regulation of December 9 2010 of the Minister of Labour and Social Policy on Homes of Mutual Aid [*Rozporządzenie Ministra Pracy i Polityki Społecznej z dnia 9 grudnia 2010 r. w sprawie Środowiskowych domów samopomocy*], Dziennik Ustaw [Journal of Laws] 2010, no 238, item 1586, as amended; Act of August 19 1994 on Protection of Mental Health [*Ustawa z dnia 19 sierpnia 1994 r. o ochronie zdrowia psychicznego*], Dziennik Ustaw [Journal of Laws] 2011, no 231, item 1375, as amended.

¹⁰⁸ Operating under Social Aid Act of March 12 2004 [*Ustawa z dnia 12 marca 2004 r. o pomocy społecznej*], Dziennik Ustaw [Journal of Laws] 2015, no 0, item 163, as amended.

¹⁰⁹ The duties of social aid in counties are fulfilled by county centres of family aid (on the basis of Social Aid Act).

conducting economic activity and giving loans for that purpose, directing the disabled to active job searching workshops, establishing contact with potential employers¹¹⁰.

Psychological and pedagogical counselling centres, including specialised counselling centres¹¹¹; these centres are public institutions providing support to disabled children and their parents. They are also engaged in career counselling.

5.1.1.3. Programs for the disabled

One of the most known programs of such nature is *Centrum DZWONI* (Centre of Career Counselling and Supporting the Mentally Handicapped) [*Centrum Doradztwa Zawodowego i Wspierania Osób Niepełnosprawnych Intelktualnie*]. Psychologists and job advisors working in the Centre's branches help mentally handicapped persons determine where they would prefer and be able to find employment¹¹².

'JobCoach – assisted employment of disabled persons' [*Trener Pracy – zatrudnienie wspomagane osób niepełnosprawnych*]¹¹³. A job coach helps a mentally handicapped person find employment and learn to fulfil his or her duties properly¹¹⁴.

JUNIOR Program – a program of vocational activation for disabled alumni. The program is addressed to persons with a major, moderate, or minor degree of disability, aged under 30, directed to a placement by a County Employment Office. The aim of the program is the popularisation of internships among the disabled¹¹⁵ as a labour market instrument.

As an effect of the actions taken by the Ministry of Science and Higher Education and the Ministry of Labour and Social Policy, the situation of disabled persons improves annually. They are given the opportunity to fully participate in the process of education and to acquire

¹¹⁰ Based on the report 'Effectiveness of occupational activation and job brokerage for disabled persons within the Masovian voivodeship – diagnosis and solutions', Fundacja TUS, Warsaw 2006.

¹¹¹ Operating under Act on Education System and Regulation of February 1 2013 of the Minister of National Education on the special operating conditions of public psychological and pedagogical counselling centres, including public specialised counselling centres [*Rozporządzenie Ministra Edukacji Narodowej z dnia 1 lutego 2013 r. w sprawie szczegółowych zasad działania publicznych poradni psychologiczno-pedagogicznych, w tym publicznych poradni specjalistycznych*]. Dziennik Ustaw [Journal of Laws] 2013, no 0, item 199.

¹¹² <<http://www.centrumdzwoni.pl/>> accessed April 12 2015.

¹¹³ Legal basis – Act of August 27 1997 on Occupational and Social Rehabilitation and the Employment of the Disabled [*Ustawa z dnia 27 sierpnia 1997 r. o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych*], Dziennik Ustaw [Journal of Laws] 2011, No. 127, item 721, as amended, Art 47(1)(4)(a).

¹¹⁴ <<http://www.trenerpracy.eu>> accessed April 12 2015.

¹¹⁵ <<http://www.pfron.org.pl/pl/programy-i-zadania-pfr/junior/106,JUNIOR.html>> accessed April 12 2015.

qualifications sought-after by the labour market. The aforementioned solutions contribute to the gradual evening out of the obstacles restricting the disabled persons' access to education and full participation in professional activity.

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

The Polish legislator encourages employers to employ disabled persons by means of numerous tax exemptions and subsidies. The examples of privileges granted to employers employing disabled persons include, among others:

Refund of mandatory pension and occupational accident premiums, granted to disabled persons conducting economic activity¹¹⁶. The refunded amount depends on the degree of disability and is between 30% and 100% of the level of mandatory premiums.

Refund of farmer's social insurance premiums, granted to disabled farmers or farmers obliged to pay premiums for a disabled member of the household. A farmer conducting non-agricultural economic activity who pays an increased KRUS¹¹⁷ premium may apply for the refund of paid KRUS premiums to the extent to which it was paid. In such case a disabled farmer has to send a valid decision of the Chairman of KRUS to PFRON¹¹⁸, containing the evidence of having paid double premium.

A subsidy to the remuneration of a disabled employee, financed with the funds of PFRON¹¹⁹, the refund of the costs of adapting a workstation to the needs of a disabled person (financed with the funds

¹¹⁶ Act of August 27 1997 on Occupational and Social Rehabilitation and the Employment of the Disabled [*Ustawa z dnia 27 sierpnia 1997 r. o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych*], Dziennik Ustaw [Journal of Laws] 2011, no 127, item 721, as amended, art 25(a).

¹¹⁷ Agricultural Social Insurance Fund [*Kasa Rolniczego Ubezpieczenia Społecznego*].

¹¹⁸ State Fund for the Rehabilitation of Disabled Persons [*Państwowy Fundusz Rehabilitacji Osób Niepełnosprawnych*].

¹¹⁹ Act of August 27 1997 on Occupational and Social Rehabilitation and the Employment of the Disabled [*Ustawa z dnia 27 sierpnia 1997 r. o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych*], Dziennik Ustaw [Journal of Laws] 2011, no 127, item 721, as amended, art 26(a).

of PFRON), provided that the employee has employed a disabled person for at least 36 months¹²⁰.

The refund may occur in the case of: the adaptation of workplace facilities to the needs of disabled persons, the adaptation or purchase of appliances aiding disabled persons in performing their duties or functioning in the workplace, the purchase or authorisation of software suited to the needs of disabled employees, the recognition of the aforementioned needs by occupational medicine services¹²¹.

Refund of costs of equipping a work station, up to fifteen times the average monthly salary, financed with the funds of PFRON. An employer may receive the refund upon employing a disabled person registered in a County Employment Office as unemployed or seeking employment¹²².

Refund (financed with the funds of PFRON) of the remuneration paid to an employee helping a disabled employee in the field of communicating with the environment and performing tasks impossible or difficult to be performed by a disabled person¹²³. The refund may also cover the costs of the pay of a disabled employee during his or her participation in a training course. The refund includes costs of employing and training persons helping disabled employees in the workplace. The provisions of the Act do not prevent other disabled persons from being the helping employees, as long as they themselves have no difficulty in performing the tasks in question. The exemption from contribution to PFRON is available to employers whose staff comprises at least of 6% disabled persons¹²⁴.

Moreover, in 2009 a social campaign 'Vocationally efficient' [*Sprawni zawodowo*] was conducted at the request of PFRON. Television and radio channels broadcast materials promoting the employment of the disabled. The campaign was aimed at highlighting the benefits stemming from cooperation with disabled persons.

Solutions included in the Act on Occupational and Social Rehabilitation and Employing the Disabled are aimed at supporting the employment of disabled persons, both in sheltered and open labour market. The solutions take the form of supporting employers operating

¹²⁰ *ibid*, art 26(1).

¹²¹ *ibid*, art 26(1)(1-2).

¹²² *ibid*, art 26(e).

¹²³ *ibid*, art 41.

¹²⁴ *ibid*, art 21(2).

in the open labour market via subsidising the remuneration of disabled employees. Since 2004, when the solutions were introduced, the participation of the disabled in the labour market rose greatly¹²⁵.

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

The Anti-crisis Act¹²⁶, effective from 2009 to 2013, included no particular provisions pertaining to the functioning of the labour market for disabled persons nor resolutions concerning education and vocational training designed for the disabled. Thus, no data concerning the impact of austerity measures on the aforementioned issues are available.

5.2. Children and Young Persons (Article 17 ESC)

It must be highlighted that Poland still has not ratified Article 17 of Revised European Social Charter. The analysis presented below pertains to actions taken by the country to implement and improve social rights of children and young people.

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

Provisions regarding the educational system in Poland are regulated in the Act on Education System¹²⁷. The Act formulates the principle of the universality of education, auxiliary role of the school for a family and autonomy of citizens and their organisations in the establishment of schools and public educational institutions¹²⁸.

¹²⁵ Report issued in accordance with art 21 by the Government of the Republic of Poland, on actions taken to implement the provisions of ESC, arts 1, 9, 10, 15, 18 for the period 2007–2010, available on the website: <http://www.mpipr.gov.pl/spoleczne-prawa-czlowieka/rada-europy-europejska-karta-spoeczna/sprawozdania-polaki-z-wykonywania-europejskiej-karty-spoecznej/sprawozdania-i-linki-do-konkluzji/sprawozdanie-si-2011> accessed April 15 2015.

¹²⁶ Act of July 1 2009 On Alleviating the Effects of the Economic Crisis for Employees and Employers [*Ustawa z dnia 1 lipca 2009 r. o łagodzeniu skutków kryzysu ekonomicznego dla pracowników i przedsiębiorców*], Dziennik Ustaw [Journal of Laws] 2009, no 125, item 1035, as amended.

¹²⁷ Act of September 7 1991 on Education System [*Ustawa z dnia 7 września 1991 r. o systemie oświaty*], Dziennik Ustaw [Journal of Laws] 1991, no 256, item 2572, as amended.

¹²⁸ M. Pilich, *Komentarz do art.1 ustawy o systemie oświaty*.

The State as well as local government units are obliged to finance their activity by subsidising them from the national budget. According to the Act, the units for education of children and young people (other than educational institutions) include: practical training institutions, professional qualification institutions, psychological and pedagogical clinics, youth educational centres, youth social therapy centres.

The main unit responsible for public administration in the field of education, supervising and controlling the educational system, is the Ministry of National Education¹²⁹. The most important organisations under the Ministry are school superintendents¹³⁰. Nowadays, there are 16 departments of education, each responsible for one *województwo* [province]. Departments of education are responsible for implementation of the State's educational policies, supervision of schools and other educational institutions, organisation of competitions, tournaments for children and the youth, cooperation in actions taken in order to promote prevention of violence at schools. Among many projects that promote the development of children's hobbies and interests, a few are worth mentioning:

- Program „Young citizen” whose task is to promote knowledge about local society.
- Resourceful School. The aim of the project is to expand students' knowledge on rational distribution of each of the particular world resources and its effect on economy and the climate.
- Young Entrepreneurs, where the students are encouraged to manage their own finances, plan their expenses and those of their family and make conscious consumer choices¹³¹.

Besides state institutions that comprise the system of education in Poland, there are also centres run by individuals who are eligible for funding their activities from the state budget.

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

¹²⁹ Established by Regulation of the Council of Ministers of May 5 2006 on creating the Ministry of National Education and annulling the Ministry of Education and Science [*Rozporządzenie Rady Ministrów z dnia 5 maja 2006 r. w sprawie utworzenia Ministerstwa Edukacji Narodowej oraz zniesienia Ministerstwa Edukacji i Nauki*] Dziennik Ustaw [Journal of Laws] 2006, no 76, item 532.

¹³⁰ Superintendents operate under Art 32 of the Act on Education System.

¹³¹ <<http://www.ceo.org.pl/pl/o-nas/the-Center%27s-programs>> accessed April 16 2015.

Provisions regarding foster care in Poland are regulated in Social Aid Act of March 12 2004¹³². The Act obliges local government units to develop varied types of aid by establishing specialised consultation, therapies, social work and institutions for daily care, available to families that struggle with education and care problems. The Act places emphasis on the priority of support for biological families, regarding the temporary placement of a child in a foster family as a last resort. The placement of a child in a foster family is only conducted under a court judgement¹³³.

Child that requires support of a family provided with it by a care and upbringing in a day-care educational institution. Day-care educational institution is conducted in care form that ensures that a child is offered proper care and upbringing; help with lessons; way to spend his or her free time, entertainment and development of his or her interests. If the care for a child cannot be provided by his or her parents it is taken by other family, which is provided by the government (care order).

Care order force a child to spend time with different family, that in time would allow for the child to return to his or her natural family; and if it impossible, strive for the adoptive family to adopt the child; and if adoption is not possible, the family the child stays with would provide care and upbringing as a substitution do natural or adoptive family. Main aim of the care order is to: (i) prepare the child to live dignified, independent, and responsible life, (ii) connect on emotional level and enter into intimate relations with family and peers, (iii) solve life obstacles in ethical way, (iv) acquire social skills, and (v) satisfy child's needs, in particular basic social, health, educational and cultural necessities. There are different forms of care order: adopted family (related, unrelated, professional and specialised) and familial orphanage.

Adopted family and familial orphanage provide a child with full time care and upbringing, in particular: (i) treat the child in dignified way, creating in him or her a sense of self-worth, (ii) provide an access to healthcare, (iii) provide schooling, evening out shortcomings in development and schooling, (iv) guarantee a development of talents and interests, and (v) satisfy child's needs, in particular basic emotional, development, social and religious necessities.

¹³² Social Aid Act of March 12 2004 [*Ustawa z dnia 12 marca 2004 r. o pomocy społecznej*], Dziennik Ustaw [Journal of Laws] 2015, no 0, item 163, as amended.

¹³³ The procedure of directing a child to an institution of emergency care and education is included in a Regulation of the Minister of Labour and Social Policy of December 22 2011 on institutional foster care [*Rozporządzenie Ministra Pracy i Polityki Społecznej z dnia 22 grudnia 2011 r. w sprawie instytucjonalnej pieczy zastępczej*] Dziennik Ustaw [Journal of Laws] 2011, no 292, item 1720.

an adoptive family or a family that manages a familial orphanage are cooperating with adoption centre, a coordinator of care order and organiser of care order. Candidates that wish to perform such functions have to take part in a training (regulated by a statute).

Provisions regarding family support in the struggle with educational and custodial issues, as well as provisions pertaining to foster families are regulated in Act of June 9 2011 on Family Support and Foster Care System¹³⁴. According to the Act, the duty of providing support for needy families is performed by local government units as well as State bodies.

**5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance?
Has your MS taken any measures to provide free, or at least access to, tertiary education?**

According to Article 70 point 1 of Polish Constitution, every person that remains on the territory of Poland has a right to education. According to provisions of Polish law, elementary schooling is compulsory after kindergarten for young people between 6 and 18 years of age, but compulsory is attendance only to elementary school and lower secondary school. Common access to pre-school institutions is provided by the Act on Education System¹³⁵.

The structure of Polish educational system guarantees the fulfillment of right to education by basic education, upbringing and care. It consists of both public and private nursery schools, elementary schools, lower secondary schools, upper secondary schools, post-secondary schools, artistic schools, and other special schools and educational institutions and centers. Universities are not considered part of the educational system in Poland. Public education sector dominates over the private one. The number of public schools and students attending them greatly outweighs non-public schools and their pupils. In higher education system the majority of students is also enrolled in public higher education institutions.

Full-time compulsory education lasts for 10 years and comprises the last year of pre-school education, 6 years of primary school education and 3 years lower secondary school education.

In the Polish educational system full-time compulsory education and part-time compulsory education are precisely defined. Full-time compulsory education (obligation to attend primary

¹³⁴ Act of June 9 2011 on Family Support and Foster Care System [*Ustawa z dnia 9 czerwca 2011 r. o wspieraniu rodziny i systemie pieczy zastępczej*] Dziennik Ustaw [Journal of Laws] 2011, no 149, item 887, as amended.

¹³⁵ Art 2 of the Act includes kindergartens, primary schools, lower-secondary schools and high schools.

and lower secondary school) applies to pupils aged 6-16 years while part-time compulsory education (obligation to be in education) concerns pupils aged 16-18 and it may take place either in school settings (a student attends upper secondary school) or in non-school settings (e.g. a student follows vocational training offered by employers).

In school year 2012/2013 a great majority of pupils (95%) completing their compulsory schooling attended public schools. This ratio remains at the same level for many years. Admittedly, it is lower at rural areas and it does not exceed 87%, but it is higher at urban areas at 105%. It stems from the lower number of people that live in rural areas and higher number of people living in urban areas, as some people from rural areas bring their children to school in cities. During school year 2013/2014, in Poland 13,446 primary schools and 7,612 lower-secondary schools [*gimnazjum*] were active. The average number of students per primary school was 168, 167 per lower-secondary school¹³⁶. Compared to previous years, the number of people attending schools decreased slightly, but this is due to the demographic decline. Network of public schools should be organized in a manner enabling all children to participate in the obligatory schooling (Article 17), which means that the number of available spots in educational facilities must match that of children¹³⁷. In the school year 2013/2014, percentage of persons aged 7-12 attending school was 98.6 %, for children aged 13-15 the percentage was 99.1%. 59.2% persons aged 16-18 attended high school¹³⁸.

The Act requires the parents to support the compulsory education by means of enroll their child in a school, guarantee the child's regular attendance at school activities, providing a proper atmosphere for the child to study. If a child attends a public school, its principal is required to inform the principal of elementary or high school in the district of the child's habitation on the implementation of compulsory education as specified in Article 16 paragraph 5b (Article 18). The principal of a school¹³⁹ or an educational institution¹⁴⁰ is committed to supervise the performance of a child's compulsory education.

¹³⁶ Research of the Central Statistical Office: *Oświata i wychowanie w roku szkolnym 2013/2014* p 63, 65 ,67.

¹³⁷ M Pilich, *Komentarz do art. 17 ustawy o systemie oświaty*.

¹³⁸ Research of the Central Statistical Office: *Oświata i wychowanie w roku szkolnym 2013/2014* p 60.

¹³⁹ Art 14b, art 16, art 19 of the Act.

¹⁴⁰ According to Regulation of the Minister of National Education of September 29 2014 on the manner of keeping the documentation of the progress of education and types of documentation [*Rozporządzenie Ministra Edukacji Narodowej z dnia 29 sierpnia 2014 r. w sprawie sposobu prowadzenia przez publiczne przedszkola, szkoły i placówki*

Measuring of quality consists on organized and systematic analysis and evaluation the degree the school or educational institution the requirements resulting from their duties, including pupils', parents' and teachers' opinions. In particular, it is surveyed if schools meet the special requirements established in educational law. What is more, the measuring is also a diagnosis, if what a school is aiming to achieve and implements is adequate for needs, means and expectations of educational process participants (pupils, parents and teachers in particular). The measuring is a comparison of factual state with expected state.

There are different procedures for such measuring. The most known are attendance at teachers' lessons, evaluation, and monitoring.

Polish education system is centrally governed by the Minister of National Education, however schools (both primary and secondary) are administered at the local level by the following authorities:

- Commune authorities - administer nursery schools, primary schools and lower secondary schools;
- District authorities - administer upper secondary schools;
- Province (voivodeship) authorities - administer schools of regional and supra-regional meaning.

Schools are supervised by the Minister of National Education and Educational Superintendents (at regional level).

Higher education institutions constitute a separate higher education system which is governed centrally by the Minister of Science and Higher Education. There are also advisory and consulting bodies. Higher education institutions are autonomous, which means that they regulate academic matters and their internal procedures by themselves.

Adult education is not regulated by a separate law. Laws regulating school education system and higher education system refer to adult education if it takes place in school settings or in higher education institutions.

dokumentacji przebiegu nauczania, działalności wychowawczej i opiekuńczej oraz rodzajów tej dokumentacji] Dziennik Ustaw [Journal of Laws] 2014, item 1170: educational institutions are obliged to run records regarding children attending the school.

Persons that are not Polish citizens (including children that are granted asylum) enjoy the education and care in kindergarten and public schools on the same terms as Polish citizens¹⁴¹. Foreigners that are bound by a compulsory schooling, and which at the same time do not know Polish language at all (or at unsuitable level) are entitled to free extra Polish lessons, that officers at school are obligated to provide them with. Children that are in youth detention center are attending schools that are part of those centers¹⁴².

The Educational System Act provides for a possibility of employment in school on position of assistant teacher for persons that know the language of foreigners attending the school. It is so called “intercultural assistant”, that for a period of up to 12 months can be additional help in the process of integration of a foreign person in the school. The schooling center for foreigners seeking asylum holds supplementary role for education offered at public schools. Head of an Polish Foreigners Office is responsible for organizing such centers. The costs of education in the centers are covered by the state budget (from a part for Ministry of Internal Affairs).

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue

In Poland only every third Pole up to 25 years of age is active professionally, which is caused by continuing education after secondary school. According to Central Statistical Office's data, in 2014 the highest unemployment rate (23.1%) occurred among young people aged 15-24. Every thirteenth person aged 15-24 was actively looking for a job¹⁴³. Act of April 20 2004 on Employment Promotion and Labour Market Institutions is aimed at promoting employment in order to introduce unemployed young people into the labour market. In 2014 the Ministry of Labour and Social Policy launched program ‘Young people in the labour market’ [*Młodzi na rynku pracy*] which is aimed at occupational activation of persons aged under 30.

One of the state institutions involved in the activation of young people in the labour market is the Voluntary Labour Corps [*Ochotnicze Hufce Pracy*]. It performs tasks in the field of employment and combating youth marginalization.

¹⁴¹ Art 94a Educational System Act of September, 7 1991 Dziennik Ustaw [Journal of Laws] 2014, item 2572.

¹⁴² Regulation of Minister of Justice of October 17 2001 concerning youth detention centers and youth shelters.

¹⁴³ Central Statistical Office: *Kwartalna informacja o aktywności ekonomicznej ludności w II kwartale 2014 roku*.

Poland, as a part of the European Commission, is implementing a program under Youth Employment Package. It will guarantee youth (all young people up to 25 years of age) with employment offers, further education, training or internship within four months of leaving school or job loss.

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

There were no major changes in the areas described in paragraphs 5.2.1, 5.2.2 and 5.2.3.

6. OTHER ISSUES

Are there any other relevant issues regarding the ESC, and not covered by the questions above, in your MS? Please describe the applicable legal framework and explain how it is not in compliance with the ESC

In this point we would like to draw the attention to the non-compliance of Polish law with ESC in the field of transposition of European law concerning the employment of women. Furthermore we have presented our critical remarks concerning the implementation of laws regarding the right to proper health care (Article 11 of ESC).

6.1. Prohibition of the employment of female workers in mining

On June 10 1997 (ratification of ESC by Republic of Poland) the provisions concerning the prohibition of the employment of female workers in underground mining (and, consequently, on all other posts which are unsuitable for them due to their dangerous, harmful to health or arduous nature) were introduced to Polish legal system (Article 8(4)(b) of ESC).

Members of ESC have decided that women as a group requiring special protection should obtain (by means of implementing ESC provisions in national legal systems) access to the labour market on conditions that guarantee them protection against exploitation and harmful factors in the workplace. Following the access to European Union, Poland undertook to transpose European law to its legal system. On March 23 2007, European Commission issued a formal

complaint against Poland, pertaining to the transposition of directive 2002/73/WE amending the directive 76/207/EWG on introducing principles of equal treatment of men and women in the fields of access to employment, education and vocational advancement, as well as work conditions. The Commission remarked that the general prohibition of employing women to perform work perceived as 'harmful to their health' or 'arduous' is inconsistent with the Community regulations and poses an obstacle to guaranteeing equal treatment of all employees. The general debarment of women from performing work referred to as 'harmful or arduous' may not be perceived as a means providing 'greater protection' in accordance with the amended Article 2(6) of directive 76/207/EWG. The Commission's resolution does allow for an exception from the equal treatment principle if: it is justified by the character of professional activity or the conditions under which it is performed, the feature in question is a prevalent professional requirement, the set target is compliant with the law and the prerequisite is proportional. The complete exclusion of women from certain posts where risk is inherent (it is not exclusive to women) is not an accepted inequality. The argument of debarring women from performing certain tasks on the basis of their potential pregnancy is unfounded, also from the scientific point of view. In response to those objections, the Polish government announced actions being taken to abrogate the provisions in question from Polish legal system.

The change of scope to which ESC is binding upon Poland, conducted by means of excluding Article 8(4)(b) from the said scope, has given the Polish legislator the opportunity to abrogate national provisions prohibiting women from working underground in mines¹⁴⁴. the exclusion of the aforementioned article and amendment of national provisions rendered it impossible for the European Commission to issue a complaint against the Polish Government under Article 226 of the Treaty Establishing the European Community¹⁴⁵ due to the incompliance of Polish provisions with Community law. Thanks to rendering Article 8(4)(b) ineffective, Poland has avoided charges of breaching the Charter's provisions. Thus, owing to technical development and the automation of the process of excavation, women may work in underground sections of mines.

¹⁴⁴ Art 8(4)(b) ESC ceased to apply on July 25 2012.

¹⁴⁵ <<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ:C:2012:326:TOC>> accessed April 14 2015.

6.2. Doctor's office queues

On the basis of Article 11 of ESC, Poland has undertaken to eliminate, as far as possible, the causes of illnesses. The actual situation – long waiting time for consultation of both primary care physicians and specialists – says much about the effectiveness of that commitment. The cases of having to wait for medical service for overly long periods of time are rather common. For example, in 2012 the average waiting time for a knee joint surgery amounted to 300 days in urgent cases and 451 days otherwise¹⁴⁶. The average waiting time for a denture amounts to 104 days. Preliminary assessment of the functioning of oncological package, introduced by decisions made on the ministerial level, implies that its application has further deteriorated the already low detectability of cancer. The package is considered to be an illusory remedy, aimed at creating useless statistics and encumbering family doctors with the duty of oncological diagnosis, despite the lack of specialised equipment.

7. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

Poland is one of the countries that did not ratify the Additional Protocol of 1995 providing for a system of collective complaints and thus no provisions concerning austerity measures were adopted. The following analysis is intended to describe Polish position on the lack of ratification of the Protocol.

From the beginning Poland represented the position reluctance towards the ratification of the protocol. In answer to an interpellation the Ministry of Labour and Social Policy¹⁴⁷ primarily noted the specific nature of social rights which requires from the country the positive action that, depending on the country, may demand considerable financial expenditure. The financial aspect of social rights leads to differences of accessibility based on the country, which may result

¹⁴⁶ <<http://www.oecd.org/els/health-systems/Health-at-a-Glance-EUROPE-2014-Briefing-Note-POLAND-In-Polish.pdf>> accessed April 11 2015.

¹⁴⁷ Response to an interpellation of August 3 2006 on the interpellation of July 13 2006 no. SPS-023-3739/06 on submitting complaints and requests on Poland to Bodies of the Council of Europe by trade unions and employers' organisations; <<http://orka2.sejm.gov.pl/IZ5.nsf/main/78D9A4CA>> accessed April 15 2015.

in citizens' dissatisfaction stemming from comparison to other countries. It was highlighted that each country has a duty to provide the implementation of social rights according to its possibilities. The fear appeared that the possibility of putting Poland under the procedure of complaint may incur numerous collective complaints. Poland's reluctance to ratify the protocol is assessed by the doctrine as unnecessary, Polish authorities should not be anxious about the difficulties appearing with legal services to collective complaints¹⁴⁸.

According to the representatives of Polish government, previous practice of functioning of European Social Committee and procedure of collective complaints do not indicate that the adoption of this procedure can improve the realization of social rights in Poland. Representatives of the government state that actual procedure of verification of European Social Charter realization is effective for Poland and enables to appropriately realize social rights by Poland according to its economical possibilities.

The increasing power of Social Rights Committee was mentioned as another argument against the adoption of collective complaints procedure. Proposal character of social rights, according to former Ministry of Labour and Social Policy can cause risk of over interpretation of social rights that can lead to intervention in the field of social policy that is reserved for a country only. This type of activity of the Committee was even called a law-making activity. This stand is however criticized. It is pointed that the Committee has quasi-judicial function that is an additional function to the primary one – setting standards in labour law in Europe as well as supervision of member states of Council of Europe in scope of fulfilment of provisions included in European Social Charter and Revised European Charter. It is highlighted that according to collective complaints procedure the Committee of Ministers is not bounded by conclusions made by the Social Rights Committee. This organ is considered as professional and independent but organ which does not issues any bounding decisions¹⁴⁹.

The negative attitude has not changed since the day the Protocol came into force. On September 14 2005, a special team regarding the Revised European Social Charter was established. Its task was, for example, the analysis of ratification of Additional Protocol of 1995 providing for

¹⁴⁸ K Łasak, 'Warunki Dopuszczalności Skargi Zbiorowej w Systemie Europejskiej Karty Społecznej' in H Machińska (ed), *Polska i Rada Europy*, (Warsaw 2005) 256.

¹⁴⁹ A Świątkowski, *Quasi-judycyjna Funkcja Komitetu Praw Społecznych Rady Europy*, 55.

a system of collective complaints in Poland. However, as of today, there are no established reports that could lead to ratification¹⁵⁰. Nowadays Poland does not take any actions regarding this issue. This position is commonly criticized in the environment dealing with social rights. In 2011, on the occasion of the fiftieth anniversary of European Social Charter, a petition of ratification of Revised Social Charter as well as Addition Protocol was issued¹⁵¹. Despite the campaign for adoption of a system of collective complaints, Poland still represents a negative attitude towards the ratification.

8. CONCLUSION

Polish economy, as opposed to the other European economies, did not suffer from recession (negative GDP index) during the international crisis that has started in 2008. Under pressure from social partners and in order to safeguard the economy from the crisis, Polish government has taken measures to stimulate economy and labour market. As a result, the Anti-crisis Act was adopted. The package of measures was a result of tough but content-related negotiations conducted in Trilateral Commission competent for Social and Economic Issues. The result of the negotiation was the adoption of 'autonomous package of anti-crisis activities' that was subsequently passed to the Council of Ministers. The Anti-crisis Act and measures taken after negotiations in Trilateral Commission competent for Social and Economic Issues are only measures adopted by the government in order to minimize the consequences of the global crisis. It is worth mentioning, that the Anti-crisis Act was in force for too short a period of time for employers to fully become acquainted with its provisions and utilize adopted measures (especially as they were bound by complex administrative procedures). The utilization of provisions of the Act by employers was limited, and its impact on the market was lower than initially planned.

While analysing the situation of Poland during the global crisis, it is worth mentioning that despite the success of development of common anti-crisis package by both employers'

¹⁵⁰ <<http://www.dialog.gov.pl/dialog-krajowy/trojstronna-komisja-ds-spoleczno-gospodarczych/zespoly-problemowe-komisji/zspol-problemowy-ds-zrewidowanej-europejskiej-karty-spolecznej/>> accessed April 15 2015.

¹⁵¹ <<https://petycja6606.wordpress.com/zrewidowana-europejska-karta-spoleczna-i-protokol-skarg-zbiorowych/>> accessed April 15 2015.

organisation and trade unions, the potential for social dialogue was not fully utilized by the government in later years. The lower rate of GDP growth lead to the crisis of social dialogue in Poland, despite it being the way to neutralize social tensions and develop better solutions. As of the date of this report, the legislative procedure intended to establish Social Dialogue Council (meant to make social dialogue more efficient) is in progress.

What is more, in accordance to recommendation of European Committee of Social Rights Poland has introduced amendments meant to propose new measures and institutions stimulating growth. As of the date of this report, the actions of the government intend to improve the situation in Poland (systematic increase of minimum wage, simplification of work entry), but still require additional incentives, in particular related to healthcare and social welfare (i.e. higher unemployment benefits and shorter queues to the doctors).

9. TABLE OF CASE LAW AND LEGISLATION

9.1. Polish statutes (source provided)

- The Constitution of the Republic of Poland [*Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997r.*].
- Act of July 1 2009 On Alleviating the Effects of the Economic Crisis for Employees and Employers [*Ustawa z dnia 1 lipca 2009 r. o łagodzeniu skutków kryzysu ekonomicznego dla pracowników i przedsiębiorców*], Dziennik Ustaw [Journal of Laws] 2009, No. 125, item 1035, as amended.
- Act of October 11 2013 on Specific Workplace Protection Solutions [*Ustawa z dnia 11 października 2013 r. o szczególnych rozwiązaniach związanych z ochroną miejsc pracy*], Dziennik Ustaw [Journal of Laws] 2013, item 1291, as amended.
- The Labour Code of June 26 1974 [*Kodeks pracy*], Dziennik Ustaw [Journal of Laws] 2014, No. 0, item 1502, as amended.
- Trade Union Act of May 23 1991 [*Ustawa z dnia 23 maja 1991 r. o związkach zawodowych*], Dziennik Ustaw [Journal of Laws] 1991, No. 55, item 234, as amended.
- Act of May 23 1991 on Employers' Organisations [*Ustawa z dnia 23 maja 1991 r. o organizacjach pracodawców*], Dziennik Ustaw [Journal of Laws] 1991, No. 55, item 235, as amended.
- Act of August 29 1997 on Municipality Guard [*Ustawa z dnia 29 sierpnia 1997 r. o strażach gminnych*], Dziennik Ustaw [Journal of Laws] 2013, item 1383.
- Police Act of April 6 1990 [*Ustawa z dnia 6 kwietnia 1990 r. o Policji*], Dziennik Ustaw [Journal of Laws] 2015, item 355, as amended.
- Prison Service Act of April 9 2010 [*Ustawa z dnia 9 kwietnia 2010 r. o Służbie Więziennej*], Dziennik Ustaw [Journal of Laws] 2014, item 1415, as amended.
- Border Guard Act of October 12 1990 [*Ustawa z dnia 12 października 1990 r. o Straży Granicznej*], Dziennik Ustaw [Journal of Laws] 2014, item 1402, as amended.

- Act of May 23 1991 on the Settlement of Collective Disputes [*Ustawa z dnia 23 maja 1991 r. o rozwiązywaniu sporów zbiorowych*], Dziennik Ustaw [Journal of Laws] 2015, item 295, as amended.
- Act of November 19 2009 abolishing the Act on the Negotiation System of Calculating Average Remuneration [*Ustawa z dnia 19 listopada 2009 r. o uchyleniu ustawy o negocjacyjnym systemie kształtowania przyrostu przeciętnych wynagrodzeń u przedsiębiorców*], Dziennik Ustaw [Journal of Laws] 2009, No. 219, item 1707, as amended.
- Minimum Wages Act of October 10 2002 [*Ustawa z dnia 10 października 2002 r. o minimalnym wynagrodzeniu za pracę*], Dziennik Ustaw [Journal of Laws] 2002, No. 200, item 1679, as amended.
- Act of November 28 2003 on Family Benefits [*Ustawa z dnia 28 listopada 2003 r. o świadczeniach rodzinnych*], Dziennik Ustaw [Journal of Laws] 2003, No. 228, item 2255, as amended.
- Act of October 13 1998 on the Social Insurance System [*Ustawa z dnia 13 października 1998 r. o systemie ubezpieczeń społecznych*], Dziennik Ustaw [Journal of Laws] 2015, item 121, as amended.
- Act of June 25 1999 on Social Aid Benefits Granted in Cases of Illness or Maternity [*Ustawa z dnia 25 czerwca 1999 r. o świadczeniach pieniężnych z ubezpieczenia społecznego w razie choroby i macierzyństwa*], Dziennik Ustaw [Journal of Laws] 2014, item 159, as amended.
- Act of December 19 2008 amending the Act on the Promotion of Employment and Institutions of the Labour Market [*Ustawa z dnia 19 grudnia 2008 r. o zmianie ustawy o swobodzie działalności gospodarczej oraz o zmianie niektórych innych ustaw*], Dziennik Ustaw [Journal of Laws] 2009, No. 6, item 33.
- Act of October 22 2010 amending the Act on Social Aid Benefits Granted in Cases of Illness or Maternity [*Ustawa z dnia 22 października 2010 r. o zmianie ustawy o świadczeniach pieniężnych z ubezpieczenia społecznego w razie choroby i macierzyństwa*], Dziennik Ustaw [Journal of Laws] 2010, No. 225, item 1463.

- Act of October 30 2002 on Social Insurance on Work Accidents and Occupational Diseases [*Ustawa z dnia 30 października 2002 r. o ubezpieczeniu społecznym z tytułu wypadków przy pracy i chorób zawodowych*], Dziennik Ustaw [Journal of Laws] 2002, No. 199, item 1673.
- Act of January 24 2014 amending the Act on Public Prosecutors, Law on the System of Common Courts and Supreme Court Act, as well as other acts [*Ustawa z dnia 24 stycznia 2014 r. o zmianie ustawy o Policji, ustawy o Straży Granicznej[...]*], Dziennik Ustaw [Journal of Laws] 2014, item 502.
- Act of December 20 1990 on the Social Insurance of Farmers [*Ustawa z dnia 20 grudnia 1990 r. o ubezpieczeniu społecznym rolników*], Dziennik Ustaw [Journal of Laws] 2013, item 1403, as amended.
- Act of January 13 2012 on Farmer Health Insurance Premiums for Years 2012-2016 [*Ustawa z dnia 13 stycznia 2012 r. o składkach na ubezpieczenie zdrowotne rolników za 2012 r.*], Dziennik Ustaw [Journal of Laws] 2012, item 123, as amended.
- Act of April 20 2004 on Promotion of Employment and Institutions of the Labour Market [*Ustawa z dnia 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy*], Dziennik Ustaw [Journal of Laws] 2015, No. 0, item 149.
- Act of June 21 2001 on Protection of Tenant's Rights [*Ustawa z dnia 21 czerwca 2001 r. o ochronie praw lokatorów*], Dziennik Ustaw [Journal of Laws] 2014, item 150, as amended.
- Act of June 21 2001 on Housing Allowances [*Ustawa z dnia 21 czerwca 2001 r. o dodatkach mieszkaniowych*], Dziennik Ustaw [Journal of Laws] 2013, item 966, as amended.
- Act of September 7 1991 on Education System [*Ustawa z dnia 7 września 1991 r. o systemie oświaty*], Dziennik Ustaw [Journal of Laws] 1991, No. 256, item 2572, as amended.
- Reform of higher education introduced with the Act of March 18 2011 amending the Higher Education Act, the Act on Scientific Degrees and Titles and Degrees and Titles in Art, and other Acts [*Ustawa z dnia 18 marca 2011 r. o zmianie ustawy - Prawo o szkolnictwie wyższym, ustawy o stopniach naukowych i tytułach naukowych oraz o stopniach i tytułach w*

zakresie sztuki oraz o zmianie niektórych innych ustaw], Dziennik Ustaw [Journal of Laws] 2011, No. 84, item 455.

- Higher Education Act of July 27 2005 [*Ustawa z dnia 27 lipca 2005 r. Prawo o szkolnictwie wyższym*], Dziennik Ustaw [Journal of Laws] 2012, No. 0, item 572, as amended.
- Act of August 19 1994 on Protection of Mental Health [*Ustawa z dnia 19 sierpnia 1994 r. o ochronie zdrowia psychicznego*], Dziennik Ustaw [Journal of Laws] 2011, No. 231, item 1375, as amended.
- Social Aid Act of March 12 2004 [*Ustawa z dnia 12 marca 2004 r. o pomocy społecznej*], Dziennik Ustaw [Journal of Laws] 2015, No. 0, item 163, as amended.
- Act of August 27 1997 on Occupational and Social Rehabilitation and the Employment of the Disabled [*Ustawa z dnia 27 sierpnia 1997 r. o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych*], Dziennik Ustaw [Journal of Laws] 2011, No. 127, item 721, as amended.
- Act of December 6 2006 on Conducting Development Policies [*Ustawa z dnia 6 grudnia 2006 r. o zasadach prowadzenia polityki rozwoju*], Dziennik Ustaw [Journal of Laws] 2006, No. 227, item 1658.

9.2. Polish in-depth statutory regulations (source provided)

- Regulation of August 10 2012 of the Council of Ministers on family income or income of a studying person entitling to a family benefit and the amount of family benefits [*Rozporządzenie Rady Ministrów z dnia 10 sierpnia 2012 r. w sprawie wysokości dochodu rodziny albo dochodu osoby uczącej się stanowiących podstawę ubiegania się o zasiłek rodzinny oraz wysokości świadczeń rodzinnych*], Dziennik Ustaw [Journal of Laws] 2012, item 959.
- Regulation of July 17 2012 of the Council of Ministers on verified income criteria and the amounts of social aid benefits [*Rozporządzenie Rady Ministrów z dnia 17 lipca 2012 r. w sprawie zweryfikowanych kryteriów dochodowych oraz kwot świadczeń pieniężnych z pomocy społecznej*], Dziennik Ustaw [Journal of Laws] 2012, item 823.

- Regulation of June 30 2009 of the Council of Ministers on occupational diseases [*Obwieszczenie Prezesa Rady Ministrów z dnia 4 września 2013 r. w sprawie ogłoszenia jednolitego tekstu rozporządzenia Rady Ministrów w sprawie chorób zawodowych*], Dziennik Ustaw [Journal of Laws] 2013, No. 0, item 1367.
- Regulation of December 9 2010 of the Minister of Labour and Social Policy on Homes of Mutual Aid [*Rozporządzenie Ministra Pracy i Polityki Społecznej z dnia 9 grudnia 2010 r. w sprawie Środowiskowych domów samopomocy*], Dziennik Ustaw [Journal of Laws] 2010, No. 238, item 1586, as amended.
- Regulation of February 1 2013 of the Minister of National Education on the special operating conditions of public psychological and pedagogical counselling centres, including public specialised counselling centres [*Rozporządzenie Ministra Edukacji Narodowej z dnia 1 lutego 2013 r. w sprawie szczegółowych zasad działania publicznych poradni psychologiczno-pedagogicznych, w tym publicznych poradni specjalistycznych*], Dziennik Ustaw [Journal of Laws] 2013, No. 0, item 199.
- Regulation of the Minister of Labour and Social Policy of December 22 2011 on institutional foster care [*Rozporządzenie Ministra Pracy i Polityki Społecznej z dnia 22 grudnia 2011 r. w sprawie instytucjonalnej pieczy zastępczej*] Dziennik Ustaw [Journal of Laws] 2011, No. 292, item 1720.
- Regulation of the Council of Ministers of May 5 2006 on creating the Ministry of National Education and annulling the Ministry of Education and Science [*Rozporządzenie Rady Ministrów z dnia 5 maja 2006 r. w sprawie utworzenia Ministerstwa Edukacji Narodowej oraz zniesienia Ministerstwa Edukacji i Nauki*] Dziennik Ustaw [Journal of Laws] 2006, No. 76, item 532.
- Regulation of the Minister of National Education of September 29 2014 on the manner of keeping the documentation of the progress of education and types of documentation [*Rozporządzenie Ministra Edukacji Narodowej z dnia 29 sierpnia 2014 r. w sprawie sposobu prowadzenia przez publiczne przedszkola, szkoły i placówki dokumentacji przebiegu nauczania,*

działalności wychowawczej i opiekuńczej oraz rodzajów tej dokumentacji] Dziennik Ustaw [Journal of Laws] 2014, item 1170.

9.3. Miscellaneous legal sources

- European Social Charter of October 18 1961, Dziennik Ustaw [Journal of Laws] 1999, No. 8, item 67.
- Interpellation no. 1803 to the Prime Minister on the ratification of the European Social Charter (revised),
<<http://www.sejm.gov.pl/sejm7.nsf/InterpelacjaTresc.xsp?key=71986C2F>> [accessed on April 11 2015].
- Judgement of the Constitutional Tribunal of September 29 1993, signature K. 17/92.
- Judgement of the Constitutional Tribunal of September 28 2006, signature K. 45/04.
- Judgement of Provincial Administrative Court in Gorzów Wielkopolski of February 19 2014, signature II SA/Go 33/14, LEX no. 1525613.
- Judgement of Provincial Administrative Court in Kielce of October 30 2014, signature II SA/Ke 807/14, LEX no. 1565704.
- Ministerial response to an interpellation no. 5703,
<<http://orka2.sejm.gov.pl/IZ6.nsf/main/76E0C4BC>> [accessed on April 11 2015].
- A response of a Secretary of State of the Ministry of Science and Higher Education – authorised by the Minister – to interpellation no. 11912 regarding the access of the disabled to higher education.
- Response to an interpellation of August 3 2006 on the interpellation of July 13 2006 no. SPS-023-3739/06 on submitting complaints and requests on Poland to Bodies of the Council of Europe by trade unions and employers' organisations,
<<http://orka2.sejm.gov.pl/IZ5.nsf/main/78D9A4CA>> [accessed on April 15 2015]

10. BIBLIOGRAPHY AND ONLINE RESOURCES

10.1. Online resources

- <http://forsal.pl/artykuly/367093,polska_jako_jedyna_w_ue_zanotuje_w_tym_roku_w_zrost_pkb.html> [accessed on April 11 2015].
- <<http://www.bankier.pl/wiadomosc/Mit-zielonej-wyspy-2199555.html>> [accessed on April 11 2015].
- <http://www.nbp.pl/aktualnosci/wiadomosci_2009/polska_wobec_swiatowego_kryzysu_gospodarczego_2009.pdf>, pages 38-49, see also Attachment 1 [accessed on April 11 2015].
- <<http://www.zus.pl/default.asp?p=4&id=3405>> [accessed on April 14 2015].
- <http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf> [accessed on April 14 2015].
- <http://eur-lex.europa.eu/legal-content/PL/TXT/?uri=uriserv:OJ.C_.2014.135.01.0013.01.POL> [accessed on April 14 2015]
- <<http://stat.gov.pl/obszary-tematyczne/warunki-zycia/ubostwo-opieka-spoeczna/beneficjenci-swiadczen-rodzinych-w-2013-r-3,2.html>> [accessed on April 13 2015]
- <<http://www.mpips.gov.pl/spoleczne-prawa-czlowieka/rada-europy-europejska-karta-spoeczna/sprawozdania-polski-z-wykonywania-europejskiej-karty-spoecznej/sprawozdania-i-linki-do-konkluzji/sprawozdanie-xii-2012/>> [accessed on April 13 2015].
- <www.krus.gov.pl/zadania-krus/ubezpieczenie-spoeczne-rolnikow/przepisy-ogolne/> [accessed on April 13 2015].
- <www.mpips.gov.pl/spoleczne-prawa-czlowieka/rada-europy-europejska-karta-spoeczna/sprawozdania-polski-z-wykonywania-europejskiej-karty-spoecznej/> [accessed on April 13 2015].

- <www.nik.gov.pl/aktualnosci/nik-sprawdzila-nfz.html> [accessed on April 13 2015].
- <<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tps00098&plugin=1>> [accessed on April 11 2015].
- <http://stats.oecd.org/index.aspx?DataSetCode=HEALTH_STAT> [accessed on April 11 2015].
- <www.parpa.pl/images/file/NP%202011_2015.pdf> [accessed on April 11 2015].
- <<http://skop.org.pl/>> [accessed on April 14 2015].
- <<http://www.msp.gov.pl/pl/pracuj-dla-nas/29331,O-programie.html>> [accessed on April 14 2015].
- <<http://www.mpips.gov.pl/pomoc-spoeczna/programy/programu-operacyjnego-europejskiego-funduszu-najbardziej-potrzebujacym-2014-2020/program-operacyjny-pomoc-zywnosciowa-2014-2020-po-pz/>> [accessed on April 14 2015].
- <<https://empatia.mpips.gov.pl/-/krajowy-program-przeciwdzialania-wykluczeniu-spoecznemu-2020>> [accessed on April 14 2015].
- <<http://www.nauka.gov.pl/wsparcie-niepelnosprawnych-studentow-i-doktorantow/>> [accessed on April 12 2015].
- <<http://www.centrumdzwoni.pl/>> [accessed on April 12 2015].
- <www.trenerpracy.eu> [accessed on April 12 2015].
- <<http://www.pfron.org.pl/pl/programy-i-zadania-pfr/junior/106,JUNIOR.html>> [accessed on April 12 2015]
- <<http://www.mpips.gov.pl/spoeczne-prawa-czlowieka/rada-europy-europejska-karta-spoeczna/sprawozdania-polski-z-wykonywania-europejskiej-karty-spoecznej/sprawozdania-i-linki-do-konkluzji/sprawozdanie-xi-2011/>> [accessed on April 15 2015]
- <<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ:C:2012:326:TOC>> [accessed on April 14 2015].

- <<http://www.oecd.org/els/health-systems/Health-at-a-Glance-EUROPE-2014-Briefing-Note-POLAND-In-Polish.pdf>> [accessed on April 11 2015].
- <<http://www.dialog.gov.pl/dialog-krajowy/trojstronna-komisja-ds-spoeczno-gospodarczych/zespoly-problemowe-komisji/zespol-problemowy-ds-zrewidowanej-europejskiej-karty-spoecznej/>> [accessed on April 15 2015].
- <<https://petycja6606.wordpress.com/zrewidowana-europejska-karta-spoeczna-i-protokol-skarg-zbiorowych/>> [accessed on April 15 2015].

10.2. Books

- Effectiveness of occupational activation and job brokerage for disabled persons within the Masovian voivodeship – diagnosis and solutions, Fundacja TUS, Warsaw 2006.
- K. Łasak, Warunki Dopuszczalności Skargi Zbiorowej w Systemie Europejskiej Karty Społecznej, in: Machińska H. (red.), Polska i Rada Europy, Warsaw 2005, p. 256.
- M. Barzycka- Banaszczyk, Prawo Pracy, 2011, C.H.Beck p. 332.
- M. Pilich, Komentarz do art. 1 ustawy o systemie oświaty.
- M. Pilich, Komentarz do art. 17 ustawy o systemie oświaty.
- 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.
- S. Nitecki, Prawo do pomocy społecznej w polskim systemie prawnym, Oficyna 2008.
- Świątkowski, Quasi-judycyjna Funkcja Komitetu Praw Społecznych Rady Europy, p. 55.
- Świątkowski, Revised European Social Charter – ratification perspective, Monitor Prawa Pracy, 2/2006.

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

Portugal ratified both European Social Charter's versions of 1961 and 1996. Despite being member of the Council of Europe ever since 22 September 1976,¹ only 25 years later has Portugal ratified the ESC: it occurred on 30 September 1991, after more than 10 years later since its signature.²

In 1996, Portugal was among the first States to sign the revised ESC, making it on 3 May 1996. The revised ESC was later ratified on 17 October 2001,³ but the instrument of accession was only deposited on 30 May 2002.⁴

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

¹ Having become the 19th country joining the organisation. The instrument of accession was deposited on 22 September 1976 (therefore shortly after the approval of the Portuguese Constitution of 2 April 1976), but the Accession Treaty was published in the official journal (*Diário da República*) only at the end of that year, by means of Law no. 9/76 of 31 December.

² Portugal signed the Charter on 1 June 1982, but it was only formally approved in 1991, by Resolution no. 21/91 of 8 August (Assembly of the Republic) and then Decree no. 98/91 of 8 August (President of the Republic). Together with the Instrument of Ratification Portugal has made the following Declaration: 'In accordance with paragraph 1 (a) of Article 20, Portugal undertakes to consider Part I of this Charter as a declaration setting out the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that Part; In accordance with paragraph I (b) of Article 20, Portugal considers itself bound by Articles 1, 5, 6, 12, 13, 16 and 19 of Part II; In accordance with paragraph I (c) of Article 20, Portugal considers itself bound by the remaining articles of Part II'. Portugal also added a Reservation concerning paragraph 4 of Article 6, which states 'The obligations entered under paragraph 4 of Article 6 shall in no way invalidate the prohibition of lockouts, as specified in paragraph 3 or Article 57 of the Constitution of the Portuguese Republic'.

³ By means of Resolution no. 64-A/2001 of 17 October (Assembly of the Republic) and Decree no. 54-A/2001 of 17 October (President of the Republic).

⁴ And it included two Reservations, still in force: on one hand, it was stated that 'The Republic of Portugal declares that it will not apply Article 2, paragraph 6 to contracts with a duration not exceeding one month or to those with an ordinary working week not exceeding eight hours, and to those of a particular or occasional nature'; on the other hand, it was maintained the Reservation concerning Article 6, paragraph 4, reaffirming that 'The Republic of Portugal declares that the obligation under Article 6 does not prejudice, with respect to paragraph 4, the prohibition of lockouts, as specified in paragraph 4 of Article 57 of the Constitution'.

Portugal has been subject to many austerity measures over the past few years, being one of the European countries where the crisis has hit the hardest: this is a widely known fact.

Although it is possible to identify «austerity measures» that were taken shortly after the emergence of the economic-financial crisis in 2008⁵ and, particularly, during 2009,⁶ 2010⁷ and first semester of 2011,⁸ the most significant **and most intense measures were adopted from the second semester of 2011 onwards**. And it's not hard to find the reason why: as it is widely known, on 6 April 2011, the Portuguese Government has decided to address the European Commission a formal request for financial assistance to ensure the financing conditions to support solvability both for financial system and economy.

As a consequence, on 16 May 2011, the Eurozone leaders officially approved a EUR 78 million bailout package for Portugal. Publicly known as the *Memorando da Troika* (Memorandum of the Troika), the agreement that stated behind this package was formally signed on 17 May 2011 between the Portuguese Republic, the European Commission, the European Central Bank and the International Monetary Fund and was technically composed by three documents:

- The *Memorandum of Understanding on Specific Economic Policy Conditionality* ('MoU');⁹
- The *Memorandum of Economic and Financial Policies* ('MEFP');¹⁰

⁵ In this particular year, however, the Government's first actions against the newcomer financial crisis were *pro*-public investment, and, because of that, hardly conceived as "austerity measures". A good example is the public presentation of the 'Anti-Crisis Plan *Investment and Employment*' which included an increase in public spending around EUR 1,300 million focused on (i) public investment, (ii) support for business and economic activity and (iii) support for employment and strengthening social protection.

⁶ This was not, however, a truly "year of austerity": although both Portuguese deficit and public debt was increasing, the Government maintained (as well as Europe) a policy focused on stimulating the economy and the internal market.

⁷ 2010 was the year for the well-known 1st, 2nd and 3rd *Programas de Estabilidade e Crescimento – PEC's* (Stability and Growth Programmes) in which the Government recognized the existence of the economic and financial crisis and presents a wide-range set of measures such as (i) higher taxes (VAT, IRS and IRC); (ii) imposition of global limitations on tax deductions; or (iii) pensions freeze. Law no. 11/2010 of 15 June must be underline since through this diploma it was created a new echelon for the IRS (45%) for incomes greater than EUR 150,000 applicable retroactively as from the beginning of the year. The unconstitutionality of this Law was later addressed by the Constitutional Court that on its Ruling no. 399/10 of 27 October, declared that the solution was non-unconstitutional.

⁸ It was then that the Government submitted to the approval of the Assembly of Republic the 'PEC IV', a document in which the austerity measures set out in the previous *Programas* were intensified. PEC IV was however leaded by the Parliament. Consequently, the Government in office officially required financial assistance and, shortly after, caused early elections.

⁹ Original English version of MoU is available at http://www.portugal.gov.pt/media/371369/mou_20110517.pdf accessed 30 June 2015.

- The *Technical Memorandum of Understanding* (“TMU”).¹¹

The signing of the *Memorandum* was the natural consequence of the recourse to the Financial Stabilisation Mechanism and served (especially the MoU) to lay down the ‘general economic policy conditions as embedded in Council Implementing Decision of on granting Union financial assistance to Portugal’. In other words, it can be seen as the *price* for Portugal to benefit from the EUR 78 million.

MoU was formally in force until June 2014 and covered all the significant economic, social and political areas, imposing both (i) general goals and (ii) the adoption of concrete measures. There are no concrete numbers concerning the execution of the measures laid down in the *Memorandum*. It can be however said that almost all the austerity measures taken during the last four years were *based* or at least *motivated* by the MoU.

Measures adopted included, among many others that won’t be referred¹² or will be analysed below:

- In the **tax area**, *v.g.*, (i) a special surcharge was created¹³ at all IRS ranges, fixed on 3.5% and which is still in force; (ii) the payment of holiday and Christmas bonuses was suspended for almost all civil servants and retirees¹⁴ or (iii) VAT increased in electricity and gas from the minimum rate (6%) to the maximum (23%).
- In **education**, and in order to guarantee a higher concentration of costs, it was announced on August 2011 the closure of 297 schools of the 1st cycle across the country.

¹⁰ Original English version of MEFP is available at <http://www.portugal.gov.pt/media/371354/mefp_20110517.pdf> accessed 30 June 2015.

¹¹ Original English version of TMU is available at <http://www.portugal.gov.pt/media/371360/tmou_20110517.pdf> accessed 30 June 2015.

¹² For a panoramic approach to the austerity measures implemented in Portugal since 2011, see, among many others, Guya Acconero & Pedro Ramos Pinto, ‘Mild Mannered? Protest and Mobilisation in Portugal under Austerity, 2010-2013’ [2015] *West European Politics*, 38:3, 491-515; Ricardo Cabral, ‘The Euro Crisis and Portugal’s Dilemma’ [2013] *Intereconomics* 2013 1 27-32; Paulo Gorjão, ‘Portugal and the Straitjacket of the European Financial Crisis’ [2012] *The International Spectator*, Vol. 47, No. 4, December 2012, 64-68; Paulo Pedrosa, ‘Portugal and the Global Crisis. The impact of austerity on the economy, the social model and the performance of the state’ (Friederich Ebert Stiftung Study April 2014) <<http://library.fes.de/pdf-files/id/10722.pdf>> accessed 30 June 2015; Tiago Dias, ‘The True Cost of Austerity and Inequality. Portugal Case Study’ (Oxfam Case Study September 2013) <<https://www.oxfam.org/sites/www.oxfam.org/files/cs-true-cost-austerity-inequality-portugal-120913-en.pdf>> accessed 30 June 2015.

¹³ By means of Law no. 49/2011 of 7 September.

¹⁴ By means of articles 21 and 25 of Law no. 64-B/2011 of 30 December. This measure was then declared unconstitutional by the Constitutional Court’s Ruling no. 353/2012 of 5 July.

- In the **public sector**, (i) the number of directors of the Public Administration was reduced; (ii) the number of civil servants fell 2% per year; (iii) the payment of hours overtime fell 50%.
- **Pensions** above EUR 1,500 suffered cuts between 3.5% and 10%.

The adoption of austerity measures was accompanied by **intense and frequent intervention of the Constitutional Court**. In fact, the judges of *Palácio Ratton* were frequently demanded to address constitutional doubts and concerns related to the main laws that were approved in the last five years.¹⁵ In addition to frequently having put the Court on social and *media's* agenda, this fact also produced an intensive debate mainly among scholars and politicians concerning the role of Constitutional Court and the limits of its powers, the constitutional relevance of economic crisis' scenarios or the relative position of the Portuguese Constitution in the European context¹⁶.

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

The Portuguese Labour Code (henceforth, 'PLC')¹⁷⁻¹⁸ dedicates its Title III (Collective Law) to the subject of social dialogue and collective bargaining rights. The Title is divided into three subtitles, regulating the labour collective subjects in Subtitle I (articles 404 to 475), the collective

¹⁵ The main Rulings produced by the Constitutional Court concerning austerity measures were the following: Ruling no. 399/2010 of 27 October (Proc. no. 523/10); Ruling no. 396/2011 of 21 September (Proc. no. 72/11); Ruling no. 353/2012 of 5 July (Proc. no. 40/12); Ruling no. 187/2013 of 5 April (Proc. no. 2/13); Ruling no. 474/2013 of 29 August (Proc. no. 754/13); Ruling no. 862/2013 of 19 December (Proc. no. 1260/13); Ruling no. 413/2014 of 30 May (Proc. no. 14/14); Ruling no. 574/2014 of 14 August (Proc. no. 818/14); Ruling no. 575/2014 of 14 August (Proc. no. 819/14). All of them are available at <<http://www.tribunalconstitucional.pt/tc/acordaos/>> [Portuguese].

¹⁶ References on these topics are now virtually inexhaustible on Portuguese literature. See, among many others and with different perspectives, Carlos Blanco de Moraes, *Curso de Direito Constitucional. Teoria da Constituição em Tempo de Crise do Estado Social* (t. II vol. 2 Coimbra Editora 2014) 709 ff. [Portuguese]; Gonçalo de Almeida Ribeiro/Luís Pereira Coutinho (org.), *O Tribunal Constitucional e a Crise. Ensaios Críticos* (Almedina 2014) [Portuguese]; Jorge Reis Novais, *Em Defesa do Tribunal Constitucional. Resposta aos Críticos* (Almedina 2014) [Portuguese]; Rui Medeiros, *A Constituição Portuguesa num Contexto Global* (Universidade Católica Editora 2015) [Portuguese].

¹⁷ Its latest version was approved by the Law no. 7/2009 of 12 February 2009 (successively revised thereafter).

¹⁸ From now on, all article references that do not specifically mention their legal diploma are from the PLC.

labour regulation instruments (henceforth, 'CLRI')¹⁹ in Subtitle II (articles 476 to 521) and labour collective conflicts in Subtitle III (articles 522 to 545).

It can be said that these are essentially the norms that develop and materialise the wide set of labour guarantees that are laid down in articles 53 to 59 of the Constitution, providing also an effective fulfilment of the obligations prescribed in articles 5 and 6 of the Charter.

2.1.1. Labour Collective Subjects

The labour collective subjects are entities that can establish a collective rapport, in defence of the parties they represent, i.e., the individual workers and employers. Workers can be represented by union associations (articles 404, paragraph a) and 440, no. 3) and workers' committees (article 404, paragraph b)); employers, on the other hand, are represented by employers' associations (article 440, no. 4).

The Chapter I of the Subtitle I of the Title III of the PLC is dedicated to the regulation of these collective subjects, determining how the workers' and employers' rights can be assured in the negotiations.

When it comes to workers' representation, trade unions are definitely a very important subject of collective labour relations. Article 442, no. 1, paragraph a) defines a trade union as a 'permanent association of workers to the defence and promotion of their social and professional interests'. Our Constitution establishes a fundamental right of freedom of association on article 55, no. 1, which reads: 'It is recognised to workers freedom of association, condition and guarantee of the construction of its unity to the defence of their rights and interests'.

The exercise of the right of union activity in companies is also protected by our Constitution on article 55, no. 2, paragraph d), which guarantees this right to workers, without any discrimination. Article 460 establishes that 'workers and trade unions have the right to develop union activity inside the company, namely through union delegates, union committees and inter-union committees'. The group of workers of a company affiliated in the same trade union form the company's union section (article 442, no. 1, paragraph e)), 'working this way as the base structure of the trade union at the company'.²⁰ The union delegates are elected through secret

¹⁹ Which are then divided into various categories that we will cover subsequently.

²⁰ Luís Menezes Leitão, *Direito do Trabalho* (3rd edn, Almedina 2012) 487 [Portuguese].

and direct scrutiny (article 462, no. 1), then forming the company's union committee (article 442, no. 1, paragraph g)). The union delegates' identification has to be disclosed in writing to the company and that information is public (article 462, no. 4).

The most relevant rights granted to the unionised workers and their representatives are: (i) the right of assembly (article 461); (ii) the right to have facilities (article 464); (iii) the right of affixation and distribution of union information (article 465); (iv) the right to have information and to consult on certain matters (article 466); (v) the right to have hour credit (articles 408, 467 and 468) and to miss work days with justification (articles 409 and 468, no. 5); (vi) the right to performance of duties in case of reduction of normal working hours or suspension of work contract (article 308); (vii) the right to protection in case of disciplinary procedure and termination (article 410) and (viii) the right protection in case of work place transfer (article 411).

2.1.2. Collective Labour Regulation Instruments

As for the collective labour regulation instruments, they can be defined as a 'specific source of Labour Law, based on collective autonomy, in the case of negotiable CLRI, or based on subsidiary administrative intervention, in the case of non-negotiable CLRI. The regulation of labour legal situations through CLRI allows for great specialisation, instituting labour regimes more adapted to various situations'.²¹

The CLRI can be divided in (i) non-negotiable or (ii) negotiable CLRI, based on the parties' ability to negotiate its content. The non-negotiable CLRI are sub-divided into (i.1) administrative extensions (that extend collective conventions and arbitral decisions to workers or employers that were not covered by those CLRI – articles 514 ff.), (i.2) labour conditions ordinances (that regulate entirely new situations, by order of the Government – articles 517 ff) and (i.3) arbitral decisions in mandatory or necessary arbitration processes (article 2, no. 4). The negotiable CLRI can be sub-divided into (ii.1) collective conventions (contract celebrated between the representation structures of workers and employers, aiming to define the terms and conditions of employment of a certain profession or activity sector – articles 485 ff.), (ii.2) accession agreements (contract celebrated by an entity that was not a part of a certain collective convention

²¹ Leitão, *Direito do Trabalho* 509.

or arbitral decision, but wishes to have it applied to them – articles 504 ff.) and (ii.3) arbitral decisions in voluntary arbitration processes (article 2, no. 2).

The collective conventions can also be sub-divided into three types: (i) collective contracts, celebrated between a union association and employers' associations (article 2, no. 3, paragraph a)); (ii) collective agreements, celebrated between a union association and multiple employers for different companies (article 2, no. 3, paragraph b)) and (iii) company agreements, celebrated between a union association and one employer for one company (article 2, no. 3, paragraph c)).

The collective conventions' duration is defined by the parties (article 499, no. 1); if nothing is said in the contract, it has a one year duration, renewable for equal periods of time (article 499, no. 2). The parties can terminate the contract by revoking it (article 502, no. 1, paragraph a)), but the contract can also cease by expiration (article 502, no. 1, paragraph b) and 501) or opposition to renewal (article 500).

The accession agreement is effective for as long as the collective convention or arbitral decision is, given that the accession agreement is merely a form of 'extension' of a certain collective convention or arbitral decision to an entity who was not an original party in the negotiations.

2.1.3. Freedom of Content and Legal Norms' Deviation

One important principle which the CLRI follow is the principle of freedom of content, meaning the CLRI can verse about all matters that the parties wish to negotiate, in order to establish the terms and conditions of employment. However, article 478 establishes some limits to this principle: first of all, the CLRI cannot contradict mandatory legal norms (article 478, no. 1, paragraph a)); second, the CLRI cannot establish economic activities' regulation, such as company's operating hours, tax regime, price regulation and conduct of business of temporary employment agencies (article 478, no. 1, paragraph b)); lastly, the CLRI can only verse about social security matters to establish complementary social security regimes, not to create social security sub-systems different than the general regime. This is the result of the interpretation of article 478, no.2.²²

Also of significant importance is the principle of legal norms' deviation. Article 3 establishes that the norms of the PLC can diverge from the CLRI. There are two exceptions to this principle: the

²² Leitão, *Direito do Trabalho* 513.

CLRI cannot diverge from the norms of the PLC when these norms establish that they cannot be overlooked by the CLRI (article 3, no. 1) and they also cannot be overlooked by employment conditions ordinances (which are non-negotiable CLRI) – article 3, no. 2.

The first exception to this principle is very important. In fact, some norms of the PLC are mandatory, as mentioned above when we listed the exceptions to the principle of freedom of content. They can be absolutely mandatory norms, in which case the CLRI cannot derogate them in any way, or limited mandatory norms, in which case they are only partially mandatory.

Article 3, no. 3 lists a number of subjects that constitute limited mandatory norms: personality rights, equality rights and non-discrimination rights; parental protection; child labour; workers with reduced labour capacity, disabilities or chronic diseases; working students; employer's duty of information; limits to the duration of normal working hours, both daily and weekly; minimal duration of resting periods, including the minimal duration of the annual vacation period; maximum duration of night workers' work; form of compliance and retribution guarantees; chapter on prevention and reparation of work accidents and professional diseases and the legislation that regulates it; company or business establishment transfer; and rights of the workers' elected representatives.

In relation to all these subjects, the CLRI can only establish norms that are more favourable to the workers.

2.1.4. Hierarchy

The Constitution of the Portuguese Republic stands naturally in the first place when it comes to establishing a hierarchy between sources of Labour Law. In second place come the norms on international conventions and norms issued by the competent organs of international organizations of which Portugal is a part (article 8, no. 2 of the Constitution).

All legislative acts (Laws, Decree-Laws and Regional Legislative Decrees) come next in the hierarchy. This includes, obviously, the PLC, meaning that its norms have priority over the CLRI and the labour contracts stipulations.

The CLRI are the fourth source of Labour Law in the hierarchy. As we have seen above,²³ there are various types of CLRI. There is no hierarchy between all of them; however, the non-negotiable CLRI are subsidiary in relation to the negotiable CLRI, given that the first can only be issued when there are no negotiable CLRI (article 515 and 517, no. 2).

The labour contract comes in last in the hierarchy of sources of Labour Law, establishing concrete commands and not norms. Article 3, no. 4 reads: ‘The legal norms that regulate the labour contract can only be derogated by an individual contract that establishes more favourable conditions to the worker, if the norms do not establish otherwise’. In other words, a labour contract can actually derogate the norms of the PLC, but only in a more favourable manner to the worker, which means that ‘in Labour Law there is a predominance of norms that are characterised for establishing a minimal mandatory nature, admitting to be derogated by individual labour contract in a more favourable manner to the worker, but not in a less favourable one’.²⁴ However, because the end of the norm clearly states that the norms can ‘establish otherwise’, the interpreter can conclude that the norm is in fact absolutely mandatory, in which case the labour contract can never derogate it, or merely supplementary, in which case the labour contract can derogate it, even in a less favourable manner.

So, in conclusion, terms and conditions of employment found in norms of the PLC prevail over the ones found in a CLRI or in an individual labour contract, with the exceptions already analysed that are a result of the ‘principle of the most favourable treatment’. The same goes for terms and conditions of employment found in a CLRI in relation to those found on a labour contract.

2.1.5. Negotiation of collective conventions

The procedure of elaborating a collective convention – which is, for the purposes of this study, the most relevant CLRI – is preceded by a negotiation process that allows the parties to share their points of view and proposals. It starts with the presentation of a proposal of celebration or revision of a collective convention (article 486, no. 1), which the other part has to respond to in thirty days after receiving it, except if a longer deadline is agreed or if one is indicated by the proponent (article 487, no. 1). Article 487 establishes the terms in which the proposal has to be

²³ See 2.1.2. *supra*.

²⁴ Leitão, *Direito do Trabalho* 79.

responded, in a manner that it is accurate to affirm that there is a duty to negotiate the collective convention by both parties.²⁵ Also, article 489, no. 1 establishes a general duty of good faith in the negotiations, exemplified in the letter of the article with mention to a duty of celerity (article 489, no. 1), a duty of assuring representation in the process (article 489, no. 1 *in fine* and no. 2) and a duty of information to the other part (article 489, no. 3).

If the negotiation process fails, there is always the possibility of requesting conciliation, mediation or arbitration (articles 522 ff.).

If the negotiation is successful, the collective convention is celebrated, in writing (article 477) and signed by the representatives of the entities (article 491).

2.1.6. Social dialogue

In Portugal, joint consultation between workers and employers is particularly promoted through *Conselho Económico e Social* (Economic and Social Council; henceforth, 'CES')²⁶, which is a constitutional organ of social consultation.²⁷ The objective of CES is to promote the participation of all economic and social agents in the sovereign decision-making process with respect to socio-economic matters. It has a tripartite nature, facilitating all communications between the Government, social partners and all other organised society representatives.

Article 92 of our Constitution attributes two kinds of competences to CES: one is the advisory competence, which is based on the participation of society's most representative organisations and consists on the elaboration of feedbacks required by the Government or other sovereign organs, or by CES' own initiative. These feedbacks can verse, for example, about social and economic policies or Portugal's position on European institutions regarding those policies, about the economic and social situation of the country, among others.

²⁵ Leitão, *Direito do Trabalho* 518.

²⁶ The CES was created by Law no. 108/91 of August 17 (with revisions made by Law no. 80/98 of 24 November, Law no. 128/99 of 20 August, Law no. 12/2003 of 20 May, Law no. 37/2004 of 13 August and Law no. 75-A/2014 of 30 September). Also relevant are Decree-Law no. 90/92 of 20 August, that regulates Law no. 108/91 (with alterations made by Decree-Law no. 105/95 of 20 May, Law no. 53-A/2006 of 29 December and Decree-Law no. 108/2012 of 18 May) and the operating rules of CES, published on the *Diário da República*, 2nd series, no. 162 of July 13 1993.

²⁷ Article 92, no. 1 of the Portuguese Constitution defines it as follows: 'The Economic and Social Council is the organ with responsibility for consultation and concertation in the economic and social policy domain, shall take part in drafting the Major Options and the economic and social development plans, and shall exercise any other functions allocated by law'.

The second kind of competence constitutionally attributed to CES is the social consultation competence, which promotes social dialogue between the Government and the social partners (trade union confederations and employers' confederations). This competence is exercised through tripartite negotiation processes between representatives of these entities, where legislation projects regarding labour matters are discussed and social consultation agreements are celebrated.

Of significant importance is one of the CES bodies – the *Comissão Permanente de Concertação Social* (Permanent Social Consultation Commission; henceforth, 'CPCS')²⁸, which has complete autonomy in relation to CES. The Government and the social partners are part of this organ, whose main objective is to promote social dialogue in order to celebrate agreements. The CPCS has the competence to: (i) rule on restructuring and socio-economic development policies as well as on their implementation; (ii) propose solutions that lead to the regular march of the economy, regarding specifically the implications on the labour domain; (iii) apprise regularly the evolution of the socio-economic situation of the country and to (iv) apprise legislation projects regarding social and labour matters, namely labour legislation.

The composition includes (i) four Government members; (ii) two representatives of the *CGTP – Confederação Geral dos Trabalhadores Portugueses-Intersindical Nacional* (Portuguese Workers' General Confederation), at management level, one of which has to be its Secretary General; (iii) two representatives of the *UGT – União Geral de Trabalhadores* (Workers' General Union), at management level, one of which has to be its Secretary General (paragraph c); (iv) the President of the Portuguese Farmers' Confederation; (v) the President of the Portugal's Commerce and Services Confederation; (vi) the President of the Portuguese Industry Confederation and (vii) the President of the Portuguese Tourism Confederation.

The negotiations between the Government and the social partners often result in the celebration of agreements.²⁹ It is discussed by many authors, however, whether these agreements are binding

²⁸ Regulated by the Internal By-Law of the Permanent Social Consultation Commission, published on the *Diário da República*, 2nd series, no. 204 of 31 August 1993.

²⁹ That can be consulted in the CES' official website: <<http://www.ces.pt/11>> accessed 30 June 2015 [Portuguese].

or not to the parties involved.³⁰ Even for those who claim that the tripartite agreements celebrated between the Government and the social partners are not binding, there still is political liability in the case of failure to respect the agreement.³¹ In any case, they are most of the time respected, if anything because of the political pressure to do so.

The matters discussed in the CPCS sessions include public labour policies, professional formation policies, social security policies, tax and public administration policies, among others. The order by which these and other matters are discussed is set in several stages, namely by proposing and scheduling the order of subjects to discuss and defining the methodology more adequate to do so, based on a chronogram, by year or legislature, that is accepted by all members of the CPCS.

There are also some matters that need to be preceded by a hearing of the CPCS, being the most important example the definition of the annual amount of the *Retribuição Mínima Mensal Garantida* (minimum wage), according to article 273 of the PLC.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

The approval and subsequent application of the MoU³² had a strong impact concerning labour and social policy-making in Portugal. In regards to these two subjects now in focus, the measures proposed by the MoU, in the words of³³, were essentially the following:

- The definition of clear criteria for the administrative extension of collective agreements;

³⁰ For an overview on the many positions adopted by several Portuguese authors, see Luís Gonçalves da Silva, '*Sujeitos Colectivos*' [2002] Estudos do Instituto do Direito do Trabalho – Volume III 287 [Portuguese], especially 319-320.

³¹ Silva, '*Sujeitos Colectivos*' 325 says that 'the "agreements" celebrated in the Economic and Social Council are mere deliberations of a political nature, with the objective of, with it, on the one hand, pacify some social forces in a manner of facilitating action taking and assuring they are more effective, as well as to lead information to the governance from who knows the reality best, in a way that it unequivocally influences the governance action.'

³² For an introduction of the impacts of the MoU on the austerity policies, see 1.2. *supra*.

³³ Maria do Rosário Palma Ramalho, '*Portuguese Labour Law and Industrial Relations During the Crisis*' (Working Paper no. 54, Governance and Tripartism Department – International Labour Office, Geneva, November 2013) <http://www.ilo.org/ifpdial/information-resources/publications/WCMS_232798/lang-en/index.htm> accessed 30 June 2015.

- Shortening the validity periods of collective agreements that had expired but were not renewed;
- The improvement of tripartite dialogue on wages; the decentralization of collective bargaining, by allowing workers' councils to negotiate at plant level in firms with a minimum number of 250 employees, under delegation from the trade union or independently of such a delegation;
- The creation of a tripartite Labour Relation Centre, to support social dialogue and to provide technical assistance to the parties involved in collective bargaining.

Of the measures proposed by the MoU in relation to collective bargaining and social dialogue, our national legislation only adopted a few. According to Ramalho³⁴, there were three major changes in our legislation:

- Resolution of the Council of Ministers no. 90/2012 of 10 October adopted the measure of defining clear criteria for the administrative extension of collective conventions, taking into account the representation of the parties in the collective conventions and the consequences of the extension on the companies not covered by the collective convention,³⁵
- Law no. 23/2012 of 25 June changed article 491, no. 3 of the LPC in order to promote decentralised collective bargaining, allowing workers' councils to negotiate at company level in firms with a minimum of 150 workers, under the authorization of trade unions;
- Lastly, Decree-Law no. 189/2012 of 22 August, created the *Centro das Relações Laborais* (Labour Relations Centre), which provides assistance to the parties involved in collective bargaining.

As we can see, not all measures proposed by the MoU were immediately adopted by our national legislation. There are two areas where this gap is noticeable: one is the recognition of workers' councils as legitimate counterparts in collective bargaining; the other is the shortening of validity

³⁴ Ramalho, *Portuguese Labour Law and Industrial Relations During the Crisis*' 10.

³⁵ When the Adjustment Programme ended, Resolution of the Council of Ministers no. 43/2014 of 27 June introduced some flexibility in the criteria for issuing administrative extensions, now allowing the employer to only comply with one of the possibilities: to have in its service at least 50% of the workers of that sector of activity, within the envisaged geographic, personal and professional scope; or its associates must include at least 30% of micro, small or medium companies.

periods of collective conventions. This last aspect was later implemented in PLC by Law no. 55/2014 of 25 August, which shortened the validity period of convention provisions that make its termination dependent on the replacement by another collective labour regulation instrument from 5 to 3 years (article 501, no. 1), reduced the extended validity period after termination from 18 to 12 months (article 501, no. 3) and introduced the possibility of suspending the validity period for a maximum period of 18 months (article 501, no. 5). As said by Martins, 'It is a measure that aims to boost collective bargaining by reducing work conditions through the expiry of collective bargaining agreements'.³⁶

2.2.1. Effects on collective bargaining

The number of collective conventions published in Portugal has declined significantly in the past few years. In 2008, 296 collective conventions were published; the lowest number was reached in 2012, with only 85 conventions published. In 2014, however, there was a slight increase in the numbers, with the publishing of 152 conventions, 58 more than the year before.³⁷

In terms of the type of collective conventions celebrated, company agreements represented more than 50% of the total of collective conventions published in Portugal in 2013 and 2014. Until 2011, the majority of conventions published were collective contracts, but these numbers continuously declined from year to year since the beginning of the crisis, in 2008, except in 2010. In the past three years, collective contracts represent a smaller percentage of conventions published.³⁸

As for the workers covered by conventions, the numbers have been declining drastically since 2008, since there is a predominance of company agreements, as seen above. Although there has been a slight increase on the publication of collective contracts, which cover a higher number of workers, it has not been significant enough to counteract the current tendency. In the last two years the number of workers covered by conventions has been more stable, with 242,676

³⁶ David Carvalho Martins, 'Labour Law in Portugal Between 2011 and 2014' (written for the "Young Scholars Meeting" of the "XI European Regional Congress 2014", September 2014) <<http://islssl.org/wp-content/uploads/2014/08/Portuguese-National-Report.pdf>> accessed 30 June 2015.

³⁷ These numbers were presented in UGT - *União Geral de Trabalhadores* (Workers' General Union), *Relatório Anual da Negociação Colectiva* (Annual Report on Collective Bargaining) (2014) <http://www.ugt.pt/NC_relatorioanual2014.pdf> accessed 30 June 2015 [Portuguese].

³⁸ *ibid* 5.

workers covered in total in 2013 and 246,388 in 2014, a number that still does not come anywhere near the 1,894,846 workers covered by conventions in 2008.³⁹

Regarding administrative extensions, we have seen above that one of the measures adopted by our country was the introduction of some criteria for the issuing of these instruments. The flexibility later given to the criteria by Resolution of the Council of Ministers no. 43/2014 of June 27 increased the dynamics of this instrument. In 2014 there were more administrative extensions in comparison to 2013, although the increase was not very significant.⁴⁰

The shortening of validity periods of collective conventions, which aims to force the parties to renegotiate the conventions before their expiry date, has posed some questions to the *UGT*, which believes this solution will not necessarily 'invigorate and strengthen collective bargaining'.⁴¹ They proposed a solution on the CPCS that was then adopted in the national legislation, which prevents a new shortening of validity periods without the favourable feedback from at least half of the trade unions and at least half of the employers' confederations with a permanent seat on the CPCS.⁴²

The Constitutional Court has directly ruled on collective bargaining matters in Judgment no. 602/2013 of 20 September. Although this ruling is more focused on labour rights,⁴³ the Court also appraised article 7 of Law no. 23/2012 of 25 June that imposed, in many ways, the prevalence of the alterations introduced in the PLC about the firing compensations' regime, vacation duration, remuneration supplements for supplementary and holiday work and compensatory rest, over the collective conventions and labour contract clauses, doing so by declaring their nullity or decreeing the efficacy suspension of those conventional or contractual clauses.

The Court only ruled on the prevalence of the new norms of the PLC over the CLRI, and not on the prevalence of those same norms over labour contracts. Some of the norms of article 7 of the Law no. 23/2012 were considered unconstitutional, meaning that they do not prevail over

³⁹ *ibid* 6.

⁴⁰ *ibid* 7.

⁴¹ *ibid* 9.

⁴² *ibid* 9.

⁴³ Which is why the Ruling will be further analysed *infra*, 2.3.

collective conventions, but they do prevail over labour contract clauses and company by-law's rules.⁴⁴

The common ground on which the Court seemed to decide on the unconstitutionality, or not of these norms was, as explained by Palma Ramalho:

(...) The recognition that some matters that are typically a part of collective bargaining are inserted in its intangible core, being the Court's understanding that, on these matters, collective bargaining cannot be limited by law, or when it is, those limits must, themselves, be restricted and temporary. In short, we are before the recognition of some kind of collective bargaining right reservation, which explains that the arguments used in the ruling are based systematically on the collective autonomy principle (article 56 of the Constitution), in conjunction with article 18, no. 2 of the Constitution. On the matters whose legal regime is predominantly mandatory, the Court considers that they are not inserted in the collective bargaining right reservation, so that the law can establish more widely on those matters and oppose to collective bargaining, even if it is to establish a less favourable regime – which was the case, in the compensation regime for labour contract termination' (article 7, no. 1 of Law no. 23/2012).⁴⁵

This Ruling of the Constitutional Court, not just on this matter specifically, but the totality of the Judgement, is probably the most discussed in the Portuguese labour doctrine for being directly related to the austerity measures implemented in our national legislation, which have, in general, raised questions on their conformity with our Constitution.

2.2.2. Effects on social dialogue

The austerity measures implemented in Portugal following the crisis of the last few years have definitely affected social dialogue between the Government and the social partners. There have been some breaches in social peace, especially with the occurrence of several strikes.

The fundamental right to strike is established in our Constitution in article 57 and is regulated in articles 530 to 543 of the PLC.

⁴⁴ Maria do Rosário Palma Ramalho, '*O olhar do Tribunal Constitucional sobre a Reforma Laboral – Algumas Reflexões*' [2014] Para Jorge Leite – *Escritos Jurídico-Laborais*, (volume I, Coimbra Editora 2015) 757 [Portuguese], especially 770.

⁴⁵ *ibid* 773. However, the Author disagrees with the Court on this line of thought (773-776).

Since 2009 there have been a total of 14 general strikes and several other sectorial strikes, especially in the transport sector.⁴⁶

Besides from strikes, there have also been several demonstrations of dissatisfaction from the general public, which did not always formally involve the trade unions.

As for sectorial strikes, there has been often the intervention of Arbitral Courts, especially in the transport sector, to decree minimum services, which has happened in most cases.

In consequence of these strikes, some measures proposed by the Government were withdrawn, such as the raising of the length of the working day to half an hour more and the change of the *TSU – Taxa Social Única* (social security tax).⁴⁷ However, it can be said that, ‘the employers’ organisations consider that the social tension is largely due to tax policies and the deterioration of living conditions in recent years rather than to the changes in labour law.’⁴⁸

2.2.3. Conformity with the European Social Charter (ESC)

The Portuguese Government presented on 15 May 2014 the *9th Report on the application of the European Social Charter*, specifically on the accepted provisions of the Revised Charter relating to Thematic Group 3, “Labour Rights”.⁴⁹ In regards to articles 5 and 6 of the ESC, the conclusions indicate some cases of non-conformity:

- In article 5, the criteria used to determine representativeness are not adequate;
- In article 6, the criteria used to determine representativeness in respect of joint consultation are also not adequate (paragraph 1);
- Compulsory recourse to arbitration both in the private and public sectors is permitted in circumstances that go beyond the limits set out in article G of the Charter (paragraph 3);
- Finally, regarding paragraph 4 of article 6, the right to call a strike is primarily reserved to trade unions, the establishment of a trade union is subject to an excessive time frame and

⁴⁶ For a view on the number of strikes by duration from 2009 to 2012, please see the Portuguese Government’s 9th Report on the application of the ESC, <http://www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/Portugal9_en.pdf> accessed 30 June 2015 74-75.

⁴⁷ Ramalho, *Portuguese Labour Law and Industrial Relations During the Crisis* 19.

⁴⁸ *ibid* 19.

⁴⁹ Available at <http://www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/Portugal9_en.pdf> accessed 30 June 2015.

it has not been established that recourse to compulsory arbitration to define minimum services in the case of a state-owned company falls within the limits set by article G of the Charter.⁵⁰

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

2.3.1. Portuguese Labour Reform

It is established as a fundamental duty of the Portuguese State to guarantee the respect and promotion of the fundamental rights and democratic principles. Regarding labour rights, the Constitution determines the right of employees' not to be dismissed from their jobs without just cause or based on any kind of discrimination and it also guarantees to all the right to work, to equal opportunities and professional formation, under articles 53 and 58, respectively. The article 59 of the Constitution, under the heading 'Workers' Rights', also determines the right to fair remuneration and the right to just conditions of work.

In the context of the economic crises faced in Portugal, addressing many aspects of labour legislation, a set of austerity measures to be enforced was provided, in order to accomplish the strengthen of budgetary consolidation, potential economic growth and job creation also reaffirmed in the Growth, Competitiveness and Employment Commitment, dated 2012. As a result, the workers' rights have been affected, especially regarding the right to just conditions of work and the right to a fair remuneration, established under articles 2 and 4 of ESC.

2.3.2. The Right to Just Conditions of Work

The conditions of work, such as the organisation of working week, the number of paid public holidays and the annual holidays' payment were subject to some amendments, hoping these measures would improve competitiveness by reducing employers' personal expenses and stimulate economic activity.

⁵⁰ The nature of this report does not allow for much detail on the Portuguese report on the implementation of the ESC, but all of these considerations are extensively analysed in the report itself, 51-84.

Following the instructions of the 'Agreement Reached on Austerity Measures and Reforms for European Civil Service', June 2013, there was an increase in the minimum working week hours from 35 to 40 without any right to a financial compensation for staff in all institutions.⁵¹

Four out of fourteen mandatory public holidays, two religious festivals and two public holidays, were suspended for five years, starting from 2013⁵², and it was established the possibility for employers to close their companies during bridge days and to compensate these with vacation days of the workers.

Another austerity measure halved the overtime payments. In 2012, the first hour of overtime work is at 25% more than normal, rather than the established payment of 50% and, for further hours the payment went from 75% to 37.5%. In case the overtime working is on a weekend or public day, the payment is 50% extra instead of the original 100%. Furthermore, the Portuguese State Budget of 2013 determined that, during the Economic and Financial Assistance Programme, the overtime and night working payments should be reduced, once again, in half, as an extraordinary measure for budgetary stability.⁵³

Also, the Government intended to suspend any provision of collective labour regulation instruments (CLRI) regarding this matter, so the PLC would remain in force over the Collective Labour Agreements for two-years, until 31 December 2014. From 2015 the overtime and holiday workers will duplicate their payment, and reaching the values *supra* mentioned.

Before the Labour Reform, in situations where there were no or only a few justified absences there was an increase in the annual vacation period by up to 3 days. The Law no. 23/2012 of 25 June removed this option, reducing the annual vacation period from up to 25 to 22 days but the Constitutional Court decided it was an unconstitutional measure and those days were replaced.

In 2013, after the ruling of unconstitutionality by the Constitutional Court (judgment no. 602/2013) of the measure establishing the proportional reduction of the Christmas bonuses and

⁵¹ This measure was approved by Law no. 68/2013 of 29 August. The Constitutional Court found no unconstitutionality, validating a reduction of wages for an increase in annual working time. See Ruling no. 602/2013 [2013] of 20 September, available at <http://www.tribunalconstitucional.pt/tc/acordaos/20130602.html>> accessed 30 June 2015 [Portuguese].

⁵² The public holidays affected were All Saints Day, Corpus Christi, October 5, which marks the formation of the Portuguese Republic and December 1st, which commemorates the independence from Spain in 1640.

⁵³ Articles 6 and 11 of Law no. 66/2012 of 31 December and article 45 of Law no. 66-B/2012 of 31 December, respectively.

vacation allowances of workers which salary was higher than EUR 600 and lower than EUR 1,100 and the total suspension in case of salaries higher than EUR 1,100⁵⁴, another measure came in force. This measure determined that Christmas bonuses and vacation allowances would be paid in twelfths. The vacation allowance and the Christmas bonuses should be paid 50% until the beginning of the vacation period or until December 12, respectively, and the other 50% in twelfths throughout the year. This extraordinary and temporarily measure was extended to 2014, and kept enforced also in 2015.⁵⁵

The other main change of the legislation relates to the application of the new sustainability factor. The increasing of elderly population led to a raise of the retirement age, as an alternative to a reduction of the retirement pension. The measure applied gives a bonus of 1% of pension for each month of work after 65 years, changing the retirement age from 65 to 66 years from 2014.

2.3.3. The Right to Fair Remuneration

Regarding the right to fair remuneration, the nominal minimum monthly wage was frozen, the legal framework on lawful dismissal was changed and wages were subject to a reduction.

From 2006 to 2011, the nominal monthly minimum wage increased, in average, 4.7% a year,⁵⁶ and after that period was frozen, during the Adjustment Programme. According to the policy of wages moderation established in the *Memorandum*, to promote the competitiveness and employment, any increase in the minimum monthly wage was subject to the improvement of economic conditions and the labour market.

⁵⁴ The ruling of unconstitutionality was not based on the reduction or suspension of the bonus or allowances itself, but on the violation of article 13, Equality Principle between citizens of the Portuguese Constitution. The Court determined non-retroactive ruling, maintaining the suspension during 2012, due to recognising the difficulties this ruling would create given the cuts included in the agreement with international creditors, in which was accorded that, in the year of 2013, Portugal should reach a 3% budget deficit.

⁵⁵ Law n. 83/2013 of 9 December and Law no. 82-B/2014 of 31 December, respectively.

⁵⁶ David Carvalho Martins, '*Labour Law in Portugal Between 2011 and 2014*' 14.

After a four-year freeze, the value of the minimum monthly wage in Portugal was close to the lowest value compared to the values of the Member States, even when compared to those that were also subject to an Adjustment Programme.⁵⁷

In 1st January 2011 cuts were enforced in public sector wages.⁵⁸ In 2014, revising the temporary measure adopted three years before, the cuts ranged from 2.5% up to 12.5%. This time, the progressive reduction affected workers who have a monthly wage up to EUR 2,000; above that, the reduction was 12.5%. This reform aimed at a better distribution of the reduction, even though it still protects the workers who have a monthly wage lower than EUR 600, by affecting a larger number of workers with a progressively reduction and not aggravating the competitiveness of public remunerations higher than EUR 2,000.⁵⁹

On 1 October 2014, the Portuguese Government raised the national minimum salary by 4%, from EUR 484 to EUR 505⁶⁰, guaranteed for fifteen months, reaching the value initially predicted for 2011.⁶¹ The Government predicted this measure would benefit 350,000 workers in the private sector and 75,000 in the public sector.⁶²

The minimum monthly wage aims to ensure workers with the minimum profit from their labor necessary to have a dignified standard of living. As so, in 2014 it was concluded that the

⁵⁷ International Labour Organization, *"Tackling the Job Crisis in Portugal"* (26 November 2013), 21-25 <http://www.ilo.org/wcmsp5/groups/public/---dgreports/--dcomm/documents/publication/wcms_228208.pdf> accessed 30 June 2015.

⁵⁸ The cuts ranged from 3.5% to 10%, affecting progressively workers earning between EUR 600 and EUR 1,500 per month, and 10% for workers who had a monthly wage higher than EUR 1,500. In the same year, there was also cuts by 5% for top government workers.

⁵⁹ Law no. 83-C/2013 of 31 December.

⁶⁰ Approved by the Decree-Law no. 144/2014 of 30 September. This decision was a result of an agreement reached by the Government, representatives of labour unions and employers, namely the Business Confederation of Portugal, the Portuguese Tourism Confederation, the Confederation of Trade and Services of Portugal the Farmers Confederation of Portugal and the workers' union UGT. Several employers' associations argued that this raise of the national minimum salary could lead companies to go bankrupt if there was no compensation regarding employers' social security contribution. As a result, the government decide companies will pay less social security for workers receiving the minimum wage, from 23.75% to 23%, until 31 December 2015. In 2016, the value of national minimum monthly wage will be updated based on Portugal's productivity level.

⁶¹ David Carvalho Martins, *'Labour Law in Portugal Between 2011 and 2014'* 13-16.

⁶² Council of Ministers Official Report 25 September 2014 <<http://www.portugal.gov.pt/pt/os-ministerios/ministro-da-presidencia-e-dos-assuntos-parlamentares/documentos-oficiais/20140925-cm-comunicado.aspx>> accessed 30 June 2015 [Portuguese].

minimum wage for private sector workers did not ensure a decent standard of living, violating number 1 of article 4 of ESC.⁶³

In the labour legislation reform, the legal framework on fair dismissals was also reviewed, bringing more flexibility to this matter, following the impositions of the MoU. Moreover, the reform established the possibility of dismissal based on unsuitability of the employee regardless of the introduction of new technologies or changes to the work position and also where the worker did not reach the goals set by the agreement between the parties of the employment relation. The seniority criteria was replaced by a non-discriminatory criteria defined by the employer, giving him the power to determine which worker should be dismissed due to the elimination of position, when there were multiple work positions with a similar function. One more alteration was the elimination of the employer's duty to propose an available and compatible work position in case of dismissal due to the elimination of position and dismissal due to unsuitability of the worker. These measures were implemented by Law no. 23/2012 of 25 June, giving the employer the right to choose relevant and non-discriminatory criteria, in case of dismissal due to the elimination of job position. It was abolished the duty of the employer to propose an available and compatible work position to the worker to be dismissed due to the elimination of position, violating articles 24 of ESC and article 3 of the Additional Protocol. In case of dismissal based on unsuitability of the workers, there were introduced the measures elaborated by The Growth, Competitiveness and Employment Commitment.

The Constitutional Court ruled the replacement of the seniority criteria - last in, first out - with the criteria of non-discrimination, since the criteria was considered to be vague and employing 'undefined concepts, lacking a minimum of precision and effectiveness', opening the possibilities to an arbitrary decision by the employer. For this reason, it was declared unconstitutional.⁶⁴ In the Constitutional Court's point of view, the dismissal of an employee based on objective criteria should only occur in exceptional situations ("*ultima ratio*"). The Court declared unconstitutional

⁶³ 9th National Report on the Implementation of the European Social Charter 2014, 29-31.

⁶⁴ In 2014, the legislator adopted a new objective criteria to be followed by the employers to determine which worker should be laid off in the event of extinction of work position, in case there is a plurality of jobs with identical function content in the same section or equivalent structure. The employer has to respect the following order criteria: worse performance evaluation; minor academic and professional qualifications; most costly to the company for maintaining the employment relationship; lower job experience; minor length of service the company. This labour reform provides a greater flexibility, promoting greater economic competitiveness.

the elimination of the duty to replace the worker in cases where there is a compatible and available work position, due to the violation of numbers 2 and 4 of article 368 of PLC and article 53 of the Constitution, which prohibits the dismissal of a worker without just cause. In 2014, the government adopted alternative reform options in order to respect the Constitutional Court ruling, (re)establishing the employer duty to propose a compatible and available work position to the worker, either in case of dismissal due to the extinction of the work position or due to unsuitability.⁶⁵

Since 2011, it was envisaged the need to bring some flexibility for temporary reduction of the regular working period or even the suspension of the employment contract in situations of company crisis.⁶⁶

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by their own efforts or from other sources?

The Portuguese Constitution grants a special protection to the right to Social Security, deeming it as a true constitutional right on article 63, under the section of Economic, Social and Cultural Rights. Unlike other constitutional jurisdictions, the Portuguese Constitution has chosen not only to grant a general constitutional normative background to this right, according to article 63 no. 1, but as well to develop its interpretation on several other provisions on the Basic Law: (i) article 63, no. 2 imposes on the State a duty to promote a social security system and (ii) article 63, no. 3 confers strict protection in case of illness, as well as unemployment and old age. Furthermore, according to article 72, old people should be protected and granted both Economic Security and Habitation minimums.

⁶⁵ Law no. 27/2014 of 8 May.

⁶⁶ Predicted in the Competitiveness and Employment Tripartite Agreement 2011. These necessities were reaffirmed in the MoU and also in the Growth, Competitiveness and Employment Commitment, in 2011 and 2012, respectively. These measures were introduced in national legislation by the Law no. 23/2012 of 25 June.

This constitutional protection is further developed on an *infra*-constitutional basis. Today it is safe to affirm that the Social Security scheme in Portugal can be divided in essentially three major systems:

- The social protection of citizenship system (*Proteção social de cidadania*) which aims to ensure the access of all citizens to basic rights and equality of opportunities, through mechanisms against extreme poverty, the protection of family as well as protection in case of illness. These objectives can be found in article 26 of Law no. 4/2007 of 16 January;
- The protection on the impossibility to perform work system (*Sistema previdencial*) which has as main objectives to ensure that measures do exist to support financially those who cannot perform their jobs, by reasons relating to sickness, motherhood, unemployment, accidents at work, old age and death. These topics are regulated in article 50 of the same law;
- The complementary system (*Sistema complementar*) which is divided in a public system (article 82) sponsored through capital injection from the State, and a private and collective complementary system (article 83), financed by private entities (for example, Labour Orders). The objectives are however the same: they aim to finance complementary aid that is not yet provided by the two last systems that we have mentioned.

Under each of the systems, in order to have a bigger understanding of the impact that the austerity measures have had on Portugal during these last years, one must analyse the precise measures that have been taken in order to promote the several objectives of each of the systems.

3.1.1.1. Unemployment Measures

Since 2003, with the Decree-Law no. 84/2003 of 24 April, there has been an increasing effort on promoting three main measures that could better fulfil the objectives mentioned above: (i) the reduction of the amount of time required to be able to benefit from the unemployment aid (which is now in 360 days of employment in the last 2 years before the request); (ii) the increase of the unemployment aid in the event of both parents being unemployed or on the event of single parent families on the basis of 10% increase and (iii) the possibility to access the pension

scheme at the age of 58 (where the normal standard is today at the age of 66) when the person in question is unemployed, therefore being able to immediately have access to social aid.

Since 2006, the new target was on the promotion of the return to work, as soon as possible of people who were currently unemployed. For this effect, the Decree-Law no. 220/2006 of 3 November, on its article 12, no. 4, promotes the increasingly use of the Employment Centres where unemployed people should find a solution through guidance and orientation from specialized groups of people. This is done at the same time through the increasing of the professional formation of the candidates, with respect to article 14 of the same Decree-Law, providing an investment on rehabilitating the unemployed persons back into the professional market.

With the financial crisis however, there has been a bigger improvement of the social protection concerning unemployment in order to sustain the increasing rates of the past years. Therefore, it was created and further increased along the years, the access to a second subsidy (the social unemployment subsidy) that is granted in two cases: (i) or when the requirements to attribute the first subsidy are not met (the regular unemployment subsidy) (ii) or when the first subsidy was already granted and the situation remains. This access is limited to people who have up to EUR 100,612.80 in patrimony (not real estate), as well as a monthly income, by family member of EUR 335.38. This possibility is present on article 24 of the Decree-Law no. 220/2006 of 3 November.

3.1.1.2. Family and Motherhood aid

Since the year 2002, there is in Portugal a truly autonomous sub-system (under the Social protection of citizenship system) aimed at granting protection of those in need relating to family and motherhood issues. On this basis, there has been an increasing effort to provide several standards of income rethinking the minimum numbers which trigger each of the standards. Therefore, and with respect to proportionality, a new standard was created for those incomes between 1.5 and 4 times the minimum remuneration standard (EUR 505), therefore setting better equality standards among the beneficiaries.

There is also a subsidy on birth (*abono de família*) that is now a true right of the children, having been simplified on its attribution. On the basis of Decree-Law no 176/2003 of 2 August, being

entitled to this right every national or foreigner, and even stateless person as long as they reside in Portugal, who do not work and fulfil the age criteria: are up to 16 years old; or older than 16 as long as they are currently engaged in school (from 16-21 years) or university (from 21-24 years). For those children who have some kind of sickness or handicap, it is granted a special protection until the age of 24, regardless of the engagement in school or university.

With the Decree-Law no. 308-A/2007 of 5 September, a general right was also created with regard to birth subsidies even before birth, on the 13th week of pregnancy, therefore promoting birth ratios and helping of mothers unable to work. In conjunction with this measure and in order to promote the existence of numerous families (more than 2 children), the State provides for the increase of the value of the birth subsidy from the first to the second child in 100% (doubles it) and from the second to the third in 200% (the triple as to the first child).

Related to the problems concerning motherhood and general parenting, Portugal has been trying to develop a set of measures to help those in need, especially families with low incomes, by assuming the protection of children and youngsters in peril. Through the Decree-Law 332-B/2000 of 30 December, as well as some other diplomas⁶⁷, which aim to develop the existence of fostering centres, psychological support centres, among others.

3.1.1.3. Old age

In 2006 a special subsidy was created that financially supports the elderly above the age of 66 with an extra amount of money (*Complemento Solidário para Idosos*), taking into account the special needs and situation of these people. This measure has been applied to incomes on the basis of one distinction: if the person is already married, then the annually income must be under EUR 8,590.75 and the income of the single person who requests the subsidy must be under EUR 4,909.00; if the person is single, the same value of EUR 4,909.00 will apply.⁶⁸ This subsidy will be paid on a daily basis, ranging from an amount of EUR 275 to 490 per month.

3.1.2. Persons who are unable to secure adequate resources either by their own efforts or from other sources due to illness?

⁶⁷ V.g., Decree-Law no 11/2008 and Decree-Law no. 12/2008, both of 17 January.

⁶⁸ See article 10 of Decree-Law no. 220/2006 of 3 November, as changed by the Decree-Law no. 13/2013 of 25 January.

Concerning the situations where there is a lack of resources rendering helpless those in need of health care, the Portuguese social security system provides some mechanisms to alleviate the suffering and provide the necessary aid.

There is a general subsidy granted to those who, due to illness, cannot longer be employed and obtain an income. On the basis of Decree-Law 28/2004 of 4 February, the following values would apply:

Duration of the Disease	Percentage of the income to be awarded
Until 30 days	55%
From 31 to 90 days	60%
From 91 to 365 days	70%
Over 365 days	75%

Table 1.

The value of reference is currently the value which each of the companies of the worker declares, in each fiscal year, divided per day on the last six months of activity.⁶⁹

There are also substantial benefits, in terms of access to old age pensions, for those who suffer from certain types of disabilities such as HIV⁷⁰, Cancer⁷¹ and Multiple Sclerosis⁷². Persons who suffer from any of these conditions would be able to access the pension scheme through a reduction of the minimum of years required to have access (on the normal situation 15 years would be required; on this case only 3 are mandatory); they would benefit from higher values when it concerns the value of reference for the attribution of the pension and also an higher bonus on the annual tax for the formation of the pension scheme.

⁶⁹ See articles 16, 17 and 18 of Decree-Law no. 28/2004 of 4 February.

⁷⁰ Decree-Law no. 216/98 of 16 July.

⁷¹ Decree-Law no. 92/2000 of 19 May.

⁷² Decree-Law no. 327/2000 of 22 December.

However, accordingly to the Portuguese ECS's 2013 Report⁷³, it is to be concluded that the current situation in Portugal is far from achieving the specific objectives that the Charter demands. With regards to illness and sickness benefits, the Committee stated that the minimum amount of this benefit stood at 30% of the social support index [IAS] (EUR 419.22) and thus amounted to EUR 125. The Committee considers that this level is manifestly inadequate and the situation is not in conformity with the Charter.

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

The administrative structures that ensure the Portuguese social protection system represent a big structure on the context of Public Administration. Therefore, the political measures taken in recent years aimed to Government spending adjustment have always a significant impact on that. It was the MoU that has stipulated the general terms commitments on social protection measures. There was, therefore, a proposal to cut in social protection spending that in Portugal represents a significant proportion of Gross Domestic Product (GDP).

The Memorandum established some of the following measures:

- To reduce pensions above EUR 1,500 according to the progressive rates applied to the wages of the public sector as of January 2011, with the aim of yielding savings of at least EUR 445 million;
- To suspend application of pension indexation rules and freeze pensions, except for the lowest pensions, in 2012;
- To reform unemployment insurance on the basis of detailed measures listed below under 'Labour market and education', yielding medium-term savings of around EUR 150 million.

Concerning the last point, the Government will prepare by Q4-2011 an action plan to reform along the following lines the unemployment insurance system, with a view to reduce the risk of long-term unemployment and strengthen social safety nets. This will be done through the

⁷³ Available at <http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Portugal2013_en.pdf> accessed 30 June 2015.

reduction of the maximum duration of unemployment insurance benefits to no more than 18 months. The reform will not concern those currently unemployed and will not reduce accrued-to-date rights of employees; capping unemployment benefits at 2.5 times the (IAS) and introducing a declining profile of benefits over the unemployment spell after six months of unemployment (a reduction of at least 10% in the benefit 20 amount).

The reform will therefore only concern those who have become unemployed after the reform, reducing the necessary contributory period to access unemployment insurance from 15 to 12 months. This will also be carried out through a proposal for extending eligibility to unemployment insurance to clearly defined categories of self-employed workers providing their services to a single firm on a regular basis. The proposal will take into account the risks of possible abuses and will contain an assessment of the fiscal impact of extending benefits under several scenarios concerning eligibility criteria (namely the involuntary character of unemployment) and requirements for increased social security contributions for firms making use of these arrangements.

On this context, we can define the austerity measures with impact on the social protection system described above in two guidelines: on the one hand, there was a cut in social protection measures; on the other hand, there was also a tax increase for those receiving social support.

The State Budget for 2012 was the first one to execute the agreement. So it established the suspension of the actualization system and freeze for all the social benefits.

The State Budget for 2013 established an important – and polemic – measure: the extraordinary solidarity contribution (*Contribuição Extraordinária de Solidariedade*). It is a supplement tax charged on lifetime pensions paid by the State with the following distribution:

- Pensions between EUR 1,350 and 1,800 – 3.5%;
- Pensions between EUR 1,800 and 3,750 – 3.5% until EUR 1,800 and 16% on the remaining;
- Pensions from EUR 3,750 – 10% until EUR 5030.64 and 15% on remaining until EUR 7,545.96 and 40% on remaining.

The illness benefits and unemployment benefits are charged with a 5% tax for the former and 6% for the latter.

The State Budget for 2014 maintains this framework.

Finally, **the State Budget for 2015** introduces a little change: it reduces the field of application of the extraordinary solidarity contribution. The new configuration is:

- Pensions between EUR 4,611.42 and 7,126.74: 15%;
- Pensions from EUR 7,126.74: 40%.

It is safe to say, for the many reasons stated above, that the austerity measures have had a great impact on social protection on Portugal, leading to a general decrease of such support (through the reduction of the aid and the grants). This has been aggravated by the constant tax raise on the same social protection measures, reducing therefore the general economical capacity of many Portuguese families.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

There is in fact, under the general description of Social Support for Families and Children, a wide range of services that provide care for those families who find themselves in a difficult position. The support that this set of measures ranges from the moral/psychological approach to the financial and logistic support.

There are currently, under the designation *Apoios Sociais – Família e Comunidade em Geral*⁷⁴, 9 main services that are provided: (i) social professional follow up of the situations; (ii) self-help discussion group; (iii) Community Centre; (iv) holiday and leisure activities for the youngsters; (v) Meal Center; (vi) office to support aid to new/young parents in need; (vii) temporary housing for families in need and (viii) food and supplies.

This sort of services is especially designed for those groups at risk, such as homeless people, but also and primarily to single mothers and young parents in need. This is made not only at a State level (through the social security office) but also within the action of some private-social actors

⁷⁴ For more information, see http://www4.seg-social.pt/documents/10152/27232/apoios_sociais_familia_comunidade accessed 30 June 2015.

and institutions, such as, *v.g.*, the *Santa Casa da Misericórdia de Lisboa* (Holy House of Mercy of Lisbon)⁷⁵.

We have not found, to our knowledge, any substantial change on this system through the austerity measures.

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

The Portuguese Constitution is embedded in social concerns, therefore it widely grants protection to people facing social deprivations and living in situations of poverty. In fact, articles 63, 64 and 70 visibly address the fight against social exclusion and the state's obligations of defending and promoting medical assistance, housing and education to persons who are at risk of poverty and severely materially deprived.

Even though those rights have been broadly discussed in Portugal in the last years, mainly due to the financial crisis, it is not the scope of this research to discuss to what extent those obligations might be enforced. As a result, one should note that those rights, regardless of their degree, are configured on the Portuguese Constitution as well as in the Social Charter, thus, the State 'must adopt a global coordinated approach (...) and take measures promoting the access to social rights (...)'.⁷⁶

In order to fulfil those obligations some laws have been made through the years of which we can point:

- Law no. 28/84 of 14 August, on social security;
- Law no. 73/96 of 18 June, on Social Housing, promoting the flexibility of the regime;

⁷⁵ See <http://www.scml.pt/pt-PT/areas_de_intervencao/acao_social/?culture=en-GB> accessed 30 June 2015.

⁷⁶ European Committee of Social Rights, Conclusions 2013: Portugal (May 2014) 1.

- Law no. 48/90 of 24 August, has the basis for the health system;
- Decree-Law no. 84/2000 of 11 May, has amended the legislation on the guaranteed minimum income;
- Implementing Order no. 8/2002 of 12 February, promoting the eradication of poverty and social exclusion;
- Decree-Law no. 232/2005 of 29 December, created the Solidarity Supplement for the Elderly (CSI), a monetary benefit designed to combat poverty among the elderly.

In 1997 some authors argued that ‘in the past three decades, the State in Portugal has undergone a series of changes that have taken it from the under-development typical of an authoritarian state on the “semi-periphery” of Europe, to a welfare state to a welfare state of unfinished modernity belonging to European Union’.⁷⁷

Three years later, in 2000, within the presidency of the European Union, Portugal fostered anti-poverty measures at the European level and, extremely important, suggested social cohesion as a third axis besides employment and economic growth.

However, since 2008 and the well know ‘crisis’, Portugal has been through a series of austerity measures and it is of enormous importance to analyse the impact – if any – that those measures had on the path that has been made until then.

According to the last report of the European Commission⁷⁸, Portugal has not been successful on dealing with the impact of austerity measures mainly with respect to unemployment and the resulting increase of the poverty risk.

As the working conditions worsened, the groups particularly affected by the rising unemployment were young people (aged 16-24) and long-term unemployment persons.

The Commission states that the measures taken by the Government had a general negative impact and the groups that were mostly affected were working-age adults, the elderly and children with less than 10 years.

⁷⁷ Luís Capucha, Teresa Bomba, Rita Fernandes and Gisela Matos *Portugal – a virtuous path towards minimum income?*, [2005] *Welfare State Reform in Southern Europe. Fighting poverty and social exclusion in Italy, Portugal and Greece* (ed. Maurizio Ferrera Routledge 2005) 163.

⁷⁸ See some of its points at <<http://economico.sapo.pt/noticias/nprint/212832>> accessed 30 June 2015 [Portuguese].

In fact, the children are the group with the higher risk of social exclusion, 4.2% above the general of the population (31.6% regarding children and 27.4% concerning the rest of the population).

While, as the European Committee of Social Rights 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.

In accordance, the European Commission noted that the impact of social assistance on the reduction of poverty has diminished from 29.2% (2012) to 26.7% (2013), which shows that the government was unable to attenuate the effect of the austerity measures on poverty levels and social exclusion.

Going further, the European Commission explains that between October 2010 and August 2014 more than 592,000 beneficiaries of social subsidies have lost the access to it. In particular one should remark that the above referred period overlaps the time in which Portugal had to implement austerity measures.

In face of this scenario, once we ask whether austerity measures had an impact on poverty level, deprivation and social exclusion in Portugal, the answer seems evidently affirmative.

Despite this general negative impact of the austerity measures, the Committee of Social Rights makes mention to some measures adopted during the referenced period to combat social poverty and exclusion and recalls that the economic crisis should not be a catalyst for the reduction of the social rights conferred by the charter. Quite the opposite, while the country is facing difficult times the government should guarantee that social rights are conferred to those that need it most.

It is now time to underline some of the measures that had a significant impact on social exclusion matters during the last years.

Between 2010 and 2011, even before the signing of the MoU, the former Government pursued a reform on the fiscal system and raised the VAT taxes.⁷⁹ Moreover, all pensions - including the

⁷⁹ The regular VAT tax was increased from 21% to 23% and more products were placed under this tax.

lowest ones - were frozen and the exemption of user fees for medical care in hospitals was reduced, even for unemployed and beneficiaries of pensions above the minimum wage.⁸⁰

After the agreement with the *Troika* settled in May 2011, a plethora of austerity measures was taken by the new Government. Some of these measures had a strong and direct impact on the persons with low income, such as the rise of the electricity prices, the increase of the price for public transports and the reduction of health deductible expenses for the income tax (IRS), as well as massive tax rises.

But, at the same time, some measures were taken in order to ensure social integration.

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 a 'National Social Emergency Program'⁸¹. The Government's main objective was to implement a social model that could provide solutions for urgent and severe social needs of the population.

In particular, one should highlight the following measures:

- For couples with children in which both members were unemployed, the unemployment subsidy was increased in 10% for each one of the members;
- Professional training programs available for social excluded groups in order to increase their employability;
- Creation of a network of social canteens with the aim of providing free meals for families;
- Development of a market for low-cost housing rentals;
- Investment on scholarships for university students whose families lived in a situation of poverty.

In order to ensure the application of the measures, the government allocated EUR 400 million to the Program. In the following year (2012) EUR 200 million were added to finance the same Program.

⁸⁰ EUR 485 at the time.

⁸¹ Available at <<http://www.portugal.gov.pt/media/747090/programa%20emergencia%20social.pdf>> accessed 30 June 2015.

In 2012, the government extended the social protection granted to employed workers who were made redundant to independent workers⁸² whose economic activity as service providers depended exclusively on other entity. In case of bankruptcy of the latter, a subsidy was to be attributed to independent workers to compensate from their loss of income.

Secondly, the unemployment subsidy was increased from 10% to 20% for those couples with children when both members are unemployed.

Thirdly, a few changes were also introduced in the *Rendimento Social de Inserção* (Social Inclusion Income). This concept corresponds to a certain income provided by the State to those persons and families who live or risk living in a situation of poverty. The two main objectives of this measure were the development of safeguards for minimum dignified living and to help the reintegration beneficiaries in the labour market.

The most relevant changes concerning this mechanism were the protection of families during the maternity and paternity leave whenever the employer does not pay the amount required by law and the possibility given to the beneficiaries of asking for a revaluation of their economic situation when a sudden change on their monthly income occurs. Nevertheless, the new rules became stricter: the legislator established an important onus on the beneficiaries, since they are now required to prove that they are register in the Job Centre and actively searching for a job. In addition, the list of reasons for cessation of the benefits was enlarged.

In 2013, the government added EUR 251 million to the Emergency Program. Furthermore, the Government announced that Portugal will receive EUR 176,9 million from the Fund European Aid to the Most Deprived for the period between 2014 and 2020 to spend on clothing, food and other essential goods for people on risk of poverty.⁸³

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

⁸² By means of Decree-Law no. 65/2012 of 15 March.

⁸³ See <http://europa.eu/rapid/press-release_MEMO-14-131_en.htm> accessed 30 June 2015.

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

Besides establishing the general principle of equality (article 13), the Portuguese Constitution clearly states that ‘those citizens who are physically or mentally disabled have the same rights and obligations established by the Constitution for other citizens’ (article 71, no. 1). This is the guidance key for the entire regulation concerning social rights of persons with disabilities in Portugal legal system. At the same time, the Constitution also provides broad dispositions related to the protection of children and young people. On the one hand, it is stated that ‘with a view to their integral development, children have the right to protection by society and the state, especially from all forms of abandonment, discrimination and oppression and from the improper use of authority in the family or any other institution’ (article 69, no. 1); on the other, the Constitution fixes that ‘in order to ensure the effective fulfilment of their economic, social and cultural rights, young people shall enjoy special protection, particularly a) in education (...) b) in access to their first job (...) c) in access to housing; d) in physical education and sport and e) in the use of free time’.

Before this, it can be undoubtedly said that the Portuguese legal system, more than assign to persons with disabilities, children and young people the *general* social, economic and welfare rights, treats them as a subject of special duties of protection.

The Law no. 38/2004 of 18 August defined the general basis of the juridical system for prevention, habilitation, rehabilitation and participation of people with disabilities. The mainstreaming principle was expressly adopted, especially in Article 3.

Moreover, we can find some concrete legislation related to specific problems concerning persons with disabilities, such as

- Law no. 46/2006 of 28 August, which prohibits and punishes discrimination based on disability or health. This Law applies to economic, social and cultural individual rights and defines the concept of direct and indirect discrimination. It also reinforces the application of laws that protect people with disability from discrimination and establishes

the inversion of the burden of proof. NGOs representing people with disability interest and rights are entitled to represent and defend them in court;

- Decree-Law no. 163/2006 of 8 August, defining the conditions for accessibility in construction of public spaces, public facilities and public buildings and houses, and surrounding areas.

2006 was also the year in which the 1st ‘Action Plan for the Integration of the People with Disabilities or Impairments (2006-2009)’ was approved.⁸⁴

Within this general framework, it can be surely guaranteed that in Portugal people with disabilities are protected by law against discrimination in employment, education, access to health care, or the provision of other state services, and the government effectively enforces the law. The law also mandates access to public buildings and ensures that the laws are adhered to. No legislation covers private businesses or other facilities. Institutionally, it is the Ministry of Labour and Social Solidarity the department responsible for ensuring equality for the disabled in access to work and other state services. Additionally, the Portuguese National Institute for Rehabilitation gives personal support and advice on technical matters to people with disabilities and their families.

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

Portuguese Social Security makes Disability Pension (*Pensão de Invalidez*) payments to people who cannot work due to disability or who need care and supervision.

The following conditions have to be met to entitle a person to a disability pension:

- The disability, either physical or mental, must be of a permanent nature and prevent the person from working;

⁸⁴ As an amendment to Resolution of the Council of Ministers no. 120/2006 of 21 September.

- Payments must have been made to Portuguese Social Security for at least five years or the gross monthly income must not be greater than 30% of the national minimum salary, or 50% in the case of a couple;
- Complementary payment for dependent persons (*Complemento por Dependência*) is a special payment available to people who are dependent on care from others. This is paid to pensioners dependent on assistance.

The legislation categorizes the level of dependency in degrees, as follows:

- First degree: a person who cannot independently carry out actions that are indispensable to satisfy basic, everyday needs without help from other people (such as domestic chores, self-mobility and personal hygiene);
- Second degree: in addition to the above characteristics, these are people who are confined to their beds or suffer from serious dementia.

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

Data from 2007 shows that the activity rate from disabled people (aged between 18 and 65) is twice inferior compared with non-disabled people. On the employment topic, the scenario is even worse – which directly impacts the average income rate from these people – according to data from until 2010, non-disabled people had an average income 37% superior to the income from disabled people, where public funding (subsidies) plays an extremely important role. Disabled people not only have a smaller income but also require higher costs, which easily leads to a poverty situation. Within the disabled people, women are the most critical population sector. Since 2008, two main reasons have made the situation of persons with disabilities much worse: (i) the decrease of social support, programs and services on employment, education and social assistance, leading to less offer and longer waiting lists; (ii) the postpone of independence promotion support services (personal assistance and accessibility promotion regime), enhancing the dependency from society and families.

5.2. Children and Young Persons (Article 17 ESC)

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

Since the beginning of the nineties, the evaluation of the Portuguese school system was seen as the best way to ensure the quality of education in our country. The Program 'Schools' Quality Observatory' (*Observatório da Qualidade das Escolas*), launched in 1992, was the first self-evaluation project in Portugal that brought interest to the correlation between evaluating the school and its quality. Nevertheless, it was in 1998, with the pilot-project launched by the European Community, that the bases for internal evaluation of schools found its true intent. Portugal was the only country that continued this project, 'School Education Quality Evaluation' (*Avaliação da Qualidade na Educação Escolar*).

In 2002, Law no. 31/2002 of 20 December was published, establishing an evaluation regime for the basic and secondary education, but while this regime was mandatory, it did not have significant effects in schools' self-evaluation.

In 2006 the way self-evaluation was perceived changed. With the creation of the 'Schools' External Evaluation Program' (*Programa de Avaliação Externa das Escolas*), the school's results were for the first time a matter of public record, creating in the schools the need to be the very best in their fields and to have the highest possible results. School ranking increased the pressure on the schools and the teachers to not only explain the results obtained by students, but also, and as a consequence, to provide the best possible education. Schools started implementing highly demanding methods of evaluating their teachers, services and buildings, as a way of accounting their results.

In spite of this project and similar programs, it is not possible to change some aspects of the school system, such as the school establishments' distribution, which places a greater number of schools in highly populated areas, even when said population is concentrated in a smaller territory. In 2009, the North was the area of the country with the greatest number of schools, with 2,754 public basic schools (primary education), to the Center's (which includes the capital,

Lisbon) 2,115, and the South's (encompassing Alentejo and Algarve) 1,008. Regarding secondary education, on the same year, the North once again was the leader with 173 public secondary schools, against 144 of the Centre and 80 in the South (Alentejo and Algarve put together).

The Portuguese mandatory education system is divided into 2 stages, primary and secondary school. Primary school is called basic education and has 4 different stages: 1st cycle that lasts from 1st through 4th grade (children aged 6 to 9 years old), 2nd cycle that encompasses 5th and 6th grades (children aged 10 to 12 years old), and 3rd cycle 7th, 8th, and 9th grades (children aged 13 to 15). The secondary education, 10th, 11th and 12th grades (children aged 16 to 18) only became mandatory in 2009, with the Law no. 85/2009 of 27 August. While primary school has a strict mandatory curriculum (encompassing a wide array of subjects, from Portuguese to Math, History and Natural Sciences, Music and Physical Education), in the secondary school students are allowed to choose an area of expertise (such as Sciences, Humanities, Economics Literature or Art) according to what they want to pursue in their careers.

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

According to Social Security's Report 'Annual Characterization of Children and Young People Fostering', the number of children in foster care has diminished during the past decade. In 2006, 12,245 children had been taken in by the State, a number which lowered to 8,557 in 2012. Children and youth homes and temporarily shelter centres take in the vast majority of abandoned children, up to 89%.

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

In order to provide free primary and secondary education to Portuguese children and young people, Portugal has adopted some measures designed for this purpose.

One of the oldest measures still in effect was approved by the Decree-Law no. 26/99 of 28 January, called Social Education Ticket (*Vale Social da Educação*). This regime allows the employer to give tickets to their employees in order to help them with expenses with their children's education, tickets which replace a part of their income. At first, these tickets were only applicable

to minors younger than seven years old, but recently (2014) its range was enlarged, allowing young people up until 25 years old that depend of their parents to get these tickets, with the maximum value of EUR 1,100 per year.

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue

Youth unemployment is not only a Portuguese emerging problem but also an European problem. Currently, youth unemployment affects thousands of young people in Portugal and unfortunately this fact affects not only academically low-qualified individuals but also, and in great scale, students with high degrees. There is no one single factor that has caused the dramatic state of youth unemployment in Portugal, but instead a vast array of them interlaced, such as technological progress and increasing competition, as well as the great number of college graduate students that presently exist.

Statistics show that, as a norm, youth unemployment has been higher than general unemployment in Portugal. In the year of 2000, youth unemployment was 8.6% while general unemployment was 3.9%. This 4.7% difference increased in the subsequent years; by 2003 it had gone up to 8.2% (14.5% for youth unemployment and 6.3% for general unemployment), and in 2006 to 8.5% (the first category reached 16.2% while the second was in 7.7%).

It is widely acknowledged, though, that the crises had a big effect in these numbers, both categories of unemployment growing exponentially. In 2009, while general unemployment did not reach the 10% (9.5%) youth unemployment was 20%. In 2010 the difference was 11.5% (22.3% for youth and 10.8% for general) and in 2011 that difference reached 17.2%. In 2012 the biggest gap is recorded: 37.7% of young people was unemployed while the general unemployment rate was 15.9%, which makes a difference a whopping 21.8%.

To control this ongoing difference several strategies were adopted, some to provide better access to employment and others as a direct support to employment.

In the first category the Program New Opportunities (*Programa Novas Oportunidades*) was one of the country's biggest bets in educational training. This program allowed students to learn a trade (hairdresser, electrician, waiter, among others), and have practical experience upon the conclusion of those (technical) studies. While the intentions of the program were benign, it was

highly criticized for its low-demanding criteria, and as a result it was shut down in March 2013. Another program worth mentioning is the INOV internships that provide students with the opportunity to do internships within the context of a companies and businesses.

In the second category, the 2010 Employment Initiative (*Iniciativa Emprego 2010*) created measures that intended to stimulate job creation and to promote the professional insertion of unemployed.

In July 2013, the Portuguese Republic Assembly approved Resolution no. 95/2013 in which three recommendations were made to the Portuguese Government in order to adopt measures to prevent and fight youth unemployment. The suggested measures included issuing a request to the proper European agencies for the creation of a European fund that would allow Member States to implement emergency national programs to combat youth unemployment; the definition of plans to finance micro, small and medium enterprises that would allow them to hire young unemployed people; and to promote the increase of education levels of young people to make them more employable.

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

We do not know or otherwise have any data about concrete austerity measures that had resulted on the *weakening* of the previous policies.

6. OTHER ISSUES

Are there any other relevant issues regarding the ESC, and not covered by the questions above, in your MS? Please describe the applicable legal framework and explain how it is not in compliance with the ESC

There are no other issues we would like to address in this Report: a general description of austerity measures' impact over social rights in Portugal and its relations with ECS were already pointed out in the previous sections.

7. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

The complaint system was introduced in the European Social Charter in 1995 while a process of revitalization of the Charter was going on. The Council of Europe adopted a Protocol providing for a complaint system which came into force three years later. Portugal ratified this Protocol on 20 March 1998⁸⁵, after being one of the first States signing it, as early as 9 November 1995.

As it widely known, originally the only system that ensured that the parties complied with its obligations under the ECS was a system of reporting, under which the parties reported every two years on the implementation of the treaty within its territories. After that, the report was seen and discussed by the European Committee on Social Rights and also by the Committee of Ministers. If, at the end of the process, the state was not fully complying with the treaty, the latter body could make a recommendation to the state party.

The whole Charter was facing some problems and specifically the reporting system was very inefficient. Those were the main reasons why, in the 90's, the Council of Europe embarked in a process of revitalization of the treaty. According to the Explanatory Report on the Protocol, the introduction of a system of collective complaints is 'designed to increase the efficiency of supervisory machinery based solely on the submission of governmental reports. In particular, this system should increase participation.'

Therefore the new complaint system was created to promote the effective enforcement of the social rights guaranteed by the treaty. The first complaint was made in October 1998 and by 2004, 23 have been made.

Despite the numbers, it is important to examine how the complaint system has worked so far and if, within a context of austerity measures, it actually promoted the enforcement of the obligations.

⁸⁵ By means of both Resolution no. 69/97 of 6 December (Assembly of the Republic) and Decree no. 72/97 of 6 December (President of the Republic).

Since 2008, when the crisis began in Portugal and the need for austerity measures was felt, **Portugal had only one complaint within the collective complaint system.** We will now analyse this complaint to see how it turned out.⁸⁶

On 23 April 2010, a complaint submitted by the European Roma Rights Centre (ERRC) against Portugal was registered by the Committee on the grounds that the sum of housing-related injustices suffered by Roma contravened Articles 16, 30 and 31 of the Revised Charter, alone or in conjunction with Article E.

In particular, ERRC complained about the lack of adequate and effective measures to ensure them housing solutions. According to the Centre, the failure in the implementation of the governmental re-housing programs lead to severe problems concerning the infra-structures (“inadequately sized areas”, “poor infra-structure”, “exposed to inclement weather conditions”) and even to the “segregation” of the Roma population in Portugal. In a nutshell, one may refer three main concerns raised by the Committee, all in conjunction with the non-discrimination provision (Article E):

- Whether the housing infra-structures provided by the Portuguese authorities respected article 31 of ECS (including decision on segregation and concerning whether the cultural differences of the Roma were respected);
- Regarding the right of the family to social, legal and economic protection enshrined in article 16 of ECS, whether the government failed to collect data concerning the Roma population given the importance of that information for future policies;
- Whether the coordination at a central level of municipal policies on re-housing failed to comply with article 30 of the ECS, especially where local entities pursued housing policies that led in practice to the social exclusion of Roma populations.

In relation to the latter issue, the Committee took into account new developments on the current situation and changed its positive opinion of the Portuguese government actions on the Roma situation regarding the period from 1 January 2005 to 31 December 2007. According to the Committee, the present policies are ineffectively coordinated, insufficiently funded and

⁸⁶ *European Roma Rights Centre v. Portugal*, Complaint no. 61/2010
<https://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC61Merits_en.pdf> accessed 30 June 2015.

discriminatory. As a result, one must conclude that Roma's situation on housing is now worse than it was during the last temporal period analysed by the Committee.

The Committee found Portuguese Government breached the above-mentioned provisions and condemned the government to pay EUR 2,000 as compensation.

In conclusion, the collective complaint system is very seldom used against the Portuguese authorities. In general, the fact is that only about one-third of the parties of the Charter have accepted the system. Eventually, it can be seen as an effective mechanism to monitor the compliance of domestic laws with the provisions of the Charter and to provide an adequate solution for the tensions that will surely arise as a consequence of austerity domestic measures. Concerning Portugal, however, it has to be said that the complaint system has not been effective during these last years. It must be underlined that **none of the most relevant austerity measures** that were described *supra* were **tested under the system of collective complaints**.

8. CONCLUSIONS

It seems to this point relevant to highlight some of the main remarks one can conclude when assessing the information above gathered as a whole. This will provide a comprehensive view of the evolution and impact that the austerity measures, in combination with the economic and social effect of the crisis, have had on the legal and political aspects in Portugal concerning the protection of social rights.

It is safe to say that ESC provides a rather high set of standards when it comes to the protection of fundamental rights, ranging from the classical protection of the basic economic rights, but also stretching forward on more detailed and densified set of rules and principles.

It is however true that, in the Portuguese specific constitutional environment, there was already a wide protection of almost every of these rights covered in the international documents, as the 1976 Constitution was somehow ground-breaking on the protection of the fundamental rights, even those of an economic, social or cultural nature.

The duality that was provided by having the Constitution in conformity with ESC can explain some of the minor impacts that austerity measures have had on the country, because of the

simple fact that its own constitutional architecture seemed to block many of the politics intended to restrict fundamental guarantees.

This report shows clearly a tension between the strength/legitimacy of these constitutional guarantees and the set of politics that austerity measures tried to apply on the economical tissue of the Portuguese economy: on one hand one might say that the austerity measures have had an impact, especially on the domains of Salaries and Tax burdens; on the other, however, this was always kept within the confines of a strong commitment of the Constitutional Court to the protection and safeguard of the fundamental Liberties which therefore rendered less uniform the application of some of these measures.

One thing that was particularly worrying was the effects that it might have had on the standards of democracy/legitimacy, when considering the possible reduction of the general quality of living through State Budget reduction of costs. It seems that the fundamental basis of Democracy, as well as the constitutional consensus with respect to the application of austerity measures have however maintained intact, with minor incidents, with a general acceptance of the consequences and implications of such application. This can be widely confirmed through the analysis of the latest data concerning the number of complaints addressed to the Committee: there was not a substantial increase on the use of the collective right of Complaint and neither there was an increase on the number of situations of in compliance with the provisions of the Charter.

In conclusion, the austerity measures have had an economic and political impact on the Portuguese society. They have tested the constitutional limits on some sensitive subjects such as pensions, salaries or taxes, demanding a new attention of the legal community to sociological aspects of politics. The Portuguese, as a people, learnt how to react to this impact through their own constitutional tools, having proved benefit the existence of a Constitutional Court as the last resort to the safeguard of the Fundamental Rights. This reaction was always in a strong collaboration with civil society and privates, through a strong sense of citizenship, providing the help to those in need and ensuring that the respect for the ESC was always met at its best.

9. TABLES OF CASE LAW AND LEGISLATION

9.1. Table of Cases

9.1.1. Portuguese Constitutional Court⁸⁷

- Ruling no. 399/2010 of 27 October (Proc. no. 523/10).
- Ruling no. 396/2011 of 21 September (Proc. no. 72/11).
- Ruling no. 353/2012 of 5 July (Proc. no. 40/12).
- Ruling no. 187/2013 of 5 April (Proc. no. 2/13).
- Ruling no. 474/2013 of 29 August (Proc. no. 754/13).
- Ruling no. 602/2013 of 20 September (Proc. no. 531/12).
- Ruling no. 862/2013 of 19 December (Proc. no. 1260/13).
- Ruling no. 413/2014 of 30 May (Proc. no. 14/14).
- Ruling no. 574/2014 of 14 August (Proc. no. 818/14).
- Ruling no. 575/2014 of 14 August (Proc. no. 819/14).

9.1.2. European Committee of Social Rights

- *European Roma Rights Centre v. Portugal*, Complaint no. 61/2010
<https://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC61Merits_en.pdf> accessed 30 June 2015.

9.2. Legislation⁸⁸

* The Report refers to almost a hundred diplomas which are fully identified in each occasion: it would be a useless exercise to provide a List of them.

⁸⁷ All the Constitutional Court's Rulings are available at <<http://www.tribunalconstitucional.pt/tc/acordaos/>>.

⁸⁸ All Portuguese legislation can be found at <<https://dre.pt/web/guest/pesquisa-avancada>>.

10. BIBLIOGRAPHY AND ONLINE RESOURCES

10.1. Books

- Leitão L, *Direito do Trabalho* (3rd edn, Almedina 2012) [Portuguese].
- Medeiros R, *A Constituição Portuguesa num Contexto Global* (Universidade Católica Editora 2015) [Portuguese].
- Morais C, *Curso de Direito Constitucional. Teoria da Constituição em Tempo de Crise do Estado Social* (t. II vol. 2 Coimbra Editora 2014) [Portuguese].
- Novais J, *Em Defesa do Tribunal Constitucional* (Almedina 2014) [Portuguese].
- Ribeiro G/Coutinho L (org.), *O Tribunal Constitucional e a Crise. Ensaio Crítico* (Almedina 2014) [Portuguese].

10.2. Articles

- Acconero G & Pinto P, ‘«Mild Mannered?» Protest and Mobilisation in Portugal under Austerity, 2010-2013’ [2015] *West European Politics*, 38:3, 491-515.
- Cabral R, ‘The Euro Crisis and Portugal’s Dilemma’ [2013] *Intereconomics* 2013 1 27-32.
- Capucha L/Bomba T/Fernandes R/Matos G, ‘Portugal – a virtuous path towards minimum income?’, [2005] *Welfare State Reform in Southern Europe. Fighting poverty and social exclusion in Italy, Portugal and Greece* (ed. Maurizio Ferrera, Routledge 2005) 163.
- Dias T, ‘The True Cost of Austerity and Inequality. Portugal Case Study’ (Oxfam Case Study September 2013) <<https://www.oxfam.org/sites/www.oxfam.org/files/cs-true-cost-austerity-inequality-portugal-120913-en.pdf>> accessed 30 June 2015.
- Gorjão P, ‘Portugal and the Straitjacket of the European Financial Crisis’ [2012] *The International Spectator*, Vol. 47, No. 4, December 2012, 64-68.
- Martins D, ‘Labour Law in Portugal Between 2011 and 2014’ (written for the “Young Scholars Meeting” of the “XI European Regional Congress 2014”, September 2014)

<http://isssl.org/wp-content/uploads/2014/08/Portuguese-National-Report.pdf>

accessed 30 June 2015.

- Pedroso P, 'Portugal and the Global Crisis. The impact of austerity on the economy, the social model and the performance of the state' (Friederich Ebert Stiftung Study April 2014) <<http://library.fes.de/pdf-files/id/10722.pdf>> accessed 30 June 2015.
- Ramalho M, 'Portuguese Labour Law and Industrial Relations During the Crisis' (Working Paper no. 54, Governance and Tripartism Department – International Labour Office, Geneva, November 2013) <http://www.ilo.org/ifpdial/information-resources/publications/WCMS_232798/lang--en/index.htm> accessed 30 June 2015.
- 'O olhar do Tribunal Constitucional sobre a Reforma Laboral – Algumas Reflexões' [2014] Para Jorge Leite – Escritos Jurídico-Laborais, (volume I, Coimbra Editora 2015) 757 [Portuguese].
- Silva L, 'Sujeitos Colectivos' [2002] Estudos do Instituto do Direito do Trabalho (Almedina 2002) [Portuguese].

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

Yes, Romania signed and ratified the 1961 European Social Charter revised at Strasbourg, on the 3rd of May 1996, Law n. 74 of May 1999¹. The paper presents all the necessary information requested by CoE and incorporates the content of the European Social Charter² in the Romanian legal system. The current act is being held and protected by the Labour Ministry, under the direct coordination of the Romanian Government.

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

Under the agreement established between the Romanian Government and the International Monetary Fund, Romania promised to reduce the number of employees in the Public Administration System, increase the amount of revenue income tax, increase the minimum age of retirement and to establish plans for the safe and future development of the economic system in Romania.

Under the first agreement, signed in 2009, the International Monetary Fund agreed to finance a loan of nearly EUR 6.2 million in order to fix the financial deficit. In the first stage, the Government promised that it will enhance its legislation system in order to improve the performance and to reduce the level of corruption from the public system. In 2009 the financial deficit was around 5.9% out of the total state income. The agreement with the IMF established a new amount of the total state income, from 5.9% to 6.8%. During the first stage of implementation, the Romanian Government decided to cut 25% of the wages of the civil servants and of the employees working in the public system (financed through public funds), and

¹ Law 74/ 3rd May 1999, Issued by the Parliament of Romania, published in Monitorul Oficial No. 193, 4th May 1999 - <http://www.mmuncii.ro/pub/imagemanager/images/file/Legislatie/LEGI/L74-1999.pdf>.

² Romania ratified 65 of the 98 paragraphs of the ESC.

15% from the pension fund. The next stage hit the fiscal and tax system, when the added tax value was increased from 19% to 24% (still the current value in 2015). The last measure was established in order to raise the retirement minimum age, from 60 to 65 for male workers and from 58 to 63 for female workers.

The 2010 report from the IMF showed that the financial crisis and the financial deficit were heading on the right track, regarding Romania's progression, as the deficit turned from 5.9% to 5.2% in just 11 months. The initial plan was to raise the quantum of the deficit in order to create more jobs on a shorter term so that the economic system would expand on a longer lasting term.

Even though the final report on austerity measures on 2010-2014 has not been published yet, the preliminary results lead towards the reduction of the tax deficit. The first step in this direction was made by the Government under a test project set to be established in three phases. The first phase was initiated in the beginning of 2012, when the added tax value on bread and pastry items was reduced from 24% to 9%. The results were positive, as the IRS was no longer required to follow up the "black market", since the tax value was lower than ever. The second phase consists in lowering the tax added value from 24% to 9% for the rest of the food categories. Starting from January 2016 there will be a major change in the tax added value, as the Government has recently announced, which will result in an increase in the public budget at national level.

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

The social and collective bargaining rights are exercised through workers unions. In Romania, the trade unions (workers' organizations) are defending the rights of their members arising from labour laws, statutes of civil servants, collective agreements and individual employment contracts.

In exercising the powers referred above, trade unions have the right to take any action required by law, including the power to formulate actions on behalf of their members on the basis of a

written mandate given by them. The action cannot be brought or continued by the trade union if the member expressed concerns or expressly waives the right to trial.

Furthermore, in exercising the powers provided by the Social Dialogue Law (Law n. 62 of 2011), trade unions have the right to access court proceedings in order to defend the rights of their members, rights that are arising from labour laws, statutes of civil servants or collective agreements and individual employment contracts.

Law n. 62 on the social dialogue, adopted on the 10th of May 2011, states that collective agreements can be negotiated and concluded only at company level, group of undertakings or sectoral level (branch of activity). An undertaking belongs to one of the mentioned sectors according to the criteria of its main activity that is registered according to the national trade register.

Moreover, companies from the same sector defined as belonging to the same division, group or class, may set up volunteer groups, in order to negotiate collective agreements at that level. Employers who intend to negotiate collective agreements can constitute a voluntary group of units, both by judicial decision by the competent court and/or by written consent or other written agreement between the parties.

Collective bargaining is mandatory in the case of undertakings having more than 20 employees. If the undertaking has less than 21 employees, collective bargaining is not mandatory but allowed.

Only representative trade unions and representative employers' organization can participate in a collective bargaining and conclude a collective agreement.

In all the cases, according to the law, the initiative to bargain collectively belongs to the employer or employers' organization.

The employer or the employers' organization initiates collective bargaining by at least 45 calendar days before the expiry of an existent collective agreement or before expiration of applicability of the clauses stipulated in the addenda of the collective agreement.

The duration of collective bargaining shall not exceed 60 calendar days. The only exception permitted is when this takes place by consent of the parties.

Also, collective agreements may contain the right for periodic renegotiation of any clauses agreed between the parties.

If the employer or employers' organization does not initiate the negotiation, it will start only with a written request of the trade union's representative or of the elected representatives of employees, within 10 calendar days of the request being communicated. In this case, within 5 calendar days from the trade union's/elected employees' representatives' request, the employer or the employers' organization must invite all parties who are entitled to negotiate the collective agreement to the collective bargaining.

At the first negotiation meeting, the parties will establish what information is public and what is confidential which means that this information will remain between the parties. The parties will also establish all the information that the employer shall provide to the trade union delegates or elected representatives of the employees, according to the law and also the date on which this obligation is due.

The conditions in order to keep the confidentiality of the information provided by the employer are settled by Law n. 467/2006, establishing a general framework for informing and consulting employees. According to the law, the employees' representatives, and any experts who assist them, are not authorized to reveal to employees or to third parties, any information which, in the legitimate interest of the undertaking or establishment, has expressly been provided to them in confidence. This obligation shall continue to apply wherever the mentioned representatives or experts are, even after expiry of their terms in office. In addition, the employer is not obliged to communicate information or undertake consultation when the nature of that information or consultation is such that, according to objective criteria, it would seriously harm the functioning of the undertaking or establishment or would be prejudicial to it.

In any cases, the information which the employer or employers' organization will provide the delegates union or employee representatives, as appropriate, shall at least include data on economic and financial situation to date and the employment situation.

Also at the first meeting of the negotiating parties, the following points will be recorded in the minutes.

- The nominal composition of negotiating teams for each part, based on written mandate.

- The names of persons authorized to sign the collective agreement.
- The maximum duration of negotiations agreed by the parties.
- The location and timing of meetings.
- The proof of the representativeness of the negotiating parties.
- The evidence of convening all parties entitled to participate in the negotiations.
- Other details of the negotiation.

The date of the first official meeting is considered to be the date when negotiations were initiated. Afterwards, each negotiation session will end with a minutes recording the contents of the meeting, signed by the representatives authorized by the negotiating parties.

Regarding the relations between the parties, as we all know, because it is a private legal relationship, there is always a stance of equality during the negotiation of the terms and also, when the collective agreement is signed. The law forbids any interference from public authorities, whatever the form or way, during the negotiations, the conclusion, the performance, the modification and termination of collective agreements.

The terms of collective agreements may establish rights and obligations within the limits and conditions provided by law. At the conclusion of collective agreements, legal provisions regarding rights of the employees have a minimal character. Thus, collective agreements may not contain provisions that establish rights to a level that is inferior to those established by law and by the applicable collective agreement concluded at a higher level.

The law states clearly that (individual) employment contracts cannot contain clauses establishing a lower-level of rights than the one applicable according to the collective bargaining agreements.

Apart from the collective bargaining, the law also settles a form of trade union involvement in the decisional process at undertaking's level. The board of administration or other equivalent bodies must communicate to the trade union in written all the decisions regarding the professional, economic and social problems, within two working days from the date of the meeting.

The employer may invite the representative trade union at undertaking level to participate in Board of administration, or any other governing body similar to it, including, for public administration, in discussing the professional, economic and social problems.

In order to promote and also to protect the professional, economic and social rights of their members, trade unions have the right to receive from employers or their organizations all the necessary information in order to negotiate collective agreements or, by case, under the law, they will have access to other forms of agreements having a collective nature.

During the process of social dialogue different conflicts called 'conflicts of interests' may occur. Collective labour conflicts (conflicts of interest) can be triggered in the following situations:

- The employer or employers' organization refuses to start the collective bargaining, while not having signed such a contract or agreement or the previous one having ended.
- The employer or employers' organization does not accept claims made by employees.
- The parties don't reach to an agreement on a contract or collective agreement until the date agreed to finalize the negotiations.
- Collective labour conflict is triggered only after prior registration thereof, as follows:
 - At company level, the representative trade union or, as appropriate, the elected employees' representatives notify the employer about the collective labour conflict triggered and will also notify the local labour inspectorate in writing.
 - At group of undertakings level, trade union organizations have to notify each member of the group of undertakings and employers' organization established at a group level about the collective labour conflict onset. They also have to notify, in writing, the Ministry of Labour, Family and Social Protection.
 - At sectoral level, trade union organizations have to notify each undertaking in which they have members and the employers' organizations about the collective labour conflict. The Ministry of Labour, Family and Social Protection will also be notified in writing about the existent collective labour dispute.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

In economics, austerity is the policy of reducing government budget deficits. Austerity policies may include spending cuts, tax increases, or a mixture of both. Austerity may be undertaken to demonstrate the government's fiscal discipline to their creditors and credit rating agencies by bringing revenues closer to expenditures. In Romania austerity measures gave also a new course to the relations between the employee and the employer. This happened when the new law on social dialogue was adopted.

The Law n. 62/2011 on social dialogue created tougher conditions for the representativeness of trade unions (workers' organizations) and, at the same time, it generalized the collective bargaining at the company level.

As an aid for companies which already passed through a burdensome rise of VAT, the number of workers required in order to recognise that a trade union is representative at company level was raised to 50%+1 of the total number of the employees. This has happened even if the unionisation rate was approximately 24% in 2008. That made social dialog between employees and employers very difficult and a fair negotiation between these two parties almost impossible.

Another change was the repeal of the possibility to conclude collective labour agreements at national level. That gives us a current situation in which most of employees are not covered by a collective agreement. That was possible due to the fact that the Law n. 62/2011 of social dialog repealed Law 130/1996 of the collective labour agreement.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

The international economic crisis is a period characterized by a dramatic drop in global economic activity. In any country it manifests itself by decreasing economic power of that country resulting in a decrease in the GDP (Gross Domestic Product) loss of liquidity and rise / fall in prices due to inflation / deflation. The crisis began in December 2007 in America and

caused changes at macroeconomic and microeconomic level. Economic crises can take the form of economic depression and sometimes can lead to economic collapse.

Another important drawback of the crisis was the emphasizing of the gap between working people and persons receiving pension. This was cumulated with the actions of the Government that recklessly spent funds to the detriment of sustainable and viable investments to strengthen the infrastructure of Romanian business sector.

A measure relating the Article 4 ESC was announced in 6th of May 2010 by the President Traian Basescu. He stated:

We need to reduce the wage bill for the entire budget unit in Romania with 25% and by the end of the year, heads of institutions have the obligation to make selection and to choose the best of the employees!

This means a reduction in wages for the entire public sector that was later to affect the entire purchasing power of Romanians, but also the economy itself. “And this measure should be taken from 1st of June”.

At the time, the staff salaries accounted for 28% of the budget. Social spending accounted for 12% of GDP, which represents over 35% of the State budget. If we sum up, we will have as a result 65% from the State Budget for these expenses.

There was a complex action of dismissal in the public sector and in less than two years 150,000 civil servants were dismissed. This action was a very unpopular measure, but it was presented as the only chance to rebalance the State Budget according with the necessity for strategic investments in sectors that enhance the national economy.

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by their own efforts or from other sources?

The state provides assistance to people with limited or insufficient resources necessary for care and development of personal living. State aid data is regulated in Law n. 292/2011 on social

assistance, Law n. 277/2010 on family support allowance and the Law n. 416/2001 regarding the minimum guaranteed income.

Under the Law n. 292/2011 on social assistance, Article 7, social assistance benefits are a form of adding to or replacing income from work and can be selective, universal or divided into categories.

Under the same law, social assistance for persons with disabilities are grouped in the sustained aid budget, supported by local budget aid for disasters or aid in nature, consisting of food, supplies and goods for personal use.

In Article 16 of the same law, the right to social assistance is granted at the request of the person who is entitled, family representative or the legal representative of the entitled person, accompanied by supporting documents on the factor that determine receiving benefits.

In addition to material aid, the state provides disadvantaged people, social services designed to make available assistance and support to ensure basic needs, personal care or contribute to the recovery, rehabilitation, insertion or social reintegration.

Provision of social benefits aims at preventing and fighting poverty, supporting children and their families and supporting people with special needs.

By preventing and combating poverty, the state aims to insure access for vulnerable persons to certain fundamental rights such as the right to housing, the right to social assistance, the right to health care, right to education and the right to a job.

By providing social care for children, the state provides protection by respecting all rights of the child and his family. Thus, families with children are offered some financial aid and tax incentives in order to assure the child's upbringing and care.

A vulnerable group of people, which the state is obliged to protect is represented by persons with disabilities. The state must provide them with specific measures of protection and social assistance, according to particular needs, based on the principle of ensuring equal opportunities. Basically, they are entitled to allowances, have the right to education, right to health, the right to justice and right to participate actively in community life.

Older people represent a vulnerable population group with specific needs, due to the limitations and fragility characteristic of physiological aging. The State intervenes in their care and provides

benefits for social assistance and social services appropriate to their needs, which consist in care allowance, allowances to cover the costs of food and sustaining nutritional supplements, urban transport facilities, the purchase of food and spa treatment.

In Article 1 (1), Law n. 416/2001 on the minimum guaranteed income certifies that families and single persons are entitled to a guaranteed minimum income as a form of social assistance. This minimum income relates to the social reference indicator and sets monthly income per family or individual. Like the benefits contained in Law n. 292/2011, the minimum guaranteed income shall be granted on application and affidavit, accompanied by supporting documents relating to family structure as well as revenue.

Another form of social assistance is regulated in Law n. 277/2010 on family support allowance. This allowance is intended to supplement, not substitute, the income of families in order to provide better conditions for growth, care and education.

This form of social assistance is offered to families with average monthly net income less than 0.40 ISR (Indicator of Social Reference) of between 0.40 and 0.70. This form of social assistance is also granted on application and affidavit accompanied by documents showing family structure, income and, if necessary, the school attendance of the child or children in care.

3.1.2. Persons who are unable to secure adequate resources either by their own efforts or from other sources due to illness?

According to Government Emergency Ordinance on leave and allowances for health insurance, the persons who are insured in the public health insurance system are entitled to compensation in case of illness during their employment. The Government Emergency Ordinance reads that medical leave allowances for temporary disability is paid by the employer for the first 5 days and then from the budget of the National Fund for health insurance, up to a maximum limit of 183 days in a year. This maximum limit can be exceeded if the temporary disability is caused by tuberculosis, heart disease or AIDS.

The medical leave allowances for temporary disability including for the persons in quarantine, consists of 75% of the person's average monthly income in the last 6 months. The maximum of such allowance is set to 12 monthly minimum salaries. The medical leave allowances for

temporary disability represents 100% of the person's average monthly income in the last 6 months for patients suffering of tuberculosis, AIDS and contagious diseases type A.

Besides temporary disability compensation, the person who is insured enjoys a spa treatment between 15 and 21 days if the temporary work disability lasts more than 90 consecutive days,

Another category of people receiving compensation are parents or guardians who take care of a sick child aged up to 7 years or a child with a disability aged up to 18 years. Allowance in this case represents 85% of the person's average monthly income in the last 6 months (with a limit of 12 monthly minimum salaries).

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

In general, the austerity measures were not directly targeting the social security system, the impact is only indirect, meaning that allowances and aids are calculated based on a social indicator reference, whose value is set by the law on insurance unemployment (RON 500 / approx. EUR 120) and not based on the minimum wage as it was previously.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

Public services which deal with poor, disadvantaged or unprivileged families can be found in the form of governmental institutions as well as non-governmental institutions that are not funded by any public authorities. Help in this sector comes under the form of payment as well as counselling and orientation services that serve to establish a possible future for an individual, as well as for a family. Payment comes in the form of social care, but certain criteria can result in multiple institutional bodies getting involved in the alleviation of personal and or family want. Private services are found in the form of associations that benefit from European financing and grants for developing work on this topic, and in this field.

The austerity measures did not have a massive impact on the measures/authorities that operate in this field, although financing has suffered a small setback because of those measures, which

did not impact the final beneficiary. This small setback was caused by general fund cuts around governmental institutions and percentages dropping with around 10-15 points regarding general funding for the institutions in this field; but their management turned this around and decided to cut costs from their own network, and not from the end beneficiary. Ditto, the end beneficiary continued to receive the same amount of money, while costs were cut internally in the institutions.

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

As a first mention, Article 30 was not accepted by Romania when the European Social Charter was ratified in 1999 and as a result there are no legal obligations regarding it. However, social inclusion and the promotion of effective access of persons who live or risk living in a situation of poverty are in the centre of many public policies of our State and we are able to do an analysis in the light of Article 30 of ESC.

Currently, measures taken by the State against poverty and social exclusion usually follow two main directions: those linked to the social security system and the provisions and policies that aim to reduce unemployment.

4.1. Social Assistance System

The Romanian legislation uses for the persons who live or risk living in a situation of poverty the term of persons/groups of persons under vulnerability. The most important definition can be found in the Law n. 292/2011 on social assistance, where vulnerable groups of persons are described to be those people who are in danger to lose the capacity to provide for their daily needs, caused by health problems, physical disabilities, poverty, drug dependence, or other situations related to social and economic exclusion. Statistics provided by Eurostat showed that

at the end of 2013, 40.4% of the Romanians were at risk of poverty and social exclusion. In the period 2008 - 2013, the risk of poverty and social exclusion decreased slightly (as 44.2% of the population was exposed to poverty and social exclusion in 2008). In the same period, the relative poverty percentage of the population was situated between 23.3% (2008) and 22.4% (2013). Main reasons associated to the risk of poverty and social exclusion are material resources deprivation, social transfers and households with low working rates.

A general legal frame related to social exclusion can be found in the national social security system established by the Law n. 292/2011 for social assistance, and it is represented by a set of institutions, measures and actions taken by the State, involving central and local government authorities and civil society, with the objective to prevent, mitigate or eliminate the temporary or permanent situations that lead to poverty and social exclusion of the persons, families, groups or communities.

The social assistance benefits are described in the law as a form of supplement or a replacement of the income from work, in order to ensure a minimum standard of living, and a form of support to promote social inclusion and increase the quality of life of certain categories of persons. Based on this, we can find in the Romanian legislation direct social benefits for preventing and combating poverty and social exclusion risk (example social benefits from the state/public budget, focused grants for the categories of population at risk of poverty, emergency aid from the state budget and/or local budgets provided for situations due to natural disasters, fires etc.), social assistance benefits for child and family support (parental leave allowance³, child benefit⁴), allowances for people with disabilities and for their care, social benefits for special situations.

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 (Resolution No. 799/2014), which proposes to give the directions for the future measures in terms of

³ Parental leave allowance is a benefit awarded to one of the parents when he or she gives up his or her professional activity to raise a child. According to the Government Emergency Ordinance No. 111/2010, the allowance represents 85% of the parent income for the last 12 months, up to a limit of RON 3400 (approximately EUR 770) - for a 12 months of vacation or RON 1,200 - for a 24 months of vacation, and not less than RON 600.

⁴ A monthly fixed allowance received after the age of two and up until the age of 18; the child must attend school in order to receive it (Law n. 61/1993).

employment, social protection, access to finance, education, health, social housing, social participation, policies for rural and marginalized urban communities, minorities.

4.2. Inclusion on the Labour Market

Related to the promotion of the access of persons to employment, the Law n. 76/2002, as stated in Article 3, establishes a legal frame which aims to: prevent unemployment and combat its social effects; employment or reinstatement in employment of people looking for a job; support the employment of persons belonging to disadvantaged populations; ensure equal opportunities in the labour market; stimulate unemployed to fill for a job; encourage employers to hire people looking for a job; improve occupational structure economic sectors and geographical areas; increase labour mobility in the structural changes occurring in the national economy; ensure protection of persons within the unemployment insurance system.

The institution in charge with most of the mentioned objectives is the National Agency for Employment (ANOFM)⁵, which is currently responsible for the passive measures related to the labour market (unemployment allowance) and active measures such as vocational counselling, vocational training, outplacement services, labour mediation, consultancy for starting a business, financial support for the employers who hire people who live or risk living in situation of poverty, credit facilities to create new jobs and more. In some situations, employment services are offered by other public entities directly or by private entities (NGOs or companies). The most projects involving collaboration between public and private entities were those funded from the European Union, such as those on the *Operational Programme for Human Resources Development (POSDRU)*.

With the role to offer a better coordination of the measures settled by the law, it was developed the National Strategy and the Action Plan for Occupying the Labour Force 2014 -2020, whose main objective is to reach a sustainable level of labour employment, supported by economic competitiveness, social cohesion and sustainable development. The strategy includes objectives and measures meant to integrate vulnerable categories of persons in the labour market and its implementation involves many Government bodies (Ministry of Labour, Family, Social

⁵ More information about the Agency can be found at the address <http://www.anofm.ro/files/NAE%20Romania%20Overview.pdf>.

Protection and Elderly, Ministry of Education etc.), but unfortunately Civil Society Organizations does not have a very clear role among the stakeholders.

An effective measure that aims at removing obstacles related to difficulties related to the lack of experience of young people when they are trying to access the labour market could be the financing by the State of a placement period⁶ for the young university graduates, a six months paid internship. The employers who agree to provide this kind of placements receives for every intern a grant of 1.5 the social reference indicator established by law, which goes approximately around 3/4 of the minimum net salary.

4.3. Access to Housing, Education, Health and Culture

Regarding housing, a rent subsidy is awarded to individuals or families whose economic situation does not allow access to housing or renting a property in housing market conditions, according to the Law n. 144/1996. The social housing benefit is offered by local public authorities (local councils), on the basis of priority established annually by these limited available fund, taking into account both free housing from the state existing homes and to be completed in the investment objectives contained in the programs of social housing construction. Another measure, launched after the financial crisis stroke in 2008, is the “First Home” program; the State guarantees the loans contracted for the purchase or the construction of a dwelling, within the maximum of EUR 75,000.

The effective access of persons who live or risk living in a situation of poverty to education is ensured by the existence of a social grant for other costs than the tuition, which is offered for in every stage of the education system. Another benefit is the free or reduced access to transportation while a person is enrolled within the education system. Education in Romania is based on a tuition-free, egalitarian system. Access to free education is guaranteed by Article 32 in the Constitution of Romania. At the age of six, children must join the "preparatory school year", which is mandatory in order to enter the first grade. School starts at the age of seven, and is compulsory until the tenth grade (which corresponds with the age of sixteen or seventeen). The school educational cycle ends after the twelfth grade, when students graduate the baccalaureate.

⁶ Law n. 335 from 2013.

Regarding the medical care, Article 34 of the Constitution guarantees the protection of health and Law n. 95/2006 for the reform of the medical system establishes the conditions for receiving the medical care. Romania has a national health insurance system, based on a 5.5% contribution of the citizen revenue, which offers access to most of the medical primary, preventive and curative procedures, while young people under 18 years and those between 18 and 26 enrolled in a form of education, apprenticeship, or those who come from the child protection system benefit of an exemption. The aforementioned law offers, for those who are not insured, emergency medical care, counselling for infectious diseases and care during the pregnancy and post birth.

Access to culture is offered free mainly through the public libraries network.

4.4. Austerity Measures and Social Exclusion

When it comes to look over the impact of the austerity measures over the vulnerable groups we have to provide first a summary of what the measures taken related to the financial crisis consist of:

- Cutting 25% of salaries in the public sector, including bonuses, allowances and other remuneration.
- Unemployment benefits were reduced by 15%.
- Freezing the pension reference point in 2010 and 2011.
- The decrease by 15% of the pensions, which later was ruled unconstitutional by the Constitutional Court.
- The Government decision to increase VAT from 19% to 24%.
- The introduction of a contribution for the health insurance system of 5.5% for pensions higher than RON 740 (ruled unconstitutional and imposed only for what exceeds RON 740).

We saw that 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%. Absolute poverty shows in fact the capacity

of the population to cover with their income basic needs: absolute needs (food, shelter) plus health care, education and specific needs depending on where people live.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

The legislation regarding support of persons coping with disabilities is mainly found in Law 448/2006, which has suffered latter updates and modifications along the years, the latest update taking place in 2009 and was regarding the applying methodology. It is important to mention that although the law did not suffer major modifications, its applying methodology did – fact which shows interest in good practice and useful appliance, as well as compliance with the ESC revised on the 3rd of May 1996 at Strasbourg, which in turn was ratified through Law 74/1999.

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

Measures regarding the right to education can be found in Section 2 of Law 448/2006, and it is later described in the same section with the rights and methodology. It is said in the document that “Education of persons with disabilities is an integrated part of the national education system, coordinated by the Ministry of Education, Research and Youth” – so we can safely assume that it is part of a general body. References to the National Authority of Youth can be found in the law, regarding the allowances for study costs of persons with disabilities. It is later said that “For assuring access of persons with disabilities, public authorities have the obligation to take the following specific measures” followed by a general rights list to be respected. This comes to reinforce that this is part of a general framework, although some specialised bodies exist for very specific tasks.

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment,

adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

Measures referring to employment are again found in Law 448/2006, in Section 5, Capitol 5. There is a general listing of rights and accessibility options for persons with disabilities in the line of work. Guidance, evaluation and general assistance is available freely and confidentially, according to Articles 72 and 73. Although the obligation for public authorities is “to realise/diversify/support financially programs regarding professional orientation of persons with disabilities” and “to create the necessary framework for access to evaluation and professional orientation in any job line, according to the abilities of persons with disabilities” the methodology initially didn’t describe the methods through which these would be carried out, later on an Emergency Ordinance of the Government regulated the methods by designating specialised bodies to take care of this task. More clear obligations are found in Article 78, where it is said in the 2nd Paragraph that employers (public or private) that have at least 50 employees “have the obligation to employ persons with disabilities in at least 4% of the total employee count”. The 3rd Paragraph specifies that employers who do not meet this condition must either “pay a monthly sum to the government budget representing 50% of the minimum net salary of the number of persons with disabilities that should have been employed” or:

To buy services/products realised through the own activities of persons with disabilities employed in sheltered employment units, in the sum of money that would have been otherwise sent to the state.

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

The austerity measures did not have a massive impact on the measures described, given that the legislation was not especially flexible, although it was a good practice which employers respected throughout the austerity period. The only effect that was seen was a small decline in the total amounts of money that was allowed for the different bodies that had obligations in these fields, but that is a separate factor which was forced upon the state by the IMF, and was agreed upon by both parties.

5.2. Children and Young Persons (Article 17 ESC)

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

The general framework regarding Children and Young Persons is found in Law 272/2004, and it includes rights, duties as well as some methodology for applying the law and references to specialised bodies that must help apply the law. The specialised bodies benefit from great support from the government part as well as international aids and projects carried out through EU financing. Assurance of the training, and education through maintenance and establishment of institutions is being enforced through a number of general as well as specialised bodies. In the case of training and education the general body is represented by the Ministry of Labour, Family and Social Protection in collaboration with the Ministry of Education, Research, Youth and Sport. Together these bodies create, apply and finance the general framework for education and training purposes.

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

The first reference to protection of a child that “is separated from its family” can be found in Section 1, Article 55 – where basic criteria for categorisation reside, and terms of eligibility. The afore mentioned terms can be simply put so that the conditions to be met are “the young person has capacity”, “has benefited from a special protection measure”, “does not continue study” and “does not have the possibility of reintegration in the family”. If these conditions are met, the person may benefit upon request of a maximum 2 year period of special protection. This consists mainly of offering of a job and/or a place to live, as well as professional counselling.

Firstly an individual protection plan for reintegration is conceived and if that fails, “placement/ special kind of placement in an emergency and specialized assistance” represent other options. Article 60 details special protection measures and who is eligible, more exactly children which have deceased parents, unknown, stripped of parenting rights, children who have been abused or uncared for properly, etc.

Later on, placement is described as a first measure of support, this being a measure in which a child is placed in a specialised facility for children who are eligible for support because of the measures described in the first paragraph.

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

Regarding free primary and secondary education, this is a measure supported by the Ministry of Education, in theory. Access to tertiary education is supported, albeit freely upon some conditions of eligibility. The details are found in Law 1/2011 and it is stated in Article 9, 3rd Paragraph that “State education is free. For some activities, levels, cycles and study programmes can require some charges, following conditions imposed by the present law”. Along for support of primary and secondary education, every child benefits from a RON 42 allowance per month (approximately EUR 10); this being higher in cases of children with special needs (e.g. orphans, children with disabilities etc.). Referring to tertiary education, in the form of institutions that are beneath universities and above high school, access is made freely in case of state facilities if eligibility and high grades are met. The MS has taken steps for free access under this form. Regarding the encouragement to regular school attendance, steps were taken as to fine the parents a specific amount of money for their children missing school as well as more severe punishments to the student under the form of general grade lowering in the case of multiple absences.

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue

According the National Labour Occupying Agency, in January 2015 the number of people unemployed was:

- 14.53% - under 25 years old.
- 8.35% - 25-29 years old.
- 21.84% - 30-39 years old.

What is to be seen is that the lowest rate is that of those between 25 and 29 years old, and the second is that of the people under 25 years old, the rate for people over 55 being the third with 14.58%.

The issue is being addressed by encouraging employers to choose young people through fiscal advantages such as tax cuts, grants representing money, and various other benefits regarding the employment of different protected categories of young people. For example, business companies that employ young people will have a smaller percentage profit tax at the end of the year. The benefits are mainly tax cuts and grants, besides the bureaucracy reduction in case of social care taxes but these benefits apply in a plethora of cases. Companies may end up benefitting of off these, but they may do so because of different reasons. While one company will have employed a large number of culturally diverse people, others will have very young employees.

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

Again, the austerity measures had an effect albeit not a massive one. The measures were held up during the austerity period and employers actually looked upon them as a possibility of surviving the austerity; by decreasing their costs in relation with the contributions they owed to the state.

Regarding the school system benefits, the austerity measures had no effect that would be visible upon the child/young person.

As for the special protection/aid part and general protection of children regarding training and education, the measures did not have a direct effect on the person themselves, but it did have on the system overall, the salaries of social assistance and people working in the institutions being decreased.

6. OTHER ISSUES

Are there any other relevant issues regarding the ESC, and not covered by the questions above, in your MS? Please describe the applicable legal framework and explain how it is not in compliance with the ESC

Any relevant issue regarding the ESC was covered by the content of the questions listed above.

7. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

The Additional Protocol to the European Social Charter providing for a system of collective complaints has now been enforced in some states for over a decade, being thought out as a “compliment to the basic mechanism for the supervision of the application of the Charter”, as the Explanatory Report of the Protocol states. Ideally, the effectiveness of the Charter would be considerably increased by the initiative of the organizations that are entitled to submit complaints in the light of the 1st article of the Additional Protocol (international organizations of employees and trade unions and other international non-governmental organizations).

The collective social consciousness is being, therefore, challenged in the member states that recognize this right by the provision of an accessible and short procedure for the organizations that are eligible in the light of the 1st article of the Protocol to submit a collective complaint.

Since Romania has not yet ratified the aforementioned Additional Protocol, the aim of this part of the report will be to:

- Identify the possible reasons for which the ratification has not yet taken place;
- Highlight some of the public initiatives in the direction of ratification that have been taken in Romania;
- Outline particular situations of categories of employees in Romania that would, theoretically, benefit from the collective complaint system and INGOs or other organizations that may have the ability to submit a collective complaint.

Firstly, it is necessary to highlight the fact that the collective complaint system, in spite of the fundament it has been thought out on, has faced world-wide criticism for its lack of effectiveness, given some unsatisfactory prior outcomes in national legislations in member states that have ratified the aforementioned Protocol. While Romania's hesitation concerning the ratification of the Protocol has never been argued officially and publicly, the possible main reason may be the lack of effectiveness of the Committee of Ministers' recommendations. Particularly, “the ECSR has no power to order remedies, being able to only deliver declaratory

decisions.⁷ Moreover, in the light of Article 20 of the Romanian Constitution, the Romanian national court may apply the international regulations that are favourable to the individual directly, given any inconsistencies between the covenants and treaties on the fundamental rights Romania is a party to, and the national laws.

Secondly, as far as the public initiatives that sustain and propose the ratification of the Additional Protocol in Romania are concerned, this section will point out the public opinion awareness level, proceeding with law proposals in the Romanian Parliament, as well as public debates and press releases concerning the collective complaint system.

To begin with, a recent bill will be analysed, as following: on the 23rd of February 2015, a group of ten members of the Romanian Parliament had submitted a law proposal⁸ concerning the ratification of the Additional Protocol that establishes the collective complaint system. In the memorandum of reasons, the initiators are basing their proposal motives around the “the strengthening of the Romanian democratic system”, as well as “the consolidation of human rights” in Romania. One can state that the need for a collective complaint system has not been particularized in the aforementioned memorandum of reasons, therefore such a need may not exist or may not have been adequately quantified by the group of initiators. However, this law proposal may be considered as a turning point in the level of awareness given by the legislators towards the social and economic rights of the employees in Romania.

In the beginning of March 2015, the Economic and Social Council endorsed the aforementioned bill, while the Legislative Council rightfully denied the proposal, by invoking a procedural error. More specifically, the initiators did not have the capacity of proposing such a law, since the head of state is the only one competent to initiate a law that implicates the state on an international level. Most recently, in the 31st of March 2015, the Bureau of the Deputies' Chamber has also outlined the arguments presented by the Legislative Council, considering that the bill did not fulfil the constitutional conditions that were required for such a law proposal. Although the fate of this specific initiative is naturally sealed, it can be highlighted as an example of interest towards a collective complaint system.

⁷ Maša Marochini, INDIVISIBILITY AND INTERDEPENDENCE OF HUMAN RIGHTS – SHOULD THERE BE LIMITS TO THE EUROPEAN COURT OF HUMAN RIGHTS READING SIGNIFICANT SOCIO-ECONOMIC ELEMENTS INTO CONVENTION RIGHTS?, p. 108

⁸ PL-X81/25.02.2015.

Furthermore, the number of national debates that might entice the public opinion towards emphasizing the need of a collective complaint system in Romania is, unfortunately, small. The National Union Bureau has initiated such a public debate that emphasised the need of the ratification of the Additional Protocol that regards the Collective Complaint system in the August of 2012, taking place at the House of Parliament in Bucharest.

Lastly, the report will take a national focus approach by highlighting a particular case in which vulnerable Romanian categories of employees might benefit from the effectiveness of a collective complaint system, as well as outlining some of the organisations that might sustain them in this process and submit such a complaint.

For example, the increase of the minimal income to 60% of the value of the medium income is one of the obligations that are undertaken by Romania by ratifying the European Social Chart. However, Romania does not respect this particular disposition, as the *minimum* gross wage is currently RON 975, and the *medium* gross wage is RON 2,385.

Therefore, currently, the minimum wage is 20% less than the European Social Charter standards. With the occasion of several interventions in the field of labour law, the aforementioned Romanian National Union Bureau has drawn attention to this particular problem, by bringing it under the attention of political parties. Although the minimum wage has been increased just recently, the Romanian government predicts the standardization of the minimum wage by 2018-2019. Until then, if Romania would ratify the Additional Protocol that regards the Collective Complaint system, the Romanian National Union would be entitled to submit a complaint that implies the increase of the minimum wage to the European Social Chart's standards.

8. CONCLUSIONS

This report provides information about the compliance between the measures that have been taken in Romania and the European Social Charter, focusing on the Labour Rights, Social Protection, Social Exclusion and Social Rights of Persons with Disabilities, Children and Young People and on the Complaint System.

Through the Law n. 74/ 1999, Romania has ratified the 1961 European Social Charter revised at Strasbourg, incorporating the content of the ESC in the legal system.

Looking back to the 2008 economic crisis, Romania had to take austerity measures in order to respect the agreement between the International Monetary Fund and Romanian Government.

To fulfil the objectives successfully, the Government had to cut 25% of the wages of the civil servants and of the employees working in the public system and 15% from the pension fund, to increase the added tax value from 19% to 24% and to raise the retirement age limit from 60 to 65 for male workers and from 58 to 63 for female workers. In just eleven months, the financial deficit turned from 5.9% to 5.2, therefore Romania's progress was visible. The preliminary results of the final report on austerity measures on 2010-2014 (which hasn't been published yet) lead towards the reduction of the tax deficit.

Aiming to mediate the relationship between employees and employers, Labour Rights represent a point of interest in the Social Rights topic, according to the Article 5 and 6 ESC. In Romania, trade unions are defending the rights of their members arising from labour laws, statutes of civil servants, collective agreements and individual employment contracts, and according to the Social Dialogue Law (Law n. 62/ 2011) they can be defended even in court. Also, collective agreements can be negotiated and concluded only at company level, group of undertakings or sectoral level. There are situations during the process of social dialogue that may occur called collective labour conflicts (conflicts of interest).

The right to collective bargaining and respect of social dialogue has been affected by austerity measures in the economics field (the policy of reducing government budget deficits) when the new law on Social Dialogue was adopted. Giving a new course to relations between employees and employers, Law n. 62/ 2011 established tougher conditions for the representativeness of trade unions, generalized the collective bargaining at the company level and repealed Law n. 130/ 1996 of Collective Labour Agreement - fact that has led to the current situation in which most of employees are not covered by a collective agreement.

In fact, all the labour rights were affected by austerity measures. As it was said, the important drawbacks of the crisis consisted in emphasising the gap between working people, persons that were receiving a pension and in actions of the government that recklessly spend funds. Related to the Article 4 ESC, in 2010 the President of Romania reduced the wage bill for the entire budget unit in our country with 25% and the heads of the institutions had the obligation to make

a selection and choose the best employees. This measure was taken from 1st of June and in less than two years, 150,000 of civil servants were dismissed.

With all the economic instability, the Social Protection was an aspect that required attention. For persons who are unable to secure adequate resources either by their own or from other sourced efforts, the state provides assistance established in the Law n. 292/2011 on social assistance, the Law n. 277/2010 on family support allowance and in the Law n. 416/2001 regarding the minimum guaranteed income. If this incapacity is caused by illness, during their employment the persons who are insured in the public health insurance system are entitled to compensation - according to Government Emergency Ordinance on leave and allowances for health insurance. Medical leave allowance is 75% of the person's average monthly income in the last 6 months.

Fortunately, the social security system was not a direct target of the austerity measures. Even so, an indirect impact took place regarding the calculation of the allowances and aids.

In Romania, there are appropriate public services that provide advice and personal help to prevent, to remove or to alleviate personal or family want. These can be found in governmental or non-governmental institutions and they deal with poor, disadvantaged or unprivileged families. The help comes under the form of payment, counselling and orientation services in order to establish a possible future for an individual, as well as for a family. The austerity measures didn't have a massive impact in this field.

Even though Article 30 ESC regarding the poverty level, deprivation and social exclusion was not accepted by Romania when the ESC was ratified and there are no legal obligations regarding, measures were taken against poverty and social exclusion on two main directions: those linked to the social security system and the provisions and policies that aim to reduce unemployment. The Law n. 292/ 2011 on Social Assistance establishes the definition of vulnerable groups of people. It has to be mentioned that at the end of 2013, 40.4% of Romanians were at risk of poverty and social exclusion. The main reasons were: 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 (Resolution No. 799/2014), which proposes to give the directions for the future measures. In Article 3 of Law n. 76/2002 there is an established a legal frame for promotion of the access of persons to employment. National Agency for Employment is the

institution in charge of most of objectives mentioned in Article 3. In some situations, employment services are offered by other public entities directly or by private entities such as NGOs or companies. Another important aspect is the access to housing, health, education and culture. Regarding housing, a rent subsidy is awarded to individuals or families whose economic situation does not allow access to housing or renting a property in housing market conditions, according to the Law n. 144/1996. After the 2008 financial crisis, a measure that has been taken was "First Home" program. Access to free education is guaranteed by Article 32 of the Constitution of Romania and the effective access is ensured by the existence of a social grant, offered in every stage of the educational system. Article 34 of Constitution of Romania guarantees protection of health. Regarding the medical care there is Law n. 95/2006 for the reform of the medical system, which establishes the conditions for receiving the medical care. Based on the 5.5% contribution of the citizen revenue, Romania a functioning a national health insurance system. Public Library networks facilitate cultural access. Austerity measures and social exclusion were related to the financial crisis as we summed up at the 4th point of the report.

There are categories of persons in need of special protection, such as persons with disabilities, children and young people. The Law n. 448/ 2006 establishes the legislation of supporting the persons with disabilities. In this legal framework measures are taken regarding even to the right of education (section 2) and measures regarding employment (Section 5). The Law n. 272/ 2004 represent the measures taken in the educational and training area for children and young people, setting out rights and duties. To provide protection and special aid for children and young persons who are temporarily or definitively deprived of their family's support some conditions were established in Section I, Article 55 of Law n. 272/ 2004 and if they are met, the person may benefit upon request of a maximum 2 years period of special protection. Also, regarding to access to education, in Romania primary and secondary education is supported by the Ministry of Education. Tertiary education can be also supported by the state upon some conditions of eligibility (details in the Law n. 1/2011). Analysing the youth unemployment in Romania (compared to the general unemployment), this category of "under 25 years old" does not have the lowest rate. Employers are encouraged to choose young people by fiscal advantages (like tax cuts, grants etc.). Fortunately, these categories of persons with disabilities, children and young people didn't suffer a massive impact because of the austerity measures.

Regarding to the Complaint System, Romania has not ratified the Additional Protocol to the ESC for a system of collective complaints. The reasons for this hesitation have never been argued officially and publicly. One of the causes can be the lack of effectiveness of the Committee of Ministers'. Even so, there was a public initiative in direction of ratification that have been taken in Romania as an example of interest towards a collective complaint system: at the beginning of 2015, a law proposal concerning the ratification of the Additional Protocol was submitted by 10 members of Romanian Parliament. Unfortunately, the bill didn't fulfil the constitutional conditions that were required for such a law proposal.

It can be seen that our legislation and measures need some improvement on different areas, but there are also aspects in which major events such as the financial crisis didn't have any massive impact.

9. TABLE OF LEGISLATION

- Law n. 74 (for the ratification of the European Social Charter (revised) adopted in Strasbourg on the on the 3rd of May 1996) 1999 [Legea pentru ratificarea Cartei Sociale Europene Revizuite adoptata la Strasbourg la 3 Mai 1996].
- Law n. 292 (on Social Assistance) 2011 [Legea Asistentei Sociale].
- Law n. 76 (regarding the Unemployment Social Insurance System and the Incentive of Work Force Occupancy) 2002 [Legea privind sistemul asigurarilor pentru somaj si stimularea ocuparii fortei de munca].
- Law n. 114 (regarding Housing) 1996 [Legea Locuintei].
- Law n. 95 (on the Reform of the Healthcare System) 2006 (Legea privind reforma in domeniul sanatatii).
- Law n. 277 (regarding allowance for family support) 2010 [Legea privind alocatia pentru sustinerea familiei].
- Law n. 416 (regarding the minimum guaranteed income) 2001 [Legea privind venitul minim garantat].
- Law n. 448 (regarding the protection and the promotion of the rights of disabled people) 2006 [Legea privind protectia si promovarea drepturilor persoanelor cu handicap].
- Law n. 272 (regarding the protection and promotion of the children's rights) 2004 [Legea privind protectia si promovarea drepturilor copilului].
- Law n. 1 (National Education Law) 2011 [Legea educatiei nationale].
- Law n. 279 (regarding the apprenticeship at the workplace) 2005 [Legea privind ucenicia la locul de munca].
- National Strategy and the Action Plan for Social Inclusion and Fight Against Poverty for 2014-2020
- Statistics by the Ministry of Labour.

10. BIBLIOGRAPHY AND ONLINE RESOURCES

- <http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ESCRBooklet/Romanian.pdf>.
- www.mmuncii.ro - Ministry of Labor, Family, and Social Protection of Romania.
- http://www.mmuncii.ro/pub/imagemanager/images/file/Domenii/Relatii%20bilaterale-organizatii/prezentare_carta.pdf.
- <http://www.mmuncii.ro/pub/imagemanager/images/file/Legislatie/LEGI/L74-1999.pdf>.
- http://www.cdep.ro/pls/legis/legis_pck.http_act_text?id=19646.
- www.anofm.ro - National Agency for Employment of Romania.
- Maša Marochini, INDIVISIBILITY AND INTERDEPENDENCE OF HUMAN RIGHTS – SHOULD THERE BE LIMITS TO THE EUROPEAN COURT OF HUMAN RIGHTS READING SIGNIFICANT SOCIO-ECONOMIC ELEMENTS INTO CONVENTION RIGHTS?
<http://discovery.dundee.ac.uk/portal/en/theses/indivisibility-andinterdependence-of-human-rights-should-there-be-limits-to-the-european-court-of-human-rights-reading-significant-socioeconomic-elements-into-convention-rights%28e4b096d3-2bfc-4f82-8f47-26f1d37d1d25%29.html>.
- http://www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=14642.
- <http://www.bns.ro/wps/portal/Acasa/Pagina-Principala/lut/p/b1/>.
- <http://www.cdep.ro/pls/dic/site.page?id=371>.
- <http://www.coe.int/T/DGHL/Monitoring/SocialCharter/>

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

The European Social Charter protects the social and economic rights of citizens and installs the control mechanism designed to guarantee their observance by the Member States. Open for signing in 1961 (came into force in 1965) was reconsidered for its updating and inclusion in it of new categories of the rights taking into account the social changes, which happened in the European countries.

In the new Charter open for signing on May 3, 1996 and which came into force on July 1, 1999, all of the rights, declared in the European Social Charter of 1961, Protocols and additions to it, were reduced to one document and also a number of new provisions were recorded. As result, the content (scope) of the guaranteed social rights was expanded.

On the basis of the subparagraph “b” point 1 of Article 15 of the Federal law "On International Treaties of the Russian Federation"¹ the European Social Charter of May 3, 1996 (amended) (hereinafter the Charter) is subject to ratification as it contains the basic rights and freedoms of a person.

Thus ratification of the Charter is an implementation of one of the obligations of the Russian Federation taken on at the accession to the Council of Europe in February, 1996 and a confirmation of the commitment to the principles and norms of the European legal order in the social sphere.

A comparative analysis of compliance of the legislation of the Russian Federation with the provisions of the Charter shows that the institutional and legal bases of social and economic guarantees of the rights of citizens existing in Russia generally correspond to the provisions of the Charter.

¹ Federal Law “ On International Treaties of the Russian Federation”, 15.07.1995, law database Consultant+: http://www.consultant.ru/document/cons_doc_LAW_160092/.

At the same time, the level of guarantees realized for separate groups of the population is defined by economic opportunities of the State. An increase of this level to the standards set by the Charter is linked to further economic development of the country.

The Charter was signed by the Russian Federation in Strasbourg on September 14, 2000.

Ratification of the Charter has provided to the citizens additional guarantees of protection of the social and economic rights, and also served as a reference point for the carrying out of further social reforms.

Russian Federation has accepted the obligations set out in 19 articles of 31 in the Charter, including 6 articles (1, 5, 6, 7, 16 and 20) of the 9 obligatory ones (these are articles related to the right to work, the right to organize, the right bargain collectively, the right of children and young persons to protection, the right of the family to social, legal and economic protection, the right to vocational guidance, the right to equal opportunities and equal treatment in employment and professional activity without discrimination on the basis of a gender).

Now from the three remaining obligatory articles – 12, 13 and 19 – Article 13 is not presented for ratification and both Article 12 "The right to social security" and Article 19 "The right of migrant workers and their families to protection and assistance" are only partially ratified (in Article 12 the provision on creation and support of social security system, and in Article 19 – in part "to secure for such workers lawfully within their territories treatment not less favorable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons"; also in part "to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire"²). In case the articles are fully ratified additional financial and economic obligations would follow, the legislation of Russian Federation would be brought in line with hereof.

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

² Official web-resource of the Council of Europe <http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm>.

As a consequence of the 2008 economic and financial crisis MS adopted the austerity measures. They are defined as budget reduction on social needs³ in particular tax increment, pensions' reforms resulting in loss of social protection, furthermore in high unemployment⁴ and poverty.⁵ For comparison, International Labour Organisation underlined a post-crisis threat to the whole social security in Greece due to decrease of salaries with increased by 28% unemployment. The same situation was held in other MS like Finland, Ireland, Portugal, etc.⁶ However, these measures may not reach their objective to improve the crisis, otherwise more deepening it.⁷ Instead it is better to end social cut and turn to increment of public revenues⁸ such as creation of new quality employment opportunities, equal access to employment and any social support.⁹

After 10 years of economic and social well-being Russian Federation was confronted with tough global challenges, particularly with GDP reduction more than 2%.¹⁰ Due to non-competitiveness of certain economic sectors happened a wide range of negative consequences such as huge industrial collapse, unemployment and low salaries. Correspondingly, the Government began to undertake austerity measures. Notwithstanding, the main priority was the responsibility of a State before its population which means strengthening the social protection,¹¹ development of high medical treatment, etc. All pre-arranged measures were going to be performed: in accordance with inflation wage indexation, increment of average social pension to minimum of subsistence,¹² development of program concerning healthy lifestyle¹³ that would

³ Harald Hauben Michael Coucheir, Jan Spooren, Donal McAnaney, PhD, Claude Delfosse; Assessing the impact of European governments' austerity plans on the rights of people with disabilities, EU Report, 2012, p. 5.

⁴ Sebwa Domingos, The Impact of Austerity Measures on People and Local Government, AuthorHouse, 2014.

⁵ World Social Protection Report 2014-2015, International Labour Organisation; See also at <http://www.un.org/esa/socdev/rwss/docs/2010/chapter2.pdf>.

⁶ OECD, OECD Public Governance Reviews Finland: Working Together to Sustain Success, 2010, p.54.

⁷ Resolution 1884 (2012), Parliamentary Assembly Council of Europe, Doc. 12948, report of the Committee on Social Affairs, Health and Sustainable development, para 3.

⁸ Ibid., para 6

⁹ Ibid., para 7.

¹⁰ Long-term social economic development conception of Russian Federation till 2020; See at <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=Law;n=90601>.

¹¹ Federal Law of Russian Federation "About social protection of disabled people" 24 November 1995 N 181-FL (ed. 21.07.2014).

¹² Resolution of Federal Council of Russian Federation's Federal Assembly 29 October 2014 N 499-FC "Priorities of the government of Russian Federation in social sphere in the medium term"; Federal Law of Russian Federation "About governmental social support" 7 July 1999 N 178-FL (ed. 21.07.2014), Art.12.1.

¹³ Decree of the President of Russian Federation "About national strategy in the interests of the children on 2012-2017" 1 June 2012 N 761.

help to prevent disturbing impact of crisis. Specifically, Government is continuing these measures now as well. Moreover, amount of unemployment relief extended more than in 1.5 times as well as possibilities to receive additional education.¹⁴ However, austerity measures concerning the intensive reliance on the working class through extension of the pension age¹⁵ and invitation of immigrant workers¹⁶ in no way may cease bad consequences.

Such policy emphasizes the understanding that human being is a cornerstone of modern economic policy, but the above-mentioned pressure only destroy the social sphere of a particular country, underlying the non-profitability of austerity measures.

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

The Constitution of the Russian Federation of 12 December 1993 and the Labor Code of The Russian Federation of 31 December 2001 (hereinafter “Russian Labor Code”) provide for social and collective bargaining rights. The answer to the question above should be divided into two parts; firstly, we would like to deliver the regulations on social rights and secondly, the collective bargaining rights will be governed.

As to the first point, as stipulated in Art. 1 of the Russian Labor Code, the purpose of the labor law shall be setting out official state guarantees of labor rights and freedoms of the nationals, creating favorable conditions for work, protecting rights and interests of both employees and employers.

As to the second point, social rights are exercised in Art. 30 of the Constitution of the Russian Federation whereby “everyone shall have the right to association, including the right to create

¹⁴ The program of austerity measures adopted by government of Russian Federation on 2009; RG. Rule No 4872.

¹⁵ Clara Weiss, Kremlin prepares austerity program, published by the ICFI, 2012; Federal Law of Russian Federation “About modification of Articles 49 and 53 of Federal Law “About military duty and service” 2 April 2014 N 64-FL.

¹⁶ Andrea Peters, Russian government implements austerity as economy falters, published by the ICFI, 2013.

trade unions for the protection of his or her interests. The freedom of activity of public association shall be guaranteed”¹⁷ and in Art. 29 of the Russian Labor Code, namely:

Representatives of employees in the social partnership shall be labor unions and their associations, other labor union organizations stipulated by charters of Russian national labor unions or other representatives elected by employees in the cases stipulated by this Code¹⁸.

Hence, the freedom and right to elect labor unions are recognized by social rights. In order to protect employees' rights at work, to introduce their needs and proposals labor units functions as representative and collective organizations. So it is a special and very important guarantee to employees.

Nowadays we have different labor units that are presented in various fields of work. For example, mining and smelting labor unit¹⁹, Russian labor units of railway workers and transports constructors²⁰, Russian national labor unit for education and science²¹ and many more. The labor units have influence and they benefit employees' rights.

As to the third point, the collective bargaining rights are exercised in Chapter 6. Collective Bargaining of the Russian Labor Code²² (Art. 36-39), in particular it stipulates representatives of employees and employers shall participate in collective bargaining for preparing, concluding and amending the collective contract, agreement and shall be entitled to take initiative on engaging in such bargaining.

We would like to emphasize several aspects of the collective bargaining rights:

- The collective bargaining rights presented in the Russian Labor Code correspond with the international standards: Convention concerning the Promotion of Collective Bargaining (Entry into force: 11 Aug 1983) No. 154; Recommendation concerning the Promotion of Collective Bargaining, 1981, No. 163;

¹⁷ Official English version of the Constitution of Russian Federation [<http://www.constitution.ru/en/10003000-03.htm>].

¹⁸ Labor Code Of The Russian Federation of 31 December 2001 in English [<http://www.ilo.org/dyn/natlex/docs/WEBTEXT/60535/65252/E01RUS01.htm#chap1>].

¹⁹ Official page of the [Mining and smelting labor unit <http://www.gmpr.ru>].

²⁰ Official page of the Russian labor units of railwaysmen and transports constructors [<http://rosprofzhel.rzd.ru>].

²¹ Official page of the Russian national labor unit for education and science [<http://www.eseur.ru>].

²² <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/60535/65252/E01RUS01.htm#chap1>.

- The Russian Labor Code establishes timeframes for a negotiation procedure, conditions for effective conclusion of a collective agreement and subject characteristics;
- Each side is provided with the Guarantees under Art. 39 of the Russian Labor Code.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

In accordance with the Russian Labor Code there is no legal statement of austerity measures in regard to the right to collective bargaining and respect of social dialogue.

As to general the rights and freedoms of man and citizen may be limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State (article 55 (3) of the Constitution of the Russian Federation).

Therefore, the right to collective bargaining and respect of social dialogue could be affected by austerity measures if such austerity measures pursue the aims of art. 55 (3) of the Constitution of the Russian Federation stated above. However, this article has certain restrictions: a) only federal law can impose a restriction; b) the necessity and proportionality criteria; c) the aims²³.

However, the restriction of the right to collective bargaining and respect of social dialogue was not raised by federal law at present time or previously.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

Wage is guaranteed both by the Constitution and the Labour Code, for example, Article 37 provides that “forced labour is prohibited”, and also, in the Russian Federation, according to the Federal Law on the minimum amount of wage, we have a fixed (minimum) amount of wage, which means that the employer cannot pay the employee a lesser amount.

²³ The Constitution of the Russian Federation: dogmatic commentary guidelines (Dmitriev J.A.) – Moscow, «Delovoi Mir», 2009 [http://constitution.garant.ru/science-work/comment/5697462/chapter/2/#block_2000].

The restriction on Labor rights under article 4 ESC may be placed with the establishment of their framework and time period (art. 56 (1) of the Constitution of Russia). It would be followed by an enforcement of the federal law.

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by their own efforts or from other sources?

The social security scheme of the Russian Federation is formalized in the Federal Social Security Act in July 17 1999 № 178²⁴ In the Federal Social Security Act the State Social Security Assistance is defined as the provision of social allowance, social pension supplement, subsidies, social services and essential goods for low-income families, low-income single citizens and other population categories specified in this Federal Act.

The grounds on which the State Social Security Assistance is provided are defined in this Act. According to Rule 7 of this Act, low-income families, low-income single citizens and other population categories specified in the Act that due to circumstances beyond their control have per capita income which is lower than the subsistence level adapted by an appropriate Sub-Federal Unit can be the recipients of the State Social Security Assistance.

Subsistence level capacity of the low-income family or single citizens is defined by an appropriate Sub-Federal Unit, subsistence level values can be specified for demographic groups. In case the subsistence level values are not adopted in a Sub-Federal Unit, the subsistence level values adopted by the Federal Government are applicable.

For instance, the subsistence level for the third quarter of 2014 in the amount of 7,972 Russian Rubles (RUB) per capita and RUB 6,310 for pensioners were adapted by the Government Regulation of the city of Saint Petersburg № 1033 in November 13, 2014²⁵. The subsistence level

²⁴ Legal online data base Consultant Plus http://www.consultant.ru/document/cons_doc_LAW_165963/.

²⁵ Legal online data base Consultant Plus <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=SPB;n=153525;div=LAW;dst=100003,2;rnd=0.059474369743838906>.

data must be published quarterly in the official editions of the Government and Sub-Federal Unit executive bodies.

For the aforementioned population categories the social assistance is provided in the following forms:

- Cash payments (social allowance, subsidies and other payments);
- In-kind aid (fuel, food products, clothes, shoes, medical supplies and other types of in-kind aid).

With respect to the holders of pension according to Regulation 12.1 of the Federal Social Security Act the social supplemental payments are made to them. An aggregate amount of pension holders' endowments is subject to the compulsory pension insurance in accordance with the Compulsory Pension Insurance Federal Act of December 15 2011 # 167²⁶. Provided pension cannot be lower than the pensioner subsistence level data established in response to the Subsistence Level Data Act in the Sub-Federal Unit of the Russian Federation. As for the low-income families in case the aggregate amount of pension holders endowments is lower than the pensioner subsistence level federal social supplemental payments are to be at his/her domicile or at a place of stay.

The Social Security Assistance is provided from the budget resources of the Sub-Federal Units.

In order to be granted the social allowance the citizen has to approach the Social Security Agency and file an application with the following data:

- Information on his/ her family;
- Income level information;
- Beneficially owned belongings;
- Any state social services currently being received.

Not later than 10 days after this application a rejection notice in writing or a social assistance assignment notice in writing must be sent. In need of additional checks of the information provided by the applicant, this time can be extended.

²⁶ Legal online data base Consultant Plus
<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=173423;fld=134;from=165963-417;rnd=0.052143163280561566>.

The social assistance can be also provided in the form of Social Contract. The State Social Security Assistance on the Social Contract basis is provided for the afore-mentioned in Rule 7 citizens in order to stimulate their active acts towards overcoming living difficulties. In the Social Contract the following should be arranged:

- Scope of the agreement;
- Rights and duties of citizens and Social Security Agency when exercising the social assistance;
- Types and amount of the State Social Security Assistance;
- State Social Security Assistance procedure on the Social Contract basis;
- Effective period of Social Contract;
- Procedure for Contract change and termination.

The program of social adaptation where obligatory for recipients measures are mentioned is attached to the Contract. Among such obligatory measures are:

- Seeking employment;
- Getting higher education or further vocational education;
- Carrying out sole proprietorship;
- Personal subsidiary economy management;
- Implementation of other measures aimed at overcoming living difficulties.

This program of social adaptation is established for the period of the Contract effective period. The State Social Security Assistance on the Social Contract basis is provided for the period of 3-12 months according to social adaptation program content. This period of time can be extended by the Social Security Agency on the grounds adapted by a Sub-Federal Unit Act.

The State Social Security Assistance on a Contract basis doesn't lead to discontinuance of a benefit paid without a Contract or to denial of the social assistance assignment.

There is also a Methodology of Social Contract efficiency which was adopted by the Order of the Ministry of Labour and Social Protection in September 30 2013 # 506n/389. The formula of counting off the composite index of the Social Contract efficiency is contained there.²⁷

What is noticeable is that in 2014 the most part of the Social Contracts recipients were the citizens who have children younger than 16. As stated in the Draft Report of the Ministry of Labour and Social Protection in March 30 2015²⁸ to the citizens who have children under 16 years old 28.8 thousand Social Contracts were awarded. It is 76% from the all awarded Social Contracts in Russian Federation in 2014. In general 37.8 thousand Social Contracts were awarded, in respect of all family members 95.7 thousand people were covered by the Social Contract in 2014. The proportion of the population who overcome life difficulties arrived at 33%. The best rated values are in Tomsk region (99.4%), Orenburg region (89.4%) and Khabarovsk district (81.6%).

3.1.2. Persons who are unable to secure adequate resources either by their own efforts or from other sources due to illness?

The State Social Security Assistance is provided according to the types of illnesses.

For instance according to Rule 14 contained in the Federal Prevention of Tuberculosis Extension Act of June 18 2001 # 77²⁹ citizen who is unable to work due to tuberculosis illness has the right his/her workplace to be kept for him/her. During the suspension from work because of tuberculosis (TBC) illness Social State Insurance Benefits are given in compliance with the Russian Federation legislation.

Persons under dispensary observation due to TBC or TBC patients are provided with medical preparations for its cure in the outpatient setting for free. Communicable TBC patient who lives in conditions when a sole room can not be detached for his/her dwelling has the priority in providing him/her with a sole dwelling place in compliance with the Sub-Federal Unit legislation.

²⁷ Official Legal Resource Rossiyskaya Gazeta online <http://www.rg.ru/2014/02/19/socpomosh-dok.html>.

²⁸ Official website of the Ministry of Labour and Social Protection
<http://www.rosmintrud.ru/docs/mintrud/analytics/69/#19>

²⁹ Legal online data base Consultant Plus http://www.consultant.ru/document/cons_doc_LAW_156791/.

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

It is true that an impact was made on the social security scheme by the austerity measures. It could be the austerity measures that lead to the reduction of transport subventions for the certain categories of citizens *inter alia* those who due to circumstances beyond their control have per capita income which is lower than subsistence level adopted by appropriate Sub-Federal Unit can be the recipients of the State Social Security Assistance. According to the Russian Federation Budget Law for the period of 2007, 2008 and 2009³⁰ the amounts of subventions provided equal access to the transportation system for the certain categories of citizens decreased in 2009. When in 2007 the amount was RUB 4,250,735.2, in 2008 it was RUB 4,548,286.7, in 2009 the amount of provided funds arrived at 2,472,925.6 what is on average 1.7 times smaller than it was in 2008 and 2007.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

According to the Federal Social Services Act of December 28 2013 # 442³¹ the social service is an act or acts in the sphere of social assistance that provides permanent, ad-interim or ad-hoc help including emergency assistance for a citizen with improvement of his/her living conditions or broadening his/her capacity to ensure his/her welfare intentions.

According to the Rule 2 of this Act the social assistance is based on the principles of equal access to the social services without any type of discrimination and voluntariness.

The system of social assistance includes Social Services Organizations of Federal and Sub-Federal Unit levels, non-governmental (profit-making and non-profit-making) Social Services Organizations and Social Services Sole Proprietors.

³⁰ Legal online data base Consultant Plus
<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=73345;>
<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=81452;>
[http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=94413.](http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=94413;)

³¹ Legal online data base Consultant Plus [http://www.consultant.ru/document/cons_doc_LAW_166044/#p39.](http://www.consultant.ru/document/cons_doc_LAW_166044/#p39)

The types of social services entrenched in Rule 20 of the Act. The following types of social services may be provided to recipients:

- Social Welfare Services geared towards life-supporting equipment of the social services for a recipient in his/her everyday life;
- Social Medical Services geared towards life-supporting equipment and health preservation for a recipient organizing medical care and regular monitoring for him/her in order to provide health deviations disclosure;
- Social Psychological Services providing help intervening in the mental condition of a recipient for a better adaptation in the community, including anonymous psychological help using hot line;
- Social Pedagogical Services geared towards prophylactic treatment of a recipient's behavior and individual development deviations, shaping positive interests (including leisure time interests), providing help in childrearing practices;
- Social Labour Services geared towards providing help in seeking employment and solving other problems linked to labour adaptation/adoption;
- Social Legal Services geared towards providing help in receiving legal services, including pro bono cases, in the sphere of recipient's legitimate rights;
- Social Services aimed at raising/rising the communicative potential of a recipient who has mental or physical disabilities, including handicapped children;
- Emergency Assistance.

According to the aforementioned/fore-mentioned Draft Report of the Ministry of Labour and Social Protection the acting information transparency is provided for the Social Services organizations. To that effect organizations establish transparent and public data resources contained the information about their movements via publishing it *inter alia* in the official website of the Russian Federation www.bus.gov.ru functioning from December 1 2012.

According to Rule 30 of the mentioned above Federal Law public funds of the Russian Federation Budget System, voluntary endowments, funds of social services recipients in case a

service is provided on the commercial basis, income from the Social Services entrepreneurial activities and other legal activities are the sources of Social Services funding.

The austerity measures hadn't an obvious impact on the Social Services in the sphere of their funding. As stated in the Russian Federation Budget Law for the period of 2007, 2008 and 2009³² the amount of sums the Social Services received in 2007 and 2008 accounted RUB 3,948,296.4 and RUB 4,046,018.1 respectively, but in 2009 Social Services received RUB 6,190,953.1. Still we should take into consideration an inflation rate which amounted 13.28 %³³ in 2008 so that the austerity measures impact is not an obvious one.

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

Russian Federation guarantees support for people who live in a situation of poverty.

Although Russian Labour Code does not contain provisions that encourage employers to hire persons who live or risk living in a situation of poverty, Federal Law «On employment in Russian Federations»³⁴ regulates a situation of unemployment. People who have no job and seek for it can be considered as unemployed if they submit identity papers and documents that prove their qualification to special governmental bodies (Article 3 of the Law “On employment in Russian Federation”). These bodies regularly offer vacant positions in different organizations that suit the application (Article 15 of the Law “On employment in Russian Federation”. During

³² Legal online data base Consultant Plus
[http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=73345;](http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=73345)
[http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=81452;](http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=81452)
[http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=94413.](http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=94413)

³³ Internet site inflationrussia.com where inflation rates are based on the official consumption rates published by the Federal State Statistics Service http://уровень-инфляции.рф/таблица_инфляции.aspx.

³⁴ Federal Law of 19.04.1991 “On employment in Russian Federation” No 1032-1.

the period when persons are not able to find a job, they receive unemployment benefit. The amount of that benefit is (Article 33 of Federal Law «On employment in Russian Federations»):

- First 3 month – 75 percent of their average monthly contributory income;
- Next 4 month – 60 percent of their average monthly contributory income;
- After that – 45 percent of their average monthly contributory income.

However, in all situations, unemployment benefit cannot be more than RUB 4,900 and less than 850 RUB³⁵. For example, minimum wages in Russian Federation³⁶ are RUB 5,925.

Russian Federation provides with social housing persons who are officially indigent and have a need for housing. Constituent entities are responsible to regulate this social sphere and we will apply to regulation of Saint Petersburg by the way of example. The minimum subsistence per capita in Saint Petersburg is RUB 8,479³⁷. People who receive below this level are considered to be indigent. To be considered as a person who has a need in social housing, citizen should:

- Have no place to live at all;
- Or live in place where no enough space is available for him/her;
- Or in place with unsatisfactory conditions of living;
- Or share place with a person with contagious disease³⁸.

Persons who fulfill these requirements are provided with available municipal social housing³⁹.

Because education in Russian Federation is completely free, persons who live in a situation of poverty are provided with access to training and education.

The austerity measures did not have an impact on the poverty level in the Russian Federation. 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. Poverty rate came down to 13.1% in comparison with 13.3% in 2007. In absolute figures the income below the minimum subsistence level had 18.5 million of Russian citizens while in 2007 it was 200 thousand people

³⁵ Government Decision of 17.12.14 No 1382.

³⁶ Federal Law of 19.06.2000 “On minimum wage” No 82-FZ.

³⁷ Saint Petersburg Government Decision of 05.03.2015 No 229.

³⁸ Article 51 of The Housing Code of the Russian Federation.

³⁹ Chapter 8 of The Housing Code of the Russian Federation.

more. The minimum subsistence level in Russian Federation came up as well from RUB 4,005 in 2007 to RUB 4,693 in 2008⁴⁰.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

Russian legislation has established an effective legal regime for persons with disabilities for smooth social integration.

5.1.1.1. *Guidance*

Russian Federation has a duty to guarantee social security in case of disability (Article 39 of the Russian Constitution).

Federal legislation specifies the provisions of Constitution. Federal Law “On social security of persons with disabilities in Russian Federation” is a main measure that regulates public relations in this sphere⁴¹.

People with disabilities are entitled to social services in the manner described in paragraph 2.1.

For example, they are provided with special appliances, which they need for social adaptation (Article 28 of the Law «On social security of persons with disabilities»).

5.1.1.2. *Education*

Russian Federation stipulates that everyone have a right to education. Education in Russian Federation is free and accessible (Article 43 of Russian Constitution).

⁴⁰ Independent news web-portal http://www.ng.ru/economics/2009-05-29/1_bednost.html.

⁴¹ The Federal Law of 20.07.1994 No 181-FZ “On social security of persons with disabilities in Russian Federation”.

Article 19 of the Law “On social security of persons with disabilities” states that Russian Federation provides persons with disabilities with conditions to get education. Education governmental bodies and private organization jointly to social assistance bodies and healthcare bodies are responsible for providing accessible and free pre-school, primary, elementary, secondary and vocational education, as well as free higher education.

According to the Article 79 of the Law “On education”⁴², primary, elementary, secondary and vocational education and professional trainings are conducted in accordance with the individual rehabilitation programme, a non-mandatory document that contains complex of rehabilitation measures.

Persons with disabilities can receive general education in regular schools that have established special conditions for education for people with disabilities. If they want, they can also apply in individual special education organizations. When it is not possible to study in regular schools and such organizations, educational governmental bodies with parental consent provides education at home.

We can find an explanation of the term “special conditions” in the Law “On education”⁴³, article 79. It is a special environment of education that includes special education programmes and methods, special school books and didactic material, special technical means, services of assistant, accessible entrance to educational organization and other conditions that are necessary for a successful studying.

Thus, persons with disabilities in Russian Federation can receive free general education in schools, special organizations or at home. Also, persons with disabilities are provided with accessible and free vocational and higher education, which they can receive if it is in conformity with the individual rehabilitation programme. Russian Federation maintains the governmental program “accessible environment 2011-2015” which was approved by the decision of the Government of Russian Federation.⁴⁴ According to the report of the Ministry of Labour and

⁴² Federal Law of 29.12.2012 No 273-FZ “On education in Russian Federation”.

⁴³ Federal Law of 29.12.2012 No 273-FZ “On education in Russian Federation”.

⁴⁴ Decision of Government of Russian Federation of 15.04.2014 #297.

Social Protection, in 2011-2012 769 schools was adapted, in 2013 – 500 schools⁴⁵. The program is well funded⁴⁶ and theoretically able to be decisive.

Persons with disabilities have a right to apply bachelor's or equivalent programmes and enter higher education institutions without taking part in a competition within the limits of the quota. Every higher education organization establishes its own quota but it cannot be less than 10% of free available vacant places. The only one requirement is to take and succeed in entry examinations. (Article 79 of the Law "On education").

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

Article 20 of the law "On social security of persons with disabilities in Russian Federation" guarantees an employment for persons with disabilities.

Russian Federation establishes a quota for the hiring of persons with disabilities of no less than 2% and no more than 4% of staff in enterprises with more than 100 employees.

In enterprises with no less than 35 employees but no more than 100 employees can be established a quota for the hiring of persons with disabilities by governmental bodies of constituent entities, but no more that 3% of staff.

Each employee with disabilities is provided by an employer with special working conditions depending on his disabled functions and restrictions (Article 23 of the Law "On social security of persons with disabilities"). For example, it is mandatory for an employer to comply with

⁴⁵ Official website of the Ministry of Labour and Social Protection:

<http://www.rosmintrud.ru/docs/mintrud/handicapped/17>;

<http://www.rosmintrud.ru/docs/mintrud/handicapped/16>;

<http://www.rosmintrud.ru/docs/mintrud/handicapped/70>.

⁴⁶ The budget of this project is RUB 168,437,465.6 RUB or USD 3,062,499

<http://www.rosmintrud.ru/ministry/programms/3/0>.

Sanitary Regulations⁴⁷. This document defines exact special conditions that should be provided for specific group of persons with disabilities. Persons with vision problems are provided with work environment with tactile, visual, and hearing guide marks. In case of cardiovascular diseases, person needs to be protected from direct sunlight Shelves should be placed on the shoulders level and they should not be taller than a person.

Currently Russian Federation has not taken any federal measure to encourage employers to hire and maintain in employment persons with disabilities. Several constituent entities of Russian Federation have established regulation that provides employers with tax advantages for the hiring of persons with disabilities. For example in Moscow employers enjoy tax advantages, receive provisions of funds from Moscow city budget and enjoy preferential treatment in governmental orders competition⁴⁸.

According to the article 20 of the Law “On social security of persons with disabilities”⁴⁹ Russian Federation guaranties reservation of vacancies that are the most suitable for persons with disabilities, for example bibliographer or receptionist. The amount of reserved vacancies is established by the decision of the constituent entity.

The Public Chamber of Russian Federation has initiated to create a legislative framework for the promotion of employers hiring of persons with disabilities⁵⁰, because of difficult situation in this social sphere. According to Ministry of Labour and Social Protection data more than 65% of able-bodied persons with disabilities are still unemployed⁵¹.

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

Austerity measures did not do any impact on the described measures and federal legislation has developed in a positive way for last five years. Nevertheless, because of financial crisis Russia is going to reduce funding for subsidizing of non-profit organizations that support social

⁴⁷ Sanitary Regulations SP 2.2.9.2510-09 “Hygienic requirements for working conditions of persons with disabilities”, which are approved by the Resolution of the Chief State Sanitary Doctor of the Russian Federation of 18.05.2009 N 30.

⁴⁸ Article 6 of the Law of the city of Moscow of 22.12.2004 # 90 “On job quotation”.

⁴⁹ The Federal Law of 20.07.1994 No 181-FZ “On social security of persons with disabilities in Russian Federation”.

⁵⁰ <https://www.oprf.ru/press/news/2014/newsitem/26962>,

⁵¹ <http://www.rosmintrud.ru/social/invalid-defence/251>.

vulnerable groups of population including persons with disabilities. The Ministry of Finance has developed a draft act that excludes about 11.5 billions of dollars from provision on financing of such organizations of the Law on Budget⁵². Our personal opinion is that such financial situation adversely affects on opportunities of persons with disabilities to get access to employment, but with respect to guidance and education there is no prospects to deterioration.

5.2. Children and Young Persons (Article 17 ESC)

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

The Russian educational system, as it has been noted many times by major international experts, is one of the most developed and advanced educational systems in the world. For example, the literacy rate in Russia, according to the 2002 census, is 99.4% (99.7% men, 99.2% women). In 2014, the Pearson/Economist Intelligence Unit rated Russian education as 8th best in Europe and 13th best in the world⁵³.

Citizens of Russia have the right for education which is guaranteed by the Constitution. According to Article 43⁵⁴, everyone has the right for education, and the State guarantees accessibility of the primary and secondary school education in the state or municipal educational institutions and enterprises and guarantees that it's free of charge. Also, everyone has the right of free higher education in state or municipal educational institution or enterprise on competitive base. The Russian Federation establishes federal state educational standards and supports various forms of education and self-education.

According to the Federal Law "On Education in the Russian Federation"⁵⁵, the right for education is guaranteed in the Russian Federation, regardless of gender, race, nationality, language, origin, property, social and official status, place of residence, religion, beliefs, membership of public associations, and other circumstances.

⁵² <http://newsbabr.com/msk/?IDE=133650>.

⁵³ <http://www.bbc.com/news/business-27314075>.

⁵⁴ <http://www.constitution.ru/en/10003000-01.htm>.

⁵⁵ Official Legal Resource Rossiyskaya Gazeta online <http://www.rg.ru/2012/12/30/obrazovanie-dok.html>.

In order to realize the right of everyone for education federal government agencies, state authorities of the Russian Federation and local governments create the necessary conditions to obtain a quality education without discrimination of persons with disabilities and assist individuals who have shown outstanding ability in studying.

Education in Russia is provided predominantly by the state and is regulated by the Ministry of Education and Science, which is responsible for the accreditation and licensing of higher education establishments, and for developing and maintaining State Educational Standards. Regional authorities regulate education within their jurisdictions within the prevailing framework of federal laws. In 2004 state spending for education amounted to 3.6% of GDP, or 13% of consolidated state budget. In 2011, the spending on education amounted to USD 20 billion. Private institutions account for 1% of pre-school enrollment, 0.5% of elementary school enrollment and 17% of university-level students⁵⁶.

The public educational system in our country incorporates pre-school, general school, specialized secondary and higher education.

Pre-school consists of kindergartens and crèches. Children there learn reading, writing and arithmetic. But pre-school education isn't compulsory - children can get it at home.

Compulsory education is for children from 6(7) to 17 years of age.

The main link in the system of education is the general school which prepares the younger generation for life and work in modern production. There are various types of schools: general secondary schools, schools specializing in a certain subject, high schools, lyceums and so on. Tuition in most of them is free of charge, but some new types of schools are fee-paying. The term of study in a general secondary school is 11 years and consists of primary, middle and upper stages. At the middle stage of a secondary school the children learn the basic laws of nature and society at the lessons of history, algebra, literature, physics and many others.

After the 9th form pupils have to sit for examinations. Also they have a choice between entering the 10th grade of a general secondary school and enrolling in a specialized secondary or vocational school.

⁵⁶ <http://web.archive.org/web/20080531104416/http://www.ed.gov.ru/uprav/stat/1846/>.

Persons, who finish the general secondary school, receive a secondary education certificate, giving them the right to enter any higher educational establishment. Entrance examinations are held in July and August. Institutions are headed by rectors; the faculties are headed by the deans. One has to study in the institute for 4 or 6 years. Higher educational institutions train students in one or several specializations.

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

The implementation of the rights of children-orphans and children left without parental care is regulated by Federal law from 21.12.1996 N 159-FZ "On additional guarantees of social support of children-orphans and children left without parental care"⁵⁷, and the Federal law from 29.12.2012 N 273-FZ "On education"⁵⁸. According to the law, the maintenance and education of children-orphans and children left without parental care at educational institutions are based on full state support.

In order to ensure the education of children-orphans and children left without parental care, article 6 of the Law provides for them additional guarantees of the right to education.

Orphans and children left without parental care are entitled to receive free first and second primary professional education. They can also study at universities at the expense of the federal budget in the case of the successful passage of introductory tests.

During education these persons can get the following benefits:

- Stipend, the amount of which increases not less than 50% in comparison with the total amount of grants;
- Annual allowance for the purchase of textbooks and supplies in the amount of three-month fellowships;
- 100% of the salary accrued during the period of training and practice.

For students who receive state social scholarship, retains the right to receive general state academic grants.

⁵⁷ Legal online data base Consultant Plus http://www.consultant.ru/document/cons_doc_LAW_173312/.

⁵⁸ Official Legal Resource Rossiyskaya Gazeta online <http://www.rg.ru/2012/12/30/obrazovanie-dok.html>.

These warranties do not apply to commercial educational institution and not having the state accreditation.

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

The right for education guaranteed by the Constitution of The Russian Federation. According to the Article 43:

- Everyone has the right for education.
- The State guarantees accessibility of the primary and secondary school education in the state or municipal educational institutions and enterprises and guarantees that it's free of charge.
- Everyone has the right on free higher education in state or municipal educational institution or enterprise on competitive base.
- The basic general education shall be compulsory. Parents or guardians ensure that their children receive basic general education.
- The Russian Federation establishes federal state educational standards and support various forms of education and self-education.⁵⁹

Pursuant to the provisions of the Constitution of the Russian Federation The Federal Law of 29.12.2012 N 273-FZ (ed. By 31.12.2014) "On Education in the Russian Federation" drafted.

According to article 5 of this law:

Article 5. The right to education. State guarantees the right to education in the Russian Federation

1. In the Russian Federation guarantees the right for education to everyone.
2. The right for education guaranteed in the Russian Federation, regardless of gender, race, nationality, language, origin, property, social and official status, place of residence, religion, beliefs, membership of public associations, and other circumstances.

⁵⁹ <http://www.constitution.ru/10003000/10003000-4.htm>.

5. In order to realize the right of everyone for education federal government agencies, state authorities of the Russian Federation and local governments:

- 1) Create the necessary conditions to obtain a quality education without discrimination of persons with disabilities.
- 2) Assist individuals who have shown outstanding ability in studying.

Full course of studying in Russian schools is 11 years.

School course divided into three stages, officially referred to as the "primary school", "elementary school" and "high school."

- Level I (primary general education) - 4 years;
- Level II (elementary general education) - 5 years;
- Level III (secondary (complete) general education) - 2 years.

The main purpose of the high school - preparation for university entrance.

The government establishes a large number of social guarantees in education.

Students mastering basic educational programs through budgetary allocations from the federal budget, budgets of subjects of the Russian Federation and local budgets within the federal state educational standards are free of charge for using educational textbooks and manuals as well as educational materials and training tools. Students of primary school provided with free meals. Students have some preferences using public transportation.⁶⁰

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue

According to the State Statistics Agency of the Russian Federation: Young people up to 25 years among the unemployed is 23.7%, including 15-19 - 4.5%, 20-24 years - 19.2%. High level of unemployment was observed in the 15-19 age group (32.5%) and 20-24 years age group (12.5%). Compared with January 2013. The unemployment rate in the 15-19 age group increased by 4.9 percentage points, between the ages of 20-24 years - decreased by 1.2 percentage points.

On average among young people aged 15-24 the unemployment rate in January 2014 was 14.2%.

⁶⁰ Official Legal Resource Rossiyskaya Gazeta online <http://www.rg.ru/2012/12/30/obrazovanie-dok.html>.

Efforts to struggle against youth unemployment are implemented not only and not so much the federal government, as the regional authorities of the Russian Federation.⁶¹

In accordance with the Law of the Russian Federation dated April 19, 1991 № 1032-1 «On employment in the Russian Federation" to citizens, including young people, to provide public employment authorities use following methods:

- Assistance to citizens in finding suitable employment and employers;
- Organizing job fairs and training jobs;
- Organization of paid public works;
- Organization of temporary employment of minors;
- Assistance to unemployed citizens in moving and resettling in another place of employment in the direction of the employment services;

In order to acquire practical skills practical training is organized. The main purpose of the practical training is acquisition with practical work experience in a profession (specialty) chosen by a student.

In order to encourage employers to hire graduates the State provides tax compensations and additional payments for hiring young specialists.

One of the priorities of the youth labor market policy is to create favorable conditions for the development of youth entrepreneurship, making opportunities for creating their own business.⁶²

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

There was no impact on described measures. In comparison with the period of the collapse of the Soviet Union, social protection of citizens up to 25 years only became more and more effective.

⁶¹ http://www.gks.ru/bgd/free/b04_03/IssWWW.exe/Stg/d03/36.htm.

⁶² Legal online data base Consultant Plus http://www.consultant.ru/document/cons_doc_LAW_165863/.

6. TABLES OF CASE LAW AND LEGISLATION

6.1. Legislation

- Federal Law “ On International Treaties of the Russian Federation”, 15.07.1995, law database Consultant+: http://www.consultant.ru/document/cons_doc_LAW_160092/.
- Federal Law of Russian Federation “On social protection of disabled people” 24 November 1995 N 181-FL (ed. 21.07.2014).
- Resolution of Federal Council of Russian Federation's Federal Assembly 29 October 2014 N 499-FC “Priorities of the government of Russian Federation in social sphere in the medium term”.
- Federal Law of Russian Federation “On governmental social support” 7 July 1999 N 178-FL (ed. 21.07.2014), Art.12.1.
- Labor Code Of The Russian Federation of 31 December 2001 in English [<http://www.ilo.org/dyn/natlex/docs/WEBTEXT/60535/65252/E01RUS01.htm#chap1>].
- Federal Law of Russian Federation “On modification of Articles 49 and 53 of Federal Law “About military duty and service” 2 April 2014 N 64-FL.
- Federal Law of 19.06.2000 “On minimum wage” No 82-FZ.
- The Federal Law of 20.07.1994 No 181-FZ “On social security of persons with disabilities in Russian Federation”.
- The Housing Code of the Russian Federation.
- The Federal Law of 28.12.2013 No 442-FZ “On basic principles of social services in Russian Federation”.
- Federal Law of 29.12.2012 No 273-FZ “On education in Russian Federation”.
- Federal Law of 19.04.1991 “On employment in Russian Federation” No 1032-1.
- Law of the city of Moscow of 22.12.2004 # 90 “On job quotation”.
- Saint Petersburg Government Decision of 05.03.2015 No 229.

- Government Decision of 17.12.14 No 1382.

6.2. Decrees, Regulations, Orders, Reports and Public Documents

- Long-term social economic development conception of Russian Federation till 2020; See at <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=Law;n=90601>
- Decree of the President of Russian Federation “About national strategy in the interests of the children on 2012-2017” 1 June 2012 N 761
- The program of austerity measures adopted by government of Russian Federation on 2009
- World Social Protection Report 2014-2015, International Labour Organisation. See at <http://www.un.org/esa/socdev/rwss/docs/2010/chapter2.pdf>
- OECD, OECD Public Governance Reviews Finland: Working Together to Sustain Success, 2010
- Harald Hauben Michael Coucheir, Jan Spooren, Donal McAnaney, PhD, Claude Delfosse; Assessing the impact of European governments’ austerity plans on the rights of people with disabilities, EU Report, 2012

7. BIBLIOGRAPHY AND ONLINE RESOURCES

7.1. Books and Articles

- Andrea Peters, Russian government implements austerity as economy falters (ICFI), 2013.
- Clara Weiss, Kremlin prepares austerity program (ICFI), 2012.
- Sebwa Domingos, The Impact of Austerity Measures on People and Local Government (AuthorHouse), 2014.

7.2. Websites, Blogs and Internet Sources

- Official web-resource of the Council of Europe
<http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm>.
- Official page of the [Mining and smelting labor unit <http://www.gmpr.ru>].
- Official page of the Russian labor units of railwaymen and transports constructors
[\[http://rosprofzhel.rzd.ru\]](http://rosprofzhel.rzd.ru).
- Official Legal Resource Rossiyskaya Gazeta online
<http://www.rg.ru/2012/12/30/obrazovanie-dok.html>.
- Official English version of the Constitution of Russian Federation
[\[http://www.constitution.ru/en/10003000-03.htm\]](http://www.constitution.ru/en/10003000-03.htm)
- Official page of the Russian national labor unit for education and science
[\[http://www.escur.ru\]](http://www.escur.ru).
- <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/60535/65252/E01RUS01.htm#chap1>.
- Legal online data base Consultant Plus
http://www.consultant.ru/document/cons_doc_LAW_165963/.
- Official website of the Ministry of Labour and Social Protection
<http://www.rosmintrud.ru/docs/mintrud/analytics/69/#19>.
- Official Legal Resource Rossiyskaya Gazeta online
<http://www.rg.ru/2014/02/19/socpomosh-dok.html>.
- Legal online data base Consultant Plus
<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=173423;fld=134;from=165963-417;rnd=0.052143163280561566>.
- Legal online data base Consultant Plus
<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=SPB;n=153525;div=LAW;dst=100003,2;rnd=0.059474369743838906>.

- Legal online data base Consultant Plus
http://www.consultant.ru/document/cons_doc_LAW_156791/.
- <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=81452;>
- Legal online data base Consultant Plus
<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=73345;>
<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=94413;>
[http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=81452.](http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=81452;)
- Legal online data base Consultant Plus
http://www.consultant.ru/document/cons_doc_LAW_166044/#p39.
- <https://www.oprf.ru/press/news/2014/newsitem/26962>.
- <http://web.archive.org/web/20080531104416/http://www.ed.gov.ru/uprav/stat/1846>.
- Official website of the Ministry of Labour and Social Protection
<http://www.rosmintrud.ru/social/invalid-defence/251>.
- <http://newsbabr.com/msk/?IDE=133650>.
- <http://www.bbc.com/news/business-27314075>.
- <http://www.constitution.ru/en/10003000-01.htm>.
- Official Legal Resource Rossiyskaya Gazeta online
<http://www.rg.ru/2012/12/30/obrazovanie-dok.html>.
- Legal online data base Consultant Plus
http://www.consultant.ru/document/cons_doc_LAW_173312/.
- Official Legal Resource Rossiyskaya Gazeta online
<http://www.rg.ru/2012/12/30/obrazovanie-dok.html>.
- <http://www.constitution.ru/10003000/10003000-4.htm>.
- http://www.gks.ru/bgd/free/b04_03/IssWWW.exe/Stg/d03/36.htm.
- Legal online data base Consultant Plus
http://www.consultant.ru/document/cons_doc_LAW_165863/.

- Independent news web-portal http://www.ng.ru/economics/2009-05-29/1_bednost.html.
- Internet site inflationrussia.com where inflation rates are based on the official consumption rates published by the Federal State Statistics Service http://уровень-инфляции.рф/таблица_инфляции.aspx.

8.3. Miscellaneous

- Resolution 1884 (2012), Parliamentary Assembly Council of Europe, Doc. 12948, report of the Committee on Social Affairs, Health and Sustainable development, para 3.
- The Constitution of the Russian Federation: dogmatic commentary guidelines (Dmitriev J.A.) – Moscow, «Delovoi Mir», 2009 [http://constitution.garant.ru/science-work/comment/5697462/chapter/2/#block_2000].

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

The Constitution of the Slovak Republic (Act No. 460/1992 Coll., hereinafter the Slovak Constitution) as the fundamental national law establishes a set of essential principles, rules and contains a list of guaranteed human rights on the national level. Social, economic and cultural rights are embodied in Articles 35-43 therein.¹

The European Social Charter (ESC) was adopted on 18 October 1961 in Torino and opened for signing by the Member States of the Council of Europe. On behalf of the former Czech and Slovak Federative Republic (CSFR), the ESC was signed on 27 May 1992. The Slovak Republic as a successor of the former CSFR took over the obligations laid down by this treaty. National Council of the Slovak Republic expressed its consent with the ESC by its Resolution No. 1026 of 27 March 1998 and the Prime Minister on behalf of the President of Slovak Republic ratified the ESC on 29 May 1998. The instrument of ratification was deposited and registered in Depository, the Secretary General of the Council of Europe on 22 June 1998. In accordance with Article 35(2) thereof, the ESC entered into force on 26 February 1965. For the Slovak Republic, pursuant to Article 35(3) thereof, the ESC entered into force on 21 July 1998.²

The revised ESC was open for signing by the Member States of the Council of Europe on 3 May 1996. On behalf of the Slovak Republic, it was signed on 18 November 1999. The National Council of the Slovak Republic expressed its consent with the revised ESC by the Resolution No. 1321 of 17 February 2009 and ordered it be considered an international treaty under Article 7(5) of the Slovak Constitution³, i.e. with the priority over the laws of the Slovak Republic.

¹ English version of the Slovak Constitution is available at: <<http://www.slovak-republic.org/constitution/>> accessed 18 March 2015).

² The Notice of the Ministry of Foreign Affairs of the Slovak Republic No. 329/1998 Coll. on the European Social Charter.

³ Article 7(5) of the Slovak Constitution states that international treaties on human rights and fundamental freedoms, international treaties whose executions do not require adoption of domestic legislation and international treaties which directly establish rights or obligations of natural persons or legal persons and which were ratified and promulgated in a manner laid down by law shall prevail.

President of the Slovak Republic ratified the Charter on 20 March 2009. With regards to Article 15, the Slovak Republic reserved to be bound by paragraphs 1 and 2 thereof.⁴ The instrument of ratification was deposited and registered in Depository, Secretary General of the Council of Europe on 23 April 2009. The revised ESC has been in force since 9 June 2009.

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

The Slovak Republic is a small, export-oriented economy, therefore, essential deterioration in economies of its major trading partners cannot remain without negative consequences. The Slovak Government stated that it was committed to take decisive actions to fight the crisis and protect our economy and the living standards of our population, as well as to provide prosperity and social justice.

The Government of the Slovak Republic adopted on 6 November 2008 a set of measures in the fight against global economic crisis. The document contained a list of measures and also a report with actual evaluation of the economic situation after the economic crisis stroke.⁵ This report states that in 2008 the forecasts released by international authorities indicated that the majority of economies of the world would slow down in the following years. The International Monetary Fund expected that in 2009 developed world economies would grow approximately by 0.5 per cent and the US economy would show 0 per cent growth. Euro-countries would also experience the full impact of the economic crisis and possibly they would be facing the prospect of recession.⁶

The Slovak banking sector was affected by global crisis only minimally, in fact, it remained highly profitable, with sufficient liquidity without the need for special governmental support programmes. The Slovak banking sector has remained relatively stable, thanks to prudent

⁴ At the time of ratification, the Slovak Republic has already ratified the UN Convention on the Rights of Persons with Disabilities, which fully covered the content of Article 15(3) of ESC.

⁵ Opatrenia vlády SR na prekonanie dopadov globálnej finančnej krízy (Measures of the Slovak Government for Overcoming the Impacts of the Global Financial Crisis), http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Mater-Dokum-48853?prefixFile=m_ accessed 14 March 2015 [Slovak].

⁶ International Monetary Fund, *World Economic Outlook- Sustaining the Recovery* (October 2009) <https://www.imf.org/external/pubs/ft/weo/2009/02/> accessed 14 March 2015.

policies and the pre-crisis period (with parent banks abroad), their assets and liabilities are largely tied to Slovakia, therefore are not significantly burdened by distressed assets or so called toxic securities.⁷

The set of measures was submitted for adoption by both the Ministry of Finance of the Slovak Republic (hereinafter the 'Ministry of Finance') and the Ministry of Economy of the Slovak Republic (hereinafter the 'Ministry of Economy') for the purpose of minimizing the risks of the 2008 economic crisis. Specifically, the complex document on Measures of the Slovak Government for Overcoming the Impacts of the Global Financial Crisis⁸ consisted of the measures organized in certain areas of interest:

- Macroeconomic policy⁹;
- Budgetary policy¹⁰;
- Financial market policy¹¹;
- Labour market policy¹²;
- Business policy¹³;

⁷ Ivan Okáli & col., *Hospodársky vývoj Slovenska v roku 2008* (Ekonomický ústav Slovenskej Akadémie vied, Bratislava, 2009) 60 <http://ekonom.sav.sk/uploads/journals/186_hv_sr_2008_-_slovenska_verzia.pdf> accessed 10 March 2015 [Slovak].

⁸ Supra note 5, accessed 14 March 2015.

⁹ To secure use of EU funds on the budgetary level and a realization of PPP (Public Private Partnership) projects in highway construction as planned. If unfavourable situation in financial market occurs, and the PPP projects would not be able to proceed as planned, to prepare an alternative plan of highway construction (financed directly from the state's budget) in cooperation with the Ministry of Finance.

¹⁰ In order to reconsider budgetary aims in balance of public administration for the years 2009-2011 so that Slovakia would carry on the consolidation path towards the mid-term objectives and at the same time to minimize the risks of economic slowdown due to fiscal policy.

¹¹ In order to increase the share capital of Slovenská záručná a rozvojová banka, a. s. by another SKK 1 billion at the beginning of 2009 to finance programs for small and medium entrepreneurs (which is two years earlier than the long-term approach has been predicting) and to prepare a drawing of the credit line from the EIB in the amount of EUR 30-40 million for the Development of SMEs.

¹² In order to rejuvenate the active labour market policy and to modernize the employment services with an objective to stimulate job offers by passing of financial sources to the most effective instruments of the active labour market policy. In connection with the labour market policy and budgetary possibilities, to consider the expansion of employment bonus, which would cover greater number of workers with low income and lessen their tax duties.

¹³ In order to promote the transfer of innovative technologies and to transfer sources of basic research to applied research and innovation. Furthermore, to establish points of contact for all groups and forms of enterprise as well as to accelerate the implementation of the JEREMIE initiative in Slovakia and evaluate the financial resources available to implement this initiative in order to preferentially use of bank guarantees and micro-loan

- Wage and price policy and
- Tax and fund contribution policy¹⁴.

Those measures were the first steps of Slovakia in restoring the economy after the crisis stroke. Afterwards, in 2009, the Government adopted 62 measures in total. In the report of 6 May 2009 it is stated that the measures taken by the Government are being reflected in a positive way and they are eliminating the negative consequences of the global financial crisis in the Slovak economy. In May 2009, the Government announced that 11 out of 62 measures were successfully accomplished. The Ministry of Economy suggested to remove from monitoring 6 measures concerning energy and proposed that other 6 should be monitored after granting of financial support.¹⁵

In 2010, the Ministry of Economy announced in the Report on the Implementation of the Government Measures that the measures have met and continue to meet its main objective, but Slovakia will not undertake the adoption of further anti-crisis measures.¹⁶ The Report states that although it is possible to support the views expressed by several EU Member States and European institutions according to which it was currently not appropriate to propose additional measures to mitigate the impact of the global economic crisis, nevertheless, it is necessary to support measures taken in practice which proved to be the most effective. Slovakia, according to the report's conclusions is still considered as one of the best functioning economies in Europe, having a potential to grow steadily. According to the Ministry of Economy, it is therefore necessary to support this growth and focus on creating the best conditions for a functioning market system in the knowledge-based economy.¹⁷

program implemented by companies with special status (SPV). The objective is to rapidly resolve the difficulties in obtaining access for entrepreneurs, especially small and medium-sized entrepreneurs, to capital.

¹⁴ In order to reconsider reducing of the period of returning the excess VAT by business entities from 60 to 30 days.

¹⁵ SITA, 'Ministry zatiaľ splnilo jedenásť protikrizových opatrení (Ministers Have so far Fulfilled Eleven Anti-crisis Measures)', *finance.sk* <<http://www.finance.sk/spravy/finance/24353-ministri-zatial-splnili-jedenast-protikrizovych-opatreni/>> accessed 10 March 2015 [Slovak].

¹⁶ In 2010, the parliamentary elections took place in the Slovak Republic. The power in Slovakia changed from left centred to right centred, and so did the attitude towards austerity measures.

¹⁷ SITA, 'Nové protikrizové opatrenia sa nečrtajú (New Anti-crisis Measures Are Not Overseen)', *Pravda.sk* (10 March 2010) <<http://spravy.pravda.sk/ekonomika/clanok/192840-nove-protikrizove-opatrenia-sa-necrtaju/>> accessed 10 March 2015 [Slovak].

Nowadays, the European Commission (EC), as a part of the winter prediction of economic growth of the Euro area for the years 2015 and 2016, indicated that the economies of the countries in the bloc will grow more than expected, as is the case in the Slovak Republic. In 2015, economic growth for the entire 28-member EU foreseen by the EC is at 1.7 per cent and for the Euro area of 1.3 per cent. Slovakia with the predicted growth of 2.5 per cent far exceeds the EU average. Next year, the economic activity in the EU should grow by 2.1 per cent while in the Euro area it should be by 1.9 per cent, and the predictions for Slovakia are again positive i.e. indicating 3.2 per cent growth.¹⁸

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

Social and collective bargaining rights are governed within the Slovak legal system mainly by the Act on Collective Bargaining (Act No. 2/1991 Coll.) and the Labour Code (Act No. 311/2001 Coll.). Since the collective agreement is a bilateral legal action, it can be alternatively governed by the Civil Code. From the wording of Article 4 of the Act on Collective Bargaining it can be concluded that in addition to these laws, collective bargaining is influenced by a number of specific legislations and collective agreements of higher degree.

Article 1(2) of the Act on Collective Bargaining defines collective bargaining as an effective instrument for promoting social dialogue and the achievement of social peace based on bipartite basis.

The condition for the start of the collective bargaining process is a delivery of a proposal in a written form to sign a collective agreement with the participants of the other party. Article 8 of the Act on Collective Bargaining imposes an obligation on the contracting parties to enter into collective bargaining within at least 60 days before the expiry of the current collective agreement. The law does not allow any exceptions to this deadline. The goal of the legislator in this

¹⁸ European Commission, 'European Economic Forecast, Winter 2015' (European Union, 2015) 122 <http://ec.europa.eu/economy_finance/publications/european_economy/2015/pdf/ee1_en.pdf> accessed 23 March 2015.

provision was to provide enough space for the collective bargaining itself, which is reflected in the quality of the final version of the next collective agreement.

The content of the proposal must be precise and unambiguous, as the facts therein may not be called into question. Since it is a legal basis which determines the further course of collective bargaining, a draft of the collective agreement is of great importance. From the moment of its receipt by the other Party a statutory period of 30 days commences, upon expiry of which the Party has to express its opinion even on the parts of disagreement, unless agreed otherwise. The answer of the other party also has to satisfy the substantive and formal aspects.¹⁹

In the process of collective bargaining an obligation is imposed on the participants thereto to cooperate and provide necessary cooperation without which it would be difficult to discuss in the conclusion of a collective agreement. In the event that this would be contrary to the interests of either party authorized by law, the legislation provides an exception.

Under Article 6 of the Act on Collective Bargaining the collective agreement is concluded for a period specified therein. If for some reason the period, for which the collective agreement is concluded, is not stated, a legal presumption applies under which it is valid for one year.

Employees are represented in collective bargaining by trade unions. Article 230 of the Labour Code defines trade unions as civil associations governed by the Act on Civic Associations (Act No. 83/1990 Coll.). This Act governs the means for creation and association of these organizations and it provides that state may interfere with their activities only in accordance with law.

Trade unions differ from other civic associations in the way of their creation. While civic associations are registered at the Ministry of Interior of the Slovak Republic (hereinafter the “Ministry of Interior”), trade unions are recorded. A proposal for registration of a trade union must be submitted by at least three people of whom at least one must be of a legal age (18). The proposal, together with the statute are administered by the Ministry of Interior. Citizens filing for registration of a trade union act on its behalf as a preparatory committee until the establishment of the trade union. Trade unions are established on the day following the receipt of the application for registration by the Ministry of Interior. Full legal capacity is granted to trade

¹⁹ Vojtech Tkáč, *Odbory, zamestnávateľia, zamestnanecké rady* (Košice, Eduard Szattler PressPrint, 2004) 269 [Slovak].

unions on the day of their creation. Their legal capacity shall expire on the date of termination by a voluntary merger, associating with another association or dissolution by statutory grounds.

A trade union in the highest form is the Confederation of Trade Unions, which focuses on the tripartite relationship between the government and the social partners in the public service at the creation of collective agreements of a higher level. In the Slovak legal system the basis for the relationship is the Act on Tripartite (Act No. 103/2007 Coll.).

Results of collective bargaining are collective agreements, which constitute employment acts. Collective agreements act as a normative legal act, since they include commitments which entitle an unspecified number of employees. The provisions of the operative part of the collective agreement act in relation to the content of a contract as a necessary minimum to repeal that part of the employment contract, which does not comply with the specified minimum.²⁰ Despite their nature, collective agreements are not normative legal acts, since normative legal acts differ in their form, content and actors.

In addition to the normative content of collective agreements, commitments of collective character are included giving rise to claims of individual employees. These commitments may concern the whole collective of employees or their individual groups. Certain parts of collective agreements may include additional content, for example an agreement on the force and effect of a collective agreement, rules on dispute resolution, or other issues of procedural nature.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

In response to the financial crisis in 2008 the social-democratic oriented government of the Slovak Republic and the Confederation of Trade Unions of the Slovak Republic agreed on a Memorandum of Cooperation²¹ in addressing the financial and economic crisis on the Slovak

²⁰ E. Janičová, *Kolektívna zmluva – Lex contractus realizácie sociálneho dialógu a zodpovedného podnikania, Európska dimenzia podnikovej sociálnej zodpovednosti a jej vplyv na reguláciu pracovnoprávných vzťahov* (Košice, Univerzita Pavla Jozefa Šafárika- Právnická fakulta) 197 [Slovak].

²¹ Memorandum o spolupráci pri riešení dopadov finančnej a hospodárskej krízy na slovenskú spoločnosť medzi Vládou Slovenskej republiky a Konfederáciou odborových zväzov Slovenskej republiky (Memorandum on Cooperation in Resolving Impacts of the Financial and Economic Crisis on the Slovak Society between the

society in 2009. It has acted in favour of the interests of economic development and economic growth as well as in that of social stability and gives the basis for cooperation of the contracting parties of this memorandum in the following areas:

- The adoption and implementation of social, economic, political and social measures designed to eliminate the effects of the financial crisis on residents, employees, business sector and the economy of the Slovak Republic;
- Maintaining the favourable development of the social climate in order to maintain social peace, as a precondition for the stability of the state and the performance of all its functions even in a difficult economic situation;
- Protecting Slovak citizens from economic, social and sanitary overflow;
- Active participation in the creation of new social models and the co-existence of the state, business sector, employees and other residents, including the utilization of EU funds for social programmes.

Part of the Memorandum is a list of commitments which the contracting parties refer to. To ensure social stability in labour relations and promote economic growth the Slovak government commits to the following:

- That the relevant legislative and executive measures shall consistently meet the Programme Declaration of the Government of the Slovak Republic especially in the areas that have an impact on employment and perform only those steps that do not pose risk to social balance in the Slovak Republic;
- To adopt measures to promote and maintain social peace in the country;
- To respect and address applications and solutions of the Confederation of Trade Unions as its social partners, in the same way to lead a social dialogue on the level of individual ministries with the relevant trade partners;
- To receive and support measures aimed at maintaining employment and its proliferating;

Government of the Slovak Republic and the Confederation of Trade Unions of the Slovak Republic) <http://www.kozsr.sk/page_sk/dolezite_materialy/memorandum.pdf> accessed 28 February 2015 [Slovak].

- To cooperate with the Confederation of Trade Unions, while maintaining and guaranteeing the prior status and legal framework of the status of employees and their further protection while maintaining the current employment legislation and preventing deterioration of the position of employees;
- To accept an effective and appropriate legislature to ensure the conditions for creating and maintaining jobs while the legislative proposals will be preceded by an analysis of the current situation, existing legislation in the European Union and the impact study with the active participation of the representatives of the Confederation of Trade Unions;
- To promptly discuss and inform the Confederation of Trade Unions of any negative trends which in its view may have a negative impact on employment and employees;
- To use all available means to avoid unwarranted abusive use of the crisis in the deterioration of legal, economic and social security of employees.

The Confederation of Trade Unions towards the Slovak government undertakes:

- To promote growth in real wages and salaries and respect the indicator of labour productivity growth in collective bargaining;
- To use social dialogues at all levels as a vital tool for maintaining social peace during the economic crisis;
- To provide objective information on the actions of government within its structures;
- To pass on information about the application of the measures in enterprises.²²

The Memorandum itself was created in the spirit of abiding the basic rights guaranteed by articles 5 and 6 of the European Social Charter and therefore the austerity measures do not contain a breach of the charter.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

²² Ibid, accessed 25 February 2015.

As mentioned previously, the impacts of austerity measures on both collective bargaining and labour rights are regulated in the Memorandum of Cooperation in addressing the financial and economic crisis on the Slovak society. The most severe effect of austerity measures on labour rights can be felt among the wages of public administration employees, where the collective bargaining and social dialogue was one of the most difficult to handle.

According to the Regulation of the Government of the Slovak Republic No. 393/2014 Coll. on Public Employee Wage Tariffs, public administration employees are divided into four groups – the basic group, the special group (e.g. employees in the sphere of culture), the third, individual group for university/college teachers and healthcare employees and the fourth group intended for non-university/college teachers, each having an individual wage scale.

Each group is divided into 12 salary levels depending on the years worked on a certain work position and 14 salary categories depending on the difficulty of the work position. The greatest dispute involving these tariffs is that many of them are lower than EUR 380 - the minimal wage for the year 2015 (e.g. the first, second and third salary categories of the basic group have all their salary levels below the minimum wage²³) bringing about a de-motivation for public employees in these groups.

Although it does represent a de-motivational factor among the administration employees, their standard of living is still protected by the Decree on minimum wage, so the wages of employees do not go under this amount even though the wage tariffs show a lower wage.

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by their own efforts or from other sources?

The social insurance coverage in Slovakia is based on occupational activity, not residence. The system is under the competence of the Ministry of Labour, Social Affairs and Family of the

²³ Annex 1 to the Regulation of the Government of the Slovak Republic No. 393/2014 Coll. on Public Employee Wage Tariffs.

Slovak Republic (hereinafter the 'Ministry of Labour, Social Affairs and Family'). The Social Insurance Agency and the Central Office of Labour, Social Affairs and Family of the Slovak Republic are the executive bodies. Due to complexity of the topic a closer look will be taken at the following issues: persons in material need (indigent persons), long-term unemployed persons, families and Roma people.

The social security system in the Slovak Republic contains the three main components:

Social insurance: its basic role is the protection of the economically active population in the event of life contingencies. The employees and self-employed persons are insured mandatorily. Social insurance is financed by contributions; it is administered by the Social Insurance Agency.

Social assistance: it allows citizens below the statutory subsistence minimum to receive substitute financial aid from the state in the form of benefits.

State social support: is devised to address particular life contingencies, including the birth of a child, child care, death of a family member and others. These benefits are financed directly from the state budget. Usually, benefits from the state social support are based on the condition of permanent or temporary residence in Slovakia and not on the income of the family or economic activity of a person and his/her family members. For each particular benefit of state social support there exist requirement which has to be fulfilled.

Health insurance²⁴ in the Slovak Republic is not included in the scope of social insurance. It is obligatory and a proof of health insurance is required also as a part of residence permit granting procedure. The healthcare system in Slovakia falls under the competence of the Ministry of Health of the Slovak Republic (hereinafter the 'Ministry of Health').²⁵

The social insurance system in Slovakia has been defined by the Act on Social Insurance (Act No. 461/2003 Coll.) effective as of January 2004. The Act specifies the social insurance, amends the range of social insurance, legal relations within social insurance performance, the

²⁴ Major applicable legislation are the Act No. 580/2004 Coll. on Health Insurance and the Act No, 577/2004 Coll. on the Scope of Health Care Provided on the Basis of Public Health Insurance.

²⁵ Supra note 24, accessed 06 February 2015.

organisation of social insurance, the financing of social insurance, the state supervision over social insurance performance and acting in matters of the social insurance.²⁶

For many people in the Slovak Republic, particularly those with lower qualifications, it does not make a difference in financial terms whether they work or not. This is because the social subsistence they receive is only slightly lower than what they would earn in many full-time jobs. In some cases, wages could even be lower than the social support provided, meaning that the motivation to join the labour market is almost entirely absent in some cases. However, under the amendment of the Act on Assistance in Material Need (Act No. 417/2013 Coll.) the Ministry of Labour, Social Affairs and Family wants to increase the incentive of long-term unemployed to work. Since January 2015, overlapping of assistance in material need and the specific contribution respecting the labour income up to twice the minimum wage (in 2015 around EUR 760) has been introduced. The goal is a higher income as a motivation for those who will work compared to those who remain in material need. They will be able to receive a contribution up to 12 months (in the first 6 months it will be a contribution of EUR 126.14 per month and in the second 6 months it will be a contribution of EUR 63.07 per month).²⁷

3.1.1.1. Stimulating activities allowance

The allowances are provided for a stimulating activity performance in the form of smaller community services for the benefit of a community or smaller services for a self-governing region pursuant to Article 52 of the Employment Services Act (Act No. 5/2004 Coll.). Stimulating activity in the form of minor community services or in the form of minor services for a self-governing region is a support for long-term unemployed persons to maintain their work habits. It is organized by communities, self-governing regions or non-profit organizations. Both types of service are performed by a job seeker during maximum six consecutive calendar months in the scope of **maximum 20 hours a week** except for the week, in which the

²⁶ Sociálna poisťovňa, *Social Insurance System in Slovakia* <<http://www.socpoist.sk/social-insurance-system-in-slovakia/24533s>> accessed 23 March 2015 [Slovak].

²⁷ *Zvyšujeme motiváciu pracovať pre dlhodobo nezamestnaných (We Increase Motivation to Work for the Long-Term Unemployed)*, (Ministry of Labour Social Affairs and Family of the Slovak Republic, 14 July 2014) <<http://www.employment.gov.sk/sk/informacie-media/aktuality/zvysujeme-motivaciu-pracovat-dlhodobonezamestnanych.html>> accessed 25 March 2015 [Slovak].

stimulating activity started, with the possibility of repetition during maximum **further 12 calendar months**.²⁸

3.1.1.2. Roma people and marginalised Roma communities

In the Slovak Republic, 60 per cent of non-Roma inhabitants have a full-time job, according to the Slovak Ministry of Finance's Financial Policy Institute (IFP). For Roma, the figure is below 17 per cent. A lot of young Roma in Slovakia leave school early because of the possibility to earn money at the municipal level, the so-called stimulating work pursuant to Article 52 of the Employment Services Act (Act No. 5/2004 Coll.). Monthly pay for the stimulating work averages EUR 63, the equivalent of 30 hours per month at minimum wage, i.e. something seemingly within a reach of vocational work.²⁹ Underlying the unemployment crisis in Slovakia's Roma community, it is a massive education gap that sees Romani-speaking students trailing their peers by some four full years of schooling on average. Slovak government is now emphasizing vocational education³⁰ and an increased cooperation between secondary schools and employers. On 9 January 2015 the Slovak Government approved a EUR 26 million proposal to implement its own version of dual education systems. Targeting vocational secondary school students, the plan calls for 40 per cent of study time to be devoted to classroom education and 60 per cent to work experience with firms that may opt to hire the students after graduation. The Government aims to inspire greater interest in vocational education on the part of students and to enable employers to participate directly in the education of young people and to hire them.³¹

3.1.1.3 Family Policy in the Slovak Republic

²⁸ *Aktivačná činnosť, príspevok na aktivačnú činnosť formou menších obecných služieb pre obec alebo formou menších služieb pre samosprávny kraj - § 52 (Activation Work, Contribution to Activation Work in the Form of Minor Municipal Services or Minor Services for Self-Governing Region- Article 52)*, (Central Office of Labour, Social Affairs and Family) <http://www.upsvar.sk/sluzby-zamestnanosti/nastroje-aktivnych-opatreni-na-trhu-prace/aktivacna-cinnost/prispevok-na-aktivacnu-cinnost-formou-mensich-obecných-sluzieb-pre-obec-alebo-formou-mensich-sluzieb-pre-samospravny-kraj-52.html?page_id=13087> accessed 25 March 2015 [Slovak].

²⁹ Benjamin Cunningham, 'Is Opportunity Knocking for Slovakia's Roma?', *Transitions Online* (12 February 2015) <<http://www.tol.org/client/article/24683-is-opportunity-knocking-for-slovakias-roma.html>> accessed 21 February 2015.

³⁰ Tlačová konferencia Róberta Fica a Juraja Draxlera o návrhu zákona o duálnom vzdelávaní (*Press Conference of Róbert Fico and Juraj Draxler concerning the Proposal of the Act on Dual Education*), (Government Office of the Slovak Republic, 09 January 2015) <<http://www.vlada.gov.sk/tlacova-konferencia-roberta-fica-a-juraja-draxlera-o-navrhu-zakona-o-dualnom-vzdelavani/>> accessed 25 March 2015 [Slovak].

³¹ Supra note 30, accessed 21 February 2015.

According to OECD Fertility Rates, in 1970 a Slovak woman gave birth to 2.4 children on average, in 2011 this figure was only 1.45 and in 2012 even less: 1.34.³² With current levels of fertility, dependency ratios past 2040 will be among the worst in Europe. The fundamental problem with family policy in Slovakia is that it is rather one-sided.³³ Family cash benefits in Slovakia measured by their proportion to the economy are robust.³⁴ Family support in the national legislation is ensured by direct financial transfers which are provided in certain life situations and by measures ensuring the childcare services through the childcare allowance. Contributions to dependent children and the subsidy programmes aimed at food and school necessities are defined within the assistance in the material need system. Pursuant to the Income Tax Act, the tax bonus which is connected to earning activities of parents fulfils the function of support of families with children within the tax system.³⁵

Mothers in the Slovak Republic have, in line with the Labour Code (Act No. 311/2001 Coll.) the right to **maternity leave** of 34 weeks (37 weeks for single mothers, and 43 weeks in the case of multiple births), of which six to eight weeks must be taken before the expected date of delivery. During the period of maternity leave, maternity benefit is provided amounting to 65 per cent of the assessment base (daily earnings calculated on the basis of the previous year, with a monthly upper limit of one and a half times the national average monthly wage). Parental leave can be taken by the mother or the father until the child is three years old. For children with long-term health problems, parental leave can be extended until the child reaches six years of age.³⁶

Under the Act on Child Allowance (Act No. 600/2003 Coll.) and Act on Social Insurance (Act No. 461/2003 Coll.), current child allowance refers to the amount of EUR 23.52. Entitlement to a child allowance relates to any dependent child from his birth until completion of mandatory school attendance, at the longest until the 25th year of age, supposing a child has been preparing himself/herself for the future occupation, studying at high school, college or university.

³² *Fertility Rates* (OECD, 2015) <<https://data.oecd.org/pop/fertility-rates.htm#indicator-chart>> accessed 24 March 2015.

³³ Tomas Meravy, 'Family Policy in Slovakia: In Urgent Need of Reform', *Revue* (16 December 2013) <<http://visegradrevue.eu/family-policy-in-slovakia-in-urgent-need-of-reform/>> accessed 05 March 2015,

³⁴ *Social Security Contributions* (OECD, 2015) <<https://data.oecd.org/tax/social-security-contributions.htm>> accessed 24 March 2015.

³⁵ Ministry of Labour, Social Affairs and Family of the Slovak Republic, *National Social Report of the Slovak Republic 2014* <<http://ec.europa.eu/social/BlobServlet?docId=11948&langId=en>> accessed 04 March 2015.

³⁶ <http://europa.eu/epic/countries/slovakia/index_en.html> accessed 06 March 2015.

Under the Act on Parental Allowance (Act No. 571/2009 Coll.), the current amount of the parental allowance is EUR 203.20. When more than 2 children were born at once (twins, triplets and so on.), the amount of the parental allowance is increased by 25 per cent to every newborn child; e.g. the amount of parental allowance by the birth of twins is EUR 254. When triplets are born the amount of parental allowance is increased to EUR 304.80.

Under the Act on Childbirth Allowance and on Allowance on Several Concurrently Born Children (Act No. 383/2013 Coll.), parents are entitled to a lump sum benefit, currently paid in the amount of EUR 829.86 from the first to the third childbirth. Parents are also entitled to a benefit, currently paid in the amount of EUR 151.37 in case of a newborn child from the fourth and further childbirths. Under the same Act a benefit to the parents or surrogate parents for increased expenses associated with the care when more than 2 children were born at once is provided by the state. The benefit in the amount of EUR 110.36 shall be provided to the parents once per year to every child under the age of 15 years.

3.1.1.4. Other Related Issues

The Slovak government in the pre-election year gradually presents a set of measures, so-called “**Social Package**”.³⁷ The first 15-measure-social-economic package with expenses reaching EUR 250 million is to compensate the Slovaks for recent years of austerity.

The first measure³⁸ within the so-called “Social Package” was a measure aimed at taking away the financial burden associated with transport costs for families and university students (students aged up to 26 years), pensioners and elderly people of 62 years or older have led to travelling free of charge on selected trains as of 17 November 2014.

The second measure was intended to support the firms running the so-called kid corners with the aim to open the job market to more women who are caring for children under the age of

³⁷ *Sociálno-demokratický balíček (Social-democratic package)*, (Government Office of the Slovak Republic) <<http://www.vlada.gov.sk/robert-fico-socialnodemokraticky-balicek/>> accessed 26 March 2015 [Slovak].

³⁸ *Tlačová konferencia Róberta Fica a Jána Počiatka o zavedení bezplatného cestovania vlakmi pre študentov a dôchodcov (Press Conference of Róbert Fico and Ján Počiatka concerning the Introduction of Free Train Transport for Students and Pensioners)*, (Government Office of the Slovak Republic, 17 November 2014) <<http://www.vlada.gov.sk/tlacova-konferencia-roberta-fica-a-jana-pociatka-o-zavedeni-bezplatneho-cestovania-vlakmi-pre-studentov-a-dochodcov/>> accessed 26 March 2015 [Slovak].

six.³⁹ Implementing Agency for the Operational Programme Employment and Social Inclusion launched a call for the involvement of employers in the Work and Family National Project.⁴⁰ Employers may seek financial contributions to flexible jobs for job seekers with children up to ten years, or for employees who are returning to work after the parental leave and are interested in flexible forms of employment.⁴¹ The government plans to support mothers returning to work after maternity leave, while until the end of this year, EUR 23 million from the EU funds are prepared for companies to tap for encouraging them to employ parents. Apart from the kid corners, it is planned that the state would also provide a big part of mothers' salaries (up to 90 per cent of the average salary) in order to create new jobs by the companies and hire them for a fixed period of time.⁴²

The third measure⁴³ of the so-called "Social Package" aims to support kindergartens and nursery schools amounting to EUR 10 million. From the money, facilities will be reconstructed and extended, and modular kindergartens will be built. According to the Government, it is the first step towards meeting the demands of all parents which should happen by 2023.⁴⁴

3.1.2. Persons who are unable to secure adequate resources either by their own efforts or from other sources due to illness?

³⁹ *Druhým sociálnym balíčkom chce vláda pomôcť mladým rodinám (With the Second Package the Government Seeks to Help Young Families)*, (Government Office of the Slovak Republic, 16 January 2015) <<http://www.vlada.gov.sk/druhym-socialnym-balickom-chce-vlada-pomoc-mladym-rodinam/>> accessed 26 March 2015 [Slovak].

⁴⁰ *Výzva na predkladanie žiadostí na zapojenie sa zamestnávateľov do Národného projektu rodina a práca (Implementačná agentúra pre Operačný program Zamestnanosť a sociálna inklúzia)* <<http://www.iazasi.gov.sk/sk/aktuality/vyzva-na-predkladanie-ziadosti-na-zapojenie-sa-zamestnavatelov-do-narodneho-projektu-rodina-a-praca>> accessed 25 March 2015 [Slovak].

⁴¹ *Výzva- Národný projekt rodina a práca* (the Ministry of Labour, Social Affairs and Family of the Slovak Republic, 19 February 2015) <<http://www.employment.gov.sk/sk/informacie-media/aktuality/vyzva-narodny-projekt-rodina-praca.html>> accessed 25 March 2015 [Slovak].

⁴² Roman Cuprik, 'Policy Urges New Hiring of Mothers', *The Slovak Spectator* (26 January 2015) <<http://spectator.sme.sk/c/20053242/policy-urges-new-hiring-of-mothers.html>> accessed 05 March 2015.

⁴³ *Tlačová konferencia o zvýšení kapacity jaslí a materských škôl (Press Conference on the Increase of Capacity of Nurseries and Kindergartens)*, (Government Office of the Slovak Republic, 26 January 2015) <<http://www.vlada.gov.sk/tlacova-konferencia-o-zvyšení-kapacity-jasli-a-materskych-skol/>> accessed 25 March 2015 [Slovak].

⁴⁴ Roman Cuprik, 'Government Wants to Support Kindergartens', *The Slovak Spectator* (27 January 2015) <<http://spectator.sme.sk/c/20053268/government-wants-to-support-kindergartens.html>> accessed 05 March 2015.

Protection of disabled people in the area of human rights is relatively new in Slovakia although the civic associations representing people with disabilities have long been trying to promote the rights of its members.

3.1.2.1. Sickness benefits

The Labour Code (Act No. 311/2001 Coll.) as amended stipulates that any employee officially declared sick (i.e. incapable of work) does not receive any salary but he/she is entitled to sickness benefits.⁴⁵ An employee is entitled to a sick pay from the 11th day of temporary incapacity to work. Self-employed persons and voluntarily-insured persons are entitled to a sick pay from the first day of temporary incapacity to work. Sickness benefits are at the rate of 25 per cent of the employee's assessment base for the first 3 days, then at the rate of 55 per cent of the employee's assessment base. During the period of first 10 days of the sick leave the benefits are paid by his/her employer; from the 11th day the sick pay is paid by the Social Insurance Agency (at the rate of 55 per cent of the employee's assessment base).⁴⁶ Entitlement to a sick leave expires on the day following the end of temporary incapacity to work, no later than 52 weeks after the temporary incapacity to work.

3.1.2.2. Severely disabled persons

A natural person with a severe disability is considered by law a person whose rate of functional impairment is at least 50 per cent of the disability listed in Annex No. 3 to the Act on Financial Allowances for Compensation of Severe Disabilities (Act. No. 447/2008 Coll.). To overcome or mitigate the social consequences of severe disabilities and to support social inclusion of persons with severe health disabilities, various types of allowances are provided. Under the Act on Financial Allowances for Compensation of Severe Disabilities, the contributions include contributions for personal assistance service, for a purchase of a gadget, for a purchase of a car, for making adjustments in the flat, for caretaking, for compensation of increased costs, etc.

⁴⁵ *Slovak Employment Law Basics* (Legal Counsels, 2015) <http://www.legalcounsels.sk/hrnews/Slovak_employment_law_basics.pdf> accessed 25 March 2015.

⁴⁶ *Sickness Insurance* (EURAXESS, 2015) <<http://www.euraxess.sk/en/main/services-practical-information/social-security/social-security-system-in-slovakia/social-insurance/sickness-insurance#sickness>> accessed 25 March 2015.

Slovak legislation prohibits direct and indirect discrimination on the grounds of disability. This is formulated explicitly in the Act on Equal Treatment in Certain Areas and Protection against Discrimination as amended (the Anti-Discrimination Act No. 365/2004 Coll.).

One of the most important forms of support for employment of persons with disabilities in Slovakia, governed by Act on Employment Services (Act No. 5/2004 Coll.), is the possibility of establishing “**sheltered workshops**” and “**sheltered workplaces**” further discussed in part 5.1.

All the above-mentioned measures aimed to compensate Slovaks for recent years of austerity such as support to kindergartens and nursery schools, support to mothers returning to work after maternity leave, effort to increase income as a motivation for those who want to work, vocational education and many others on the list are reasonable and in line with the charter. They are aimed to help people to develop and to make more of all the advantages that are offered to them in the country. However, their long-term-sustainability and thus a proper dealing with the problem for which they are intended is more than questionable.

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

Shortly after taking office in 2012, the new Slovak Government announced its intention to implement an austerity agenda in order to stabilise public finances. The austerity programme approved by the government reportedly included a lot of cuts, new taxes on corporate and retail bank deposits, as well as minimal increases in income taxes for high earners and high-profit companies. Prior to the 2008 economic crisis the unemployment in Slovakia was 8 per cent, the best ever. During the crisis it has risen to nearly 14 per cent. The youth unemployment still has been among the highest in the EU.

Additional cuts inevitably meant a further deterioration of living conditions for the Slovak population. Inequality between the poorest and the richest rose alarmingly when in 2007, 11 per cent of the population lived in poverty, a figure that has now risen to almost 18 per cent. In the same period, the number of the indigent working people increased from 5 to 9 per cent. Furthermore, an excessive financial burden of the population can be observed when for example

price of housing in Bratislava is higher than that in Prague and Vienna, which implies that more than 50 per cent of Slovak households spend more than 60 per cent of their income on rent.⁴⁷

When public spending cuts are at stake, the sectors such as social protection (where the pension and health insurance sectors represent the most costly areas), social services, health care and education are the most likely candidates for reductions.⁴⁸ A blind focus on austerity measures while reducing debt above all else has ignored the fact that growth can still occur during relatively high levels of debt and that any new growth in the economy must be inclusive and for the benefit of all.⁴⁹ In addition, austerity measures have resulted in the rise of social insecurity. Social security scheme is jeopardized by the cost saving steps that threaten future sustainability of a decent life. Further cut-down of social benefits has reached its limits as they are altogether mostly below the level of surviving. Sustainable cost saving measures without pro-future oriented investment are not a way how to guarantee sustainable decent life in the country.⁵⁰

The austerity measures used to deal with the crisis have all in some way affected the fundamental rights included in the Charter. The fact is that the decisions on measures taken were made on the basis of very short-term considerations and followed by urgent procedures. Subsequently, the ability to fully enjoy fundamental rights such as right to education, housing, work, access to healthcare included in Charter was undermined by these ill-conceived decisions. Economic hardship was used as a reason for reducing levels of protection in Slovakia resulting in not fulfilling the obligations of the state set out in the Charter to safeguard human rights.

⁴⁷ OECD *Economic Surveys: Slovak Republic 2014* (OECD, 2014) <http://dx.doi.org/10.1787/eco_surveys-sk-2014> accessed 04 March 2015.

⁴⁸ Harald Hauben et al, *Assessing the Impact of European Governments Austerity Plans on the Rights of People with Disabilities* (European Foundation Centre, October 2012) <http://www.enil.eu/wp-content/uploads/2012/12/Austerity-European-Report_FINAL.pdf> accessed 21 February 2015.

⁴⁹ Teresa Caverio & Krishnah Poinasamy, *A Cautionary Tale, the True Cost of Austerity and Inequality in Europe* (OXFAM, September 2013) <http://www.oxfam.org/sites/www.oxfam.org/files/bp174-cautionary-tale-austerity-inequality-europe-120913-en_1.pdf> accessed 28 February 2015.

⁵⁰ Miloslav Hetteš, *Global Challenges and Social Welfare in Slovakia*, (PROHUMAN, 27 Jun 2013) <<http://www.prohuman.sk/socialna-praca/global-challenges-and-social-welfare-in-slovakia>> accessed 05 March 2015.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

In the Slovak Republic there are many public services which provide advice and personal help to all persons in need. Under the Act on the Providing of Legal Aid to Persons in Material Need (Act No. 327/2005 Coll.) the **Centre for Legal Aid** was established. It is a state-funded organization with 14 offices whose goal is to improve the access to justice for the people in material need.⁵¹ In addition, there is the **Social Insurance Agency** in Slovakia, the **Central Office** of Labour, Social Affairs and Family, the **Local Offices** of Labour, Social Affairs and Family together with **Ministry** of Labour, Social Affairs and Family and many other public services which have specialized departments for information and advisory services that provide professional consultancy, counselling and psychological services for all persons in need. The **Public Defender of Rights** is an independent body of the Slovak Republic, which, to the extent and in the manner prescribed by law, protects fundamental rights and freedoms of natural persons and legal entities in the proceedings before the public authorities and other public bodies if their decisions or failure to act are in conflict with law.⁵²

The public support for charity, donations and volunteering in Slovakia is slowly growing. Currently, more than a quarter of citizens engage in the formal volunteering and almost a half of the citizens are engaged in the informal volunteering. Despite the unfavourable external conditions, NGOs' activities in the social field focusing on the care for the elders, the sick and long-term sick persons, running of hospices and emergency centres are increasing. However, unfavourable trend is still the insufficient financial support provided by the state for civic activism and civic participation.⁵³ Austerity measures were of no help as they even worsened the already bad financial situation of NGOs and slowed down the potential of their development.

⁵¹ See the official website of the Centre for Legal Aid: <<http://www.cpp.finalarea.com/o-nas>> accessed 23 March 2015.

⁵² See the official website of the Public Defender of Rights: <<http://www.vop.gov.sk/verejny-ochranca-prav>> accessed 23 March 2015.

⁵³ See the NGO Partnership Portal, Section Slovakia: <<http://www.ngonorway.org/countries/slovakia>> accessed 09 March 2015.

Although the current Slovak tax system, namely the Income Tax Act (Act No. 595/2003 Coll.) allows the Slovak employees to donate 2 per cent from their income tax to the civic society institutions, there is a fierce debate on the proposed amendment to the Income Tax Act, which lays down that legal persons will be able to donate only 1 per cent instead of 2 percent from its income tax to a civic society institution. A high number of NGOs benefits are financed from those 2 per cent of the income tax.

Therefore, such legislation together with insufficient public support for charity, donations and volunteering could be seen as inconsistent with the Charter as it, due to the loss of income, negatively affects activities of NGOs and thus the protection of certain fundamental rights listed in the Charter.

NGOs in Slovakia operate in various sectors such as:

- Humanitarian NGOs goals are to eliminate poverty in terms of habitat and homelessness: *Proti prúdu* (Against the Stream), *Slovenská katolícka charita* (Slovak Catholic Charity), ETP Slovakia, DEPAUL Slovensko, Habitat for Humanity Slovakia, *Človek v tísní Slovensko* (People in need Slovakia), *Právo na bývanie* (Right to Housing), *Divadlo bez domova* (Homeless Theatre), *Nadácia Pontis* (Pontis Foundation);
- Educational and awareness raising NGOs: *eRko*, *K.a.b.a. Slovakia*, *Keric*, *Človek v ohrození* (People in Peril Association), *Úsmev ako dar* (Smile as a Gift), InfoRoma Foundation;
- NGOs representing people with disabilities: *Národná rada občanov so zdravotným postihnutím v Slovenskej republike* (The National Council of Persons with Disabilities in the Slovak Republic), *Slovenský zväz zdravotne postihnutých* (Slovak Association of Persons with Disabilities), *Liga za duševné zdravie* (League for Mental Health), *Únia nevidiacich a slabozrakých Slovenska* (Slovak Sightless and Partially Sighted Persons Union), *Asociácia organizácií sluchovo postihnutých v Slovenskej republike* (Association of the Organizations of Persons with Hearing Disabilities in the Slovak Republic) etc.

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

The Government of the Slovak Republic has taken multiple measures for people living in poverty. These measures cover policies for ensuring an adequate standard of living including an access to adequate resources (adequate standard of living), an access to work, education and affordable services and housing.

The active 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. Active/effective efforts of social inclusion must therefore intervene and improve all areas of disadvantages: the area of income, access to decent work and access to quality services of various kinds, including housing and healthcare in an integrated strategy of active inclusion.

The strategies in the area of poverty and social exclusion therefore emphasize the need for a three-pillar access consisting of: ensuring an access to adequate resources, an access to quality services and promoting participation in the economic, social and cultural life.

The three-pillar approach is not viable without integration of policies which are the responsibility of various ministries and accountability is shared between the local, regional and central level. The importance of an integrated approach was highlighted in the Memorandum on Social Inclusion (2003). The Memorandum alleges that for Slovakia it is a major challenge to mainstream and integrate the addressing issues of social inclusion across the board, particularly in the key policy areas such as labour market, taxes, social protection, education, housing and public services.

A specific approach is needed in resolving the problems of social exclusion or even marginalisation of the Roma communities in the Slovak Republic. 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 2020.⁵⁴

The Government of the Slovak Republic has adopted the Strategy for Roma Integration by 2020 with a commitment to significantly support processes towards social and economic inclusion of Roma communities in Slovakia. The Government notes that the quality of life of Roma communities compared to 1989 declined for several reasons and that without external intervention the status of Roma communities cannot be improved in real time. If putting off the addressing of the social inclusion issues of the Roma communities, there will be an increase in tensions between the majority population and the Roma population, which can escalate into open conflicts, including a physical violence.

This strategy is the basic document for the area of inclusion of all target groups of Roma people. It assumes that individual ministries and other institutions of the central, regional and local authorities will consistently apply its principles in the development of their public policies. To resolve such a complicated and multidimensional problem as the inclusion of marginalized Roma communities, close cooperation and initiative of all central, regional and local institutions is inevitable. Special authorities in the creation of conditions for inclusion of marginalized Roma communities are particularly the Ministry of Labour, Social Affairs and Family, the Ministry of Education, Science, Research and Sports of the Slovak Republic (hereinafter 'the Ministry of Education'), the Ministry of Health and the Ministry of Transport, Construction and Regional Development of the Slovak Republic. In accordance with this strategy, each of these ministries should prepare their legislative proposals in order to contribute substantially to handling the current exclusion and discrimination against Roma communities and reverse the present negative trends. The Ministry of Labour, Social Affairs and Family has drafted a bill of law for socially

⁵⁴ 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].

excluded communities, which appropriately addresses the issues within the competence of the Ministry and overlaps significantly into other areas.

The role of the strategy is to provide a basis for action plans and tasks to prepare measures, policies and legal rules at all levels of government in the Slovak Republic for the period of 2012-2020. The principles defined in the strategy should inevitably be included in the relevant legislation relating directly or indirectly to the Roma communities in Slovakia. Legal rules to be submitted in the future for the purpose of Roma inclusion will be guided by the principles set out by the Strategy of the Slovak Republic for Roma Integration by 2020. The main objective of the strategy is to stop the segregation of Roma communities, to improve significantly the social integration of Roma communities, to provide non-discrimination and to change the attitudes of the majority population towards the Roma minority.

The success of the social and economic integration and inclusion policies depends on the harmonisation of policies in relation to the three target groups, which overlap each other. The initiatives aimed at inclusion must balance the needs of the three groups as follows: the Roma, the Roma communities and the marginalized Roma communities. The Government recognizes that different types of exclusion affect the life of the Roma people as a national minority as well as all types of Roma communities, including marginalized Roma communities.

The strategic and conceptual plans for the inclusion of the Roma communities in Slovakia taken since 1991 will gradually have to define the extent of the problems and priorities in addressing them. The strategies adopted in 1991 defined the situation of the Roma in Slovakia using a theoretical framework that would enable understanding of the Roma issues and Roma exclusion while having failed to interconnect the decisive subjects, the setting out of clear plans for individual actions or the allocation of funds for such activities.

Addressing the situation of the Roma population has not been helped by the frequent discontinuity in government policies, which was related to changing governments in Slovakia. Another reason for the stagnation of social inclusion of the Roma communities was the lack of political will on the national, regional and local level.

The strategy emphasizes the importance of perceptions of the social inclusion in all its dimensions, which is a prerequisite to the success of Roma inclusion. This objective can be achieved only with the participation of all stakeholders: the state of higher territorial units, the

governments, the NGOs, the churches, the media, academic institutions, the majority population and the Roma themselves.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

Slovak legislation prohibits discrimination of disabled persons generally by Article 2(1) of the Act on Equal Treatment in Certain Areas and the Protection from Discrimination (the Anti-Discrimination Act No. 365/2004 Coll.). Pursuant to the referred Article, compliance with the principle of equal treatment shall consist of prohibition of discrimination on various grounds including disability.

Considering the access of disabled persons to education, the Anti-Discrimination Act states in Article 8a(1) that discrimination is not caused by adopting temporary equalizing measures by state administrative bodies or other legal persons aimed at eliminating the disadvantages imposed on selected grounds including disability, which aims to ensure equal opportunities in practice. According to Article 8a(1)(b, c) of the Anti-Discrimination Act, temporary equalising measures are in particular the measures consisting of encouragement towards the members of disadvantaged groups in the areas such as education, culture, health care and services, and also towards creating equality in their access to education, healthcare and such areas, especially through targeted training programmes for members of the disadvantaged groups or through dissemination of information on these programmes or the opportunities to apply for jobs or places in the education system.

The education of people in disadvantaged groups is mainly governed by the Act on Upbringing and Education (the Schools Act No. 245/2008 Coll.) in section 7, Articles 94-02 on Schools for children or pupils with special educational needs. Education of children with disabilities or

students with disabilities shall be carried out in the following types of schools: kindergartens, elementary schools, secondary schools, practical schools, and vocational schools. The elementary schools, which provide education and training according to educational programmes for children and students with intellectual disabilities, are referred to as special schools. Special schools are also kindergartens for children with disabilities. Children or pupils are accepted to special schools on the basis of their health disability after diagnostic examination for detection of their special educational needs, with the informed consent of a parent (legal representative). Education and training is carried out by using special teaching devices and aids, which together with textbooks and teaching texts specially modified according to the special educational needs of the child or the student is provided free of charge by the school, in which the student is educated. Education of children and students with disabilities is adapting their special educational needs, on the basis of which may be special schools internally differentiated according to the kind and level of impairment of children or students.

The Ministry of Labour, Social Affairs and Family is responsible for the employment, support and social care of disabled persons. The state provides financial contributions and social services in order to mitigate or overcome the social consequences of a severe disability. The aim of providing of this compensation in the given areas is to support the social inclusion of persons with severe disabilities in the society with their active participation while preserving their human dignity.⁵⁵

However, the leading role in education, guidance or vocational training is vested in specialised bodies organised as associations with voluntary membership. One of the leading bodies is the Slovak Association for the Disabled (SAFD). As a voluntary public association for disabled citizens and other citizens, SAFD cooperates with societies, state and public administration, representative bodies, mass media, companies and individuals in promoting legitimate demands of disabled people, particularly in the area of social assistance, health, social and labour integration. It carries out social prevention, providing social counselling and social services.

⁵⁵ The social consequences of the following areas of severe disability are compensated for: mobility and orientation (reduced mobility or orientation), communication (impaired communication ability), increased expenditures (increased expenditures related to, special diet, hygiene or wear and tear of clothing, underwear, shoes and household furnishings, ensuring the operation of a passenger vehicle, care for a dog with specialized training), self-care (limited or total loss of the ability to take care of oneself). The compensation is governed by national legislation: Act No. 447/2008 Coll. Act on Financial Allowances for Compensation of Severe Disabilities.

SAFD supports the implementation of programmes aimed at socio-rehabilitation, reconditioning and integration activities and educational activities. It focuses on the creation of appropriate professional, social and cultural conditions for the lives of the disabled people.⁵⁶

Another specialised body, which focuses on a special group of disabled persons, is the Slovak Association for the Handicapped Persons (SAFHP).⁵⁷ The main purpose of SAFHP is to assist persons with handicap in solving their social, economic, psychological, social interests and needs, to help in creation of conditions in cooperation with competent state authorities for persons physically handicapped to enjoy a full and integrated life and work. In pursuing this objective SAFHP focuses for instance on participation in the creation and implementation of nationwide prevention programmes for handicapped citizens that these programmes are projected to reach families and handicapped individuals, providing awareness of the public on its activities in dealing with handicapped, etc.⁵⁸

Besides the above-mentioned bodies, there are more organizations supporting disabled people in Slovakia, e.g.: Open your door, open your hearts (supporting persons with mental disabilities), the Slovak Association of Diabetics, the National Council of Slovak Disabled Persons, etc.

Other important national bodies with responsibility for disability issues include Governmental Council for Human Rights, National Minorities and Gender Equality of the Slovak Republic and its organisational unit the Committee for Persons with Disabilities are advisory bodies to the Slovak Government on the respective issues.

Last but not least, the novelty in educational program by the Ministry of Education for disabled children introduced in the Slovak Republic in the form of the Concept on Education and Training of Disabled Children is worth mentioning. This concept deals with the following action plan for the years 2014-2020. The general objective of the further development in educational policy is to provide children and young people in need of special care the most suitable options

⁵⁶ See the official website of the Slovak Association for the Disabled: <www.szzp.sk> accessed 18 March 2015 [Slovak].

⁵⁷ Every handicapped person over 18 year of age (if not over 18, the legal representative shall become a member until the handicapped person turns 18), or every person who sympathizes with the handicapped shall become the member of this Association.

⁵⁸ See the official website of the Slovak Association for the Handicapped Persons: <www.sztp.sk> accessed 18 March 2015 [Slovak].

for education with regard to their individual interests, skills and abilities and enable them to the fullest extent possible the approach to the teaching and learning process.⁵⁹

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

In Slovakia, the access of persons with disabilities to employment is governed mainly by the Employment Services Act (Act No. 5/2004 Coll.). The most importantly, an employer employing at least 20 employees is obliged to employ persons with disabilities when the office of the register of job seekers registers people with disabilities. The proportion of persons with disabilities to be employed in such cases represents 3.2 per cent of the total number of employees.⁶⁰ The obligation to employ persons with disabilities of a compulsory share can be fulfilled by awarding a contract appropriate to employing people with disabilities or a contract to a disabled person who operates or is self-employed.⁶¹ An employer who does not comply with any of these two requirements is required to pay a contribution, no later than by 31 March of the following calendar year, on behalf of the Office for every citizen who lacks the fulfilment of the mandatory share of the persons with disabilities. The amount of the contribution is 0.9-multiple of the total labour costs.

Furthermore, the Anti-Discrimination protects from discrimination in an access to and the conditions of employment on the ground of disability. In conformity with Article 7(1) of the Anti-Discrimination Act, employers must take appropriate measures to enable persons with disabilities to have an access to employment, to the work of certain type, to promotion or to the

⁵⁹ Koncepcia výchovy a vzdelávania detí so zdravotným postihnutím (Conception of Upbringing and Education of Children with Disabilities) <<https://www.minedu.sk/data/att/937.pdf>> accessed 18 March 2015 [Slovak].

⁶⁰ An employer who employs a disabled person who has the long-term health status decline in earning capacity greater than 70 per cent, for the fulfilment of a compulsory rate of employment of disabled employees counts as if he/she were employing three disabled persons.

⁶¹ The contract for the supply of goods or paid services is realized between the employer, who seeks to perform this obligation to employ persons with disabilities of compulsory share, and a sheltered workshop or a sheltered environment or people with disabilities who operates or is self-employed.

access to the vocational training; this does not apply if the adoption of such measures would be a disproportionate burden on the employer. The above-mentioned Article 8a of the Anti-Discrimination Act is also applicable to the issue of the access to employment by disadvantaged groups.⁶² Prohibition of discrimination is also governed by the Labour Code (Act No. 311/2001 Coll.), particularly in Article 13(1) and further, under which an employer is obliged to treat employees in line with the relevant provisions of Anti-Discrimination Act. Under the Labour Code, discrimination is prohibited on various grounds including the unfavourable health state or health disability. The Labour Code protects disabled persons as employees against notice in Article 66, which states that the employer needs a prior consent of the relevant office of labour, social affairs and family otherwise the notice shall be invalid. Articles 158 and 159 of the Labour Code deal with the obligation of an employer to employ employees with health disabilities in suitable positions, and to enable them training or study to attain the necessary qualification and shall also be obliged to attend to the development of such qualifications. Furthermore, an employer shall be obliged to create conditions for employees to enable them working and to improve the facilities of workplaces so that, where possible, they may attain the same work results as other employees, and for their work to be made as easy as possible.

Further measures introduced by the Slovak Republic concerning employment of disabled consists of a list of arrangements.

5.1.2.1. Sheltered workshop a sheltered workstation (Article 55 of the Employment Services Act)

Sheltered workshop and sheltered workstation are workstations established by a legal entity or natural person where persons with health disabilities are employed. Persons, who are not able to find a job in an open labour market, can work in workshops or workstations where they are trained or prepared for a job. Sheltered workshop and sheltered workstation are established mainly for persons with health handicaps. Such workstation, within which a legal entity or a

⁶² Article 7 of the Anti-Discrimination Act reads that the adoption of temporary equalizing measures by state administrative bodies or other legal persons targeted to eliminate disadvantages imposed on the grounds of [...] disability, which aim is to ensure equal opportunities in practice, is not considered discrimination. Such temporary compensatory measures, in particular, are measures a) aimed at elimination of social or economic disadvantages, by which members of disadvantaged groups are disproportionately affected b) consisting in encouraging the interest of members of disadvantaged groups in employment, education, culture, health care and services, c) aimed at creation of equal access to employment, education, healthcare and housing, especially through targeted training programmes for members of disadvantaged groups or by spreading information on these programs or on opportunities to apply for jobs or jobs in the education system.

natural person established more than one job for a person with a health handicap, and in which minimum 50 per cent of persons with health handicap work, is also considered a sheltered workstation.

5.1.2.2. Allowance to establish a sheltered workshop or a sheltered workstation (Article 56 of the Employment Services Act)

Allowance may be provided to establish a sheltered workshop or sheltered workstation to the employer, who engages for the established job in a sheltered workshop or sheltered workstation a job seeker, who is a disabled person, registered in the job seeker register for the period of minimum one month, if the employer applies for the allowance in writing.⁶³ The allowance is provided pursuant to a written agreement on granting the allowance provision made between the Office of Labour, Social Affairs and Family and the employer. Other persons with a health handicap may be engaged in these jobs in such case only, when they are free temporarily pursuant to previous approval by the Office for the maximum period of nine calendar months. Employer, who received the allowance, is obliged to preserve the job in a sheltered workshop or sheltered workstation for the period of two years at least.

5.1.2.3. Contribution of allowance to maintain a person with health handicap in a job (Article 56a of the Employment Services Act)

The allowance is provided for a person with health handicap, who performs for an employer a work in the scope of minimum one half of the statutory weekly work hours. Allowance to maintain a person with health handicap in a job is provided upon a written request by the Office of Labour, Social Matters and Family to the employer, who employs more than 25 per cent of persons with health handicap calculated from the overall amount of employees and to whom the

⁶³ Amount of the allowance for one established job in a sheltered workshop or sheltered workstation is in Bratislava region, maximum 4-multiple of the total work price calculated from the average salary of an employee in the economy of the Slovak Republic for the first up to third quarter of the calendar year preceding the calendar year, in which the allowance is provided. In 2103, it is in the Bratislava region in a maximum of EUR 4,228.96.

status of the sheltered workshop or sheltered workstation was not granted.⁶⁴ The allowance is provided quarterly pursuant to documents proving the justifiable costs.

5.1.2.4. Allowance for the job assistant activity (Article 59 of the Employment Services Act)

The Office of Labour, Social Matters and Family will provide, based on a written request, pursuant to the employer, who employs a person with health handicap, or self-employer, who is a person with health handicap, allowance for the activity assistant, if the necessity of such job assistant results from the kind of health handicap and performed work of employee or self-employer. The job assistant shall be minimum 18 years old with the capacity to carry out acts-in-law. The allowance is provided monthly, in the minimum amount of 41 per cent and maximum amount of 70 per cent of the total work price (in 2013 from EUR 433.46 to EUR 740.06).⁶⁵

5.1.2.5. Allowance for settlement of operational costs of sheltered workshop or sheltered workstation as well as for settlement of transport of employees, granted to the employer (Article 60 of the Employment Services Act)

Allowance for the settlement of operational costs of a sheltered workshop or a sheltered workstation as well as for settlement of transport of employees is provided to a legal entity or to a natural person if this allowance is applied for in writing no later than by the end of the first calendar month of the quarter following after the quarter for which the allowance is requested. The annual allowance amount, which is provided by the Office in the territory, in which a sheltered workshop or a sheltered workstation is established, is a maximum of 2,5-multiple of the total work price pursuant to Article 49(4) of the Employment Services Act.⁶⁶ Fulfilment of

⁶⁴ The allowance is provided to an employer for settlement of insurance premium for social insurance and obligatory contributions for retirement pension savings paid by the employer monthly from the salary of the employee- person with health handicap.

⁶⁵ It is calculated from the average salary of an employee in the economy of the Slovak Republic for the first up to third quarter of the calendar year preceding the calendar year, in which the agreement for one job assistant is concluded for the duration of labour relation of an employee, who is a person with health handicap or employees, who is a persons with health handicap being in personal care of the job assistant and of performance or operation self-employed gainful activity by a person, who is a person with health handicap.

⁶⁶ In 2013, the amount of allowance is EUR 2,643.10; 5-multiple of the total work price pursuant to Article 49(4) of the Employment Services Act calculated from the average salary of an employee in the economy of the Slovak Republic for the first up to third quarter of the calendar year preceding the calendar year, in which the allowance is provided per person with health handicap, whose ability to perform gainful activity is reduced for more than 70 per cent due to long-term unfavourable health condition and who performs the work within determined weekly work hours, i. e. in 2013 the allowance amount is EUR 5,286.20.

the obligations pursuant to Article 70(7) of the Employment Services Act shall be proved by a legal entity or a natural person once per year together with the first written application presented in the relevant calendar year.⁶⁷

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

The Government has supported the flexible employment, contributions to the job creation, social enterprises, and to have employees at home with 60 per cent wage compensation as government anti-crisis measures to ensure the maintenance of jobs. Numerous anti-crisis measures support the public funding to maintain employment. The anti-crisis measures taken by the Slovak Government focusing on employment of the disadvantaged (disabled) persons included contributions to promote the maintenance of employment (for an employer), contributions to promote job creation (for an employer, who creates a job for the disadvantaged) etc.⁶⁸

In 2013, the Employment Services Act was amended. The amendment, the purpose of which was saving measures, had an impact on disabled people and was broadly criticised because the oncoming changes seemed to worsen the situation among the disabled persons in the society. The result of the amendment was that contribution to the establishment of a sheltered workplace was lowered by a half and must be approved by a special commission. A contribution for a reconstruction or a technical evaluation of property of workshops or workplaces was

⁶⁷ Allowance for settlement of operational cost for sheltered workshop or sheltered workstation and for settlement of cost for transport of employee (self-employer with health handicap), Article 60 of the Social Services Act.

⁶⁸ There are several kinds of contributions for job creation for the disadvantaged (employment of the disabled), to do business, to maintain jobs for workers with the lowest income, contribution to the employee's wages and many others, but unfortunately, there have been opinions that this is only worthless expense of money by the Government with no or unimportant effect. According to a Slovak economist Peter Gonda, the contributions to support job retention means that Government supports the payment of social security contributions for artificially kept jobs, which is a moral hazard and deformation of the competitive environment. *Opatrenia vlády nestačia* (The Government's Measures Are Insufficient), *Hospodárske Noviny* (21 October 2009) <<http://hnporadna.hnonline.sk/poradca-156/opatrenia-vlady-nestacia-350435>> accessed 18 March 2015 [Slovak].

revoked as well as a contribution for the preparation of employability of persons with disabilities.⁶⁹

Under the introduced quota system for the employment of persons with disabilities as described above, a frequent practice of employers is to rather choose to stay in their comfort zone and pay contributions than to employ a disabled person, who needs to have the workplace adapted according to his/her special needs. Financial contributions provided by state authorities to support the creation of suitable workplace for a disabled person are not sufficient to persuade the employers. Moreover, since the contribution to be paid as an alternative to hiring a person with disability under the quota system or ordering services is designed as a preferable alternative since its amount is not a penalisation. Apparently, the actual measures are not an optimal solution and need to be altered (higher sum of contributions and stricter sanctions).⁷⁰

According to the Report of the Slovak National Centre for Human Rights from 2013, there is an acute lack of work opportunities for the persons with disabilities in the labour market and the promotion of their employment is insufficient and administratively difficult. Contributions and subsidies do not improve adverse conditions and barriers faced by these people. The current solutions of the condition are only partial and not sustainable in long terms. The present situation reflects the scepticism regarding low level of their quality of life and also very poor incomes, which mostly belong under the category of low-income households. Procedures of eliminating barriers and integration are regarded insufficient and slow.⁷¹

As for the question of conformity with the Charter, we shall conclude, that the rights of persons with disabilities to social integration and participation in the life of the community are preserved by the exercising of particular measures, which are providing those persons with guidance, education and vocational training, but we have to highlight that the effects of the measures are

⁶⁹ Another criticised changes included: contributions for establishing of sheltered workshops, maintaining the employment of a person with disability and for self-employment of a person with disability would not be provided automatically, and the contributions per one person with disability would be significantly reduced.

⁷⁰ A sanction for failure to meet the obligation of employing a disabled person or making a contract appropriate to employing people with disabilities, or to pay a contribution is in according to Article 66a(1)(a) of the Act on Employment Services (Act No. 5/2004 Coll.) up to EUR 33,193.91.

⁷¹ Slovak National Centre for Human Rights, *Report on the Observance of Human Rights including the Principle of Equal Treatment and the Rights of the Child in the Slovak Republic for the year 2013*, 35-51
<http://snslp.sk/CCMS/files/REPORT_ON_THE_OBSERVANCE_OF_HUMAN_RIGHTS_INCLUDING_THE_PRINCIPLE_OF_EQUAL_TREATMENT_AND_THE_RIGHTS_OF_THE_CHILD_IN_THE_SLOVAK_REPUBLIC_FOR_THE_YEAR_2013.pdf> accessed 23 March 2015.

not sufficient for long sustainable time and the unfavourable existential situation of key non – governmental organization active in the field of the protection of those persons causes that the requests of the persons with disabilities are losing attention.

5.2. Children and Young Persons (Article 17 ESC)

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

The education and training of children and young persons is considered an important part of the state policy in the Slovak Republic. Therefore, there is a core structure of institutions which were established and granted particular competences in order to perform state functions and provide an appropriate and sufficient education system.

The Ministry of Education is a central body of the state administration of the Slovak Republic responsible for elementary, secondary and higher education, educational facilities, lifelong learning, sciences, and for supporting sports and the youth by the state. It manages schools and school facilities at the Slovak territory through generally binding rules. It manages also sub-organizations carrying out activities within the scope of their competences. Such organization is for example the National Institute for Education⁷² ensuring methodical and professional management of schools and school facilities as well as educational activities of the teaching staffs. The main function of the Institute of Information and Prognoses in Education⁷³ is producing an information to support management and development of the areas falling within the managerial responsibilities of the Ministry.⁷⁴

Very important educational institution managed and financed by the Ministry of Education is the so called IUVENTA which carries out tasks resulting from the state policy towards children and

⁷² See the official website of the National Institute for Education: <<http://www.statpedu.sk/en/Home.alej>> accessed 14 February 2015.

⁷³ See the official website of the Institute of Information and Prognoses of Education: <http://www.uips.sk/index.php?option=com_content&task=view&id=459&Itemid=1187> accessed 14 February 2015.

⁷⁴ See the official website of the Ministry of Education, Science and Sport of the Slovak Republic: <<https://www.minedu.sk/about-the-ministry/>> accessed 14 February 2015.

the youth. These activities cover different areas of development and promotion of issues involving the youth, such as administration of grant programmes, work with the talented youth, educational activities for various target groups and providing of information on youth mobility, volunteering, state support of talented youth, etc.⁷⁵

The Ministry of Labour, Social Affairs and Family as an important state administration body for the social and legal protection of children and family policy coordination ensures that the social support system is economically sustainable, sufficient and fair. Despite playing main role in providing social support, it takes appropriate actions in order to reduce dependence on such benefits. The fact that the services of its organizations are daily used by thousands of citizens makes the Ministry the largest provider of social and counselling services in Slovakia.⁷⁶

The Central Office of Labour, Social Affairs and Family is a government authority which ensures state administration activities in the area of social affairs and employment services. It manages, controls, coordinates and methodically directs activities of 46 regional Offices of Labour, Social Affairs and Family. These institutions are not primarily focused on the education and training of children and young persons but their activities indirectly influence this issue.⁷⁷

The Council of the Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality has created a specific committee dealing with the issues related to children and the youth, i.e. the Committee for Children, as a permanent expert body. It performs particular tasks and provides for the obligations of the Slovak Republic in the implementation of children's rights enumerated in the provisions of the UN Convention on the Rights of the Child. The best interests of the child are a primary consideration in all actions concerning children undertaken by public or private entities and the conditions for the implementation and maintenance of such procedures and mechanisms should enable the participation of children and youth in the development of policies and measures affecting them.

There are several possible ways how a school can be founded under the Slovak legal system. First of all, a territorial self-government, consisting of municipalities and self-governing counties,

⁷⁵ See the official website of IUVENTA: <<http://www.iuventa.sk/en/IUVENTA/Our-Mission.alej>> accessed 14 February 2015.

⁷⁶ See the official website of the Ministry of Labour, Social Affairs and Family of the Slovak Republic: <<http://www.employment.gov.sk/en/>> accessed 14 February 2015.

⁷⁷ See the official website of the Central Office of Labour, Social Affairs and Family: <http://www.upsvar.sk/socialne-veci-a-rodina-2.html?page_id=237> accessed 14 February 2015.

is entitled to found primary and secondary schools within their territory under the Act on State Administration of School and School Self-Government (Act No. 596/2003 Coll.). Further, a county district office as a state authority is entitled and authorised to cooperate with other founders such as churches or private entities. State financing of these schools is based on a normative principle, i.e. according to the number of the students, the staff and the economic demands of the educational process under the Act on Financing of Primary Schools, Secondary Schools and School Units (Act No. 597/2003 Coll.).

Children of asylum seeking persons, refugees and foreigners receive education, accommodation and meals in schools under the same conditions as citizens of the Slovak Republic under the Act on Upbringing and Education (the Schools Act No. 245/2008 Coll.). Moreover, in order to remove language barriers, they are entitled to attend basic and advanced Slovak language courses in order to learn the official state language of the Slovak Republic.

Young offenders continue in compulsory education in a pertinent institution which ensures full time instruction in cooperation with the municipality or a body of state administration in education. There is also a possibility to receive secondary education. A young offender may study individually with professional assistance or within detached classes.⁷⁸

There are some problems concerning the access to proper education for the Roma children. The Roma children from socially disadvantaged backgrounds are very often enrolled in special schools or special classes, although they do not necessarily have special educational needs. This may be caused by their insufficient knowledge of the Slovak language and also by an absence of the Romany language in testing or other professional activities carried out with the Roma children.⁷⁹

Discrimination in education on the grounds of race or ethnicity is prohibited under the Act on Equal Treatment in Certain Areas and the Protection from Discrimination (the Anti-Discrimination Act No. 365/2004 Coll.). The Ministry of Education issues every year Pedagogical and Organizational Guidelines, under which all forms of discrimination are strongly prohibited and schools are obliged to prevent spatial, physical, organizational and symbolic

⁷⁸ Article 72 of the Regulation of the Ministry of Justice of the Slovak Republic No. 368/2008 Coll. Issuing the Rules for Serving the Sentence of Imprisonment.

⁷⁹ The Ministry of Education, Science and Sport of the Slovak Republic, *Report on the State of Education in Slovakia and Systematic Steps to Encourage its further Development 2013*, 46 [Slovak].

segregation or exclusion of Roma students on the ground of their ethnicity or social disadvantage. There are some projects supporting an effective and inclusive education and a multicultural environment within educational system. Nevertheless, the segregation of the Roma children in primary schools remains problematic in the Slovak Republic. Well-known examples are the cases from Levoča and Šarišské Michaľany, where exclusively Roma classes were created. As a result of implementation of a final court decision in case of primary school in Šarišské Michaľany, which ruled that the segregation did occur in this school, there have been some changes made and the situation is getting better.⁸⁰

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

Children and young persons, especially in disadvantaged situation such as a temporal or a final deprivation of the family support, enjoy the protection provided by state institutions in accordance with Article 41(1) of the Slovak Constitution, which expressly guarantees special protection for children and young persons. Particular conditions of an enforcement of this right are defined by law. They are entitled to get different types of benefits based on financial, social and legal support.

The state provides families with children with several allowances which are primarily aimed to financially support them and relieve them in their situation. In general, an allowance may be targeted individually for a child or a young person and not for a family as a whole, but persons eligible to claim such allowances are parents (or one parent only, or persons responsible for a child in an alternative care) on behalf of their children. However, in some specific situations the eligible person is directly a child or, better said, a young adult person.

Under the Child Allowance Act (Act No. 600/2003 Coll.), this allowance is a state social support for a dependent child and his or her training and maintenance. It is paid out monthly up to 25 years of age of the child or the young adult. Very important condition is a dependence of such person and therefore the characteristic features under which one may say who is dependent are exhaustively listed in the Act. A dependent child for the purposes of a child benefit allowance is considered such a child who:

⁸⁰ Supra note 72, accessed 3 March 2015.

- Is continuously getting prepared for a profession studying full time at a secondary school or a university;
- Is incapable to get prepared continuously for a profession by studying or is not able to work in employment because of illness or injury;
- Is exempt from the duty of compulsory school attendance;
- Is studying at a school for the students with disabilities.

Pursuant to the Act on Child Allowance Benefit, a person entitled to claim the child allowance is (except parents or persons responsible for a child in an alternative care) also an adult dependent child if there is no parent, if he/she has special arrangements for parental maintenance, was married, was married and divorced, or is a minor parent, who owes parental care and responsibility.

The amount of child allowance is governed by a regulation of the Ministry. Currently its amount is EUR 23.52 and there is a possibility to obtain a bonus of EUR 11.02.⁸¹ The conditions to meet in order to receive the bonus are provided in the Act.

Other type of special state aid for children and young persons is the so-called substitutive maintenance payment governed by the Substitutive Maintenance Act (Act No. 201/2008 Coll.). This type of support contributes to ensure the maintenance of a dependent child if there are specific situations such as a dependent child is not entitled to an orphan's pension or the orphan's pension is lower than the minimum of maintenance provided in the Family Act, or the responsible person fails to perform mandatory maintenance payment obligation established by a court decision or by a court-approved agreement. An adult child may directly obtain a substitutive maintenance. The amount is determined by the court's final decision or an approved agreement and it may be up to a maximum of 1.2 times of a living wage for a dependent child. In the event that responsible person pays partially, the entitled child will obtain a difference between the stipulated amount and the paid amount of maintenance.

In cases when parents do not or cannot provide parental custody of a child, there are some instruments of substitute care. Under the Family Act (Act No. 36/2005 Coll.) a court may decide

⁸¹ Regulation of the Ministry of Labour, Social Affairs and Family of the Slovak Republic No. 450/2013 Coll. on Amount of Child Allowance Benefit and Bonus to Child Allowance Benefit.

that such a minor child shall be in custody of another person, the so-called alternate custody, in a foster care or an institutional care. First two instruments are considered to be family forms of the substitute care and the third one may be ordered by the court only if education and upbringing of a minor child is seriously disrupted or the parents cannot provide personal care for other serious reasons and an alternative custody or a foster care are not possible. The institutions, where children may be placed are children's homes, emergency centres and re-socialization centres. According to statistics, 14,100 children were out of their families in 2013, i.e. 1.33 per cent of all children population in Slovakia.⁸²

Children's homes can be divided into two groups: state children's homes established by an authority of the social child protection, usually an Office of Labour, Social Affairs and Family, and children's homes established by NGOs which are accredited by the Ministry of Labour, Social Affairs and Family. Both types are fully or partially state-funded. Currently, children's homes are undergoing substantial transformation and the so-called professional families simulating normal family life are more preferred.⁸³ Nevertheless, under the Act on Social Protection of Children and Social Guardianship (Act No. 305/2005 Coll.), every type of child welfare institution temporarily makes up for a child's natural family environment or an alternative family environment. A maximum number of children in professional families is 6 and 10 in a children's home within one individual group, however, a total number of children in one building which contains several individual groups cannot exceed 40 children.

The child welfare institutions are administered by The Central Office of Labour, Social Affairs and Family which has several competences in this field such as establishing, control, methodological guidance and others.

**5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance?
Has your MS taken any measures to provide free, or at least access to, tertiary education?**

⁸² See the official website of the Central Office of Labour, Social Affairs and Family: <http://www.upsvar.sk/detske-domovy-a-ine-zariadenia/detske-domovy/vybrane-statisticke-ukazovatele.html?page_id=130708> accessed 12 March 2015.

⁸³ See the official website of the Central Office of Labour, Social Affairs and Family: <http://www.upsvar.sk/socialne-veci-a-rodina/socialno-pravna-ochrana-deti/profesionalne-rodiny.html?page_id=12846> accessed 12 March 2015.

Quality education system is currently a global issue and one of the key concerns of the society because educated population is one of the most important elements of a sustainable development and a well-functioning economy. The Slovak Republic recognizes the necessity and the need to ensure an accessible system of education, therefore, it has taken not only substantial measures to provide children and young persons with a free primary and secondary education, but also measures with the aim to encourage regular school attendance. Generally, there is a constitutional level of such measures, which represent basic principles and views on this issue, and a statutory level, which includes specialising of particular legal institutes and measures related to education and its providing.

The Slovak Constitution guarantees, among others, the right of everyone to education (Article 42). However, from the right to education an obligation is derived, under which school attendance is compulsory and such obligation will be specified by law⁸⁴ Moreover, under the Slovak Constitution free education at primary schools and secondary schools is considered a right, but there is also a possibility to establish schools other than public schools under conditions defined by specific law and tuition fees may be charged in such schools.⁸⁵

Statutory protection of the right to education is expressed in several statutes. One of these statutes is the Act on Upbringing and Education (the Schools Act No. 245/2008 Coll.) which contains, *inter alia*, the principles of education and training. Under the Education Act, the education in the Slovak legal system is based on a principle of free education guaranteed one year before compulsory school attendance at preschools and free education guaranteed at primary schools and secondary schools which are created either by an authority of local government, or an authority of central government, or an authority of local self-government also known as state schools. Compulsory education lasts ten years and no longer than until the end of the school year in which the child reaches the age of 16 years. No one can be exempted from this duty. A compulsory school attendance starts at the beginning of the school year following the date on which the child reaches the age of 6 years and educational capability. The state primary and

⁸⁴ Article 43(1) of the Slovak Constitution reads: Everyone has the right to education. School attendance is compulsory. Its period and age limit will be defined by law.

⁸⁵ Article 43(2) of the Slovak Constitution reads: Citizens have the right to free education at primary and secondary schools... Article 43(3) of the Slovak Constitution: Schools other than state schools may be established, and instruction in them provided, only under conditions defined by law. Such schools may charge a tuition fee.

secondary schools provide textbooks and workbooks of compulsory courses and pupils and students are fully entitled to get them for free.

Pursuant to Article 20(2) of the Education Act, every legal representative is obliged to register the child for compulsory school attendance in a primary school and such registration takes place from 15 January to 15 February every year in which pertinent school year begins. If the legal representative of a child fails to perform the duty mentioned, he/she will be held liable for an offence and may be fined in amount up to EUR 331.50 in accordance with Article 37(1-2) of the Act on State Administration of School and School Self-government (Act No. 596/2003 Coll.). Other possible consequences of failure to meet this obligation are as follows:

- A competent Office of Labour, Social Affairs and Family, department of the State Social Benefits shall issue a decision designating a special receiver of the child allowance and bonus, usually a municipality, in place of the child's legal representative;
- The parent ceases to be entitled to substitutive maintenance payments;
- In the event a parent is a receiver of the social assistance benefit and the supplementary benefit, and the parent ceases to be entitled to obtain the allowance for the child who is bound to attend school in the amount of EUR 17.20;
- In the event a parent is a receiver of the parental allowance and the child has omitted the compulsory school attendance for three following months, the parental allowance is reduced by 50 per cent within a period of three months.⁸⁶

As for tertiary education, the Slovak Constitution does not guarantee free tertiary education automatically. However, there are two expressed fundamental conditions under which the state guarantees this right. Students at higher educational establishments, i.e. universities, may enjoy free education depending on the abilities of the individual and the potential of the society in respect of its adequate sources in line with Article 43(2) of the Slovak Constitution.

Currently, there is a complex of conditions contained in the statutory law under which student is not required to pay tuition fee at a university. Firstly, it is a student studying full time at a public

⁸⁶ See the official website of the Central Office of Labour, Social Affairs and Family: <http://www.upsvar.sk/socialne-veci-a-rodina-1/rodina/vychovne-problemy-deti/zaskolactvo.html?page_id=262372&urad=239644> accessed 12 March 2015.

university within a regular length of studies.⁸⁷ Specific situation occurs when such a student with Slovak citizenship attends a study programme in a foreign language and there is a possibility to study the same programme in the Slovak language. In order to be entitled to a free tertiary education the student will, apart from the above mentioned, study in the Slovak language. Students studying in external form for longer than regular length of studies, or studying more than one study programme are required to pay the tuition fee, which is stated by the principal of the university in accordance with Article 92 of the Act on Universities (Act No. 131/2002 Coll.). In addition, there are other benefits which are to facilitate an access to education and to make it financially viable. Under the Act on Universities, the state provides a system of social support for students which can be provided by direct and indirect means. Indirect means of social support include activities such as financial support and organizational support for sport activities and cultural activities, or a support based on accommodation and meals providing a contribution to the costs. Currently, the State pays for student meals in such a way that special student canteens get EUR 1 per every main course for a student. It means that every main course is EUR 1 cheaper than a real value of certain food. However, there is a limit under which a student may get only two main courses per day.

Direct means of social support are scholarships and concessional loans for students. Scholarships guaranteed in the Act may be paid out from state source or a source of particular university. There are two types of scholarships, social scholarship and motivating scholarship. Concessional student loans are granted from the special State Fund to support education.

Every student has the right to apply for social support, however, a student must meet the conditions required for obtaining them. When a number of applicants for any of the mentioned services is beyond the total capacity, the service shall be provided to the applicants according to the criteria predetermined by the university, taking into account the particular social situation and the study results of the students (tenderer).

The Slovak Government has made a decision which is not expressly a measure supporting education and training of children and young persons, however, it makes education system more open and available from financial point of view. Under this decision the children up to the age of

⁸⁷ Under the Slovak law a regular length in of full time studies is 3-4 years for bachelor studies and up to 3 years for master studies.

15 and students in full-time studies at secondary schools and universities up to the age of 26 years are entitled to travel by train of State Railway Company Slovakia within Slovakia for free.⁸⁸ Free railway transport for students is a recent measure effective from 17 November 2014.

Hidden costs of the university studies are mostly related to study materials, professional literature, books, other necessary devices, charges in libraries, etc.

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue

A long-term unemployment is a permanent social-economic problem in the Slovak Republic as previously mentioned. The current phenomenon in the EU and even more in Slovakia is a high youth unemployment. Although in 2014, an average unemployment rate in the EU (28 countries) was 22.2 per cent, rate of the youth unemployment was 30.4 per cent in Slovakia which is the 7th worst rate within the EU. This rate represents unemployed persons below 25 years of age as a percentage of the labour force. Therefore, it can be concluded that the youth unemployment in comparison to the general unemployment is relatively high.⁸⁹

There are several elements causing the situation in which the young population finds it rather hard to find any job. The state supported by the EU policy is trying to implement sufficient measures in order to increase employment rates. The biggest problem seems to be disproportionality in the labour market based on the principle of supply and demand. Education system does not reflect the current economic situation or trends and it does not respond to the needs of employers. Subsequently, obtaining of skills, knowledge and experience which are necessary to carry out certain jobs prove to be insufficient. Approximately 60 per cent of unemployed people are employees with low qualification.

According to the Minister of Labour, Social Affairs and Family, one of the main goals of the Ministry of Labour, Social Affairs and Family for the year 2015 is a decrease in unemployment. In his statement concerning the measures applied in the year 2014 the Minister expressed his satisfaction that all legislative changes that were adopted, had been positive and since January

⁸⁸ Proceedings of the Government of the Slovak Republic, Implementation of measures on financial, economic and social package in railway personal transport.

⁸⁹ Eurostat, *Unemployment Rate by Age Group*, <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tsdec460&plugin=1> accessed 17 March 2015.

unemployment rate was dropping steadily and employment rate was growing. Subsequently, as for the year 2015, he added that warranties for young people would be realized through a new operational programme, which has already been passed. The Minister expressed the will to continue in the well-established projects such as community centres, field services etc.⁹⁰

A plan for the implementation of warranties for young people and reforms concerning the professional education, training and internships were adopted in February 2014 but the Slovak Government has continued introducing of new applicable measures.

Since the beginning of the year 2015, an amendment to the Act on Employment Services (Act No. 5/2004 Coll.) became effective, under which employers are entitled to obtain an allowance to support job creation for the unemployed young persons. They are required to meet certain conditions in order to get this financial aid. In general, under basic conditions, the allowance is provided for 12 months in the maximal amount of EUR 456.54 per employee, but young employee must be under 29 years of age and the employment term will be for specified period of at least 18 months. A specific situation is in the case of young drivers and co-drivers when the allowance in the maximal amount of EUR 547.85 is provided for 9 months and the employee will be employed for the period of at least 30 months. An estimated number of the jobs created is 6.4 thousand in the year 2015.

Another special programme to support directly young unemployed people is a paid internship after their graduation. An applicant must be under 26 years and registered in the Office of Labour, Social Affairs and Family for at least 1 month. Duration of the internship ranges between 3 and 6 months and a young employee is entitled to obtain an allowance which is 65 per cent of the living wage. This allowance is provided by the pertinent local Office of Labour, Social Affairs and Family. The employer shall make an agreement with the local Office of Labour, Social Affairs and Family and meet requirements such as good working conditions, keeping records, allowing an authorized person to supervise the agreement performance, etc., in order to employ a graduate. Under the Act on Subsistence Minimum (Act No. 601/2003 Coll.), the subsistence minimum for an individual is currently set out in the amount of EUR 198.09.

⁹⁰ TASR, 'V roku 2015 chceme ďalej znižovať nezamestnanosť, tvrdí Richter (In 2015 We Seek to Further Decrease Unemployment, Says Richter)' *TERAZ* (29 December 29 2014) <<http://www.teraz.sk/ekonomika/v-roku-2015-chceme-dalej-znizovat-nez/112344-clanok.html>> accessed 28 March 2015 [Slovak].

In addition to the above mentioned programmes focused directly on the young unemployed people, the state introduced other measures to support all unemployed people, such as a resettlement allowance for work, an allowance for commuting to work, an allowance for self-employment, an allowance to support a development of local and regional employment and others.

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

The austerity measures have had the impact mainly on the education system. Financing of the education system is a substantial problem in the Slovak Republic affected by a current economic situation and also by the austerity measures. In the recent years, this area suffers from a lack of money in different ways.

Shortly after the beginning of the global crisis there were not enough textbooks for every student at primary schools. The reform of the Slovak education system, realized in 2008, called for a withdrawal of old textbooks, however, a lot of new textbooks were not delivered even by the end of the year 2011.⁹¹ The reason might be found both in non-systematic measures carried out by the authorities, and also as an effect of the crisis.

The state financing system of schools is based on a number of students in primary or secondary school and due to that fact, schools are vulnerable in outermost regions or in regions with ethnic minorities, therefore, they are supported by additional financial contribution. Nevertheless, several schools with a small number of registered students were closed in previous years because the state funding was insufficient and their founders, usually municipalities, were not able to finance them any longer. In 2013, the Ministry of Education produced a list of primary schools with a number of students under 150 which were privileged in financing and which should be gradually closed or merged in order to save money. An effort to discard small schools was also supported by new minimums of students in particular types of schools or classes.⁹²

⁹¹ SITA, 'Učiteľov a žiakov trápi nedostatok učebníc (Teachers and Students Worry about the Lack of Textbooks)' *School Portal* (10 October 2011) <<http://www.skolskyportal.sk/clanky/ucitelov-ziakov-trapi-nedostatok-ucebnic>> accessed 01 April 2015 [Slovak].

⁹² Tomáš Nejedlý, 'Pozrite sa, ktoré školy sú podľa Čaploviča na odstrel (Which Schools Are to Be Shot off According to Čaplovič)' *Hospodárske noviny* (7 August 2013) <<http://hn.hnonline.sk/slovensko-119/pozrite-sa-ktore-skoly-su-podla-caplovica-na-odstrel-563649>> accessed 01 April 2015 [Slovak].

Notwithstanding the above mentioned, the right to free education was not, or at least not substantially, affected by the austerity measures. The only significant change occurred by charging external studies at universities. Such types of studies were for free until 2011.

The situation in social support of children, young people and families is unstable. During the crisis there were several tendencies to reduce allowances but nevertheless some of them were increased, such as the parental allowance or child allowance⁹³, therefore, it is difficult to express the impact of the austerity measures in this field.

While the situation in social support of children, young people and families may not be at its best in the Slovak Republic, the evolution of this system is in accordance with the chart and no austerity measures can be marked as in contrary with the chart.

6. OTHER ISSUES

Are there any other relevant issues regarding the ESC, and not covered by the questions above, in your MS? Please describe the applicable legal framework and explain how it is not in compliance with the ESC

While Article 14 ESC is being implemented in Slovakia among others through the Act on Assistance in Material Need (Act No. 417/2013 Coll.), there have been issues on Articles 10(3) to Article 11 that ended up being decided by the Constitutional Court of the Slovak Republic.

The applicants submitted that the contested provisions of the deprived are inconsistent with the right to such assistance as is necessary to ensure basic living conditions laid down in Article 39(2) of the Slovak Constitution, and the prohibition of discrimination on the basis of different status provided for in Art. 12 section 1 and 2 of the Slovak Constitution. They claimed that the National Council of the Slovak Republic in the exercise of its legislative competence went beyond the Constitution, when it chose to achieve the objective means that are contrary to the fundamental constitutional principles of the Slovak Republic and unlawfully interfered with the fundamental rights and freedoms guaranteed by the Slovak Constitution.

⁹³ Rodičovský príspevok sa bude zvyšovať, o koľko si polepšíte? (Parental Allowance Will Be Increased, How Much Will You Augment?) *Finanzy* <<http://finanza.sk/rodicovsky-prispevok-sa-bude-zvysovat-o-kolko-si-polepsite/>> accessed 01 April 2015 [Slovak].

The application to the Constitutional Court for suspension of the disputed provisions of the deprived failed because the proposal did not contain an instantiation and a method of threats to fundamental rights or freedoms, or the facts showing that there was a considerable economic damage or other serious irreparable consequence, and even the Constitutional Court did not receive any relevant factual information to conclude that the application of the disputed provisions could endanger the fundamental rights and freedoms guaranteed by the Constitution of the addressees as the beneficiaries of material need.⁹⁴

Even though the Constitutional Court did not find any conflict between the act and the constitution, political pressure is still working on changing these statutes, as it is claimed that they do not correspond with the social values and the intention of the ESC.

7. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

ESC itself allows states to submit article-specific reservations, limiting the ESC provisions by which the state is bound, and to decide whether or not to participate in the innovative collective complaints procedure.⁹⁵ The introduction of the system of collective complaints is designed to increase the efficiency of the supervisory machinery based solely on the submission of governmental reports. In particular, this system should increase the participation by management and labour and non-governmental organizations. Unlike the reporting system, which applies to all states parties to ESC, the acceptance to be bound by the collective complaints system is optional. Thus, from among the 34 states parties to ESC, only 13 are currently bound by the system.⁹⁶ Even though this arrangement is intended to streamline and improve the reporting and monitoring reports, Slovakia has not adopted it until now. Therefore, it seems hard to evaluate

⁹⁴ Resolution of the Constitutional Court of the Slovak Republic of 26 March 2014, PL. ÚS 8/2014-12.

⁹⁵ International Justice Resource Centre: *European Committee of Social Rights* <<http://www.ijrcenter.org/european-committee-of-social-rights/>> accessed 27 February 2015.

⁹⁶ Robin R. Churchill & Urfan Khaliq, *The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?* (EJIL,2014) <<http://ejil.oxfordjournals.org/>> accessed 27 February 2015.

how the ESC's collective complaint system has contributed to alleviating the impact of austerity measures in Slovakia.

The only evaluable system for Slovakia is therefore the reporting one. The fact that states parties to ESC are once per year obliged to submit a national report describing how they are implementing specific provisions thereof is a good means how to push states to conform their activities to ESC in order to implement the provisions and get some positive results. The Committee evaluates the reports and publishes conclusions about whether each State is in conformity with ESC. Moreover, if a State does not act in response to the Committee's decision as a part of the collective complaint procedure, and if, as a result, the State is not in compliance with ESC, the Committee will also issue a recommendation to the State. This practice has formed a good method of ESC enforcement. During the time of financial crisis when the cuts in the public spending affected the social security system, the practice of reporting system helped to pump at least a minimum financial contribution to this sector.

8. CONCLUSIONS

When the 2008 economic crisis hit the world, Slovakia was no exception, being impacted thereby, too. As a result, its small, export-oriented economy suffered by an essential deterioration of the economies of its major trading partners and the negative consequences mirrored in the economy of Slovakia. At the outburst of the crisis, the Slovak Government committed itself to take decisive actions to fight the crisis and to protect the economy and living standards of the population, as well as to provide prosperity and social justice. In response to the crisis, Slovakia adopted a complex of measures in the fight against the global economic crisis. In 2010, the parliamentary elections took place in the Slovak Republic. The new government that was formed, changed from the left-centred to the right-centred, and so did the approach towards austerity measures. In 2012, Slovakia faced early parliamentary elections, which were won by the social democrats with a result enabling them to create the government without entering into any coalition. The attitude towards the austerity measures has been since then defined by this change. Shortly after taking office in 2012, the new Slovak Government signalled its intention to implement an austerity agenda in order to stabilise the public finances. In general, the

government proclaimed its will to protect the most vulnerable groups of society, such as the elderly people, people on the edge of poverty, young people and young families. The austerity programmes approved by the government reportedly included a lot of cuts, new taxes on corporate and retail bank deposits, as well as minimal increases in income taxes for high earners and high-profit companies. Despite these efforts, in line with the need to secure the budget deficit, some of the measures and cuts aimed at saving budgetary resources inevitably have had an impact on social and economic rights of individuals.

The Slovak Republic ratified both ESC and the revised ESC. Its national legislation is formally in line with all the provisions of ESC it is bound by. Although the austerity measures and the government's measures adopted to overcome the crisis have had some impact on the enjoyment of the rights guaranteed under ESC, these rights remain legislatively guaranteed in Slovakia.

The most problematic areas that must be highlighted in the conclusion of this research are the high unemployment (and particularly the youth unemployment), social exclusion and marginalisation of the Roma people in Slovakia (in all areas of everyday life, most visibly in education, employment and health care) and the situation of the disabled people (particularly with regards to the access to employment).

Prior to the 2008 economic crisis the unemployment in Slovakia was 8 per cent. During the crisis it rose to nearly 14 per cent. The youth unemployment still has been among the highest in the EU.

Additional cuts inevitably meant a further deterioration of living conditions for the Slovak population. Inequality between the poorest and the richest has alarmingly risen; while in 2007, 11 per cent of the population lived in poverty, the figure has now risen to almost 18 per cent. In the same period, the number of working poor individuals increased from 5 to 9 per cent.

The Government notes that the quality of life of the Roma communities compared to 1989 declined for several reasons and that without external intervention the status of the Roma communities cannot be improved in real time. Evidently, the economic crisis and the following public cuts also played a role. A Strategy of Roma Integration by 2020 together with the main policies with regards to the Roma people seek to address the issues of the Roma marginalisation and social exclusion. It is inevitable that the policies are thoroughly implemented in practice and that the discrimination of the Roma people is tackled. Furthermore, it seems vital to mainstream

human rights of the Roma, and their social rights in particular, into all relevant policies, especially in the areas of employment, social protection, housing, education, health care, etc. Last but not least, the authorities shall also work on overcoming the tensions between the majority population and the Roma tackling the omnipresent stereotypes and discrimination.

It must be recognised that since 2008, the Slovak Republic has introduced various positive measures aiming to tackle discrimination of the disabled people both at workplace and in education. Unfortunately, in 2013, the amendment of the Employment Services Act brought about several changes in the already existing measures, which seem to have worsened the situation of the disabled persons. Several contributions related to employment of persons with disabilities have been lowered, subjected to stricter conditions and some of them even revoked. Although, there are now more than 6,200 sheltered workshops and workplaces in the Slovak Republic, which employ more than 11,300 people with disabilities, there are still more than 33,000 disabled people unemployed.⁹⁷

Undoubtedly, since the outburst of the crisis in 2008, Slovakia has introduced and implemented also several positive measures and programmes in order to improve the social situation of people. The most notable ones fall within the area of family support and protection, employment of young people, social protection and security of elderly people and improving opportunities of some of the most vulnerable groups such as women and persons with disabilities.

In 2013, the amendment of the Anti-Discrimination Act bringing about major modifications to the instrument of temporary equalising measures entered into force. Since 2013, these may be adopted in order to eliminate disadvantages imposed on a wider range of grounds, now including also racial or ethnic origin, belonging to a national minority or an ethnic group and a disability. Moreover, such temporary compensatory measures can be now adopted not only by state administrative bodies but also by other legal persons. These measures have a potential to bring equal opportunities to the traditionally disadvantaged groups, consequently those which were impacted by the crisis and subsequent austerity measures at the most. Hence, their adoption shall be highly promoted.

⁹⁷ Jarmila Horáková, 'Ako sa od mája menia dávky pre nezamestnaných (How Do the Unemployment Benefits Change as of May)', *SME* <<http://ekonomika.sme.sk/c/6761477/ako-sa-od-maja-menia-davky-pre-nezamestnanych.html>> accessed 21 March 2015 [Slovak].

Last but not least, regarding the overall obligations of the Slovak Republic under ESC, it is to be recommended that Slovakia reconsider subjecting itself to the system of collective complaints. It is believed that such a step would further strengthen the observance of the rights guaranteed in Slovakia under ESC, hence it could contribute to mitigating the impacts of the 2008 crisis on the social rights.

9. TABLES OF CASE LAW AND LEGISLATION

9.1. National Legislation

- Act No. 40/1964 Coll. the Civil Code.
- Act No. 83/1990 Coll. on Civic Associations.
- Act No. 2/1991 Coll. on Collective Bargaining.
- Act No. 460/1992 Coll. the Constitution of the Slovak Republic.
- Act No. 311/2001 Coll. the Labour Code.
- Act No. 131/2002 Coll. on Universities.
- Act No. 461/2003 Coll. on Social Insurance.
- Act No. 595/2003 Coll. on Income Tax Act.
- Act No. 596/2003 Coll. on State Administration of School and School Self-Government.
- Act No. 597/2003 Coll. on Financing of Primary Schools, Secondary Schools and School Units.
- Act. No. 600/2003 Coll. on Child Allowance.
- Act No. 601/2003 Coll. on Subsistence Minimum.
- Act No. 5/2004 Coll. the Employment Services Act.
- Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination as amended (the Anti-Discrimination Act).
- Act No. 577/2004 Coll. on the Scope of Health Care Provided on the Basis of Public Health Insurance.
- Act No. 580/2004 Coll. on Health Insurance.
- Act No. 36/2005 Coll. the Family Act.
- Act No. 305/2005 Coll. on Social Protection of Children and Social Guardianship.
- Act No. 327/2005 Coll. on Providing of Legal Aid to Persons in Material Need.
- Act No. 103/2007 Coll. on Tripartite.

- Act No. 201/2008 Coll. on Substitutive Maintenance.
- Act No. 245/2008 Coll. on Upbringing and Education (the Schools Act).
- Act No. 447/2008 Coll. on Financial Allowances for Compensation of Severe Disabilities.
- Act No. 571/2009 Coll. on Parental Allowance.
- Act No. 383/2013 Coll. on the on Childbirth Allowance and on Allowance on More Concurrently Born Children.
- Act No. 417/2013 Coll. on Assistance in Material Need.
- Regulation of the Ministry of Labour, Social Affairs and Family of the Slovak Republic No. 450/2013 Coll. on Amount of Child Allowance Benefit and Bonus to Child Allowance Benefit.
- Regulation of the Government of the Slovak Republic No. 393/2014 Coll. on Public Employee Wage Tariffs.
- Resolution of the National Council of the Slovak Republic No. 1321 of 17 February 2009.
- Resolution of the National Council of the Slovak Republic No. 1026 of 27 March 1998.
- Notice of the Ministry of Foreign Affairs of the Slovak Republic No. 329/1998 Coll. on the European Social Charter.

9.2. National Case Law

- Resolution of the Constitutional Court of the Slovak Republic of 26 March 2014, PL. ÚS 8/2014-12.

10. BIBLIOGRAPHY AND ONLINE RESOURCES

10.1. English Titles

10.1.1. Journal Articles

- Cavero T & Poinasamy K, *A Cautionary Tale, the True Cost of Austerity and Inequality in Europe* (OXFAM, September 2013)
<http://www.oxfam.org/sites/www.oxfam.org/files/bp174-cautionary-tale-austerity-inequality-europe-120913-en_1.pdf>.
- Churchill R & Khaliq U, *The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?* (EJIL, 2014)
<<http://ejil.oxfordjournals.org/>>.
- Meravy T, 'Family Policy in Slovakia: In Urgent Need of Reform', *Revue* (16 December 2013) <<http://visegradrevue.eu/family-policy-in-slovakia-in-urgent-need-of-reform/>>.

10.1.2. Reports

- European Commission, 'European Economic Forecast, Winter 2015' (European Union, 2015)
<http://ec.europa.eu/economy_finance/publications/european_economy/2015/pdf/ee1_en.pdf>
- Hauben H et al, *Assessing the Impact of European Governments Austerity Plans on the Rights of People with Disabilities* (European Foundation Centre, October 2012)
<http://www.enil.eu/wp-content/uploads/2012/12/Austerity-European-Report_FINAL.pdf>.
- International Monetary Fund, *World Economic Outlook- Sustaining the Recovery* (October 2009) <<https://www.imf.org/external/pubs/ft/weo/2009/02/>>
- OECD, *Economic Surveys: Slovak Republic 2014* (OECD, 2014)
<http://dx.doi.org/10.1787/eco_surveys-sk-2014>
- Slovak National Centre for Human Rights, *Report on the Observance of Human Rights including the Principle of Equal Treatment and the Rights of the Child in the Slovak Republic for the year 2013*,

http://snslp.sk/CCMS/files/REPORT_ON_THE_OBSERVANCE_OF_HUMAN_RIGHTS_INCLUDING_THE_PRINCIPLE_OF_EQUAL_TREATMENT_AND_THE_RIGHTS_OF_THE_CHILD_IN_THE_SLOVAK_REPUBLIC_FOR_THE_YEAR_2013.pdf

10.1.3. Newspaper Articles

- Cunningham B, 'Is Opportunity Knocking for Slovakia's Roma?', *Transitions Online* (12 February 2015) <<http://www.tol.org/client/article/24683-is-opportunity-knocking-for-slovakias-roma.html>>.
- Cuprik R, 'Government Wants to Support Kindergartens', *The Slovak Spectator* (27 January 2015) <<http://spectator.sme.sk/c/20053268/government-wants-to-support-kindergartens.html>>.
- Cuprik R, 'Policy Urges New Hiring of Mothers', *The Slovak Spectator* (26 January 2015) <<http://spectator.sme.sk/c/20053242/policy-urges-new-hiring-of-mothers.html>>.
- Hetteš M, *Global Challenges and Social Welfare in Slovakia*, (PROHUMAN, 27 Jun 2013) <<http://www.prohuman.sk/socialna-praca/global-challenges-and-social-welfare-in-slovakia>> accessed 05 March 2015.

10.1.4. Other Sources

- Eurostat, Unemployment Rate by Age Group, <<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tsdec460&plugin=1>>.
- *Fertility Rates* (OECD, 2015) <<https://data.oecd.org/pop/fertility-rates.htm#indicator-chart>>.
- International Justice Resource Centre: *European Committee of Social Rights* <<http://www.ijrcenter.org/european-committee-of-social-rights/>>.
- *Slovak Employment Law Basics* (Legal Counsels, 2015) <http://www.legalcounsels.sk/hrnews/Slovak_employment_law_basics.pdf>.

- Social Insurance Company, *Social Insurance System in Slovakia*
<<http://www.socpoist.sk/social-insurance-system-in-slovakia/24533s>>.
- *Sickness Insurance* (EURAXESS, 2015) <<http://www.euraxess.sk/en/main/services-practical-information/social-security/social-security-system-in-slovakia/social-insurance/sickness-insurance#sickness>>.
- *Social Security System in Slovakia* (EURAXESS, 2014)
<<http://www.euraxess.sk/en/main/services-practical-information/social-security/social-security-system-in-slovakia>>.
- Social Security Contributions (OECD, 2015) <<https://data.oecd.org/tax/social-security-contributions.htm>>.

10.2. Slovak Titles

10.2.1. Books

- Janičová E, *Kolektívna zmluva – Lex contractus realizácie sociálneho dialógu a zodpovedného podnikania, Európska dimenzia podnikovej sociálnej zodpovednosti a jej vplyv na reguláciu pracovnoprávnych vzťahov* (Košice, Univerzita Pavla Jozefa Šafárika-Právnická fakulta).
- Tkáč V, *Odbory, zamestnávateľia, zamestnanecké rady* (Košice, Eduard Szattler PressPrint, 2004).

10.2.2. Reports

- Okáli I & col., *Hospodársky vývoj Slovenska v roku 2008* (Ekonomický ústav Slovenskej Akadémie vied, Bratislava, 2009) 60
<http://ekonom.sav.sk/uploads/journals/186_hv_sr_2008_-_slovenska_verzia.pdf>.
- The Ministry of Education, Science and Sport of the Slovak Republic, *Report on the State of Education in Slovakia and Systematic Steps to Encourage its further Development 2013*.

- The Ministry of Labour, Social Affairs and Family of the Slovak Republic, *National Social Report of the Slovak Republic 2014*
<<http://ec.europa.eu/social/BlobServlet?docId=11948&langId=en>>.

10.2.3. Policy Documents

- Konceptia výchovy a vzdelávania detí so zdravotným postihnutím (Conception of Upbringing and Education of Children with Disabilities)
<<https://www.minedu.sk/data/att/937.pdf>>.
- Memorandum o spolupráci pri riešení dopadov finančnej a hospodárskej krízy na slovenskú spoločnosť medzi Vládou Slovenskej republiky a Konfederáciou odborových zväzov Slovenskej republiky (Memorandum on Cooperation in Resolving Impacts of the Financial and Economic Crisis on the Slovak Society between the Government of the Slovak Republic and the Confederation of Trade Unions of the Slovak Republic)
<http://www.kozsr.sk/page_sk/dolezite_materialy/memorandum.pdf>.
- Opatrenia vlády SR na prekonanie dopadov globálnej finančnej krízy (Measures of the Slovak Government for Overcoming the Impacts of the Global Financial Crisis),
<http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Mater-Dokum-48853?prefixFile=m_>.
- *Sociálno-demokratický balíček (Social-democratic package)*, (Government Office of the Slovak Republic) <<http://www.vlada.gov.sk/robert-fico-socialnodemokraticky-balicek/>>.
- 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>.

10.2.4. Newspaper Articles

- Horáková J, 'Ako sa od mája menia dávky pre nezamestnaných (How Do the Unemployment Benefits Change as of May)', *SME*
<<http://ekonomika.sme.sk/c/6761477/ako-sa-od-maja-menia-davky-pre-nezamestnanych.html>>.

- Nejedlý T, 'Pozrite sa, ktoré školy sú podľa Čaploviča na odstrel (Which Schools Are to Be Shot off According to Čaplovič)' *Hospodárske noviny* (7 August 2013) <<http://hn.hnonline.sk/slovensko-119/pozrite-sa-ktore-skoly-su-podla-caplovica-na-odstrel-563649>>.
- Opatrenia vlády nestačia (The Government's Measures Are Insufficient), *Hospodárske Noviny* (21 October 2009) <<http://hnporadna.hnonline.sk/poradca-156/opatrenia-vlady-destacia-350435>>.
- Rodičovský príspevok sa bude zvyšovať, o koľko si polepšíte? (Parental Allowance Will Be Increased, How Much Will You Augment?) *Finanža* <<http://finanza.sk/rodicovsky-prispevok-sa-bude-zvysovat-o-kolko-si-polepsite/>>.
- SITA, 'Nové protikrizové opatrenia sa nečrtajú (New Anti-crisi Measures Are Not Overseen)', *Pravda.sk* (10 March 2010) <<http://spravy.pravda.sk/ekonomika/clanok/192840-nove-protikrizove-opatrenia-sa-necrtaju/>>.
- SITA, 'Učiteľov a žiakov trápí nedostatok učebníc (Teachers and Students Worry about the Lack of Textbooks)' *School Portal* (10 October 2011) <<http://www.skolskyportal.sk/clanky/ucitelov-ziakov-trapi-nedostatok-ucebnic>>.
- SITA, 'Ministry zatiaľ splnili jedenásť protikrizových opatrení (Ministers Have so far Fulfilled Eleven Anti-crisis Measures)', *finance.sk* <<http://www.finance.sk/spravy/finance/24353-ministri-zatial-splnili-jedenast-protikrizovych-opatreni/>>.
- TASR, 'V roku 2015 chceme ďalej znižovať nezamestnanosť, tvrdí Richter (In 2015 We Seek to Further Decrease Unemployment, Says Richter)' *TERAZ* (29 December 2014) <<http://www.teraz.sk/ekonomika/v-roku-2015-chceme-dalej-znizovat-nez/112344-clanok.html>>.

10.2.5. Other Sources

- Aktivačná činnosť, príspevok na aktivačnú činnosť formou menších obecných služieb pre obec alebo formou menších služieb pre samoprávny kraj - § 52 (Activation Work,

Contribution to Activation Work in the Form of Minor Municipal Services or Minor Services for Self-Governing Region- Article 52), (Central Office of Labour, Social Affairs and Family) <http://www.upsvar.sk/sluzby-zamestnanosti/nastroje-aktivnych-opatreni-na-trhu-prace/aktivacna-cinnost/prispevok-na-aktivacnu-cinnost-formou-mensich-obecnich-sluzieb-pre-obec-alebo-formou-mensich-sluzieb-pre-samospravny-kraj-52.html?page_id=13087>

- Druhým sociálnym balíčkom chce vláda pomôcť mladým rodinám (With the Second Package the Government Seeks to Help Young Families), (Government Office of the Slovak Republic, 16 January 2015) <<http://www.vlada.gov.sk/druhym-socialnym-balickom-chce-vlada-pomoc-mladym-rodinam/>>.
- Tlačová konferencia o zvýšení kapacity jasli a materských škôl (Press Conference on the Increase of Capacity of Nurseries and Kindergartens), (Government Office of the Slovak Republic, 26 January 2015) <<http://www.vlada.gov.sk/tlacova-konferencia-o-zvyseni-kapacity-jasli-a-materskych-skol/>>.
- Tlačová konferencia Róberta Fica a Jána Počiatka o zavedení bezplatného cestovania vlakmi pre študentov a dôchodcov (Press Conference of Róbert Fico and Ján Počiatek concerning the Introduction of Free Train Transport for Students and Pensioners), (Government Office of the Slovak Republic, 17 November 2014) <<http://www.vlada.gov.sk/tlacova-konferencia-roberta-fica-a-jana-pociatka-o-zavedeni-bezplatneho-cestovania-vlakmi-pre-studentov-a-dochodcov/>>.
- Tlačová konferencia Róberta Fica a Juraja Draxlera o návrhu zákona o duálnom vzdelávaní (Press Conference of Róbert Fico and Juraj Draxler concerning the Proposal of the Act on Dual Education), (Government Office of the Slovak Republic, 09 January 2015) <<http://www.vlada.gov.sk/tlacova-konferencia-roberta-fica-a-juraja-draxlera-o-navrhu-zakona-o-dualnom-vzdelavani/>>.
- Výzva na predkladanie žiadostí na zapojenie sa zamestnávateľov do Národného projektu rodina a práca (Implementačná agentúra pre Operačný program Zamestnanosť a sociálna inklúzia) <<http://www.iazasi.gov.sk/sk/aktuality/vyzva-na-predkladanie-ziadosti-na-zapojenie-sa-zamestnavatelov-do-narodneho-projektu-rodina-a-praca>>.

- Výzva- Národný projekt rodina a práca (the Ministry of Labour, Social Affairs and Family of the Slovak Republic, 19 February 2015) <<http://www.employment.gov.sk/sk/informacie-media/aktuality/vyzva-narodny-projekt-rodina-praca.html>>.
- Zvyšujeme motiváciu pracovať pre dlhodobo nezamestnaných (We Increase Motivation to Work for the Long-Term Unemployed), (Ministry of Labour Social Affairs and Family of the Slovak Republic, 14 July 2014) <<http://www.employment.gov.sk/sk/informacie-media/aktuality/zvysujeme-motivaciu-pracovat-dlhodobo-nezamestnanych.html>>.

10.3. Websites

- Central Office of Labour, Social Affairs and Family: <http://www.upsvar.sk/socialne-veci-a-rodina/socialno-pravna-ochrana-deti/profesionalne-rodiny.html?page_id=12846>.
- Central Office of Labour, Social Affairs and Family, Statistics: <http://www.upsvar.sk/detske-domovy-a-ine-zariadenia/detske-domovy/vybrane-statisticke-ukazovatele.html?page_id=130708>.
- Centre for Legal Aid: <http://www.cpp.finalarea.com/o-nas>.
- Institute of Information and Prognoses of Education: <http://www.uips.sk/index.php?option=com_content&task=view&id=459&Itemid=1187>.
- IUVENTA: <<http://www.iuventa.sk/en/IUVENTA/Our-Mission.alej>>.
- Ministry of Education, Science and Sport of the Slovak Republic: <<https://www.minedu.sk/about-the-ministry/>>.
- Ministry of Labour, Social Affairs and Family of the Slovak Republic: <<http://www.employment.gov.sk/en/>>.
- National Institute for Education: <<http://www.statpedu.sk/en/Home.alej>>.
- NGO Partnership Portal, Section Slovakia: <<http://www.ngonorway.org/countries/slovakia>>.

- Public Defender of Rights: <<http://www.vop.gov.sk/verejny-ochranca-prav>>.
- Slovak Association for the Handicapped Persons: <www.sztp.sk>.
- Slovak Association for the Disabled: <www.szzp.sk>.

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

Slovenia ratified the revised European Social Charter in year 1999.¹ It ratified all 31 Paragraphs with the exception of 1 and 4 Paragraph of Article 13 and the second Paragraph of Article 18.

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

In Slovenia, there have always been a very high percentage of all employees covered by collective agreements, and today, EIROnline Slovenia - Industrial Relations Profile, indicates that the collective bargaining coverage is estimated at 96%.²

According to Article 76 of the Constitution of the Republic of Slovenia (hereinafter the Constitution of RS), the freedom to establish, operate, and join trade unions shall be guaranteed. The social and collective bargaining rights are further defined by the Collective Agreements Act. In the **private sector**, collective bargaining between trade unions and employers is established both at the industry and at the company level. National bargaining for the private sector as a whole came to an end in 2005, following the employers' decision to withdraw from it due to changed legislative framework. In the **public sector**, in addition to the industry and the company level, negotiations also take place at the national level, hence there are separate agreements for different parts of the public sector, as well as an agreement covering the entire non-commercial sector. At the **industry level**, the parties to collective agreements are the unions on one side, and the employers' associations, including the chambers of commerce and industry,

¹ Act on the Ratification of the European Social Charter, 1999 [Zakon o ratifikaciji Evropske socialne listine (spremenjene)].

² European Committee of Social Rights, "Conclusions 2014 (Slovenia)" [2014] 28 <http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Slovenia2014_en.pdf> accessed 14 March 2015.

which are now voluntary bodies, on the other. On the unions' side, the negotiating team at the industry level typically consists of full-time union officials, as well as of union representatives in individual companies. At the **company level**, the negotiating parties consist of individual employers and local trade unions. Agreements can be concluded for a definite period of time or for an indefinite period of time. They are typically in force for a year or more. Industry level agreements must be registered with the Ministry of Labour and currently 46 public and private sector agreements have been registered since the adoption of the new collective bargaining legislation in 2006.

According to Article 3 of the Collective Agreements Act, in their binding sections, collective agreements regulate the rights and commitments of the parties and may also regulate the manner of peaceful settlement of collective labour disputes. In their procedural sections, collective agreements may contain provisions which regulate the rights and commitments of employees and employers in concluding employment contracts during employment relationships, and in respect of the termination of employment contracts, pay for work and other personal remunerations and reimbursements regarding work, occupational safety and health, or other rights and obligations arising from relationships between employers and employees, and which also regulate the provision of conditions for the activities of trade unions. Collective agreements are binding and respected and they shall be consistent with the law. According to Article 9 of the Employment Relationships Act (ZDR-1), both, in entering into or terminating an employment contract, as well as during the employment relationship, the employer and the worker must follow the provisions of collective agreements. Hence, there is a hierarchy established between the terms and conditions of employment found in the labour contract, in the collective agreement and the law. In general, agreements at a lower level can only be improved through arrangements made at a higher level.³ However, the reverse of the improvement can also be the case; the 2006 Collective Agreements Act introduced a provision under which a higher-level agreement can specifically provide for worsening of conditions of a lower-level agreement. Some agreements include this provision; for example, Collective Agreement for Craft and Business, Collective Agreement of Activities of Catering and tourism of Slovenia, and others.

³ Katarina Kresal Šoltes, *Pravni vidiki avtonomije kolektivnega pogajanja* (2010) 179.

Collective agreements at the industry level normally apply only to employers who are members of the employers' association that has signed the agreement, and to all their employees when they are represented by the union. However, if the agreement is signed by the union representing the workers in a particular industry and the employers in the employers' association employ more than half of the employees in that industry, the Minister of Labour can extend the industry level agreements to all companies in that industry. Currently, **twelve agreements are extended** in this way, covering commerce, tourism, foundry industry, electrical industry, metal industry, textiles, clothing and leather, road transport, chemicals and plastics, paper industry, non-metallic mineral industry, forestry, trade and enterprise.⁴

In addition to collective bargaining between employers and unions, the social partners, i.e. employers' associations, trade unions and the Government of the Republic of Slovenia established the **Economic and Social Council of the Republic of Slovenia (hereinafter ESCRS)** in June 1994, when the Wage Policy Agreement for the non-governmental sector was adopted. ESCRS is the highest-level body representing the social partners in Slovenia. Its working procedures are governed by the Rules of Procedure of the Economic and Social Council, adopted in 1994 and most recently amended in 2007. The ESCRS is organised following the International Labour Organisation's (hereinafter ILO) pattern of tripartism; it is a tripartite body in which the Government plays an active role as the third partner besides the employers' and the trade unions' associations. In addition to its advisory role, the ESCRS plays a key role in negotiations for social agreements and, until some years ago, also wage policy agreements, which were adopted within the sphere of its activities. So far, four social agreements have been adopted through the ESCRS. Upon the expiry of the latest agreement in 2009, the social partners recognised the need for a new social pact in the time of economic crisis, however, due to very different expectations of the three groups, the new social agreement for the period of 2015-2016 was signed only on February 5 2015.

The described system of the social and collective bargaining is in conformity with the Charter.

⁴ Ministry of Labour, Family, Social Affairs and Equal Opportunities of the Republic of Slovenia, "Collective agreements register" <http://www.mddsz.gov.si/si/delovna_podrocja/delovna_razmerja_in_pravice_iz_dela/socialno_partnerstvo/evidenca_kolektivnih_pogodb/> accessed 1 March 2015.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

The recent developments do reveal a push on the employers' side towards a greater decentralisation, yet this shift has not been significantly effective. An example of the trend towards decentralisation favouring the industry level is the provision under Article 102 of the Employment Relationships Act. According to this Article, when defining the redundancy selection criteria for determining redundant workers, the employer may, in agreement with the trade union at the employer, draw up his own redundancy selection criteria instead of using the criteria laid down in the collective agreement. Despite these developments, the legal framework of social dialogue has not been importantly changed. This observation is evident from the latest Conclusions of the European Committee of Social Rights (2014) and from the 13th report submitted by Slovenia in 2013. The Committee found no violations of Articles 5 and 6 of the ESC on the part of Slovenia. In all, collective bargaining has always been conducted fairly systematically at the company level and trade unions were usually active in negotiating agreements with managers in large and medium-sized companies.

In 2013, the new labour legislation was adopted as one of the key structural reforms to boost the economic development and to end the economic crisis.⁵ The new **Employment Relationships Act (ZDR-1)** deals with the field of individual employment relationships, thus some of its provisions also have an important impact on the field of collective bargaining. The most important novelty in this aspect is the possibility to use collective agreements for determination of rights and **working conditions which are different or less favourable** to employees **than those contained in the statutory regulation**. The same system may be applied in some additional cases concerning rights and working conditions not included in the old ZDR.

Examples of such regulation of the employees' rights within all the 10 collective agreements at sectoral level, which were either signed (8 of them) or changed (2 of them) after the enforcement of the ZDR-1, represents an attempt to either reduce the employers' expenses or to make the market more flexible and less segmented.

⁵ Katarina Kresal Šoltes, *Urejanje pravic v kolektivnih pogodbah in vloga sindikatov po novem Zakonu o delovnih razmerjih* [2013] *Delavci in delodajalci* 2-3, 237-253.

First of all, to **reduce the expenses**, a collective agreement at a sectoral level can differ from the statutory arrangement in determining the severance pay rate on retirement (Article 132 of the ZDR-1). In relation to severance on retirement, more than a half of these new agreements have also set an additional condition of employment with the present employer. Further, sectoral collective agreements can set seniority bonuses at a level different from the one set by the ZDR-1 (Article 222 of the ZDR-1). All the new agreements have therefore fixed the minimum amount, which ranges from about 0.4% to 0.6% of basic salary for every year of employment. Another measure taken to lower the expenses is the arrangement of traineeship by collective agreements (Article 120 of the ZDR-1).

To achieve a **greater flexibility** of the organisation of work, the following provisions were enacted in collective agreements. All new collective agreements have set up additional cases, in which the worker can be ordered to temporarily carry out 'other appropriate work', which is not subject of his employment contract (Article 33 of the ZDR-1). Besides, some of them even exceed the maximum period of three months in one calendar year, set by the ZDR-1. Collective agreements have also stipulated that a smaller employer may conclude fixed-term employment contracts regardless of the restrictions referred to in the ZDR-1 or collective agreements (Article 54 of the ZDR-1). This may also cause the slight increase in the amount of fixed-term employment contracts in recent times. Moreover, the new agreements have used the option offered by ZDR-1, according to which the daily, weekly and monthly time limitations of overtime work may be regarded as an average limitation over the period, stipulated by an act or collective agreement, and may not exceed six months (Article 144 of the ZDR-1). They have also stipulated that the time limitation of the daily working obligation of a night worker is regarded as an average limitation within a period exceeding four but not exceeding six months and that the average minimum daily and weekly rest periods in cases of shift work shall be assured within a longer time period, which, however, should not exceed six months (Articles 152 and 155 of the ZDR-1). One of the new collective agreements has, in the light of flexibilisation, determined a surprisingly high rate of 50 per cent as the maximum number of workers assigned to the user undertaking, which shall, according to the subsidiary provision from ZDR-1, not exceed 25% of the number of workers employed with the user undertaking (Article 59 of the ZDR-1). Finally, the new sectorial collective agreements have defined the already described condition of

minimum employment with the employer to gain the right of severance pay on retirement and its rate, seniority bonuses and the institute of traineeship, also with the intent of **reducing the segmentation** of our labour market.

We can conclude that all the mentioned measures taken seem to be in line with the Charter.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

2.3.1. Measures for fiscal consolidation

In May 2012, Slovenia adopted the **Fiscal Balance Act**. It effectively altered over 40 existing laws. The most substantial cost-cutting measures were targeted at public servants' salaries and other work-related benefits. The basic salaries of civil servants were progressively reduced by 8%, the protected salary was abolished, and performance-related pay for increased workload in 2012 and 2013 shall not exceed 20% of the basic salary. The act also restricted promotion to a higher pay grade and more senior job titles. The Act sets the payment of the salary bonus for 2012 and a reduction in the bonus for 2013. Furthermore, the Act specifies a reduction in travel expenses, expenses for meals, long-service awards, social assistance, severance pay and mileage, reduces daily subsistence allowances and limits the duration of service contacts. A maximum number of days of annual leave is also determined. In particular, public sector employment measures are focused on restricting new employment. In the light of the predicted retirement conditions and the medium-term restrictive wage policy, this can lead to deterioration in the quality of public services. Another challenge is presented by the question of how to create a sustainable solution in terms of public sector employment that would, using a combination of more flexible employment and wage policies, ensure a more pleasant environment for employees and employees' efficiency. The way out of the fiscal and economic crisis might be seen in adopting active employment policy measures, measures to promote economic growth, and measures aimed at balancing public finances.⁶

⁶ Stanka Setnikar Cankar, Veronika Petkovšek, '*Austerity Measures in the Public Sector in Slovenia and Other Selected European Countries*' [2012] <http://ipsa2013.iju.hr/downloads/downloads-2/files/6_2_Setnikar%20Cankar.pdf> accessed 1 March 2015.

2.3.2. Labour market reform

During the years of the economic crisis, the view was adopted, that the Slovenian labour market is highly rigid. After long-lasting negotiations between the social partners, the Slovenian Parliament passed the already mentioned **Employment Relationship Act ZDR-1** on March 5 2013. The main aim of the new law is to make the Slovenian labour market more flexible while reducing its segmentation. Changes were mainly directed at a reduction of differences among employment contracts for fixed-term and open-ended contracts, a reduction of notice periods, simplification of dismissal procedures and prevention of the misuse of fixed-term agreements. With regard to the new legislation, the European Committee of Social Rights concludes in its latest Conclusions⁷ that the situation in Slovenia is **not in conformity** with **Article 4§4** of the Charter on the grounds that **notice periods are not reasonable** for employees with more than three years of service in the following circumstances: dismissal in companies with ten employees or fewer in accordance with some collective agreements, receivership or liquidation and ordinary dismissal for economic reasons. Further, the legislation is not in conformity with the Charter in the sense that **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 (Articles 94, 104, 107 and 108 of the ZDR-1).

On November 27 2013, the **Act Amending the Labour Market Regulation Act (ZUTD-C) was adopted**, which amended the provisions on carrying out the business of providing workers to users. Amendments took effect on March 1 2014. The main purpose of the amendment is to remove from the market those employment agencies, which do not respect the basic rules for carrying out the activity. Market researches have shown that a large number of these staffing agencies exist on the market, which deliberately and regularly breach their obligations towards employees.

We can conclude that, with the exception of the mentioned provisions regarding the notice periods, regarding which the situation in Slovenia has been found not to be in conformity with Article 4§4, all the measures taken are in line with the Charter.

⁷ European Committee of Social Rights, 'Conclusions 2014 (Slovenia)' [2014] 20 <http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Slovenia2014_en.pdf> accessed 14 March 2015.

3. SOCIAL PROTECTION

Social protection is used as the widest term in social system, which includes system of social security, system of social insurance, system of social assistance, social advantages and incentives.⁸

3.1. Has the social security scheme in your MS provided assistance and/or care for:

Slovenia is a normative social state, which is granted in the Constitution of the RS in Article 2. Right to social assistance is included in the Right to Social Security in the Article 50 – citizens have the Right to Social Security in connection to the social nature of Slovenian state.⁹ Jurisdiction of the social courts is also to decide on social security benefits (Financial Social Assistance (hereinafter FSA) and social benefits) and the right to benefits from other titles, if their purpose is to assure social security and if the recognition of such a right depends on the income census.¹⁰

Medical assistance is granted by Article 51 of the Constitution, which sets forth that everyone has the right to health care under the conditions provided by act.

3.1.1. Persons who are unable to secure adequate resources either by their own efforts or from other sources?

3.1.1.1. Social Assistance Scheme

a) Social Assistance Benefits

Exercise of Rights to Public Funds Act and **Financial Social Assistance Act** regulate the following benefits:

i. General Social Assistance

- *Denarna socialna pomoč* (FSA)¹¹

⁸ Anjuta Bubnov Škoberne, Grega Strban, *Pravo socialne varnosti*, (1st edn, GV Založba 2010) [Slovenian] pp. 40-46.

⁹ U-I-330/97 [2000] The Constitutional Court of Slovenia <<http://www.uradnilist.si/1/objava.jsp?urlid=2000117&stevilka=4907>> Point 11 [2000] [Slovenian].

¹⁰ Bubnov Škoberne Anjuta, Strban Grega, *Pravo socialne varnosti* (1st edn, GV Založba 2010) [Slovenian] Labour and Social Courts Act 2004 [Zakon o delovnih in socialnih sodiščih 1] Articles 7 and 58.

¹¹ Financial Social Assistance Act 2010 [Zakon o socialnovarstvenih prejemkih] Article 4, 11-48.

It provides funds to satisfy minimum needs of a living for those, who cannot ensure their own survival through work, rights from work or insurance, income from property and from other sources, or by benefits under other regulations or by those who are obliged to support them, or in another way specified by this Act.¹²

Reasons must be objective and the recipient of social assistance should not be in a better position than those who provide funds with their work or through rights from insurance.¹³ FSA is subsidiary by nature. Before entry into force, all other options for survival must be exhausted.¹⁴

Beneficiaries¹⁵ can be Slovenian citizens with permanent residence in Slovenia, foreigner citizens with residence permit and permanent residence in Slovenia, persons under the international protection, persons under the international agreements.

The amount of funds: Minimum income is EUR 269.20 in April 2015. It is based upon the principle of individuation,¹⁶ namely it depends on the number of family members, income, real and personal property, and benefits. The Financial Social Assistance Act also defines cases, in which the applicant is not entitled to FSA.¹⁷ It also introduces a possibility of a financial stimulation calculated in dependence of the beneficiary's work activity; 60 to 120 hours of work per month equal 0.28% of the minimal income, whereas more than 120 hours of work per month results in a stimulation of 0.56% of the minimal income.¹⁸ This incentive reduces poverty. Financial benefits are normally paid in cash, only in justified cases it may be partly or fully paid in kind (vouchers, purchase orders, payment of bills, etc.).¹⁹

FSA beneficiaries are obliged to accept every employment offer they get (if they get 9 times FSA in 1 year).²⁰ The beneficiary, who refuses or terminates an employment relationship, loses the right to FSA for 6 months.

¹² Financial Social Assistance Act 2010 [Zakon o socialnovarstvenih prejemkih] Article 6.

¹³ Ibid.

¹⁴ Grega Strban, *Nova ureditev denarnih socialnih pomoči (2-3, Delavci in delodajalci, 2011)* [Slovenian], pp.244.

¹⁵ Financial Social Assistance Act 2010 [Zakon o socialnovarstvenih prejemkih] Article 3.

¹⁶ Grega Strban, *Nova ureditev denarnih socialnih pomoči (2-3, Delavci in delodajalci, 2011)* [Slovenian], pp.245.

¹⁷ Look at The Financial Social Assistance Act 2010 Articles 27, 28, 29.

¹⁸ Financial Social Assistance Act 2010 [Zakon o socialnovarstvenih prejemkih] Article 26.

¹⁹ Financial Social Assistance Act 2010 [Zakon o socialnovarstvenih prejemkih] Article 38.

Duration:²¹ Initially it is granted for a maximum of 3 months. Under unchanged circumstances it may be extended up to 6 months. Notwithstanding the preceding allegations, the FSA can be established for 1 year due to age (63 for women and 65 for the men), illness or disability, where the social situation is not expected to be improved.²²

– *Trajna denarna socialna pomoč* (Permanent FSA)

It is granted to a person, who is permanently unemployable or permanently incapacitated for work, or is unemployed and older than 63 years for women and 65 years for men and has no assets property or is in institutional care, and whose family members also meet the requirements.²³

– *Izredna socialna pomoč* (Extraordinary FSA)²⁴

The benefit position of financial deprivation due to objective reasons and covers the exceptional costs incurred due to maintenance and the person can be ensured by his income. Regardless of the amount of income and property.²⁵

Amount of funds: maximum of five times of the amount of minimum income in one year.

Duration: off amount or for a period of 3 to 6 months.

ii. Categorical Social Assistance

These are intended to increase the income of certain groups of persons who lack the means of livelihood.²⁶

– *Posmrtnina* (Special Emergency FSA after a Death of a Family Member)²⁷

Financial assistance after a death of members of a family.

²⁰ MISSOC Comparative Tables Database (Slovenia and guaranteed minimum resources) <<http://www.missoc.org/MISSOC/INFORMATIONBASE/COMPARATIVETABLES/MISSOCDATABASE/comparativeTableSearch.jsp>> accessed 2 March 2015.

²¹ Financial Social Assistance Act 2010 [Zakon o socialnovarstvenih prejemkih] Article 36.

²² Financial Social Assistance Act 2010 [Zakon o socialnovarstvenih prejemkih] Article 42.

²³ Ibid.

²⁴ Financial Social Assistance Act 2010 [Zakon o socialnovarstvenih prejemkih] Article 33.

²⁵ Grega Strban, *Nova ureditev denarnih socialnih pomoči (2-3, Delavci in delodajalci, 2011)* [Slovenian], pp.256, Article 33.

²⁶ Grega Strban, *Nova ureditev denarnih socialnih pomoči (2-3, Delavci in delodajalci, 2011)* [Slovenian] pp.242.

²⁷ Article 34a, *Pogrebna in posmrtnina* <http://www.mdds.gov.si/si/delovna_podrocja/sociala/pogrebna_in_posmrtnina/> accessed 11 April 2015 [Slovenian].

Beneficiaries are Slovenian citizens with permanent residence in Slovenia, foreign citizens with the residence permit and permanent residence in Slovenia, an applicant, who is a family member of a deceased person or an applicant, who was entitled to FSA or Assistance and Allowance on the date of death of the deceased or an applicant, whose income or total income of family members (regardless of the property) does not exceed the census.

Amount of funds: it is paid in amount of minimum income EUR 269.20 in April 2015.

- *Pogrebna* (Special Emergency FSA for Covering Funeral Expenses)²⁸

Financial assistance for covering funeral expenses.

Beneficiaries are Slovenian citizens with permanent residence in Slovenia, foreign citizens with residence permit and permanent residence in Slovenia, an applicant, who was related to the deceased and has taken care of the funeral in Slovenia, an applicant, who was entitled to FSA or Assistance and Allowance on the date of death of the deceased or an applicant, whose income or total income of family members (regardless of the property) does not exceed the amount of EUR 606, if the applicant is a single person or EUR 909, if the applicant is a family member.

Amount of funds: maximum in amount of a double minimum income (EUR 538.40 in April 2015) but no more than the expenses of the funeral.

- *Državna štipendija* (State Scholarships)²⁹

Scholarships are intended to cover partly the costs of education.

Beneficiaries are Slovenian citizens (pupils and students) that qualify under the Scholarship Act the average monthly income per person in the last year prior to the application does not exceed 64% of the net average wage per person in the same period.

Amount of funds: 35-190 EUR + allowances (residence, success).

Duration: maximum one year for each year at the same level of education.

- *Varstveni dodatek* (Supplementary Allowance)³⁰

²⁸ Article 34b, *Pogrebna in posmrtnina* <http://www.mdds.gov.si/si/delovna_podrocja/sociala/pogrebna_in_posmrtnina/> accessed 11 April 2015 [Slovenian].

²⁹ Exercise of Rights to Public Funds Act 2010 [Zakon o uveljavljanju pravic iz javnih sredstev] Article 23.

³⁰ Financial Social Assistance Act 2010 [Zakon o socialno varstvenih prejemkih] Articles 4, 48.

Slovenia provides funds to cover the costs of living resulting in a longer period of time (the cost of maintenance of housing, replacement of durable consumer goods, etc.) and not the cost to satisfy minimum needs.

Beneficiaries are³¹ the same as at FSA plus, permanently unable to work³², permanently unemployable, unemployed above the age of 63 for women and 65 for men, are entitled to FSA or would be entitled to FSA or those, whose income or their family income exceeds the threshold required for obtaining FSA but not the census for income support.

The amount of funds is calculated according to the minimum income based on the same factors as at FSA.³³ The amount for single person is fixed as 0.56% of Minimum Income and for other adult person who fulfill the conditions as 0.28% of Minimum Income.³⁴

Enforcement of the benefits: All benefits are enforced in one location (single entry point - Social Work Centre) and with an application.³⁵ Social work centres also collect the information also from databases *ex effo*. Any changes need to be announced. In the case of a negative decision may be filed the appeals to the Ministry of Labour, Family, Social Affairs and Equal Opportunities.

Provision of funds: Payment from the state and local budget.

b) Social Services

Services are regulated in the **Social Service Act**, which also includes measures aimed at preventing and eliminating social difficulties of individuals, families and groups.³⁶

³¹ Financial Social Assistance Act 2010 [Zakon o socialnovarstvenih prejemkih] Article 7.

³² Financial Social Assistance Act 2010 [Zakon o socialnovarstvenih prejemkih] Article 54.

³³ MISSOC Comparative Tables Database (Slovenia and guaranteed minimum resources) <<http://www.missoc.org/MISSOC/INFORMATIONBASE/COMPARATIVETABLES/MISSOCDATABASE/comparativeTableSearch.jsp>> accessed 2 March 2015.

³⁴ Article 52. MISSOC Comparative Tables Database (Slovenia and guaranteed minimum resources) <<http://www.missoc.org/MISSOC/INFORMATIONBASE/COMPARATIVETABLES/MISSOCDATABASE/comparativeTableSearch.jsp>> accessed 2 March 2015.

³⁵ Twelfth Report on the implementation of the Revised European Social Charter submitted by the government of Slovenia <http://www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/Slovenia12_en.pdf> accessed 14 February 2015. Applications available http://www.mdds.gov.si/si/uveljavljanje_pravic/ accessed 18 April 2015.

³⁶ Social Service Act 2007 [Zakon o socialnem varstvu] Article 3.

Entitled persons are Slovenian citizens with permanent residence and foreign citizens with permanent residence in Slovenia are entitled to public social services. The exemption to this regulation applies only to certain social services, such as first social aid and personal assistance, which are granted to everyone.

Social preventive services are aimed at preventing the emergence of social distress, social problems and assist individuals, families and groups.³⁷

Social services which alleviate existing distress and difficulties:³⁸

- First social aid - identifying and defining social distress of people in need of assistance. Acquaintance with social services, benefits and network service providers.³⁹
- Personal assistance - consulting, editing and conducting. Focused on maintaining and improving an individual's abilities.⁴⁰
- Family assistance shall imply help for home (expert help and assistance in relations within the family, help at home (social care of people in need of assistance at home) and social service (assistance with domestic and other chores).⁴¹
- Institutional care all forms that complement and replace the function of a home.⁴²
- Organised care for adult persons with physical or mental handicaps offering guidance and employment.⁴³
- Aid to employers and workers in the enterprises, institutions and for other employers to solve problems relating to employment.⁴⁴
- Family helpers represent an alternative form of protection institutional care.⁴⁵

Social services are generally payable. Social work centre can exempt beneficiary from payment (such as the beneficiaries of permanent FSA).

³⁷ Social Service Act 2007[Zakon o socialnem varstvu] Article 10.

³⁸ Social Service Act 2007[Zakon o socialnem varstvu] Article 11.

³⁹ Social Service Act 2007[Zakon o socialnem varstvu] Article 12.

⁴⁰ Social Service Act 2007[Zakon o socialnem varstvu] Article 13.

⁴¹ Social Service Act 2007[Zakon o socialnem varstvu] Article 15.

⁴² Social Service Act 2007[Zakon o socialnem varstvu] Article 16.

⁴³ Social Service Act 2007[Zakon o socialnem varstvu]Article 17.

⁴⁴ Social Service Act 2007[Zakon o socialnem varstvu] Article 18.

⁴⁵ Social Service Act 2007[Zakon o socialnem varstvu] Article 18a.

3.1.1.2. Medical assistance scheme

Right to payment of contributions for mandatory health insurance⁴⁶ and right to cover the difference up to the full value of health services⁴⁷

The Republic of Slovenia does not have a specific medical assistance scheme. It has the unique uniform public health insurance, which covers all inhabitants of Slovenia and also citizens of the Republic of Slovenia and foreigners with permanent residence permit, who are entitled to FSA and are not insured by law regulating mandatory health insurance.⁴⁸ The beneficiaries of long term FSA also have the right to cover the full value of health services which are not fully guaranteed by the mandatory health insurance (co-payments).

Duration: The right shall be granted for a limited period, for the same as FSA.

Procedure: When beneficiaries entitle FSA, Social Work Centre decides *ex officio*.

3.1.2. Persons who are unable to secure adequate resources either by their own efforts or from other sources due to illness?

Other social assistance benefits due to illness are:

- *Dodatek za pomoč in postrežbo* (Assistance and Attendance Allowance)

It may be granted to the beneficiaries of FSA which, due to illness or disability, urgently need assistance and do not receive this allowance from another address. The provisions of Pension and Disability Insurance Act are applied.⁴⁹

Procedure: application to Social Work Center + expert opinion about the eligibility to benefit (provided by *Zavod za pokojninsko in invalidsko zavarovanje (ZPIZ)* (Pension and Disability Institute of Slovenia⁵⁰)).

⁴⁶ Exercise of Rights to Public Funds Act [Zakon o uveljavljanju pravic iz javnih sredstev] Article 30.

⁴⁷ Exercise of Rights to Public Funds Act [Zakon o uveljavljanju pravic iz javnih sredstev] Article 29.

⁴⁸ Denarna socialna pomoč (Ministrstvo za delo, družino, socialne zadeve in enake možnosti) <http://www.mddsz.gov.si/si/delovna_podrocja/sociala/denarna_socialna_pomoc/> accessed 26 February 2015.

⁴⁹ Pension and Disability Insurance Act 2012 [Zakon o pokojninskem in invalidskem zavarovanju] Articles 99-104.

⁵⁰ Pension and Disability Institute of Slovenia. <<http://www.zpiz.si/cms/?ids=zpizen>> accessed 19 April 2015.

Amount of funds: Three different categories: to satisfy the majority of basic needs (EUR 146.06), all basic needs (EUR 292.11) and most severely disabled persons (EUR 418.88 in April 2015).

- *Trajna denarna pomoč* (Permanent FSA)⁵¹

It is intended for permanently incapable or unable to work.

- *Varstveni dodatek* (Supplementary Allowance)⁵²

It is granted to those who are permanently incapable and permanently unable for work to cover the cost of living.

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

The new social legislation adopted in 2010 has transformed the system of social assistance. **The Exercise of Rights to Public Funds Act** has come in force on January 1 2012 and **The Financial Social Assistance Act** on May 31 2012. The economic crisis has also claimed austerity measures in the field of the social assistance. It brought the need for fiscal consolidation and subsequently interventional acts were adopted - Additional 2012 Intervention Measures Act and The Fiscal Balance Act. The scope of benefits has decreased.

The effect of the new legislation might not be fully assessed at this time, as the intervention measures were implemented at the same time. The main purposes were to prevent the accumulation of social benefits, the abolition of the system of related rights, the introduction of a single point of enforcement, the enforcement order – Child benefit, FSA, Supplementary Allowance, State Scholarship (the inclusion of previously acquired rights in determining eligibility), access to the official data on income and property.⁵³ Social assistance is by subsidiary by its very nature. Before the assertion of the benefits, the applicant is obligated to exercise all other sources. Social Work Centres shall decide on all social benefits. The nature of Children

⁵¹ Look the Chapter 3.1.1.

⁵² Look the Chapter 3.1.1.

⁵³ Polona Dremelj, Simona Smolej, Ružica Boškić, Tamara Narat, Liljana Rihter, Nadja Kovač, Barbara Kobal Tomc, Socialni položaj v Sloveniji, 2013-2014, Končno poročilo (Inštitut Republike Slovenije za socialno varstvo, Ljubljana, 2015) <<http://www.irsv.si/upload2/Koncno%20porocilo%20%28dopolnjeno-februar15%29.pdf>> accessed 12 February 2015.

Benefits⁵⁴ is different from the nature of the FSA (minimum resources for subsistence), as it is a family benefit for maintenance, upbringing and education of children. Due to the order of the exercise of rights, there is a sense that the Children Benefit is primary benefit, intended to eliminate poverty.⁵⁵ It might also reduce the FSA because of the order.

Minimum income for the FSA increased in the economic crisis. That is due to the increase in the number of the beneficiaries and therefore a higher amount of required funds. The number of beneficiaries is increasing.⁵⁶ The competent Ministry claims that this increase is mainly due to the fact that the beneficiaries are not obliged to return the FSA, while the social workers believe social distress is actually growing.⁵⁷

According to the new regulation, only adult secondary students and students which were Slovenian citizens were entitled to State Scholarship, if they fulfil the conditions of average monthly income per family member under The Exercise the Rights to Public Funds. The main ground for the reduction in the number of the recipients is that the State Scholarship is no longer granted to under-aged secondary school students. In 2013, the Amending Scholarship Act was adopted. It entitles also under-aged secondary school students that are socially deprived to state scholarship. However, the adult secondary school students and university students are no longer entitled to the child benefit in addition to the state scholarship.

Financial Social Assistance Act includes the annotation of the prohibition of alienation and encumbrance of real estate, which is owned by the beneficiary, who is entitled to permanent and long-term FSA and Supplementary Allowance.⁵⁸ It provides funding to those, who are socially weakest and do not have their own property and also protects the State as a grantor of benefits in case of a beneficiary's death.⁵⁹ The legal admissibility of this unlimited prohibition is contentious.⁶⁰

⁵⁴ Exercise of Rights to Public Funds Act 2010 [Zakon o uveljavljanju pravic iz javnih sredstev] Article 22.

⁵⁵ Grega Strban, *Nova ureditev denarnih socialnih pomoči* (2-3, Delavci in delodajalci, 2011) [Slovenian], pp. 249.

⁵⁶ Look the Chapter 9.

⁵⁷ Vse več ljudi prejema denarno socialno pomoč, Delo, <<http://www.delo.si/novice/slovenija/vse-vec-ljudi-prejema-denarno-socialno-pomoc.html>> accessed 19 April 2015 [Slovenian].

⁵⁸ Financial Social Assistance Act 2010 [Zakon o socialnovarstvenih prejemkih] Article 53.

⁵⁹ Grega Strban, *Nova ureditev denarnih socialnih pomoči* (2-3, Delavci in delodajalci, 2011) [Slovenian], pp. 253.

⁶⁰ *Ibid*, pp. 261.

Assistance and Attendance Allowance is a typical cash benefit, which should be financed from long-term care insurance in the future. The problem lies in the fact that Slovenia is not able to adopt new social insurance regulation. It would regulate the social risk of dependence of being in need of nursing in one place.

Special Emergency Financial Social Assistance after the Death of a Family Member and Special Emergency Financial Social Assistance for Covering Funeral Expenses became types of the Emergency Financial Social Assistance with the year 2014. Before the new regulation, the above-mentioned benefits were the rights under the mandatory health insurance. The condition for acquiring them was the pre-deceased insurance. From January 1 2014, the conditions of enforcing tightened; the applicant needs to be a family member, entitled to the FSA/Supplementary Assistance and applicant's income is below the census besides the financial assistance and the funeral shall be in Slovenia.

Some categorical social benefits were abolished, leaving only general FSA.⁶¹ It is questionable to emphasise the meaning of the general FSA and at the same time abolish other categorical social benefits, which were designed considering the specific legal, economic and social situation of certain groups of beneficiaries.⁶² The categorical benefit State Pension has been abolished in the year 2012. It was granted to a person older than 65 years, who had not had pension and disability insurance or had not acquired the right to pension under Pension and Disability Insurance Act 2.

The Slovenian legislation is in accordance with the European Social Charter, as Slovenia had not ratified the 1st Paragraph of Article 13. Even if Slovenia would ratify it, its legislation would not be in breach of the above-mentioned provision, as it assures social and medical assistance to all who are integrated in Slovenia. It guarantees a wide range of benefits and services in the social assistance scheme.

⁶¹ Ibid, pp. 261.

⁶² Ibid, pp. 261.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

Social Service Act⁶³ regulates the social services that may be performed by legal entities and natural persons subject to the conditions set out in the mentioned Act. Social services are non-profit.⁶⁴ They can be divided into two groups:

3.3.1. Public services network,⁶⁵ which comprises the legal entities and natural persons, who have been granted a concession on the public tender by the State or local municipality, and the public social care institutions.⁶⁶

- 62 Social Work Centres exercise their powers and the assignments from other laws. They provide first social aid, personal assistance, family assistance and organizing community campaigns for socially disadvantaged;⁶⁷
- 55 Residential homes for the elderly provide institutional care and family assistance;⁶⁸
- 7 Special institutes for adult provide the institutional care for mentally and physically handicapped;⁶⁹
- 5 Social care institutes provide institutional care for children and adolescents who are deprived of a normal life;⁷⁰
- 34 Occupational activity Centres provide care, protection, employment for mentally and physically handicapped;⁷¹

⁶³ Social Service Act 2007 [Zakon o socialnem varstvu] Article 41b.

⁶⁴ Social Service Act 2007 [Zakon o socialnem varstvu] Article 41a.

⁶⁵ Social Service Act 2007 [Zakon o socialnem varstvu] Article 41b

⁶⁶ Socialnovarstvene storitve

http://www.mddsz.gov.si/si/delovna_podrocja/sociala/socialnovarstvene_storitve/>accessed 7 April 2015 [Slovenian]

⁶⁷ Social Service Act 2007 [Zakon o socialnem varstvu] Article 49.

⁶⁸ Social Service Act 2007 [Zakon o socialnem varstvu] Article 50.

⁶⁹ Social Service Act 2007 [Zakon o socialnem varstvu] Article 51.

⁷⁰ Social Service Act 2007 [Zakon o socialnem varstvu] Article 54.

⁷¹ Social Service Act 2007 [Zakon o socialnem varstvu] Article 52.

- 10 Crisis Centres for children and adolescents provide institutional care for children and adolescents, who are deprived of a normal life;⁷²
- 2 Crisis Centers for adult victims of domestic violence.⁷³

3.3.2. Services outside the public service network:⁷⁴ legal entities and natural persons, based on a work permission, given by the Minister of Labour, Family, Social Affairs and Equal Opportunities and private individuals,⁷⁵ who meet the conditions (relevant professional qualification, successfully passed professional examination and opinion of the Social Chamber, at least 3 years of working experience in the field, unemployment, provided facilities and equipment, is not prohibited the practice of the profession).

Access to social services and programs has not been weakened during the economic crisis. This may be deduced from the number of participants in social care services and programs. In principle, it has not been reduced, with the exception of home help. In certain cases the level has not changed, whereas in some it is even increasing.⁷⁶

Austerity measures also had an impact on the functioning of the institutions. The most important is the effect of the **Fiscal Balance Act** adopted in 2012. It intervenes in areas of salaries, reimbursement, a ban on employing, a promotion ban, the extent of leave in public administration.

Nevertheless, the part that determines the amount of remuneration of public servants also applies to non-governmental organisations with disability status, humanitarian organisations and some other institutions.⁷⁷ The revenues in humanitarian and disability organisations are limited upward to the same amount as those in the public sector.⁷⁸

⁷² Socialnovarstvene storitve <http://www.mddsz.gov.si/si/delovna_podrocja/sociala/socialnovarstvene_storitve/> accessed 7 April 2015 [Slovenian].

⁷³ Ibid.

⁷⁴ Social Service Act 2007 [Zakon o socialnem varstvu] Article 41b.

⁷⁵ Social Service Act 2007 [Zakon o socialnem varstvu] Article 65 .

⁷⁶ Email conversation, Martina Trbanc, Institute of the Republic Slovenia for Social Protection (Ljubljana, Slovenia, 12 March 2015).

⁷⁷ Fiscal Balance Act also applies to non-governmental organizations (January 7 2013) <<http://www.cnvos.si/article/id/7231/cid/320>> accessed 13 February 2015 [Slovenian].

⁷⁸ Sistem socialnega varstva v Sloveniji <http://www.sindikatzsss.si/index.php?option=com_content&view=article&id=279&Itemid=148> accessed 10 March 2015 [Slovenian].

The emphasis is on communal forms of assistance and not on the expansion of institutional care. In addition, active forms of assistance are encouraged (services, programmes, preventive programmes) rather than the passive ones (transportation, institutions). Inside the public service, there are no longer any personnel and financial reserves.

The Social Agreement⁷⁹ for the years 2015 and 2016, which was signed in February 2015 by the representatives of the government of the Republic of Slovenia, employees and employers, also includes activities in collaboration with the social partners, determines the extent of the network of public services and provides for a stable and sustainable funding agreed quality network of public services.

Regulation is in conformity with the Paragraph 3 of Article 13 of the Revised European Social Charter. It guarantees the appropriate public and private services for everyone, who is in need of advice and personal need. Both services function well and all people can get the appropriate information. The social services and programmes contain important role in guaranteeing the social protection. Entitlement to services is in accordance with the intended procedure.⁸⁰ The principle of equal access to services and the free choice of the form set by the Social Service Act⁸¹ are compliance with the principles of social justice.⁸² The Ministry is responsible for the most appropriate decentralized access to services by expanding the public service.⁸³

⁷⁹ Socialni sporazum za obdobje 2015-2016 <http://www.vlada.si/fileadmin/dokumenti/si/projekti/2015/Socialni_sporazum/Socialni_sporazum_2015_-_2016.pdf> accessed 7 March 2015 [Slovenian].

⁸⁰ Sistem socialnega varstva v Sloveniji <http://www.sindikatzsss.si/index.php?option=com_content&view=article&id=279&Itemid=148> accessed 10 March 2015 [Slovenian].

⁸¹ Social Service Act 2007 [Zakon o socialnem varstvu] Article 4.

⁸² Sistem socialnega varstva v Sloveniji <http://www.sindikatzsss.si/index.php?option=com_content&view=article&id=279&Itemid=148> accessed 10 March 2015 [Slovenian].

⁸³ Ibid.

4. SOCIAL EXCLUSION

4.1. What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)?

4.1.1. Basic Measures

- New social legislation,⁸⁴ which gave more people access to social benefits and raising the minimum wage. The latter also improved availability of certain services to the most vulnerable (access to health services and social services for recipients of social assistance and the availability of child care, school meals, transport and rents for social housing, modified and improved in 2014 with the direct effects of poverty alleviation);⁸⁵
- Active employment policy measures and programs of social activation, intended primarily for the use of long-term unemployed (long-term integration of social assistance recipients into the labour market);⁸⁶
- Formal establishment of a working body at national and regional level to harmonizes policies and actions that affect the social status of individuals and families (as one of the objectives of the National Implementation Plan);⁸⁷
- In providing improved access to health care is revised and amended by the Law on Health Care and Health Insurance,⁸⁸ which eliminates certain asymmetry in payment of contributions for compulsory health insurance and thus increases solidarity of insured persons;⁸⁹

⁸⁴ Financial Social Assistance Act 2010 [Zakon o socialno varstvenih prejemkih], Exercise of Rights to Public Funds Act 2010 [Zakon o uveljavljanju pravic iz javnih sredstev].

⁸⁵ Spremembe socialne zakonodaje od 1.1.2014 ter 1.9.2014 (November 14 2013) <http://www.racunovodja.com/clanki.asp?clanek=7568/Spremembe_socialne_zakonodaje_od_1_1_2014_ter_1_9_2014> accessed 7 March 2015 [Slovenian].

⁸⁶ Programi, <http://www.ess.gov.si/iskalci_zaposlitve/programi>, accessed 1 March 2015 [Slovenian].

⁸⁷ Ministry for Work, Family and Social Affairs, National social report, 2014.

⁸⁸ The Law on Health Care and Health Insurance [Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju].

⁸⁹ Ibid.

- Free public education and the possibility of obtaining social scholarships (the latter are intended for pupils and students, whose average monthly income per member of their family does not reach a 64% of the average net wage amount⁹⁰).

The risk of poverty during the crisis has increased, but Slovenia remains one of the EU countries with a low risk of poverty. The risk of poverty in 2012 (13.5%) remained approximately at the level of the previous year; below the poverty threshold lived about 271 thousand people. 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%.⁹¹ The level of the risk for social exclusion was 20.4% in 2013 and rising.⁹² The Government is trying to reduce the poverty level with abovementioned **active employment policy measures** (new program was formed, named **Zaposli.me**), **incentives for employment** (for instance subsidies for employers who employ young people) and **programs of social activation** in order to recruit long term unemployed.⁹³

To reduce the impact of crisis on the population, our Government adopted **Operational Program** for material assistance to the most deprived for the period from 2014 to 2020, which is based on the implementation of European aid to the most threatened by poverty. Slovenia already allocated a total amount of EUR 20.5 million of EU funds, by providing non-financial assistance to the most deprived persons in the form of food, basic material goods and measures to contribute to the elimination of the worst forms of poverty.⁹⁴

4.2. Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

During the economic downturn, many measures were taken and many laws adopted which are shrinking social rights, some have even become completely excluded.⁹⁵ Poverty is one of the

⁹⁰ Državne štipendije <http://www.mddsz.gov.si/si/delovna_podrocja/trg_dela_in_zaposlovanje/stipendije/drzavne_stipendije/>, accessed March 7 2015 [Slovenian].

⁹¹ Kazalniki dohodka in revščine, Slovenija, 2013 <<http://www.stat.si/StatWeb/glavnanavigacija/podatki/prikazistaronovico?IdNovice=6490>> accessed 16 April 2015 [Slovenian].

⁹² Ibid.

⁹³ Aktivna politika zaposlovanja, <http://www.ess.gov.si/o_zrsz/predstavitev/zakonodaja/aktivna_politika_zaposlovanja> accessed 16 April 2015 [Slovenian].

⁹⁴ 70. redna seja vlade, <http://www.vlada.si/medijsko_sredisce/sporocila_za_javnost/sporocilo_za_javnost/article/70_redna_seja_vlade_rs_48320/> accessed 16 April 2015 [Slovenian].

⁹⁵ 19th annual report of the Human Rights Ombudsman of the Republic of Slovenia for the year 2014 [Slovenian].

important areas and shows the degree of inequality, diversity and level of social security, which are the areas where state interferes with its regulatory mechanisms. Poverty and social exclusion sooner or later go hand in hand with each other. Social exclusion often starts with material deprivation, of which social exclusion is a broader concept.⁹⁶

4.2.1. Public sector

It began by cutting wages in public sector and everywhere where the employer is the State. Various additional contributions to monthly earnings have been temporary abolished, promotions have been frozen. The latter now partially abolished, still the supplements are not yet available. Workers do not have any motivation to go to work since their performance and good work do not matter.⁹⁷ The State also reduced contributions to the reimbursement of travel expenses and lunch at the minimum amount necessary.⁹⁸

The Government's recent proposal on austerity measures in the public sector includes new radical proposals, such as removal of promotions and regular performance. Recovery would be, according to the proposal, paid in a reduced amount. Premiums for supplementary pension insurance are also planned to be reduced. The pay scale⁹⁹ would be revised with reduced levels of wage classes, along with the abolition of the allowance for continuity and the allowance for specialisation, Master's and PhD degree and reduced seniority allowance, and allowance for Sundays and public holidays work.¹⁰⁰

4.2.2. Rate of unemployment¹⁰¹

As Slovenian Press Agency reports, the rate of registered unemployment in December 2014 was 13% (119,458 unemployed people registered in the Record of unemployment). This is 0.5 point

⁹⁶ Institute of Anton Trstenjak on social exclusion <<http://www.inst-antontrstenjaka.si/gerontologija/slovar/1026.html>>, accessed 20 February 2015 [Slovenian].

⁹⁷ Sindikati zahtevajo sprostitev napredovanj, Pi. K. (April 6 2015) <<http://www.delo.si/novice/politika/sindikati-na-ukrepe-vlade-ne-pristajajo.html>>, accessed 2 February 2015 [Slovenian].

⁹⁸ Vlada bo zaostрила varčevanje v javnem sektorju, Mario Belovič (October 14 2014) <<http://www.delo.si/novice/politika/vlada-bo-zaostрила-varčevanje-v-javnem-sektorju.html>>, accessed 2 February 2015 [Slovenian].

⁹⁹ Pay scale is divided into classes; the amount of monthly wages depends on the salary class where an individual employee is ranked at.

¹⁰⁰ Sindikati zahtevajo sprostitev napredovanj, Pi. K. (April 6 2015) <<http://www.delo.si/novice/politika/sindikati-na-ukrepe-vlade-ne-pristajajo.html>>, accessed 2 February 2015 [Slovenian].

¹⁰¹ Decembra 13-odstotna brezposelnost, Je.G. (February 17 2015) <<http://www.delo.si/gospodarstvo/trg-dela/decembra-13-odstotna-brezposelnost.html>>, accessed 3 February 2015 [Slovenian].

less than it was in December 2013, but is still for 0.5 higher than in November 2014. The registered unemployment rate for men in the last month of last year amounted to 12%, for women 13%. The area with the most unemployed is the north-east of Slovenia, Pomurje, where the unemployment rate sums up to around 20%. The most problematic fields of employment are still the fields of construction and manufacturing.

In Slovenia, there is traditionally a high participation of women in the labour market (data from Eurostat in 2012: 64.5%), most of whom work full-time and Slovenia remains the country with the lowest wage gap between women and men (2.5% in 2012) which is admirable.¹⁰²

4.2.3. Health and welfare

Social security has declined also in the area of health care. It means a limitation of the number of services covered by the compulsory health insurance. Also, some medicines have been moved to the white list, which is not covered by the obligatory health insurance.¹⁰³

Significant amount of people started to use *pro bono* medical clinics. There is one *pro bono* clinic in Ljubljana, one in Maribor; in January 2015 a new one was established in Kočevje. Patients of those clinics are primarily homeless, unemployed migrants, Roma people and other disadvantaged citizens, who simply cannot afford health insurance.¹⁰⁴

Due to the lack of medical personnel, which is a result of a lack of funds for their salaries, there are extremely long queues for medical services. Hospitals lack of staff and beds.¹⁰⁵ Some hospitals are close to a bankruptcy.¹⁰⁶ Significant troubles are detected on the employment line as well; a part of medical staff receives their salaries with delay since some hospitals are not liquid

¹⁰² Ministry for work, family and social affairs, National social report, 2014 [Slovenian].

¹⁰³ Fiscal balance act 2012 [Zakon o uravnoveženju javnih financ].

¹⁰⁴ Vse več ljudi brez zdravstvenega zavarovanja, Andreja Žibert in Miha Rubin (November 16 2012) <<http://www.delo.si/novice/ljubljana/vse-vec-ljudi-brez-zdravstvenega-zavarovanja.html>>, accessed 12 February 2015 [Slovenian].

¹⁰⁵ Bolnišnice ne morejo delati ve za manj denarja, Boris Šuligoj (February 4 2015) <http://www.google.si/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CCwQFjAC&url=http%3A%2F%2Fwww.delo.si%2Fnovice%2Fslovenija%2Fbolnisnice-ne-morejo-delati-vec-za-manj-denarja.html&ei=uALqVN_oFubU7AbAroG4DA&usq=AFQjCNGK7GZI2rAZ-3Ye4dEoTdcFhrlL_w&bvm=bv.86475890,d.ZGU>, accessed 15 February 2015 [Slovenian].

¹⁰⁶ V izolski bolnišnici zmanjkuje za place, Boris Šuligoj (January 21 2015) <<http://www.delo.si/novice/slovenija/v-izolski-bolnisnici-zmanjkuje-za-place.html>>, accessed 12 February 2015 [Slovenian].

enough (all together hospitals have near EUR 250,000 million losses¹⁰⁷). This has a negative impact on the workers.

4.2.4. Effect on children

The main problem of the social exclusion of adults is that it results in social exclusion of their children. The risk of child poverty in Slovenia increased for 15% from 2008 to 2012 (1.8 percentage points). This in fact means that during the above-mentioned period an additional 7,000 children slipped below the poverty line, some lack even basic health insurance.¹⁰⁸

4.2.5. Conclusion

The impact of crisis of course deteriorated social welfare of significant part of the population; however, due to the circumstances (economic crisis, austerity measures) Slovenia does not significantly differ from other countries, since Slovenia is still one of the EU members with a low risk of poverty. In my opinion, we are trying to follow the Social Charter with different measures to help the poor and unemployed, in a form of active employment policy measures as well as financial and material aid to those in need. However, every measure needs time to show the results. In 2014, there was a 0.5% growth in gross domestic product,¹⁰⁹ which will result in an increased need of work force. Still, more could be done on family and children areas; there should be additional subsidies and financial aid, especially for those with unemployed parents.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

¹⁰⁷ Nelikvidnost bolnišč nice Izola udarila po plačah, Boris Šuligoj (January 21 2015) <<http://www.delo.si/novice/slovenija/nelikvidnost-bolnisnice-izola-udarila-po-placah.html>>, accessed 12 February 2015 [Slovenian].

¹⁰⁸ Zaradi recesije v Sloveniji revnih vsaj 7000 otrok, Helena Petmel Pečuauer (October 28 2014) <<http://www.delo.si/novice/slovenija/zaradi-recesije-v-sloveniji-revnih-vsaj-7000-otrok.html>, <http://www.delo.si/novice/ljubljana/vse-vec-ljudi-brez-zdravstvenega-zavarovanja.html>>, accessed 12 February 2015 [Slovenian].

¹⁰⁹ Ministry for work, family and social affairs, National social report, 2014 [Slovenian].

People with disabilities are specifically protected under **the Constitution** of the RS. Article 52 determines that a legislative act has to ensure people with disabilities protection and vocational training. Children with physical or mental impairments have the right to education and training to enable them for an active life in society. Their education and training are financed by public means. They are specifically mentioned in Article 14, which prohibits discrimination of people with disabilities.

Already in 2008, Slovenia ratified the **Convention on the Rights of Persons with Disabilities** and its **Optional Protocol**.¹¹⁰

The Slovenian **legislation** on people with disabilities covers a variety of different spheres of life where they are given **special protection and additional rights**. That is in fields of employment and work, health protection and health insurance, pension and disability insurance, parent protection and family benefits, social assistance, education, special rights for people with a status of a war disabled, special rules on organisations for disabled people, special rights concerning physical availability, remissions and exercising the rights. Legislation concerning disabled is intensively changing.¹¹¹ It is very broad but scattered in numerous acts, which results in non-uniform definitions of disability.¹¹² There are some issues such as no specific database only for the disabled; therefore it is impossible to establish the exact value of financial transfers for disabled.¹¹³ Also ministries, governmental institutions, disabled people's and other organisations need to cooperate more closely.¹¹⁴ Representatives of organisations for disabled evaluate the position of disabled as neither appropriate nor inappropriate.¹¹⁵

¹¹⁰ UN Enable, 'Convention and Optional Protocol Signatures and Ratifications' <<http://www.un.org/disabilities/countries.asp?navid=17&pid=166>> accessed 19 April 2015.

¹¹¹ Social Protection Institute of Republic of Slovenia, 'Raziskava o pravicah invalidov, ki jih zagotavlja država, in njihovem uresničevanju', (2011) <<http://www.irssv.si/upload2/Raziskava%20o%20pravicah%20invalidov.pdf>>, 3, accessed 19 April 2015 [Slovenian].

¹¹² Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC Country Report 2013 Slovenia, 9.

¹¹³ Social Protection Institute of Republic of Slovenia, 'Raziskava o pravicah invalidov, ki jih zagotavlja država, in njihovem uresničevanju', (2011) <<http://www.irssv.si/upload2/Raziskava%20o%20pravicah%20invalidov.pdf>>, 3, accessed 19 April 2015 [Slovenian].

¹¹⁴ Action Programme for People with Disabilities 2014–2021, 2014, 4, [Akcijski program za invalide 2014–2021].

¹¹⁵ Social Protection Institute of Republic of Slovenia, 'Raziskava o pravicah invalidov, ki jih zagotavlja država, in njihovem uresničevanju', (2011) <<http://www.irssv.si/upload2/Raziskava%20o%20pravicah%20invalidov.pdf>>, 4, accessed 19 April 2015 [Slovenian].

However, Slovenia was said not to be in conformity or has not provided sufficient information as to assess the conformity with the Revised Charter in various Articles, among others Articles 1(4), 15(1) and 15(2). The reasons are as followed: 'it has not been established that the right of children with disabilities, and particularly children with intellectual disabilities, to mainstream training is effectively guaranteed', 'it has not been established that the right of persons with disabilities, in particular with intellectual disabilities, to mainstream education and training is effectively guaranteed' and 'it has not been established that persons with disabilities are guaranteed an effective equal access to employment'.¹¹⁶

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

The Digest of the case-law of the European Committee of Social Rights sets standards that a country has to fulfil to be in conformity with the Revised European Social Charter. The country has to have non-discrimination legislation, 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.¹¹⁷

Children with disabilities are specially protected under the Constitution of RS. Children with difficulties in physical or psychological development and other persons with difficulties have a right to education and training for an active life in the society – Paragraph 2 of Article 52 of the Constitution of RS. Slovenia has to create possibilities for the citizens to acquire suitable education – Paragraph 3 of Article 57 of the Constitution of RS. Its value is in enabling a child at the end of formal education to participate in professional and adult living.¹¹⁸

5.1.1.1. Integration into the mainstream education

¹¹⁶ European Social Charter Revised - Conclusions 2012 - Articles 1, 9, 10, 15, 18, 20, 24, 25 – Slovenia, 11, 23, 27

¹¹⁷ Council of Europe, 'Digest of the Case Law of the European Committee of Social Rights' (2008) <http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestIndex_en.asp>, 112, accessed 19 April 2015.

¹¹⁸ Annual report of The Human Rights Ombudsman of the Republic of Slovenia for the year 2013, 104-105, [Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2013] [Slovenian].

The Placement of Children with Special Needs Act¹¹⁹ has a goal is to provide equal opportunities for children by taking into consideration different needs of each individual as to be in the best interest of a child – Article 4. However education in the mainstream education is not necessary considered to be in the best interest of a child. All together children can follow 7 different programmes.¹²⁰ The main difference between the programmes is whether the children following the programme will acquire an equivalent standard of elementary, professional and general secondary school education. A lower standard is permissible only if a child cannot obtain the regular standard – Article 6. A special Commission proposes in its opinion into which programme a child should be enrolled – Article 27. Children's parents can give a critique on the opinion – Article 28. The Institute of RS for education issues a decree in which it decides on the basis of the opinion on the programme the child will follow – Article 30. Depending on the educational stage (preschool, elementary or vocational education), the programmes can differ in the content, organisation, implementation, curriculum and grading – Article 11. Each child is given an individualised programme – Article 36. Additional professional help consists of helping to overcome the disability, counselling and study help - Article 8. There is also an option for a child to be included occasionally or for some classes in 'regular' programmes - Article 17.

It can be verified whether a child has been included into the right programme if a commission considers it necessary. In this case it determines a date that is longer than one year, but not longer than 5 years – Article 39.

5.1.1.2. Access to special schools

Children that cannot be offered education where they live and whose location is too far from institution to be offered free transportation, can be included into care outside their home. If a child lives close enough he or she is offered free transportation. – Article 16.

5.1.1.3. Discrimination

¹¹⁹ It regulates education of children, young people and in some case adults until the age of 26 with special educational needs – Article 1. Children included have various physical or psychological disabilities, including behavioural disorders and autistic disorders – Article 2.

¹²⁰ Preschool children are offered either a programme with adapted implementation and professional help or an adapted programme. Elementary and secondary education is given in 5 programmes. Programmes with equivalent level of education: programmes with adapted implementation and additional professional help and adapted programmes with an equivalent standard of education. Programmes with lower standard of education: special programmes with lower standard of education, a special programme for children with moderate, more severe or severe disorder in physiological development and educational programmes – Article 5.

Article 14 of the Constitution of RS determines equal human rights regardless of disability or any personal ground. Implementation of the Principle of Equal Treatment Act is a general statute aiming at ensuring equal treatment at exercising rights regardless of any personal circumstances – Article 1 and Article 2. In cases of discrimination the burden of proof is reversed – Paragraph 2 of Article 22.

Equalisation of Opportunities for Persons with Disabilities Act is a specific statute giving special protection for disabled people. It is aimed at preventing and eliminating discrimination of disabled and creating equal opportunities in all spheres of life – Article 1. It also includes the measurements for equalising the possibilities – from Article 17 onwards. Among those disabled have a right to be included in education at all levels approximate to their residence and necessary adjustment in school process – Article 11. They have a right to choose their own place of residence – Article 13. The last provision might be violated, if a child's parents would not be able to influence the decision that their child has transportation to the school even though they live far away – Paragraph 3 of Article 15 of the Placement of Children with Special Needs Act. But in case the child does not attend a school in proximity to the child's residence, Article 13 might be violated. It is the basis for the Action programme which defines the goals, measures and deadlines to achieve the goals also in the sphere of education and work and employment – Article 27. It also the basis for establishing the Council for People with Disabilities of the RS – Article 28.

The following two statutes are also important for education of children with disabilities. The Act on the Use of Slovene Sign Language gives in Paragraph 1 of Article 13 a person with a hearing disability the right to translator for 30 hours a year or 100 hours a year, if it has a status of a student. The Road Transport Act gives in Article 114(a) university and high school students the right to subsidised ticket for public transport.

According to Slovenia's report on measures to combat discrimination 2013, the children are predominantly enrolled in special schools. Inclusion of children with disabilities into regular schools is an exception and depends on the willingness of the school to accept them. There is, however, a slight change of trends in policies that could be observed at least on the level of principle. Namely, in accordance with Article 11 of the 2010 Act on Equal Opportunities of People with Disabilities, there is a duty to ensure people with disabilities inclusion into

educational programmes on all levels, in the environment in which they live. The same article further stipulates that inclusion into special schools with adjusted programmes does not constitute discrimination.¹²¹ Segregated special education is in practice still favoured and supported, which might be contrary to UN Convention on the Rights of People with Disabilities.¹²²

Conclusion: Slovenia's failure to integrate children with special need into the main-stream education might be a violation of the European Social Charter. However, each child is individually assessed and in case a child who would be capable of following regular education would not be put into a special programme.

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

In 1992, Slovenia has ratified the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159).¹²³

5.1.2.1. Access to the Employment

Slovenia is promoting access to employment on open labour market by a series of measurements, namely services for open market which are including lifelong career orientation and broking of employment – Article 16 of Labour Market Regulation Act, and temporarily employment – Article 27. Other measurements are active employment policy aiming at promoting employment – Article 28 - which includes training and education, replacement at work and sharing of a working place, encouragements for employment, creation of new

¹²¹ Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC Country Report 2013 Slovenia, 56.

¹²² Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC Country Report 2013 Slovenia, 57.

¹²³ ILO, 'Ratifications of C159 - Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)' <http://www.ilo.org/dyn/normlex/en/?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312304> accessed 19 April 2015.

employment (including public work – Article 49), encouragement of self-employment – Article 29. Self-employment is rewarded by a subsidy – Article 48. Encouragements are primarily aimed at enlarging employment possibilities of vulnerable groups of unemployed persons, including people who are in danger of losing their employment. The encouragements are in form of subventions for employment – Paragraphs 1 and 2 of Article 32. New employment is made by subsidising temporal employment for vulnerable groups. It mostly takes place at employers who do not work for profit and in public sector – Article 33. A special Foundation for improvement of working possibilities was created – Article 103 of the Labour Market Regulation Act.¹²⁴

The Vocational Rehabilitation and Employment of Disabled Persons Act regulates employment rehabilitation, employment of people with disabilities and measurements for encouraging their employment as well as financing – Article 1. It is aimed at increasing employment of disabled people and creating equal opportunities – Article 2 (1). By giving financial encouragements it is helping employers who surpass the quota of employees with disabilities, companies for disabled and employment centres – Paragraph 2 of Article 2.

Quota system of employment of disabled applies for all employers with at least 20 employees. The system does not include companies for disabled and employment centres – Paragraph 1 of Article 62 of the Vocational Rehabilitation and Employment of Disabled Persons Act. An employer can fulfil the quota by cooperating with companies for disabled and/or employment centre – Paragraph 1 of Article 64. Employer who does not fulfil the quota has to pay a contribution for encouraging employment of disabled to the Fund for encouraging employment of disabled¹²⁵ (hereinafter the Fund).

The Fund¹²⁶ is a public financial fund established to encourage disabled people's employment – Article 77. It encourages the employer to employ disabled by subsidising the disabled people's payments and by paying of expenses of adjusting the working place – Article 72. It also pays for expenses from supported employment – Article 73. The employer is exempted from paying

¹²⁴ Labour Market Regulation Act is also regulating unemployment insurance – Article 54. The rights derived from it are listed in Article 58: compensation and payment for obligatory social insurance and for retirement and disability insurance.

¹²⁵ Free translation of Sklad za vzpodbujanje zaposlovanja invalidov.

¹²⁶ It is among others financed by payment made by employers who do not fulfil the quota and by Pension and Disability Insurance Act – Article 79.

contributions for pension and disability insurance – Article 74, rewarded if surpassing the quota – Article 75 and can receive a yearly award for good practice – Article 76.

Under the Corporate Income Tax Act Article 56 and Personal Income Tax Act Article 62 has employer a tax reduction if employing a disabled person. The reduction is greater if the injury or professional disease did not occur while working for the same employer.

5.1.2.2. Reasonable Accommodation

Disabled are given equal rights under employment law as employees without disabilities, but are given additional higher protection.¹²⁷ The employer has to enable a disabled a workplace suitable to his working abilities, part time work, vocational rehabilitation and payment replacement in accordance to Pension and Disability Insurance Act – Article 196.

5.1.2.3. Discrimination

In addition to the Constitution of RS and special legislation on prohibition of discrimination, namely Implementation of the Principle of Equal Treatment Act and Equalisation of Opportunities for Persons with Disabilities Act already discussed, has Employment Relationship Act Article 6 prohibiting the employer to discriminate. Prohibition applies when employing or during employment. It specifically mentions disability as a prohibited discrimination ground.

5.1.2.4. Sheltered Employment

Programmes of social integration are supporting and helping to preserve working abilities of disabled who are not employable due to their disability under Vocational Rehabilitation and Employment of Disabled Persons Act or Pension and Disability Insurance Act. They are co-financed by public means – Article 35. Disabled can be employed in regular working environment, companies for disabled, supported and sheltered employment – Article 36. Sheltered employment is defined as employment of a disabled in a working environment adapted to his working abilities and needs. It is used when the disabled is not capable to work on a regular working place – Paragraph 1 of Article 41. The sheltered employment is mainly provided by employment centres, but also companies for disabled – Paragraph 2 of Article 41. It includes

¹²⁷ Special protection is given also concerning working overtime – Article 146, longer annual leave – Article 159, and many others. The can also sign a contract without public publication of a position – Article 26.

working from home – Paragraph 3 of Article 41. Currently there are 142 such companies,¹²⁸ while there were around 170 in 2007.¹²⁹ In 2009, the number of disabled they were employing was 5,708,¹³⁰ while in 2007 more than 6,400.¹³¹ The number of working centres has risen from 8 in 2006¹³² to 39 in 2015.¹³³ Supported employment is employment of a disabled in a regular working environment with professional and technical support for the disabled and the employer – Paragraph 1 of Article 48.

Half of employers prefer to pay additional contributions than employ people with disabilities. Actions, meant to encourage employment, such as companies for people with disabilities, are creating segregation at labour market.¹³⁴

Conclusion: Slovenia has all the legislation needed to be in conformity with the European Social Charter concerning access to open labour market.

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

From April 1 2014, employers, who employ more people with disabilities than required by the law, are awarded 20% of the minimal wage and not 25% as before the governmental decree came in force.

From January 1 2015 **additional professional help** under Article 8 of the Placement of Children with Special Needs Act **is not financed any longer** due to saving money. The teachers are still obliged to perform the additional professional help.¹³⁵

¹²⁸ Ministry of Labour, Family, Social Affairs and Equal Opportunities 'Register invalidskih podjetji', <http://www.mddsz.gov.si/si/delovna_podrocja/invalidi_vzv/invalidska_podjetja_v_rs/register_invalidskih_podjetij/>, accessed 19 April 2015 [Slovenian].

¹²⁹ Barbara Kresal, 'Zaposlovanje in delo' [2007] Vodnik po pravicah invalidov, 37 [Slovenian].

¹³⁰ Ministry of Labour, Family, Social Affairs and Equal Opportunities 'Invalidska podjetja v RS' <http://www.mddsz.gov.si/si/delovna_podrocja/invalidi_vzv/invalidska_podjetja_v_rs/>, accessed 19 April 2015 [Slovenian].

¹³¹ Barbara Kresal, 'Zaposlovanje in delo' [2007] Vodnik po pravicah invalidov, 37 [Slovenian].

¹³² Ibid.

¹³³ Ministry of Labour, Family, Social Affairs and Equal Opportunities, 'Zaposlitveni centri' <http://www.mddsz.gov.si/si/delovna_podrocja/invalidi_vzv/zaposlitveni_centri/>, accessed 19 April 2015 [Slovenian].

¹³⁴ Shadow report of a coalition of non-governmental organizations to the Committee on Economic, Social and Cultural Rights in Slovenia, 24, [Senčno poročilo koalicije nevladnih organizacij Odboru za ekonomske, socialne in kulturne pravice v Sloveniji].

In September 2014, 15.7% of registered unemployed people in Slovenia were people with disabilities. That is 12-13% of population of Slovenia – 160,000-170,000 people. People with **disabilities present only 4% of employed people** – the number remains constant. People, who cannot work on a regular work force market, are employed by companies for disabled, employment centres and care-and-employments centres. In December 2014, there were 151 such companies. According to Employment Service of Slovenia, **the percentage of people with disabilities in registered unemployment is falling** (from January to October 2013 more than 2,600 have found employment and in entire year 2012 a bit less than 2,700). The **structural problem is the duration of unemployment and lower level of education**. In 2014, 80% were long-term unemployed.¹³⁶

Conclusion: austerity measurements in the sphere of education and employment of people with disabilities were not very harsh, but the issues relating to the disabled were not solved. All together the standard is satisfactory with place for improvement.

5.2. Children and Young Persons (Article 17 ESC)

Children and young people are specially protected under the Constitution of RS. Article 56 determines that children enjoy special protection and care, and enjoy human rights and fundamental freedoms consistent with their age and maturity. It ensures that children are guaranteed special protection from economic, social, physical, mental or other exploitation and abuse. Those children, who are not cared for by their parents, who have no parents or who are without proper family care, enjoy the special protection of the state. Freedom of education is guaranteed by Article 57 of the Constitution of RS. It determines that primary education is compulsory and financed from public funds. State has an obligation to create the opportunities for citizens to obtain a proper education.

There are a lot of international treaties and documents protecting children's rights that are valid and used in Slovenian legislation. The most important ones are, beside the European Social Charter and its Articles 7 and 17, UN Convention on the Rights of the Child, European

¹³⁵ Nina Šašek Kocbek, 'Ministrstvo varčuje in ukinja financiranje učne pomoči otrokom. Učitelji na nogah.' <<http://www.24ur.com/novice/slovenija/ministrstvo-varcuje-in-ukinja-ucno-pomoc-otrokom-ucitelji-na-nogah.html>> accessed 19 April 2015 [Slovenian].

¹³⁶ Statistical Office of the Republic of Slovenia, 'Mednarodni dan invalidov 2014', <http://www.stat.si/novica_prikazi.aspx?ID=6662>, accessed 1 March 2015.

Convention on Human Rights and its Articles 8 and 2 about the right to education in Protocol No. 1, and Charter of Fundamental Rights of the European Union and its Article 24.

The main act in Slovenian legislation regarding children and their rights is Marriage and Family Relations Act, and the main act regarding education is Organisation and Financing of Education Act. There are a lot of other acts that deal with education on each level: Elementary School Act, High Schools Act and Higher Education Act.

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

Under the Article 17 of the Charter every child has the right to education. It requires states to establish and maintain an accessible and effective education system. Therefore, there must be a functioning system of primary and secondary education, which includes an adequate number of schools fairly distributed over the geographical area, the number of children enrolled in school should reach 100% of those of the relevant age, and class sizes and the teacher pupil ratio must be reasonable. There must be a mechanism to monitor the quality of education delivered and to ensure a high quality of teaching. Education must be compulsory until the minimum age for admission to employment. Equal access to education must be ensured for all children, but particular attention should be paid to vulnerable groups such as children from minorities, refugee children etc. These children must be integrated into mainstream educational facilities and ordinary educational schemes.¹³⁷

As mentioned above, in Slovenia the right to education for every child is protected by Article 57 of the Constitution of RS. It also determines that primary education is compulsory and free of charge. With the Elementary School Act the primary education lasts nine years and is mandatory for all children. Parents need to enrol a child in the first grade when, in the calendar year in which the child will start with schooling, the child will attain age six. The Ministry responsible for education keeps a record of school-age children and every year before the enrolment submits to elementary schools a list of children from the school district that the school is obliged to enrol in

¹³⁷ Digest of the Case Law of the European Committee of Social Rights (Council of the Europe, September 2008) 120.

the 1st grade. The start of the schooling may be postponed for a year, if it is determined that the child is not ready for entry into school. If all goes well, children finish primary education at the age of 15, which is the minimum age for admission to employment. Anyone who does not successfully finish elementary school in nine years, has the possibility to continue schooling for two more years and in this manner retains the status of a pupil. Elementary education is divided into three educational cycles: from the first to the third grade, the fourth to the sixth grade, and from the seventh to the ninth grade. The programme comprises a compulsory and extra-curricular programme. A teacher from the first to the ninth grade, during the lessons and other forms of organised work, differentiates work conducted with children according to their abilities. At the end of the second and the third cycle, the knowledge of children is verified by means of a national examination, with which the standards of knowledge determined with the syllabus is verified.

In the school year 2013/2014 the number of children in elementary schools was 163.229, whereas the number in the school year 2012/2013 was 161.051. There were 782 public elementary schools across the country, amongst which 57 were special schools with adapted programmes (lower educational standard). The number of children in such programmes was 1.807. There is also a private Waldorf school, which implements a publicly valid programme. In all of the elementary schools the average number of children per class was 19.4. In each school the average number of children was 209. The number of children that passed the class was 99.1%. In the school year 2012/2013, there were 17.953 professionals in elementary schools, and 931 professionals in schools with special programmes.¹³⁸ Regarding the issue of geographical distribution of schools, a public network of schools is organised, which is composed of all public elementary schools. It ensures that all children have the possibility of elementary education and attending schools in the vicinity of their residence. In the event that school is more than 4 kilometres distant from a child's residence, he has the right to free transport to and from school.

The number of pupils enrolled in the secondary education schools in the school year 2013/2014 was 76.714; 92% of all the people between the age 15 and 18. The number of pupils that finished secondary education in the school year 2012/2013 was 18.463. The number of pupils in tertiary

¹³⁸ Statopis – Statistični pregled Slovenije 2014 (Statistični urad RS, 2014) <www.stat.si/pub.asp> accessed 3 March 2014 [Slovenian].

education was 90.622, out of which 18.774 graduated that school year. The proportion of young people (aged 19 to 24) included in tertiary education was 48%.¹³⁹

The evaluation of education is carried out, on one hand, as the evaluation of the educational system at macro level and at micro level, and, on the other hand, as the evaluation of educational organisations. The Minister responsible for education appointed the Evaluation Council in 2006. The Parliament of the Republic of Slovenia adopted modifications and amendments of the Organisation and Financing of Education Act in the Republic of Slovenia in July 2007, and determined that every year the councils of educational institutions should take account of and adopt the annual report on the institution's self-evaluation. At the end of each assessment period, groups of teachers who teach a certain level, professional working groups and the school's faculty analyse the achievements of students by individual subjects; the analysis is made per each class and per teaching group. The analysis of the result is discussed by the students of a class together with their class teacher and then presented to parents at parental meetings. The Principal of school evaluates the work of a teacher within the framework of the tasks imposed by the law: he has to attend the educational work, follow it up, advise and propose the advancement to a professional worker. At the end of the school year, the school's faculty, the council of parents and the school's council discuss the school's report regarding the work performed. At the beginning of the next school year, the process concerning the internal school's evaluation is reflected in the institution's development programme and in the annual work plan. For determining the quality of the school's work, the data of national and international comparable studies on the students' achievement are used. Every school is informed about the achievements of its students and about the average results achieved at the national level.

The external evaluation of schools is carried out simultaneously. It is implemented as a process of external examination of knowledge and is led by expert bodies. Professional, technical and administrative support is provided by the National Examination Centre, the central institution for the external examination of knowledge in Slovenia.

The external administrative and educational evaluation of schools is also conducted by the Inspectorate of the Republic of Slovenia for Education and Sport. Their organisation, the fields

¹³⁹ Ibid.

of supervision and competence are regulated by the School Inspection Act. The goals of a school inspection are to ensure the respect of regularity and thus the protection of rights of pre-school children and the participants of education.

5.2.1.1. Education of the Members of the Roma Community

In 2004, professional councils from the field of education adopted a document Roma Education Strategy in the Republic of Slovenia, which included many important proposals of measures: the inclusion of a Roma assistant in the work of education institutions, the introduction of Roma language at an optional level, learning of the Slovenian language, introduction of contents relating to Roma culture, history and identity in the lessons, etc. In the past years, the following activities have been implemented: the optional subject Roma Culture was adopted, the vocational standard Roma Assistant was adopted, every year programmes of intercultural co-existence are prepared and implemented (the Roma Union of Slovenia), material in the Roma language was published, every year seminars for teachers are implemented within the framework of supplementary professional training, the network of schools, which includes Roma children, has been established aimed at exchanging experience – the National Education Institute of Slovenia. The state specially treats and recognises benefits to schools for education of Roma children. For individual and group work with Roma children the Ministry of Education and Sport dedicates additional financial resources in the school process, it has more convenient norms for classes with Roma, it specially finances food, school books, excursions and similar. In the school year 2013/2014, 1.965 Roma children were included in elementary schools. There are no homogeneous classes, including only Roma children, since the Rules on Norms and Standards for the Elementary School since the school year 2003/2004 does not allow for the formation of special classes with Roma children.

In March 2010, the Government adopted the National Programme of measures for Roma for the period 2010-2015, which envisages concrete measures to improve the schooling of Roma:

- Inclusion of Roma assistant in the education process: he should assist children in overcoming emotional and language barriers prior to their inclusion in the kindergarten of the school.

- Early inclusion in education system: provision of conditions for the inclusion in pre-school education at least two years prior to the start of the elementary school, at the latest at the age of four.
- Provision of conditions to establish trust in school, learning about Roma culture and overcoming of prejudice.
- The raising of quality of educational work with Roma pupils: permanent professional supplementary training of teachers and exchange of cases of good practice.
- The establishment of a network of teaching aid for Roma, especially those included in secondary schools.

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

According to the ECSR Conclusions, any restriction or limitation of parent's custodial rights should be based on the criteria laid down in legislation and should not go beyond what is necessary for the protection and best interests of the child and the rehabilitation of the family. Long-term care of children outside their homes should take place primarily in suitable foster families and in institutions only when necessary. Children placed in institutions are entitled to the highest degree of satisfaction of their emotional needs and physical well-being, as well as to special protection and assistance. National law must provide a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family. Furthermore, a procedure must exist for complaining about the care and treatment in institutions. There must be adequate supervision of the child's welfare system and in particular of the institutions involved.¹⁴⁰

Children and young people, whose parents do not take care of them, who do not have parents or who are without family maintenance, enjoy the special protection of the state. Their position is regulated by the Marriage and Family Relations Act, which contains several forms of protection for these children, including guardianship, fostering, adoption and placing in a home, offering various alternatives for the protection and upbringing of children in cases, where children cannot

¹⁴⁰ Digest of the Case Law of the European Committee of Social Rights (Council of the Europe, September 2008) page 121.

live with their parents, either temporarily or permanently. First form is **guardianship**, which is a special form of family care of children who do not have parents or whose parents do not take care of them. The guardian is bound to look after a ward just as a parent would. The second form is **foster care**. Children who do not have parents who cannot live with their parents or whose development is threatened in the environment in which they live are given into the care of a foster parent or foster family by a social services centre. Placing in a foster home is by agreement with the parents or the result of a measure (removal of a child, removal of the right of parenthood). Every foster family is entitled to reimbursement of the costs of keeping a child, while the foster mother receives a minimal payment for her work. The carrying out of the foster care activity is the subject of a special statutory regulation, provided for in the Act Concerning the Pursuit of Foster Care. The third form is **adoption**. The Marriage and Family Relations Act only governs full adoption, by which the adopted person is completely separated from his original family and passed over to the family of the adopter. Social services centres have statutory powers to out adoptions. The Marriage and Family Relations Act stipulates that a child over ten years old must consent to adoption. Professional practice is however that even with younger children who are capable of understanding the meaning of adoption, professional social workers talk about this decision, which is so important for them, and make a decision in accordance with their wishes. Slovenia does not have a children's home with the functions of institutional care of children and young people deprived of normal family life. All children under 7, who cannot live with their biological family, are placed in family care with foster families. The only exceptions are children placed in institutions for the purpose of training. At the same time the possibility exists of placing children and young people in educational establishments for children with behavioural problems or young people's homes. Children in these institutions are given elementary school education and secondary school education or training in secondary schools either within the framework of the institution or outside it.¹⁴¹

According to the data at the end of 2010, 1.156 children were in foster care provided by 688 foster carers. In 2013 there were 49 adoptions, taking into account adoptions of children from

¹⁴¹ Report on the Implementation in Slovenia of the Measures of the World Summit for Children (2002) <http://www.unicef.org/specialsession/how_country/edr_slovenia_en.PDF> accessed 3 March 2014.

Slovenia and from abroad. As of the end of 2009, 292 young persons were in custody, and a guardian for a special case was appointed in the case of each of 614 young persons.

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

The Article 17 Paragraph 2 covers the basic education system and demands from States that primary and secondary education must be free of charge. In addition, hidden costs such as books or uniforms must be reasonable and assistance must be available to limit their impact on the most vulnerable groups. Measures must be taken to encourage school attendance and to actively reduce the number of children dropping out or not completing compulsory education and the rate of absenteeism.¹⁴²

As mentioned above, the Constitution of RS in its article 57 determines that primary education is compulsory and financed from public funds. Secondary education is equally accessible to all children and the compulsory curriculum is free of charge. Tertiary education is also financed from public funds.¹⁴³ Regarding the issue of regular school attendance the educational institutions from the field of elementary education monitor the absence of children on a daily basis. In compliance with the Elementary School Act, parents of elementary-school children should give notice of the reason for the person's absence upon each absence. A child may be absent from lessons without parents notifying the reason for the absence if his absence is announced beforehand but not more than five days in a school year. The Principal may at the parent's wish, due to excusable reasons, allow a child a longer absence from lessons. The Act also stipulates that the parents of elementary-school children may be punished for a minor offence if they do not ensure their child the fulfilment of the elementary schooling obligation. In an event when parents do not take care that their children visit the elementary school regularly, the school has the obligation to file a proposal to a responsible offence body to order a fine.

¹⁴² Digest of the Case Law of the European Committee of Social Rights (Council of the Europe, September 2008) 122.

¹⁴³ All the data about the number of people in each level of the education was already presented under the question 5.2.1.

Educational institutions from the field of secondary education also monitor the absence of students on a daily basis. In compliance with regulations parents of students have to give notice of the cause of absence of a student upon each of his absences. If after four days from the first day of the absence the school is not notified about the absence from lessons, the school itself establishes contact with the parents. In this manner both parties take care that there are no unexcused absences.

The Ministry of Education, Science and Sport provides the primary access to free textbooks from the textbooks funds. Each elementary school should have a textbook fund, whereas secondary schools may have it if they want to. Most of them actually have textbook funds, which are financed from the state budget and contributions from students. The contributions must not exceed one third of the price at which the school bought the textbook. Socially vulnerable students are entitled to a free loan of textbooks.

Local communities in accordance with the legislation provide a free shuttle service to elementary school for children, whose residence is at a distance of more than four kilometres. First graders have the right to free transport to the school regardless of the distance of their residence to the school, whereas the students of the higher classes have the right to free transport if the competent authority for safety in transport determines that the safety of children on their way to school is in jeopardy. The state's budget provides the funds for the transportation of primary schools' children. It also funds a part of the transport for students of secondary and tertiary education, whose home is remote from educational institutions for at least five kilometres. During the reference period, the subsidy can amount to up to 70% of the price of transport. It depends on the social situation of the student, the distance of residence from educational institutions and the possibilities of accommodation in student dorms.

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures has your MS taken to address this issue

According to the statistics of Eurostat, the general unemployment rate of Slovenia in 2014 was 9.7%.¹⁴⁴ This shows the number of unemployed persons as a percentage of the labour force (the

¹⁴⁴ Unemployment rate – annual data (EUROSTAT).
<<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tipsun20&plugin=1>>
accessed 3 March 2014.

total number of people employed and unemployed) based on International Labour Office (ILO) definition. By this definition, unemployed persons comprise persons aged 15 to 74, who:

- are without work during the reference week;
- are available to start work within the next two weeks;
- and have been actively seeking work in the past four weeks or had already found a job to start within the next three months.

The youth unemployment rate is the number of unemployed people aged 15 to 24 as a percentage of the active population of the same age. According to the Eurostat, the youth unemployment rate of Slovenia in 2014 was 20.2%.¹⁴⁵ These statistics show that Slovenian youth unemployment is two times bigger than the general unemployment.

Slovenia has tried to address this issue with several measures; the last measure was taken with the Intervention Measures for the Labour Market and Parental Protection Act. With this Act the government tried to take a temporary incentive for the employment of young unemployed people. An employer who, during the period from November 2013 to the end of 2015, makes an employment contract for an indefinite period of time with an unemployed person under the age of 30 (who is also at least three months before the contract reported in the records of unemployed people) is exempted from the payment of contributions for pension and disability insurance, health insurance, insurance for parental protection and unemployment insurance, for the first 24 months of employment of this person.¹⁴⁶

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

The share of public expenditure for formal education in GDP actually increased in the past years. In 2008 the share was 5.20%, in 2010 it increased to 5.66% and in the current situation (the latest international data is for the year 2011) it is 5.68% (2.053 million EUR).¹⁴⁷ It actually exceeds the EU average, which is 5.25%. The greatest share of funds was dedicated for

¹⁴⁵ Youth unemployment rate - % of active population in the same age group (EUROSTAT) <<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tipslm80&plugin=1>> accessed 3 March 2014.

¹⁴⁶ Article 2 of Intervention Measures for the Labour Market and Parental Protection Act.

¹⁴⁷ Expenditure on education as % of GDP (EUROSTAT) <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=educ_figdp&lang=en> accessed 3 March 2014.

elementary education – 2.45%. The share for secondary education was 1.21% and for tertiary it was 1.37%.¹⁴⁸

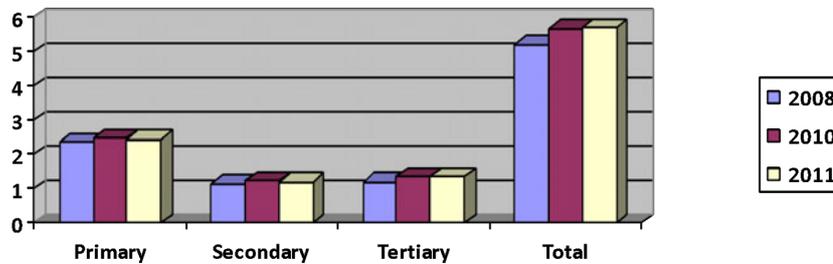


Figure 1: Total public expenditure on formal education, by level of education, Slovenia¹⁴⁹

As we can see the Government provides a great share of GDP for formal education which has not decrease after the world crisis. However, there were some minor impacts, such as restrictions on public sector employment with Fiscal Balance Act in 2012.¹⁵⁰ Schools and faculties cannot hire any new teachers/professors until the year in which the economic growth exceeds 2.5% of GDP. As an effect there is a greater burden on current staff which can result in reduction of educational quality. But if there are special circumstances they can still hire new ones, for example if someone retires. Nevertheless, Slovenia still provides all the rights to children and young people protected by European Social Charter, therefore those minor austerity measures are not in violation with the Charter.

6. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

6.1. "Direct Effect"

The collective complaint system has *prima facie* not contributed to alleviating the impact of austerity measures in Slovenia. Firstly, we will analyse this statement and assess reasons for this

¹⁴⁸ Expenditure for formal education (Statistical office for the Republic of Slovenia, 2011) <<https://www.stat.si/doc/statinf/09-si-200-1301.pdf>> accessed 3 March 2014.

¹⁴⁹ Ibid.

¹⁵⁰ Articles 182 to 188.

situation and secondly, we will try to overturn these claims by finding latent and alternative ways in which the collective complaint system might be influencing social rights and the application of the Revised European Social Charter (hereinafter the Charter) in Slovenia.

6.2. Collective Complaints Procedure in Slovenia so Far

Slovenia declared the adoption of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints on May 7 1999, when it ratified the Revised European Social Charter.¹⁵¹ Only two collective complaints have been submitted against Slovenia since then, but none of them was aimed at austerity measures as such. In the first complaint,¹⁵² the claimant succeeded in proving that Slovenia failed to comply with the provisions of the Charter guaranteeing the right to housing, the right of the family to social, legal and economic protection, and the right to non-discrimination.¹⁵³ On July 2 2013, the European Committee of Social Rights (hereinafter the ECSR) decided that the second complaint submitted against Slovenia¹⁵⁴ was admissible. The ECSR has not yet ruled on the justifiability of claims referring to the absence of the prohibition of corporal punishment of children in the Slovenian legislation, and to the state's failure to eliminate such practice.

Although two is a relatively small number regarding the period concerned and the total number of collective complaints submitted (until this day there were 113 complaints submitted and the only MS with less complaints submitted against is Cyprus with one complaint), we should not rush to any conclusions about the state of social rights and respect for the Charter in Slovenia in the time of the implementation of austerity measures. The questions that need to be addressed are why there have not been more complaints and more specifically, why none of them concerned austerity measures. This assessment will be a mere speculation at best, but nonetheless we can confirm some of the possible reasons as more plausible than others.

6.3. Reasons

¹⁵¹ Act on Ratification of the European Social Charter (Revised) n. 24/1999 1999 [Zakon o ratifikaciji Evropske socialne listine (spremenjene)].

¹⁵² European Federation of National Organisations Working with the Homeless (FEANTSA) v Slovenia (2008) No. 53/2008.

¹⁵³ European Committee of Social Rights, *Collective Complaints Procedure, Summaries of Decisions on the Merits, 1998-2012* [2013] <http://www.coe.int/t/dghl/monitoring/socialcharter/ComplaintSummaries/CCSummariesMerits2012_en.pdf> accessed 14 March 2015.

¹⁵⁴ Association for the Protection of All Children (APPROACH) Ltd. v Slovenia (2013) No. 95/2013.

6.3.1. Compliance?

As much as we would all wish, there is little chance of absolute conformity that would lead to such a small number of complaints. The fear of non-compliance is even stronger in the time of economic crisis, when a certain common feeling of responsibility for dealing with the crisis in the form of accepting the “necessary” austerity measures is present. Knowing there is always room for improvement, we should strive to fulfil the duties we have accepted by ratifying the Charter. The collective complaints procedure is a mechanism that offers support in terms of correctives and guidelines. It is also a very strong warning if regarded as such, which it should be. In response to complaints, the ECSR and the Committee of Ministers issue decisions and resolutions, which interpret the provisions and their scope and specify the duties of the MS.¹⁵⁵

Accepting the presumption that there is more that can be done in the area of social rights, especially in times of economic crisis, there are obviously other factors we should examine when discussing the lack of use of the collective complaints procedure as a legal remedy.

6.3.2. Restricted Access and Lack of Interest

A more plausible, yet less desirable reason for so few collective complaints being lodged lies in the somewhat restricted access to the procedure. Only certain organisations are justified to submit a complaint, namely, international organisations of employers and trade unions (i.e., ETUC, BUSINESSEUROPE, OIE), employers' organisations and trade unions in the country concerned and international non-governmental organisations (INGOs) enjoying participatory status with the Council of Europe. In case a MS accepts this possibility, national NGOs are also entitled to lodge complaints. So far, Slovenia has not issued any such declaration recognising an NGO that right (the only MS to have done so is Finland).

Furthermore, the complainants do not actually complain about a violation of their rights *in concreto*, but on a more abstract level, concerning the nonconformity of the MS' legislation or legal practice as a whole (i.e., a systemic breach of the Charter).¹⁵⁶ They have to cooperate with

¹⁵⁵ Jean François Akandji-Kombé, *The Material Impact of the Jurisprudence of the European Committee of Social Rights* [2005] Social Rights in Europe 89.

¹⁵⁶ 'European Committee of Social Rights: Complaint Procedure' <<http://www.co-guide.org/mechanism/european-committee-social-rights-collective-complaint-procedure>> accessed 14 March 2015.

the civil society and keep track of the legislation in order to discover such possible violations. In this situation it is no small wonder that there were so few complaints lodged (113 in 17 years).

6.3.3. Weakness of the System in Terms of Actual Impact

Perhaps the organisations entitled to lodge a complaint lack interest to do so, not only due to all the difficulties that accompany such a procedure (as already mentioned above), but perhaps also because they do not expect a positive outcome even if they succeed with the complaint. The enforceability of the decisions made by the ECSR is a very challenging and frequently discussed topic. As opposed to the enforceability of the decisions made by the European Court of Human Rights (hereinafter ECtHR), their enforceability is not as clear and as widely accepted. Many agree that they are not legally enforceable, although they carry a certain weight and provide other mechanisms of enforceability (e.g., political pressure). From a wider perspective this opinion corresponds to the so-called “marginalisation of socio-economic rights” as opposed to globally acknowledged political and civil rights. According to many international declarations (e.g., The Vienna Convention), this marginalisation is unjustified since all human rights should be treated equally.¹⁵⁷ Furthermore, many experts stress out that by ratifying the Charter and possibly the Additional Protocol, the MS accepts the responsibility not only to provide a correspondent legal regulation, but also to execute the decisions of the competent body (namely the ECSR and the Committee of Ministers). Another argument in favour of legal enforceability of the respective decisions is the fact that even though the ECtHR can award damages to the complainant and impose fines on the MS found responsible for violating the European Convention on Human Rights, there is still no guarantee that the MS will react in the desired way.

A widely spread opinion, which holds that the decision of the ESCR does not legally bind a MS in question, stems also from the ignorance of some MSs with which they meet the decisions of the ECSR when found responsible for violating the Charter. As for the attitude of the Slovenian government in this respect, we fear there is too little commitment to ensure execution of the

¹⁵⁷ Colm O’Cinneide, *Bringing Socio-Economic Rights back to the Mainstream of Human Rights: the Case-Law of the European Committee of Social Rights as an Example of Rigorous and Effective Rights Adjudication* [2009] *Revista Europea de Derechos Fundamentales* 259.

decisions. Moreover, in its response to the rulings in the case *FEANTSA v. Slovenia*, the Government explicitly denied being bound by such decisions.¹⁵⁸

Maybe entirely irrelevant from the legal standpoint, however, very illustrative is a fact, which proves that the Charter is relatively little known in the general public (at least in comparison to the ECtHR). Numbers speak for themselves; 73 persons “liked” the topic European Social Charter on Facebook, whereas the European Convention on Human Rights got 3,341 likes so far. Therefore, it is crucial to publicly promote the collective complaint system in a more decisive manner, in order to ensure the realisation of the standards set in the Charter itself.

6.4. Indirect Effect. A Violation that Has Not Been Remedied Yet

In order to provide a complete answer to the original question, we should ask ourselves another sub-question. Despite the lack of direct effect – does the system of collective complaints itself on a more abstract level contribute to ensuring social rights declared in the Charter, especially by alleviating the impact of austerity measures? The only sign of such effect would be a positive attitude of the Slovenian government towards the system as a whole and a desire to comply with the Charter even before a complaint procedure is launched. According to the response of the Slovenian government to the outcome of the first (successful) complaint submitted against Slovenia, we can not even confirm any “direct effect”, let alone an “indirect effect”. In the case of *FEANTSA v. Slovenia*, it appears the promises made by the Government after receiving a clear message about the violations of the Charter have so far not been kept.

In its yearly report for 2013, the Human Rights Ombudsman of the Republic of Slovenia has once again warned the Government about its failure to adopt sufficient measures to eliminate the established violations.¹⁵⁹ In its abrupt response to the recommendations of the Ombudsman from the report for the year 2012, the Government openly stated that it would not take responsibility for the violations and argued its decision by stating that ‘even the ECtHR in the

¹⁵⁸ 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].

¹⁵⁹ 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.varuh-rs.si/fileadmin/user_upload/pdf/lp/Devetnajsto_redno LETNO POROCILO VARUHA CP_RS ZA LETO 2013.pdf> accessed 14 March 2015.

case of *Berger-Krall and Others vs. Slovenia*¹⁶⁰ confirmed there was no violation'.¹⁶¹ One could see the irony and contradiction in this attempt to annul a decision of the ECSR by referring to a judgment of the ECtHR, as they are both institutions of the Council of Europe. Legally, the status of the Charter in Slovenian legal system is exactly the same as of the ECHR – they were incorporated in our legal order with their ratification. Therefore, the Charter should be equally respected and enforced, also through supervisory and collective complaint procedures. Nevertheless, the complaint no. 53 remains listed as a 'complaint where the Committee has found a violation that has not been remedied yet'.¹⁶²

All of the above-mentioned facts taken into account, we should honestly admit that the first collective complaint against Slovenia has not have a direct effect, nor any long-term influence on the government when adopting austerity measures.

6.5. Signs of Preventive Effect of the System as a Whole

Not very promising prospects aside, let us conclude this discussion on a more optimistic note by mentioning a sign of indirect effect the complaint system appears to have created after all.

In the process of negotiations prior to the adoption of the new Employment Relationships Act in 2013,¹⁶³ experts from the field of Labour and Social Security Law also based their arguments against lowering the standard of social and labour rights on the Charter, namely its enforcement systems, namely collective complaints. In the article on the necessity of maintaining social and labour rights on a sufficient level in the times of austerity (at least by respecting the minimal standards set out in the Constitution of the RS and in the ratified international treaties), the author Katarina Kresal Šoltes supports her argumentation by referring to the situation in Greece. The comparison is justified, since Slovenia is bound by more or less the same international treaties as Greece. The ECSR made two important decisions in cases no. 65 and 66 against Greece; it declared that Greece violated the Charter by infringing the right of all workers to a

¹⁶⁰ *Berger-Krall and Others v. Slovenia* [2013] ECtHR.

¹⁶¹ 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].

¹⁶² Council of Europe *Slovenia and the European Social Charter* [2015] <http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Slovenia_en.pdf> accessed 14 March 2015.

¹⁶³ Employment Relationships Act 2013 [Zakon o delovnih razmerjih].

reasonable period of notice for termination of employment, by infringing the right of employed persons under 18 years of age to no less than three weeks' annual holiday with pay, by failing to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employment, by failing to endeavour to raise progressively the system of social security to a higher level and by not recognising the right of workers to a remuneration which would give them and their families a decent standard of living (also in respect to abolition of discrimination).¹⁶⁴ It would be far-fetched to assume any strong correlation between those arguments and the manner in which changes in our labour legislation were formed in 2013. Maybe the Government took those arguments into consideration and modified the primary proposition accordingly. Although there were also other reasons for that, the Government did abandon the idea of introducing the so-called "single open-ended contract", perhaps also under the influence of expert's arguments based upon the above-mentioned ECSR case-law. If nothing else, the rulings of the ECSR in collective complaint procedures are being used by experts as a reference point to protect the standards set in the Charter in times of the implementation of austerity measures.

7. CONCLUSION

Concerning labour rights, the described system of the social and collective bargaining appears to be in conformity with the Charter, as well as all the measures taken in this regard. On the other hand, the situation in Slovenia is not entirely in line with Article 4§4 of the Charter.

Slovenia provides high standards in the field of social and medical assistance. Austerity measures have had an impact in this area. The scope of certain benefits has been reduced and some categorical social benefits have been abolished, while the crisis has not affected social services.

Slovenia is trying to follow the Charter with different measures to help the poor and unemployed, in a form of active employment policy measures as well as financial and material aid to those in need. However, every measure needs time to show the results. Still, more could be

¹⁶⁴ Katarina Kresal Šoltes, *Kršitve temeljnih socialnih pravic v imenu kriznih varčevalnih ukrepov [2013] Delavci in Delodajalci 11 [Slovenian]*.

done on family and children areas; there should be additional subsidies and financial aid, especially for those with unemployed parents

Slovenia's failure to integrate children with special need into the main-stream education might be a violation of the Charter. Slovenia has all the legislation needed to be in conformity with the Charter concerning access to open labour market. Austerity measures in the sphere of education and employment of people with disabilities were not very harsh, but the issues relating to the disabled were not solved. All together the standard is satisfactory with room for improvement.

Slovenia provides all the rights to children and young people protected by Article 17 of the Charter; furthermore, it actually provides higher standards than needed – free tertiary education. As in other areas, austerity measures have had impact on this as well, but in minor range, therefore those measures are not in violation with the Charter. The only problem seems to be the youth unemployment rate – it is still under the average of EU (Slovenia: 20.2%, EU28 21.9%), but the Government should be concerned with it and take more actions to provide young people with more job opportunities.

The collective complaints procedure has so far not proven to have any significant impact neither in the field of social rights in general, nor regarding the alleviation of the impact of austerity measures in specific.

8. TABLES

Expenditure in mio. EUR	2011	2012
Social benefits in cash	5.833	5.987
Social benefits in kind	2.811	2.835
Social benefits together	8.644	8.822
Other costs	0.024	0.024
Administrative costs	0.162	0.145
Expenditure together	8.830	8.992

Table 1: Expenditure and receipts of social protection schemes.¹⁶⁵

Receipts	2011	2012
Employer's contribution	2.358	2.355
Employee's contribution	3.418	3.439
Social contribution together	5.776	5.794
State contributions	2.973	3.090
Other sources	0.202	0.105
Together	8.951	8.989

Table 2: Receipts of social protection schemes.¹⁶⁶

Financial Social Assistance	Number	Average amount in EUR
2012	44,418	239.66
2013	46,304	248.59
2014	50,506	254.10

Table 3¹⁶⁷: Financial Social Assistance.

Emergency Financial Social Assistance	Number	Average amount in EUR
2012	41,554	298.48

¹⁶⁵ Anita Jacovič, Izdatki in viri financiranja programov socialne zaščite ter upravičenci do pokojnin, Slovenija, 2011 – začasni podatki <<http://www.stat.si/StatWeb/glavnanavigacija/podatki/prikazistaronovico?IdNovice=5632>> accessed 25 February 2015 [Slovenian].

¹⁶⁶ Anita Jacovič, Izdatki in viri financiranja programov socialne zaščite ter upravičenci do pokojnin, Slovenija, 2011 – začasni podatki <<http://www.stat.si/StatWeb/glavnanavigacija/podatki/prikazistaronovico?IdNovice=5632>> accessed 25 February 2015 [Slovenian].

¹⁶⁷ Statistika Denarna pomoč (Ministrstvo za delo, družino, socialne zadeve in enake možnosti) <http://www.mddsz.gov.si/si/uvcljavljanje_pravic/statistika/denarna_socialna_pomoc> accessed 23 February 2015.

2013	52,131	303.31
2014	66,171	302.67

Table 4¹⁶⁸: Emergency Financial Social Assistance.

State Scholarship	Number	Average amount in EUR
2011	51,441	161
2012	24,407	182
2013	23,437	182

Table 5¹⁶⁹: State Scholarship.

9. TABLE OF CASE LAW AND LEGISLATION

9.1. Slovenian Legislation

English Name	Slovenian Name	Year
Act Concerning Social Care of Mentally and Physically Handicapped Persons	Zakon o družbenem varstvu duševno in telesno prizadetih oseb	1983
Act Concerning the Pursuit of Foster Care	Zakon o izvajanju rejniške dejavnosti	2002
Act of long duration treatment, insurance for long duration treatment and personal assistance	Zakon o dolgotrajni oskrbi, osebni asistenci in zavarovanju za dolgotrajno oskrbo	Status: pending

¹⁶⁸ Statistika Denarna pomoč (Ministrstvo za delo, družino, socialne zadeve in enake možnosti) <http://www.mdds.gov.si/si/uveljavljanje_pravic/statistika/denarna_socialna_pomoc/> accessed 23 February 2015.

¹⁶⁹ Študenti in dijaki štipendisti po vrsti štipendije in višini povprečne štipendije letno, Slovenija (Statistični urad Republike Slovenije) <http://pxweb.stat.si/pxweb/Dialog/varval.asp?ma=0954301S&ti=&path=../Database/Dem_soc/09_izobrazevanje/10_drugi_podatki/02_09543_stipendisti/&lang=2> accessed 26 February 2015. Štipendiranje (Ministrstvo za delo, družino, socialne zadeve in enake možnosti) <http://www.mdds.gov.si/si/uveljavljanje_pravic/statistika/stipendiranje/> accessed 27 February 2015.

Act on Ratification of the European Social Charter (Revised) n. 24/1999	Zakon o ratifikaciji Evropske socialne listine (spremenjene)	1999
Act on the Use of Slovene Sign Language	Zakon o uporabi slovenskega znakovnega jezika	2002
Additional 2012 Intervention Measures Act	Zakon o dodatnih varčevalnih ukrepih za leto 2012	2012
Constitution of the Republic of Slovenia	Ustava Republike Slovenije	1991
Decree on determination of the quote for employing people with disabilities	Uredba o določitvi kvote za zaposlovanje invalidov	2014
Disabled People's Organizations Act	Zakon o invalidskih organizacijah	2002
Elementary School Act	Zakon o osnovni šoli	1996
Employment Relationships Act		2013
Equalisation of Opportunities for Persons with Disabilities Act	Zakon o izenačevanju možnosti invalidov	2012
Exercise of Rights to Public Funds Act	Zakon o uveljavljanju pravic iz javnih sredstev	2010
Financial Social Assistance Act	Zakon o socialnovarstvenih prejemkih	2010
Fiscal Balance Act	Zakon o uravnoteženju javnih financ	2012
High Schools Act	Zakon o gimnazijah	1996
Higher Education Act	Zakon o visokem šolstvu	1993
Intervention Measures for the Labour Market and Parental Protection Act	Zakon o interventnih ukrepih na področju trga dela in starševskega varstva	2013
Marriage and Family Relations Act	Zakon o zakonski zvezi in družinskih razmerjih	1976

Organization and Financing of Education Act	Zakon o organizaciji in financiranju vzgoje in izobraževanja	1996
Pension and Disability Insurance Act	Zakon o pokojninskem in invalidskem zavarovanju	2012
Placement of Children with Special Needs Act	Zakon o usmerjanju otrok s posebnimi potrebami	2011
Proposal of the Act on Personal Assistance, 1-2	Predlog zakona o osebni asistenci za invalide	
Rights to Public Funds Act	Zakon o uveljavljanju pravic iz javnih sredstev	2012
Road Transport Act	Zakon o prevozih v cestnem prometu	2006
Rules on Technical Aids and Adaptation of Vehicles	Pravilnik o tehničnih pripomočkih in prilagoditvi vozila	2014
Scholarship Act 1	Zakon o štipendiranju 1	2013
School Inspection Act	Zakon o šolski inšpekciji	1996
Self-governing agreement on the list of physical impediments	Samoupravni sporazum o seznamu telesnih okvar	1983
Social Security Act	Zakon o socialnem varstvu	2007
The Law on Health Care and Health Insurance	Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju	2013
The Law on Social Assistance	Zakon o socialno varstvenih prejemkih	2010
The Law on the Balancing of Public Finances	Zakon o uravnoveženju javnih financ	2012
Vocational Rehabilitation and Employment of Disabled Persons Act	Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov	2004

9.2. Legislation of the Council of Europe

Name	Year
European Social Charter (revised)	1996

10. BIBLIOGRAPHY AND ONLINE SOURCES

10.1. English Titles

10.1.1. Articles

- Akandji-Kombé J F, The Material Impact of the Jurisprudence of the European Committee of Social Rights [2005] Social Rights in Europe 89.
- O'Conneide C, Bringing Socio-Economic Rights back to the Mainstream of Human Rights: the Case-Law of the European Committee of Social Rights as an Example of Rigorous and Effective Rights Adjudication [2009] Revista Europea de Derechos Fundamentales 259.
- Setnikar Cankar S and Petkovšek V, 'Austerity Measures in the Public Sector in Slovenia and Other Selected European Countries' [2012]
<http://ipsa2013.iju.hr/downloads/downloads-2/files/6_2_Setnikar%20Cankar.pdf>
accessed 1 March 2015.

10.1.2. Reports

- European Committee of Social Rights, 'Conclusions 2014 (Slovenia)' [2014] 20
<http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Slovenia2014_en.pdf> accessed 14 March 2015.
- European Social Charter Revised - Conclusions 2012 - Articles 1, 9, 10, 15, 18, 20, 24, 25
- Slovenia, 11, 23, 27.
- MISSOC Comparative Tables Database (Slovenia and guaranteed minimum resources)
<<http://www.missoc.org/MISSOC/INFORMATIONBASE/COMPARATIVETABLES/MISSOCDATABASE/comparativeTableSearch.jsp>> accessed 2 March 2015.

- Report on the Implementation in Slovenia of the Measures of the World Summit for Children (2002)
<http://www.unicef.org/specialsession/how_country/edr_slovenia_en.PDF> accessed 3 March 2014.
- Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC Country Report 2013 Slovenia, 56.
- Twelfth Report on the Implementation of the Revised European Social Charter submitted by the government of Slovenia
<http://www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/Slovenia12_en.pdf> accessed 14 February 2015.

10.1.3. Online Sources

- Council of Europe, 'Digest of the Case Law of the European Committee of Social Rights' (2008)
<http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestIndex_en.asp>, 112, accessed 19 April 2015.
- Council of Europe, Slovenia and the European Social Charter [2015]
<http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Slovenia_en.pdf> accessed 14 March 2015.
- European Committee of Social Rights, Collective Complaints Procedure, Summaries of Decisions on the Merits, 1998-2012 [2013]
<http://www.coe.int/t/dghl/monitoring/socialcharter/ComplaintSummaries/CCSummariesMerits2012_en.pdf> accessed 14 March 2015.
- 'European Committee of Social Rights: Complaint Procedure' <<http://www.coguide.org/mechanism/european-committee-social-rights-collective-complaint-procedure>> accessed 14 March 2015.
- Expenditure for formal education (Statistical office for the Republic of Slovenia, 2011)
<<https://www.stat.si/doc/statinf/09-si-200-1301.pdf>> accessed 3 March 2014.

- Expenditure on education as % of GDP (EUROSTAT)
<http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=educ_figdp&lang=en>
accessed 3 March 2014.
- ILO, 'Ratifications of C159 - Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)'
<http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312304> accessed 19 April 2015.
- UN Enable, 'Convention and Optional Protocol Signatures and Ratifications'
<<http://www.un.org/disabilities/countries.asp?navid=17&pid=166>> accessed 19 April 2015.
- Unemployment rate – annual data (EUROSTAT).
<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tip_sun20&plugin=1> accessed 3 March 2014.
- Youth unemployment rate - % of active population in the same age group (EUROSTAT)
<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tip_slm80&plugin=1> accessed 3 March 2014.

10.2. Slovenian Titles

10.2.1. Books

- Bubnov Škoberne A and Strban G, Pravo socialne varnosti, (1st edn, GV Založba 2010).
- Kresal B, 'Zaposlovanje in delo' [2007] Vodnik po pravicah invalidov, 37].

10.2.2. Articles

- Belovič M, Vlada bo zaostri la varčevanje v javnem sektorju (October 14 2014)
<<http://www.delo.si/novice/politika/vlada-bo-zaostri-la-varcevanje-v-javnem-sektorju.html>>, accessed 2 February 2015.

- Decembra 13-odstotna brezposelnost, Je.G. (February 17 2015)
<<http://www.delo.si/gospodarstvo/trg-dela/decembra-13-odstotna-brezposelnost.html>> accessed 3 February 2015.
- Fiscal Balance Act also applies to non-governmental organizations (January 7 2013)
<<http://www.cnvos.si/article/id/7231/cid/320>> accessed 13 February 2015.
- 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.
- Kresal Šoltes K, Urejanje pravic v kolektivnih pogodbah in vloga sindikatov po novem Zakonu o delovnih razmerjih [2013] Delavci in delodajalci 2-3, 237-253.
- Kresal Šoltes K, Kršitve temeljnih socialnih pravic v imenu kriznih varčevalnih ukrepov [2013] Delavci in Delodajalci 11.
- Peternel Pečauer H, Zaradi recesije v Sloveniji revnih vsaj 7000 otrok (October 28 2014)
<<http://www.delo.si/novice/slovenija/zaradi-recesije-v-sloveniji-revni-v-saj-7000-otrok.html>, <http://www.delo.si/novice/ljubljana/vse-vec-ljudi-brez-zdravstvenega-zavarovanja.html>>, accessed 12 February 2015.
- Sindikati zahtevajo sprostitev napredovanj, Pi. K. (April 6 2015)
<<http://www.delo.si/novice/politika/sindikati-na-ukrepe-vlade-ne-pristajajo.html>>, accessed 2 February 2015.
- Spremembe socialne zakonodaje od 1.1.2014 ter 1.9.2014 (November 14 2013)
<http://www.racunovodja.com/clanki.asp?clanek=7568/Spremembe_socialne_zakonodaje_od_1_1_2014_ter_1_9_2014> accessed 7 March 2015.
- Statistical Office of the Republic of Slovenia, 'Mednarodni dan invalidov 2014',
<http://www.stat.si/novica_prikazi.aspx?ID=6662>, accessed 1 March 2015.
- Strban G, Nova ureditev denarnih socialnih pomoči (2-3, Delavci in delodajalci, 2011), pp.244.

- Šašek Kocbek N, ' Ministrstvo varčuje in ukinja financiranje učne pomoči otrokom. Učitelji na nogah.' <<http://www.24ur.com/novice/slovenija/ministrstvo-varcuje-in-ukinja-ucno-pomoc-otrokom-ucitelji-na-nogah.html>> accessed 19 April 2015.
- Šuligoj B, Bolnišnice ne morejo delati več za manj denarja, Boris Šuligoj (February 4 2015) <http://www.google.si/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CCwQFjAC&url=http%3A%2F%2Fwww.delo.si%2Fnovice%2Fslovenija%2Fbolnisnice-ne-morejo-delati-vec-za-manj-denarja.html&ei=uALqVN_oFubU7AbAroG4DA&usg=AFQjCNGK7GZI2rAZ-3Ye4dEoTdcFhL_w&bvm=bv.86475890,d.ZGU>, accessed 15 February 2015.
- Šuligoj B, Nelikvidnost bolnišnice Izola udarila po plačah (January 21 2015) <<http://www.delo.si/novice/slovenija/nelikvidnost-bolnisnice-izola-udarila-po-placah.html>>, accessed 12 February 2015 [Slovenian].
- Šuligoj B, V izolski bolnišnici zmanjkuje za place (January 21 2015) <<http://www.delo.si/novice/slovenija/v-izolski-bolnisnici-zmanjkuje-za-place.html>>, accessed 12 February 2015.
- Vse več ljudi prejema denarno socialno pomoč, Delo, <<http://www.delo.si/novice/slovenija/vse-vec-ljudi-prejema-denarno-socialno-pomoc.html>> accessed 19 April 2015.
- Žibert A and Rubin M, Vse več ljudi brez zdravstvenega zavarovanja (November 16 2012) <<http://www.delo.si/novice/ljubljana/vse-vec-ljudi-brez-zdravstvenega-zavarovanja.html>>, accessed 12 February 2015.

10.2.3. Reports

- Annual report of The Human Rights Ombudsman of the Republic of Slovenia for the year 2013, 104-105, [Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2013] [Slovenian].
- Ministry for work, family and social affairs, National social report, 2014 [Slovenian].

- Polona Dremelj, Simona Smolej, Ružica Boškić, Tamara Narat, Liljana Rihter, Nadja Kovač, Barbara Kobal Tomc, Socialni položaj v Sloveniji, 2013-2014, Končno poročilo (Inštitut Republike Slovenije za socialno varstvo, Ljubljana, 2015) <<http://www.irssv.si/upload2/Koncno%20porocilo%20%28dopolnjeno-februar15%29.pdf>> accessed 12 February 2015.
- Shadow report of a coalition of non-governmental organizations to the Committee on Economic, Social and Cultural Rights in Slovenia, 24, [Senčno poročilo koalicije nevladnih organizacij Odboru za ekonomske, socialne in kulturne pravice v Sloveniji].

10.2.4. Online Sources

- Uveljavljanje pravic <http://www.mddsz.gov.si/si/uveljavljanje_pravic/> accessed 18 April 2015.
- Institute of Anton Trstenjak on social exclusion <<http://www.inst-antontrstenjaka.si/gerontologija/slovar/1026.html>>, accessed 20 February 2015.
- Jacovič A, Izdatki in viri financiranja programov socialne zaščite ter upravičenci do pokojnin, Slovenija, 2011 – začasni podatki <<http://www.stat.si/StatWeb/glavnanavigacija/podatki/prikazistaronovico?IdNovice=5632>> accessed 25 February 2015.
- Kazalniki dohodka in revščine, Slovenija, 2013 <<http://www.stat.si/StatWeb/glavnanavigacija/podatki/prikazistaronovico?IdNovice=6490>> accessed 16 April 2015.
- Pension and Disability Institute of Slovenia. <<http://www.zpiz.si/cms/?ids=zpizen>> accessed 19 April 2015.
- Sistem socialnega varstva v Sloveniji <http://www.sindikatzsss.si/index.php?option=com_content&view=article&id=279&Itemid=148> accessed 10 March 2015.
- Statistika Denarna pomoč (Ministrstvo za delo, družino, socialne zadeve in enake možnosti)

- <http://www.mddsz.gov.si/si/uveljavljanje_pravic/statistika/denarna_socialna_pomoc> accessed 23 February 2015.
- Statopis – Statistični pregled Slovenije 2014 (Statistični urad RS, 2014)
<www.stat.si/pub.asp> accessed 3 March 2014.
 - Študenti in dijaki štipendisti po vrsti štipendije in višini povprečne štipendije letno, Slovenija (Statistični urad Republike Slovenije)
<http://pxweb.stat.si/pxweb/Dialog/varval.asp?ma=0954301S&ti=&path=../Database/Dem_soc/09_izobrazevanje/10_drugi_podatki/02_09543_stipendisti/&lang=2>
accessed 26 February 2015.

10.2.5. Governmental Propositions, Reports, Announcements, Programmes

- 70. redna seja vlade,
<http://www.vlada.si/medijsko_sredisce/sporocila_za_javnost/sporocilo_za_javnost/article/70_redna_seja_vlade_rs_48320/>, accessed 16 April 2015.
- Action Programme for People with Disabilities 2014-2021, 2014, 4, [Akcijski program za invalide 2014-2021].
- Aktivna politika zaposlovanja,
<http://www.ess.gov.si/o_zrsz/predstavitev/zakonodaja/aktivna_politika_zaposlovanja>
> accessed 16 April 2015.
- Pogrebna in posmrtnina
<http://www.mddsz.gov.si/si/delovna_podrocja/sociala/pogrebna_in_posmrtnina/>
accessed 11 April 2015.
- Denarna socialna pomoč (Ministrstvo za delo, družino, socialne zadeve in enake možnosti)
<http://www.mddsz.gov.si/si/delovna_podrocja/sociala/denarna_socialna_pomoc/>
accessed 26 February 2015.
- Državne štipendije
<http://www.mddsz.gov.si/si/delovna_podrocja/trg_dela_in_zaposlovanje/stipendije/drzavne_stipendije/>, accessed March 7 2015.

- Ministry of Labour, Family, Social Affairs and Equal Opportunities of the Republic of Slovenia, 'Evidenca kolektivnih pogodb'
<http://www.mddsz.gov.si/si/delovna_podrocja/delovna_razmerja_in_pravice_iz_dela/socialno_partnerstvo/evidenca_kolektivnih_pogodb/> accessed 1 March 2015.
- Ministry of Labour, Family, Social Affairs and Equal Opportunities 'Invalidska podjetja v RS'
<http://www.mddsz.gov.si/si/delovna_podrocja/invalidi_vzv/invalidska_podjetja_v_rs/>, accessed 19 April 2015 [Slovenian].
- Ministry of Labour, Family, Social Affairs and Equal Opportunities 'Register invalidskih podjetij',
<http://www.mddsz.gov.si/si/delovna_podrocja/invalidi_vzv/invalidska_podjetja_v_rs/register_invalidskih_podjetij/>, accessed 19 April 2015 [Slovenian].
- Ministry of Labour, Family, Social Affairs and Equal Opportunities, 'Zaposlitveni centri'
<http://www.mddsz.gov.si/si/delovna_podrocja/invalidi_vzv/zaposlitveni centri/>, accessed 19 April 2015 [Slovenian].
- Programi, <http://www.ess.gov.si/iskalci_zaposlitve/programi>, accessed 1 March 2015.
- Social Service Act 2007 [Zakon o socialnem varstvu] Article 11.
<http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/zsv_upb2_en.pdf> accessed 18 April 2015.
- Socialni sporazum za obdobje 2015-2016
<http://www.vlada.si/fileadmin/dokumenti/si/projekti/2015/Socialni_sporazum/Socialni_sporazum_2015_-_2016.pdf> accessed 7 March 2015.
- Socialnovarstvene storitve
<http://www.mddsz.gov.si/si/delovna_podrocja/sociala/socialnovarstvene_storitve/> accessed 7 April 2015 [Slovenian].
- Statistika Denarna pomoč (Ministrstvo za delo, družino, socialne zadeve in enake možnosti)

- <http://www.mddsz.gov.si/si/uvcljavlanje_pravic/statistika/denarna_socialna_pomoc/> accessed 23 February 2015.
- Štipendiranje (Ministrstvo za delo, družino, socialne zadeve in enake možnosti) <http://www.mddsz.gov.si/si/uvcljavlanje_pravic/statistika/stipendiranje/> accessed 27 February 2015.
 - The Government of the Republic of Slovenia, Slovenska izhodna strategija 2010-2013 [2010] <http://www.vlada.si/fileadmin/dokumenti/si/projekti/Protikrizni_ukrepi/iz_hod_iz_krize/IZHODNA_STRATEGIJA.pdf> accessed 14 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.

10.2.6. Researches

- Social Protection Institute of Republic of Slovenia, 'Raziskava o pravicah invalidov, ki jih zagotavlja država, in njihovem uresničevanju', (2011) <<http://www.irssv.si/upload2/Raziskava%20o%20pravicah%20invalidov.pdf>>, 3, accessed 19 April 2015.

10.3. Other

- Email conversation, Martina Trbanc, Institute of the Republic Slovenia for Social Protection (Ljubljana, Slovenia, 12 March 2015).

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

Spain signed the European Social Charter (ESC) on 29 April 1978 and ratified it in its entirety on 6 May 1980, with the exception of Article 8(4)(b) –concerning the prohibition of the employment of women in certain dangerous occupations–, denounced by the Spanish government on 4 December 1990.¹ Finally, it came into force in Spain on 5 June 1980, according to Article 96(1) of the Spanish Constitution.² In consequence, Spain is bound by the rights and guarantees recognised by the ESC, by its Protocols and by the interpretations of the European Committee of Social Rights (ECSR).

Subsequently, the ESC was enlarged by three Protocols: (i) the Additional Protocol of 5 May 1988; (ii) the Amending Protocol of 21 October 1991; and (iii) the Additional Protocol to the ESC providing for a System of Collective Complaints of 9 November 1995. Spain ratified the first two Protocols –which added new social rights–, but the last one has not yet signed nor ratified.

In 1996 ESC was deeply revised and in order to complete the 1961 framework on 3 May 1996 it was approved in Strasbourg the Revised European Social Charter (RESC). Spain has signed it on 23 October 2000, but not yet ratified it. Therefore the Revised Charter has not been incorporated into the national law.

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

¹ Directorate General Human Rights and Rule of Law, Council of Europe, *Spain and the European Social Charter* (Factsheet – Spain), January 2015.

² Article 96 (1) of Spanish Constitution: ‘validly concluded international treaties, once officially published in Spain, shall be part of the internal legal system. Their provisions may only be repealed, amended or suspended in the manner provided for in the treaties themselves or in accordance with the general rules of international law’.

In 2009, in response to the economic crisis, the Spanish government introduced a fiscal stimulus and another set of austerity measures. The former included, among other measures, a new benefit for jobless workers who have exhausted unemployment insurance and unemployment assistance benefits, a new personal tax credit of EUR 400³ or the right to extend the duration of mortgage by two years free of charge, among others.

In addition, due to the burst of the housing market which hit financial institutions –and particularly the Spanish smaller unlisted savings banks known as *cajas*–, the government created a bank bail-out fund –known as FROB (Fund for Orderly Bank Restructuring)⁴– with firepower of up to EUR 9,000,000⁵ and urged weaker saving banks to merge to improve solvency. Over the next year, the number of savings banks, which lent heavily in the property boom, will be cut to 13 from 45.⁶

In 2010, the then Prime Minister, J.L. Zapatero, announced austerity measures, which aimed to reduce public expenditure by EUR 15 billion.⁷ These included: direct taxes and contributions (addition of two tax brackets for top earners); benefits and tax credits (pension freeze for 2011, except for minimum and non-contributory pensions elimination of universal birth grant and elimination of EUR 400 personal tax credit from 2010); and other measures like the reduction in public investment.⁸

This first economic and fiscal strategy failed in spring 2010 as the Spanish interest rate shot up after Greece's inability to finance its debt in the financial markets. Therefore, the Eurozone's confidence for the Spanish economy deteriorated and the attention turned to Spain amid worries its public deficit.

³ Stability Programme Update 2009-2013, Government of Spain, p. 18.

⁴ Royal Decree n. 99 (Bank Restructuring and Equity Enhancement of Credit Institutions) 2009 [Real-Decreto sobre reestructuración bancaria y reforzamiento de los recursos propios de las entidades de crédito].

⁵ Fund for Orderly Reestructuring of the Banking Sector (“FROB” by its Spanish acronym) ‘Provision and funding’ <<http://www.frob.es/es/Sobre-el-FROB/Paginas/Dotacion-y-financiacion.aspx>> accessed 2 April 2015 [Spanish].

⁶ ‘El rescate de las cajas de ahorro le costará a los españoles unos 30.000 millones’ <<http://www.eleconomista.es/banca-finanzas/noticias/5873508/06/14/El-rescate-de-las-cajas-de-ahorro-le-costara-a-los-espanoles-unos-30000-millones-de-euros.html#.Kku8FdS230QwwFx>> accessed 5 February 2015 [Spanish].

⁷ Spanish Government Press Release concerning the Royal Decree n. 8, of 20 May (adopting extraordinary measures to reduce the public deficit) 2010, Official Spanish Gazette of 8 July 2010 [Real Decreto 8/2010, de 20 de mayo, por el que se adoptan medidas extraordinarias para la reducción del déficit público].

⁸ Social Situation Observatory, European Commission. *Modelling the distributional effects of austerity measures: the challenges from a comparative perspective* (RN 8, 2010).

On June, Spain's cabinet approves a labour market reform, which was criticized by trade unions as it undermined workers' rights and by business organisations for being too weak. The bill was passed through parliament in September. Other measures taken by the Government during this year are: increase of tobacco tax; reduction of wind power subsidies; or the announcement of possible privatization of the airport authority and the state lottery. Both partial privatizations are later scrapped due to bad market conditions and political pressure.

Big fiscal problems arose in 2011 and the main concerns were the unexpected increase of unemployment and the large deficits on the regional level (almost two thirds of the deviations were counted in the *Comunidades Autónomas* (Autonomous Communities)).

On 7 September 2011, the Parliament passes a constitutional amendment forcing governments to keep balance budgets, embedded in its Part VII: 'Economy and Finance' under which:

- The Government must be authorised by law in order to issue Public Debt bonds or to contract loans;
- Loans to meet payment on the interest and capital of the State's Public Debt shall always be deemed to be included in budget expenditure and may not be subject to amendment or modification as long as they conform to the terms of issue.

That reform set in the text the concept of 'budget stability', introducing, in this way, the absolute priority of debt and interest repayment. The main reason to the reform was to abide all the Public Administrations by the principle of budgetary stability. In this way, the constitutional text forbids Public Administration to exceed the thresholds defined in the Stability and Growth Pact.

After the early elections of December 2011, Spain's new government announced new austerity measures with a cut in public spending by EUR 8,9bn in 2012 for all ministries. In this line, the Treasury Minister, Cristobal Montoro, announced tax hikes to focus on the wealthy, raising around EUR 6bn.⁹

The Stability Programme 2011-2014¹⁰ clearly indicates that the wage cuts and the freezing of wages were going to be an important element of the economic and financial recovery of Spain.

⁹ Victor Martínez, Javier González 'El Gobierno sube el IRPF a todas las rentas y el IBI durante dos años' [2011], El Mundo <<http://www.elmundo.es/elmundo/2011/12/30/economia/1325253592.html>> accessed 7 February [Spanish].

¹⁰ Spain Stability Programme 2011-2014 <http://ec.europa.eu/europe2020/pdf/nrp/sp_spain_en.pdf>.

On 2012, Spain's Government imposes further austerity measures. On June 2012, Spain bows to bailout of struggling bank sector. The Eurozone finance ministers agree to lend the country up to EUR 100bn to shore up its banks and Madrid said it would specify precisely how much it would need once independent audits report in just over a week. On July, the Prime Minister announced a new EUR 65bn package of cuts, the day after the European Union approved a new bank bailout.

One of the first effects of the economic crisis in Spain was the loss of over two million jobs. Since the crisis began in 2008, unemployment rates have risen steadily to unprecedented levels, from 9.63% in the first quarter of 2008 to 24.5% in 2014 and in its worst moment in 2013 with the 26.1%¹¹ off the population unemployed (6,202,700 unemployed in 2013).¹² The gap between the wealthy and the poor population in Spain is now one of the largest in Europe. It has also grown 15% since 2007 (from 5,500,000 in 2007 to 6,300,000 in 2013).¹³

Four years after the cutbacks started the possibilities to attend university (since September 2013 students have to pay an increase tax of EUR 540¹⁴, compared with the same rates of last year. In addition, at the same time the Government has reduced and cancelled most of the scholarships and grants that existed before) or receive medical assistance have decreased. Spain also speeded up a gradual increase in the retirement age from 65 to 67 years.

On 2013, in order to boost the State income, the deduction for home purchases in the personal income tax was abolished and the VAT was increased. Other measures were focused on stepping up budget cuts. These measures were accompanied by the approval of a non-availability of credit agreement.

¹¹ Eurostat (European statistics), Unemployment rate – annual data. Source: <<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tipsun20&plugin=1>> accessed 5 February 2015.

¹² Javier G. Cuesta 'El paro registra su primer descenso en la crisis pero España pierde 198.900 ocupados' (2014), accessed 5 February 2015

<<http://www.elmundo.es/economia/2014/01/23/52e0cd5822601dae648b456d.html>>.

Eurostat, 'Ratio of total Income received by the 20% of the population, with the highest income (Top Quintile) to that received by the 20% of the population with the lowest income (Lowest Quintile)'. Source:

<<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tessi180&plugin=1>> accessed 6 February 2015.

¹⁴ Ignacio Fariza and Pilar Álvarez, 'Bruselas constata que la subida de tasas no aleja al estudiante de las aulas' (23 June 2014), El País [Spanish].

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

Collective bargaining is regulated in the 1978 Spanish Constitution, which states that the Law guarantees the right to collective bargaining between workers' representatives and employers and protects the binding power of the agreements. The 1994 reform of the Workers' Statute included new regulations extending the remit of collective bargaining over employment conditions and reducing the role of the State in this area.¹⁵

Collective agreements are negotiated between the representatives of employers and workers that can show 'sufficient representativeness' in the sector. The agreements reached in the process are public and legally binding for all workers within the scope of the agreement –independently of whether workers are union members or not–. Thus, despite a relatively low rate of union membership (15% or less), the coverage of collective bargaining in Spain is very high (80%, according to the Ministry of Labour).

Collective agreements in Spain take place at multiple levels. There are basically two main types: firm level and sectorial agreements. The former include the ones which only affect the workers in a particular firm. The latter are negotiated at a given geographical or sectorial level (national, regional or provincial) and affect all the workers in the given unit which are not covered by a firm agreement. That is, these are automatically extended to firms in the scope of the agreement regardless of the degree of unionization of the particular firm. The majority of workers are covered by sectorial agreements, particularly, under provincial ones.

The Workers' Statute determines the procedure for the bargaining process, leaving little manoeuvring room for the bargaining parties.

The representatives of the workers or employers instigating the bargaining should communicate this to the other party, in general after denouncing the previous agreement. Once the communication instigating the bargaining is received, and if the response by the receiving party is

¹⁵ Spain is also a signatory country to ILO Agreements N° 87 (Agreement on Trade Union Freedom and Protection of the Right to Form Trade Unions of 1948) and N° 98 (Agreement on the Right to Form Trade Unions and Right to Collective Bargaining of 1949).

affirmative, the parties have a maximum of one month to establish the bargaining committee: also in one month's time, the parties may set up a bargaining calendar or plan to be followed.

Collective agreements that are bargained, agreed, formalised, registered and published 'oblige all employers and workers included in their scope and during their entire validity'.

If no agreement is reached by the parties during the review process, the previous agreement continue to be valid without any limitation period. This situation was exceedingly common before the decrease of Spanish economy in 2008 and many agreements remained valid although they had expired many years before. The main aim was to protect current working conditions even if an employer refused to sign a new agreement.

Part of the minimum obligatory content of the collective agreement is to designate a joint committee with representatives from the bargaining parties 'to hear as many questions that are conferred to it' and determine the procedures to settle disputes within the committee itself.

This committee can exercise a variety of functions, but it can neither introduce modifications or alterations to the agreement, nor tackle bargaining towards the future. This does not mean, however, that the right to effective judicial protection is undermined.

This was the labour system before the outburst of the 2008 crisis in Spain, which led to a quick and dramatic increase of unemployment. The Spanish labour market and his regulation were then indicated by different sources as the main factor for the fast rise of unemployment rates. The Council Decision of 21 October 2010, on guidelines for the employment policies of the Member States, in harmony with the International Monetary Fund identified as a priority for the Spanish labour market the introduction of a solid deregulation of collective bargaining and the reduction of firing costs for open-ended contracts.

Besides the supposedly rigid regulation on the labour market other factors should be mentioned. Firstly, the employment rate in Spain relies heavily on economic growth (a Spanish economy plunge leads definitely to a sharper drop of employment, whereas job creation needs a GDP year-on-year growth of around 2 points). Secondly, we must remark the high proportion of temporary work. There had and still exists a segmentation between temporary and permanent workers, which actually it is the main feature of the labour market. Job destruction concentrated mainly on temporary work during the first two years (2008 and 2009). But then, in 2010, there

was a shift whereby permanent workers suffered the consequences of the crisis with the same intensity. Finally, we must emphasize the relevance of low human capital sectors that characterized the pattern of production of the Spanish economy.

As the Professor of Labour Law and Social Security Law of the University Autónoma of Madrid, Borja Suárez Corujo described, a new concept was then discovered, in response to such a dramatic loss of jobs: internal flexibility, an expression that, surprisingly enough, had never been used before in the Spanish legal system, becoming this way the main axe of the labour market reforms. It meant to slow down the excessive use of dismissal and temporary hiring as adjustment mechanisms by offering alternative instruments that focused on adapting labour conditions in order to guarantee the stability of the workforce in times of crisis.

The new frame for collective bargaining was introduced by the 'Royal Decree-Law 7/2011, of June 10, on Urgent Measures to Reform Collective Bargaining', in order to enhance flexibility in the functioning of the collective bargaining system so that companies have a greater ability to adapt its production to changes in the economic environment, especially when things turn sour. The result was unsatisfying for all the parties concerned.

The new elected Government approved in February 2012 the 'Royal Decree-Law 3/2012 on Urgent Measures to Reform the Labour Market'. This reform was fully backed by the European Commission and the European Central Bank, but found a strong opposition from trade unions. The reform broke the traditional –and inherent to Labour Law– balance between employers and employees.

The limits to contractual freedom were softened with this reform, leaving employees more exposed to market risks. And secondly, the collective bargaining regulation was weakened devaluing the collective aspects of labour law.

The most significant legal changes affect what is known as substantial modifications of working conditions (salary, working time, and work organization and performance measurement, among others) when they are not regulated by a collective bargaining agreement under article 41 of Workers' Statute.

The reform refers to renegotiation of collective agreements focusing on the so-called 'ultra-activity' whereby the content of an agreement is extended beyond expiration until a new

agreement is in place. Under Article 86.3 Workers' Statute, an expired and not renewed collective agreement will now be extended automatically for just one year and after that period it will expire. The new legal framework would be either a new collective agreement or the general provisions stated in the Workers' Statute.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

The labour reform of the collective bargaining system prioritizes company agreements over sectorial and territorial agreements in order to weaken the 'workers' organizations'. These micro-agreements attempts against the bargaining power of workers, given the large number of small and medium entrepreneurs who constitute the productive labour force of our country. The internal flexibility is actually limited to the employer's unilateral establishment of hours, wages and functions.

With this reform the important issues that could not be changed before can currently be modified unilaterally by the employer, including the possibility of wage cuts, even though if it was previously agreed otherwise. The only requirement is a unilateral statement by the employer of the fulfilment of one of these claims: economic, technical, organizational or productive crisis, which is theoretically related to competitiveness, productivity or technical organization of the work in each company.

The labour reform has increased the circumstances under which companies are no longer obliged to apply its collective agreement in force. The 'opt-out' clause of an agreement was already foreseen in the previous legislation, requiring the assent of both parties: in which case a new remuneration system was set during a specified period, after which the previous remuneration system came into force. With the labour reform the non-application of the agreement may now refer not only to wages but also to all other working conditions: working days, work schedules, shifts, outputs, features and voluntary improvements set by the protective action of the Social Security.

With this reform the Government neither 'promotes' nor 'encourages' voluntary collective bargaining and has tried hard to obstruct and hinder it and even (given the outcome) eliminate it

in many sectors and companies. Therefore, there is an enormous increase of the so-called 'ultra-activity' and it will continue increasing in the next years. The automatic extension of the agreement at its expiry and until the new agreement is reached, with its formal and material requirements linking employers and employees, was perfectly regulated in the previous law.

There are now hundreds of collective agreements affected by this 'ultra-activity'. Its strict implementation causes great legal uncertainty in the field of social work, as this means that thousands of collective agreements could disappear and, so, millions of workers would lose the rights acquired and consolidated over years of collective bargaining progress, leading this to a great legal vacuum. As an example of this situation it should be pointed out that up to this moment only half (50%) of the total number of the collective agreements have been signed before this labour reform came into force and the validity of the other remaining half has ceased. Therefore the workers can only invoke the minimum standards of the Workers' Statute and they are not being able to claim their previous labour rights. Most collective agreements are no longer committed to extend the period of validity of the labour rights or to maintain the acquired rights beyond the limit of one year of the 'ultra-activity'. This legal anomaly, which its nature is only transitory, has become definitely the principal feature of this labour deregulation.

This interpretation of the so-called 'ultra-activity' is certainly a violation of Article 6 of the European Social Charter, as most workers will be only protected by the minimum standards of Spanish Statute of workers. This situation does not differ much from the already forgotten 'mandatory rules' of the pre-democratic regime, since now as it was before state authority replaces collective will. It is also a violation of the 1978 Constitution which opted for a democratic system of labour relations in which negotiations between representatives of the employers and workers were the principal element.

'Ultra-activity' although it allows partial agreements to modify small aspects, also puts an end to negotiation, eliminating any possibility of reaching an agreement, since automatically the superior collective agreement comes into force, which is always the least favourable for workers. This interpretation of 'ultra-activity' is a definitive breach of the parties' autonomy.

To sum up, until 2012 the ultra-activity had an unlimited lifetime, and all working conditions would remain when a new agreement was not concluded. But with the labour reform when the

one year transitional period is off, all labour rights agreed come to an end. In practice employers let this period of negotiation pass by, in order to apply lower labour conditions.

Recently a Spanish Supreme Court's judgment of 23 July 2013 has determined that working conditions are part of contractual arrangements of workers. Even though the collective agreement expires, workers must still retain their acquired labour rights. Will collective bargaining be reactivated this way? Will the government comply with the Court ruling? Will it enforce it without any subterfuge?

It is sad that the mere mention of labour reform has become a threat for workers: One only has to mention it just to intimidate workers. We could say that collective bargaining is the backbone of the labour reform, and its violation determines the failure of the entire framework of labour relations with its direct and immediate effects in all social and economic conditions: Excessive rates of precarious employment as well as the great differences between temporary and permanent workers, being the latter the basis of social stability.

This duality must be dispelled (also remarked by the European Commission, OECD...) and 'single contract' should be regulated, where severance payments should be gradual, depending on seniority. And therefore it is also necessary to increase severance payments at the end of temporary contracts, and most of all improve controls to end the endemic 'fraud' that involves using temporary contract for positions that really need to be permanent due to its functional and long-lasting characteristics.

The flagrant violation of collective bargaining has unleashed terrible consequences in our country, where unemployment has reached levels close to 6 million people (27%) (2013: 5,896,300; 2014: 5,457,700 official figures). The spread of precarious employment has increased massively. ERE (Spanish procedure for dismissals) no longer requires prior authorization. Youth unemployment rises to 51%, households with all their members unemployed: 1,766,000. Unemployment coverage only reaches one of three workers and the rise of the long-time unemployed (2.3 million are unemployed for more than 2 years) are some of the consequences of the breach of the principles of collective bargaining.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

The objective of the Spanish labour market reform was to restore competitiveness by aligning labour costs more closely with productivity, allowing employers to exploit more easily internal flexibility measures as an alternative to dismissals in the presence of adverse company shocks, thereby preserving jobs.

This legal reform is definitely a legal initiative in favour of employers: it increases employer flexibility while reducing worker security. The reform strengthens the employer's ability to act unilaterally.

The reform redefined the conditions for a fair dismissal. While actual or expected losses or loss of competitiveness remain fair reasons for an economic dismissal, the new law specifies that a dismissal is always justified if the company faces a persistent decline (over three consecutive quarters) in revenues or ordinary income. That means that the firm does not have to prove that the dismissal is essential for the future profitability of the firm.

Monetary compensation for unfair dismissal was reduced to 33 days' wages per year of seniority up to a maximum of 24 months, compared to the previous severance pay of 45 days up to a maximum of 42 months' wages. As Professor Borja Suárez Corujo has pointed out, the preamble to the Act 3/2012 argues that this reduction of severance pay for unfair dismissal seeks to approach costs of termination of temporary and permanent contracts as an effective way of reducing the endemic segmentation of the Spanish labour market, but the truth is that experience shows that this pursued effect is not at all guaranteed.

In the area of internal flexibility, the extension of the competence for irregular distribution of working hours is raised from 5 to 10% of the annual working time. Substantial modifications of working conditions (salary, working time, and work organization and performance measurement, among others), can be adopted by the employer when the 'competitiveness, productivity, or technical or work organization at the company' demands it. It is now attributed to employers the ability to act unilaterally forcing or imposing changes on working conditions to their employees even when there is no agreement between the parties.

As regards collective dismissals, the reform has eliminated the requirement of administrative authorization for collective redundancies while maintaining the obligation of good-faith negotiations with unions before serving individual notice, in line with the current legislation in most OECD countries.

A new full-time permanent contract for small firms (under 50 employees) was created (*Contrato de Apoyo a Emprendedores*) that allows an extended trial period of one year for firms that have not engaged in collective or unfair dismissals in the 6 months prior the starting date of the contract. This provision might be declared unconstitutional as it allows the employer to dismiss workers without paying any severance pay during that period presumably violating the requirement of protection against unjustified dismissal recognised in the paragraph 4 of Article 4 of the European Social Charter.

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for persons who are unable to secure adequate resources either by their own efforts or from other sources

The Spanish Constitution states in Section 39 that the social, economic and legal protection of the family is to be ensured by public authorities. Furthermore, Section 41 affirms the maintenance of a public Social Security system for all citizens guaranteeing adequate social assistance and benefits in situations of hardship, especially in case of unemployment.

The remedy of situations of necessity (persons unable to secure adequate resources) –as a consequence of sickness, age, familiar charges, disability, unemployment, etc.–, occupies a decisive position, those situations shall be determined and appreciated taking into account the general context in which they occur and in connection with the economic conditions, the concrete availability and the needs of various social groups.¹⁶

¹⁶ Judgment 65/1987 [1987] Constitutional Court of Spain BOE 137 [1987] 2 [Spanish].

Furthermore, it has also been affirmed by the Constitutional Court the ‘consecrated character of the institution, protected by the Constitution against likely alterations which seek to denature its essence’.¹⁷

In addition, ‘its foundation lies on the safeguard in need situations, and that implies a tendency to ensure a minimum of rents to citizens, establishing a threshold under which the protection must act’.¹⁸

Firstly, the social assistance benefits granted by the Spanish Social Security system confer protection in unemployment situations.¹⁹ SEPE is the responsible entity of its management, which is an autonomous body assigned to the Ministry of Employment and Social Security. Unemployment protection benefit is expressly mentioned in section 41 of Spanish Constitution as a basic obligation of public authorities. The requirements to comply with in order to achieve the beneficiary condition are:

- Have worked and contributed for at least 360 days in the six years preceding the unemployment situation;
- Not have reached the retirement age;
- Not have been working full time, neither for others nor as a self-employee;
- Not collect incompatible benefits;
- Be registered as a jobseeker.

The length of this benefit will depend on the contributions paid to the Social security system in the previous 6 years, with a minimum of 120 to a maximum of 720 days. Its goal is the coverage of all those who, being able to work, have not the chance or this has been reduced. The highest amount of the grant are, for 2015, EUR 1,397.84 and the minimum EUR 497.01.

The National Social Security Institute (INSS) is a public manage entity in the field of social security, with autonomous legal personality which is assigned to the Social Security and Employment Ministry. The INSS process the benefits which are being mentioned below.

¹⁷ Judgment 37/1994 [1994] Constitutional Court of Spain BOE 65 [1994] 17 [Spanish].

¹⁸ Judgment 96/2006 [2006] Constitutional Court of Spain BOE 106 [2006] 69 [Spanish].

¹⁹ In recent years have been introduced, through Royal Decree of Law 20/2012, reintegration benefits directed to long-term unemployed people under 65 and over 45 (those who haven’t enjoy previously of unemployment benefits, might not access).

Death and survival benefits are directed to alleviate the economic necessity condition originated as consequence of a person's death. Widow's pension receipt is subordinated to the accomplishment of concrete periods of contribution made by the deceased:

- In an active or similar situation: during 500 days in the last 5 years, or 15 years through the whole work life;
- No active situation: 15 years through the whole work life;
- Pensioners are in no need to comply with a contribution period.

Its length is not limited to a concrete period of time, and the sum varies from a maximum of EUR 733.80 to EUR 480.30 for 2015.

For the reception of orphanage's pension is also necessary to achieve the same requirements as the remarked for the widow's pension. However, in this case its duration is, in principle, limited until the age of 21, and extendable to 25. The amount will vary depending on various factors, between EUR 193.80 and EUR 674.10 in 2015.

In relation to the lifelong pension in favour of familiars the requisites are the aforementioned and are also conditioned by an age threshold. The amount could reach EUR 468.50 as maximum and EUR 193.10 as minimum, in 2015.

In this sphere, other benefits are death grants directed to cover the funeral expenses, and are equal to EUR 46.50, and the temporal subsidy in favour of familiars which has an extent of 12 months and the same requisites as the aforementioned.

The INSS deals with the economic aids granted in relation to the events related to births and child care. Thus, the benefit for care of under 18 year olds affected by cancer or another serious illness²⁰ seeks to compensate the loss of profit as a consequence of the working parent, adopter or foster parents who have to take care of the child. The requisites are:

- Registered workers who are affiliated to the social protection scheme, including Social benefit mutual societies;
- Contributions payment must be up-to-date;
- Have fulfilled the obligations in relation to the payment of social security contributions;

²⁰ Introduced by Budget Law of the State 39/2010.

- Its length is one month, extendable two months at a time. The amount of the benefit will depend on the quotation and the working day reduction;
- Maternity and paternity leave are requested the same conditions;
- Registered workers who are affiliated to the social protection scheme or in an equivalent position;
- 180 days quoted in the last 7 years, or 365 days in total.

The purpose pursued is to cover the loss suffered by worker parents, adopters, foster parents or guardians during the employment contract suspension or reduction. For paternity leave, the duration is between 13 and 20 days; and in the case of maternity leave the maximum length is 16 weeks (the first 6 being unavoidable), with the chance to cede part of the permission to the other parent. The sum will depend on the contributions paid by the worker.

Additionally, there are foreseen benefits related to the pregnancy, as are the compensation for risk during pregnancy and risk during lactation. The conditions which must be fulfilled are connected with the register of the worker and to be contributing or in a similar contributory situation, and have complied with the payment of social security obligations. The amount will be established taking into account the contribution of the worker to the social security system.

Another sphere in the field of social protection is that related to inability, which may be temporary or permanent. Temporary inability covers the loss of profit which is suffered by the worker as a consequence of sickness, accident and observation period by reason of professional sickness. The conditions which must be fulfilled are:

- In the case of common sickness: registered workers affiliated to the social protection scheme or equivalent position which have contributed at least 180 days in the previous 5 years;
- For the event of accident or professional illness, previous contributions are not required.

The length is of 365 days, extendable to 180 days; and 6 months extendable to other 6 in case of observation period by reason of professional sickness. The amount of the benefit will vary depending on the contribution of the worker. The entity responsible for the payment will be the National Social Security Institute, the mutual insurance company or authorized companies.

In respect of permanent inability, the requirements will change depending on the inability grade. Its purpose is to cover the loss of profit suffered by the worker as result of the reduction or extinction of its working capacity. In principle, it has a lifelong length and the minimum sum for 2015 is EUR 394.55 to a maximum of EUR 1,174.33. The public body which is in charge of its payment is the National Social Security Institute.

The compensation by reason of non-disabling injury pursues to compensate the worker's loss of profit as a consequence of the reduction or alteration of his/her physical capability. The benefit will consist on a sole payment. The conditions that have to be complied are:

- Be registered and affiliated to the social protection scheme or equivalent;
- Have received the all-clear;
- The injury must be included into the scale.

Additional familiar benefits are included as in case of mono-parental and disable mother situations, assistance in case of multiple births or adoption, or in case of large families. Benefits related to the insurance field are also provided as scholar insurance for secondary and university students, or compulsory insurance ancient and disability which recognises a widow, disability or retirement benefit to those who does not hold a benefit right under the current social security system. That assistance has been designed to aid those persons who worked before 1967 and does not own the characteristics to accede to the national social security benefits.

Finally, health care assistance is one of the most important services provided by the National Social Security Institute. The purpose is to supply medical and pharmaceutical services in order to restore the beneficiaries' health. The modifications carried out because of austerity measures are analysed later.

Retirement benefit²¹ is one of the most important social benefits granted. Thus, Section 50 of Spanish Constitution establishes the obligation for public authorities to promote, for elderly citizens, their welfare through a system of social services. The entity responsible for its payment is IMSERSO²², a management entity of the Spanish social security system, dependent on the Ministry of Health. The requirements which must be fulfilled to receive it are:

²¹ As amended by Law 27/11 about update, adequacy and modernization of the Social Security system.

²² See <http://www.imserso.es/>.

- Affiliation to the social protection scheme;
- Age of 65, in principle;
- At least, 15 years contributed.

The minimum amount for 2015 is EUR 593.48.²³ The purpose of this benefit is to protect against the forfeiture experienced by reason of the lack or reduction of work because of the age. Its length begins, normally, at the age of 65, and is, in essence, lifelong.

Furthermore, MUFACE²⁴ is the special regimen designed for civil workers of the State, and it manages benefits as health care, temporary disability, risk during pregnancy and lactation, and non-disabling injuries.

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

Article 3.1(a) and (b) takes into consideration the obligation of the States to adopt national policies directed to improve safety and health at the work, and prevent accidents. Spain has not ratified the European Social Charter as amended in 1996, therefore, is obliged by article 3 of the Charter of 1961, which does not include the current paragraph 1 of the article.

Nevertheless, as established in article 18 of the Vienna Convention on the Law of Treaties, the State which has signed a Treaty has the obligation to refrain from acts which would defeat the object or purpose of the that treaty before to its entry into force.

In the analysis of the content of the first part of article 3 of the Charter of 1996, it is apparent that such an article settles an active obligation, which requires an effective attitude by the State. Thus, Spain is exclusively compelled to refrain from acts against the object or purpose, which means holding a passive position.

Nevertheless, during the years where austerity measures have been adopted in Spain, the safe and health in the working environment have not been notably affected.

In relation to the right to social and medical assistance, Article 13(1) of the Charter provides that any person must be guaranteed adequate assistance and care in case of sickness, even when it is

²³ To consult about the amount of benefits for 2015, see: <http://www.seg-social.es/prdi00/groups/public/documents/binario/130348.pdf>.

²⁴ See <http://www.muface.es/>.

unable to secure them by its own. The correlative right in the Spanish Constitution is the aforementioned section 41 about obligation upon public authorities to maintain a Social Security system. Moreover, section 43 recognizes the 'right to health protection, and confers upon public authorities the duty to organize and watch over public health by means of preventive measures and the necessary benefits and services'.

The main amend carried out in the health assistance field was the Royal Decree of Law 16/2012²⁵, which modifies Law 16/2003, of May 28 2003, on cohesion and quality in the national health system. The previous regulation established the right of both, nationals and foreigners to the protection of health and care assistance²⁶, and in relation for irregular immigrants, it was sufficient the registration in the municipal register, in order to obtain that assistance.²⁷ This regulation was maintained until Act 16/2012, which modified the regime calling for the ensured condition so as to enjoy the aforementioned rights.

In the preamble of such Act is mentioned the economic crisis context, as a justification of the legal instrument adopted to carried out the measures, providing an immediate effect. It is indicated also the necessity of austerity on the public spending. There are various pending constitutional complaints against this act, which have not been solved so far.²⁸

Royal Decree Law 16/2012 was subsequently developed by Royal Decree 1192/2012.²⁹ Both legislative acts provide that the health assistance in Spain shall be guaranteed to those persons with the insured condition. Such a condition is identified with the affiliation, pensioner, or perception of a benefit from the National Security System, or a person enrolled as a job seeker. In the previous regulation, the health assistance was guaranteed to all who have the citizen condition. Thus, present legislation links the access to health protection to a certain condition of

²⁵ Royal Decree of Law 16/2012 April 20 2012, on urgent measures to guarantee the sustainability of the national health system and improve the quality and safety of its services.

²⁶ Law 16/2003, Article 3.

²⁷ Organic Law 4/2000, Article 12.

²⁸ Constitutional complaint 433-2013 [2013] Constitutional Court of Spain BOE 228 [2012] [Spanish], promoted by Canarias' Government. Constitutional complaint 4123-2012 [2012] Constitutional Court of Spain BOE 176 [2012] [Spanish], promoted by Navarra's Government. Constitutional complaint 4530-2012 [2012] Constitutional Court of Spain BOE 228 [2012] [Spanish], promoted by Asturias' Government. Constitutional complaint 4585-2012 Constitutional Court of Spain BOE 228 [2012] [Spanish], promoted by Andalusia's Government.

²⁹ Royal Decree 1192/2012 August 3 2012, regulating the status of insured person and beneficiary for the purpose of health care in Spain paid for out of public funds through the Spanish National Health System.

citizen. Even though migrants are not covered by the European Social Charter's personal scope, the ECHR case-law has extended the human rights protection³⁰ to them. Furthermore, the European Committee of Social Rights³¹ has affirmed that the right to health-care must be recognised to everyone with special emphasis to vulnerable groups, as illegal migrants.³² In addition, the Committee of Social Rights has already affirmed that the 'denial of access to health care for foreigners adults (aged over 18 years) present in the country illegally is contrary to Article 11 of the Charter.'³³

Furthermore, Royal Decree 1192/2012 determines that those who are legal residents in Spain and does not overcome the incomes threshold may hold the insured condition as well. Moreover, foreigners neither registered, nor authorized as legal residents in Spain will be assisted in case of urgent situation or accident, and in case of pregnancy, birth and post-birth, and in any case in relation to persons under 18.³⁴

In relation to the health protection of Spanish citizens' living abroad, the health coverage is reduced. In that respect, on December 26 2013 a new modification was introduced, by virtue of which those who reside abroad for more than 3 months will lose their condition as Spanish residents for the purposes of Social Security benefits which require residence in Spanish territory. Another important reform carried out during the crisis period, in which austerity measures have affected is the pensions amend.

Already in 2010 the Royal Decree of Law 8/2010, which adopts extraordinary measures to contempt public deficit, was passed. In such act the social benefit for each children's birth is suppressed and the pensions freeze.

Later on, Act 27/2011 executed a deeper reform in the pension's field. The main amend implemented is a higher age threshold in order to achieve the retirement stage, from 65 to 67 (in 2027). A further innovation included is the sustainability factor, which foresees the revision of the fundamental parameters of the Social Security System every 5 years from 2027. It is

³⁰ D *v.* United Kingdom, Application No. 30240/96 judgment 2 may 1997.

³¹ Collective Complaint No. 14/2003 by the International Federation of Human Rights Leagues against France.

³² Daría Terrádez Salom, Carta Social Europea, Derecho a la salud y personas migrantes: el caso español [2014] Papeles en el tiempo de los derechos 26 [Spanish].

³³ European Committee of Social Rights of Council of Europe. (2014). Conclusions XX-3, 13.

³⁴ Royal Decree 1192/2012 August 3 2012, regulating the status of insured person and beneficiary for the purpose of health care in Spain paid for out of public funds through the Spanish National Health System.

incremented as well the average number of years which are used to calculate the amount of the pension, from 15 to 25 years.

Concerning the pharmacist sphere, Royal Decree of Law 4/2010 on the rationalization of pharmacist expend, introduced urgent and necessary measures to the containment and austerity of public expend. Some of these measures were the reform on the reference prices system. Also Royal Decree of Law 8/2010, by virtue of which are adopted extraordinary measures in order to decrease the public deficit. This act applies a deduction of 7% in the margins of pharmaceutical benefit. With Royal Decree of Law 9/2011 this regulation was completed, establishing measures such as the generalization of the **active** ingredient prescription, and some criteria are introduced in order to improve the selective financing of medicines. In its preamble is mentioned the austerity and rationality on the public expend as a goal, and are defined its measures as austerity measures. Moreover, in Royal Decree of Law 16/2012 is instituted the named 'pharmacist co-payment', with an user input of the 10% in the case of pensioners, and 40%, 50% or 60% depending on the rent of the assured, with a limited quantity. In addition is excluded the funding of drugs for minor symptoms. Finally, it is included a partial payment on services and products such as outpatient prosthesis, dietetic products, and the non-emergency medical transport.

In relation to the unemployment benefit, Law 16/2012 trimmed the amount received from the sixth month in a 10%. Thus, beginning with the sixth month, the unemployed will perceive the 50% of his base salary. Moreover, it has to be mentioned the budget cut in the amount of unemployment benefits,³⁵ the continued decrease in the coverage rate for unemployed,³⁶ and the average amount of the benefit to be perceived by the unemployed.³⁷

In addition, the non-contributory subsidy over 52 is eliminated up to 55 years with the aforementioned Act as well as the active insertion income which perceived each unemployed older than 45 with an income below 75% of the minimum wage.³⁸

³⁵ A 6.3% in 2013, and a 14.9% in the 2015 budget.

³⁶ This rate reached a pick in 2010 with a percentage of coverture of the 79.3%. Nevertheless, the following years has experimented a constant decrease, achieving a rate of the 60.6% in 2014. Confederación Sindical de CCOO, 'Prestaciones por desempleo. Evolución del gasto en 2014' (September 2014) <http://www.fsc.ccoo.es/comunes/recursos/99922/doc211382_Prestaciones_por_desempleo._Evolucion_del_gasto_en_2014.pdf>.

³⁷ From 1,002 EUR in 2009 to 807 EUR in 2014. *Ibid.*

³⁸ More requirements are introduced in order to accede, as to have perceived an unemployment benefit or to have been working previously, or the requisite not to travel abroad in the precedents 12 months.

Finally, the basic emancipation basic income, directed to assist young people with rental charges was abolished in December 2011.³⁹

However, even in the case Spain had ratified that part of the Chart, in the temporal context of austerity measures, there have not been in Spain legislative modifications within the security and health at work field.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

The Spanish Social Services System is divided in the private and public action. On the side of public activity there are agencies as the Information System to the Social Services Users, which demands the basic data and makes possible a prompt intervention.

Nevertheless, the main body is compounded by the social services of primary attention, which are located in each municipality. This structure carries out objectives as information and orientation, prevention and social insertion, social cooperation, accommodation and home help. These services are financed by the so called 'Concerted Plan', through which the administration in different levels must contribute to develop this goals. There are 4,800 agencies spread over Spain. The ratio of agency per habitant is 9,155 people per agency (according to the Ministry of Social Security).

Regarding the private sphere, there are several organizations as the Spanish Red Cross, Doctors of the World or Caritas which develop the task of personal advice and help.

The repercussion of austerity measures in this field comes mainly through the reduction of funding in the general budget of the State, from EUR 2,288 million in 2008 to EUR 1,810 million in 2014. Meanwhile its users have increased strongly.

Furthermore, in 2011 the Integration, Reception and Strengthening Education of Immigrants fund was suppressed. Additionally, the funding established for the so called Concerted Plan on

³⁹ Royal Decree of Law 20/2011, December 30 2011, on Urgent Budgetary, Tax and Financial Measures for the Correction of Public Deficit.

Basic Benefits, has been reduced to a 63.5% of its original amount in comparison to the 2011 budget (Ministry of Social Security).

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

On December 2013, the Spanish Council of Ministries approved a national social plan against poverty (Plan Nacional de Acción contra la Exclusión Social), hereinafter, PNAES. The budget of the plan is EUR 136,000 million. This new plan contains 240 measures and it integrates all policies against poverty and social exclusion in Spain. It was approved in accordance with the strategy of Europe 2020 of reducing between 1.4 and 1.5 million the number of people in risk of social exclusion.

4.1. Employment

One of the strategic targets of the plan is boosting social-labour inclusion through vulnerable people employment, especially families with children underage in situation of risk of exclusion.

PNAES contains 22 actions in order to achieve these strategic targets (Ministerio de Sanidad, Igualdad y Asuntos Sociales, 2014). Some of them:

- Re-orientating employment policies and focus its action in people with worse level of employability (long term unemployed, people without compulsory education);
- Promoting company bonus regarding recruitment of people with risk of social exclusion.
- Promoting labour continuation of people older than 55 years old through special treatment as a priority collective. Also promoting relief contracts and partial retirement;
- Maintaining public subsidies addressed to promoting labour integration of disabled people, and stimulating undefined contacts for them;

According to Adecco Foundation, recruitment of social exclusion people has risen up to 60% on the first semester in 2014; 2,498 people, in comparison with 1,568 in 2013.

4.2. Housing

Spain does not have updated information about how many homeless people there are in the whole country. Last official report, (Instituto Nacional de Estadística, 2012), counts about 23,000 people (without considering people that do not go to shelters neither community kitchen). Nevertheless, according to some estimation, the number in 2015 could reach 40,000.⁴⁰

Spanish Council of Ministers has also approved in 2013 (Royal Decree 233/2013) a housing plan (*Plan Nacional de Vivienda*), hereinafter 'PNV'. PNV has stopped to support house and flat purchasing and now supports renting. It contains seven different programs, one of them dedicated to helping people with risk of social exclusion. Moreover, several local governments have also amended different programs to help people to pay rentals.

The target of PNV is facilitating access and permanence to housing renting at those who have economic difficulties. One of the requirements to be beneficial of this program, is the amount of the rent, it should be EUR 600 or less. Helps would cover to 40% of the total amount of the rent, with a limit of EUR 2,400 annual (Ortiz, 2013).

4.3. Education

On the one hand, the Spanish abandonment rate is one of the highest in Europe. Almost 25% of the students give up studying just after achieving General Certificate of Secondary Education or even before getting it. On the other hand, university students in Spain overcome European average; 40.7%, in Spain, and 36.8% in Europe (Blas, 2014).

One of the goals of PNAES is convincing people who have abandoned their mandatory studies to take them back, or giving them the chance to get higher studies than they have. Some of the measures are as follow:

- Increasing schooling in mandatory studies in order to achieve European objective of reducing scholar desertion in 2020. 90% of youngsters between 18 and 24 years old should have high school studies;

⁴⁰ https://www.raisfundacion.org/es/que_hacemos/personas_sin_hogar.

- Maximizing medium and superior grade formative courses in population that did not achieve General Certificate of Secondary Education, through different workshops;
- Creating, upgrading and modernizing new programs in Medium and Superior grade formative courses;
- Signing agreements with companies to create new internship programs in Grade formative courses;

4.4. Culture

Since Spain is a country with lot of immigrants, one part of PNAES deal with giving foreigners in Spain notions about culture and language, always respecting culture of these people that are from other countries. It also contains facilitation for people with risk of social exclusion to get discounts on Museums.

4.5. Social and Medical Assistance

PNAES also contains several measures for helping people in risk of social exclusion. Some of the target group are the following:

- Women inmates or ex-inmates: it contemplates the creation of a new platform that provides medical and psychological attention.
- Receptors of integration rents: it guarantees low prices (or even free) for medicaments.
- Youngster immigrants whose fathers do not have legal residence: it guarantees free access to the Spanish health system.
- HIV patients: it contains improvement in social and medical support.
- Gypsies: Improvements of their health statue. Also promoting and educating in health.

Since economic crisis started in Spain, poverty in Spain has increased from 2008 until 2012. (Candalija 4). Austerity measures have increase poverty level in Spain. Even whether it is compared the percentage of poor population in Spain with the average in Europe, Spain has higher rates of poverty than Europe in the crisis period. In 2008, UE 27 had a 23.7% of poor population, meanwhile Spain 24.5%. In 2012, it rose in Europe 2.2%, but in Spain 3.6%

(compilation based on INE and Eurostat database). Accordingly to the increase of poverty level, also social exclusion or deprivation were raised in this period.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

People with disabilities constitute a vulnerable and numerous group which has usually been in known conditions of exclusion. This has led to the restriction of their basic rights and freedoms, conditioning or hindering their personal development, as well the enjoyment of resources and services available to the entire population and the opportunity to contribute with their skills to the progress of society has not always been offered to them. The longing for a full life and the need for personal development move all people, but those aspirations cannot be met if they are restricted or ignored, like the rights to freedom, equality and dignity.

There is a varied and profuse set of constraints that deprive people with disabilities from fully exercising their rights, and the effects of these obstacles materialize in a situation of social exclusion, which should be inexcusably addressed by the authorities. The promotion of measures to promote equal opportunities suppressing the disadvantages concerns to all citizens, organizations and institutions, but, first, to the legislator.

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

On 13 December 2006 was approved in New York, the Convention on the Rights of Persons with Disabilities (Spain ratified the Convention on 3 May 2008) which was promoted by the UN. This Convention is composed of 50 articles and it was born with the objective of working as an instrument to protect the rights and dignity of persons with disabilities. All the states that have ratified the Convention are required to promote, protect, and ensure the full enjoyment of human rights by persons with disabilities and ensure that they enjoy full equality under the law. The Convention has served as the major catalyst in the global movement from viewing

persons with disabilities as objects of medical treatment and social protection towards viewing them as full and equal members of society.

The Spanish Constitution establishes on its article 49:

The public authorities shall carry out a policy of preventive care, treatment, rehabilitation and integration of the physically, sensorial and mentally handicapped by giving them the specialized care they require, and affording them special protection for the enjoyment of the rights granted by all citizens.

This order is focused on the policies adopted by the public authorities to attend the disabled in many different areas like working, cultural, housing and sports.

The most important law developed by the government related with the persons with disabilities, was Act 13/1982, also known as the Law of social integration of disabled people. It was recently abrogated on December 2013, because it was integrated in a single text joined to the two other generic disability laws in force in Spain to date: Act 51/2003 of equal opportunities, non-discrimination and universal accessibility for people with disabilities and Act 49/2007 establishing the system of offenses and penalties in the field of equal opportunities, non-discrimination and universal accessibility for people with disabilities. Summarizing, the most important law developing the integration of persons with disabilities is the Royal Legislative Decree 1/2013. These three laws have been regularized, clarified and harmonized, following the Convention on the Rights of Persons with Disabilities, which is the explicit recognition that these people have rights, and that public authorities are obliged to ensure their full exercise on equal terms as other citizens.

The law also includes definitions of direct, indirect discrimination, harassment and discrimination by association, in order to complete the legal framework prohibiting discrimination in all its manifestations. Also, special consideration of varied discrimination is reinforced, to guarantee the rights of those who may be in this situation of accused vulnerability.

Specifically, the new revised text attaches particular importance to the role of 'the care, treatment and counselling' throughout the intervention process, emphasizing the need to facilitate both from the time of detection of disability (or from the time you start a pathological process), and throughout the various stages of the enabling or interdisciplinary rehabilitation process, and stressing the importance of establishing objectives designed to maximize the use of their skills

and personal autonomy, taking into account the personal characteristics of the person with disability, their motivations and interests and their social and family environment. Also, the legislation considered essential that multidisciplinary care teams at each disability sector level, may have the specialized training and skills necessary to provide effective care and are adapted to the needs of people with disabilities to ensure their inclusion and full participation in society on an equal basis.

The Spanish Committee of Representatives of People with Disabilities (SCRPD), described the new rules, whose production has participated with other organizations, 'as a breakthrough for people with disabilities, and although it is not a new law, it represents progress in legislation, making it more secure'. For its part, the Spanish Confederation of People with Physical and Organic Disabilities (SCPPOD) has also shown support for unification and updating of legislation, which emphasizes the definition of different types of discrimination, coordination of Administrations for the prevention of disability and classification of the types of employment for disabled people.

Some of the measures included on the Royal Legislative Decree:

- On the field of health protection: people with disabilities have the right to protection of health, including disease prevention and protection, promotion and restoration of health without discrimination on grounds of disability and the prevention of impairments and disabilities will assist to the diversity of people with disabilities, giving special treatment to the specific needs of each person. Finally the multidisciplinary teams qualification and recognition of the degree of disability will be responsible for evaluating and qualifying situations of disability;
- On the field of education: people with disabilities have the right to inclusive education, of quality and free, on equal basis with others;
- On the field of participation on public matter: people with disabilities may exercise the right of participation in the life political and electoral processes, on an equal way with the rest of the citizens;
- On the field of general integration: the public authorities will take appropriate measures to ensure universal accessibility, equality basis with other people, processes, goods,

products and services, transport, information and communications, including systems and information technology and communications in urban and rural areas.

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

On the Royal Legislative Decree previously cited is established that 'disabled people of working age are entitled to benefit from vocational and professional rehabilitation, job retention and return to work'. But this is not the only right included there.

People with disabilities have the right to work in conditions that ensure the application of the principles of equal treatment and non-discrimination.

Employment of people with disabilities will be promoted by establishing aids to help their labour inclusion. These aids may include grants or loans for recruitment, adaptation of jobs, removing all barriers that hinder their access, mobility, communication or understanding in production facilities, the ability to establish themselves as self-employed, or reductions in social security contributions among others. Employers are required to take appropriate measures to adapt the workplace and accessibility of the company, depending on the needs of each specific situation, in order to enable people with disabilities access to employment.

Besides of all this, on the Spanish legislation 4 factors of employment should be emphasised: the compulsory recruitment of people with disabilities by companies; the labour enclaves; the recruitment subsidies and the supported employment program.

5.1.2.1. Compulsory Recruitment of People with Disabilities

Public and private companies, employing a total of 50 or more employees are bound to have a minimum of 2% of people with disabilities in their workforce. The above calculation is made on the total workforce of the company concerned, whatever the number of workplaces in it and whatever the form of employment contract linking the company workers. Exceptionally companies may be exempted from the obligation to hire people with disabilities, in whole or in

part, either through agreements contained in a state level collective bargaining and, alternatively, lower level, either by choice voluntary employer, duly communicated to the labour authority, provided that in both cases the certain alternative measures are applied according to the rules.

In the case that companies cannot achieve the reserve requirement of employment for persons with disabilities, some alternatives measures exists:

- Celebrating a contract with a special employment centre, or a self-employed person with disabilities, to supply raw materials, machinery or for the provision of outside services and accessories to the development of the activity or the creation of a labour enclave;
- Making donations and sponsorship with money for the development of employability and job creation for people with disabilities to foundations or associations of public utility, whose corporate purpose is vocational training and job placement for people with disabilities.

5.1.2.2. Labour Enclaves

Labour enclaves are the contracts between a labour market, called Partner Company, and a special employment centre for the execution of works or services directly related to their normal activity and for the realization of a group of workers with special disabilities that will be moved to the workplace of the partner company. The main objectives of these are easing the transition from the work done in a special employment centre to the work of a company and enabling the growth of the activity of the special employment centres.

5.1.2.3. Recruitment Subsidies

Subsidies are assigned to workers with special difficulties in accessing the regular labour market; people with cerebral palsy, mental illness or intellectual disability with a recognized degree of disability equal to or greater than 33% and persons with physical or sensory disabilities with a degree of disability equal to or greater than 65%. The subsidies consist of:

- Grant of EUR 7,814 per indefinite contract full time. If the contract is part-time, the grant will be reduced in proportion to the agreed working hours;

- 100% of the bonus on corporate contributions to Social Security including accidents at work and occupational diseases and joint collection contributions throughout the contract period;
- Grant for job adaptation and elimination of architectural barriers in an amount not exceeding EUR 902 per job, but in no case exceed the actual cost, the effect is justified by that adaptation or disposal;
- Supported employment program: the set of actions individualized guidance and support in the workplace, provided by specialized job coaches, which are intended to facilitate the social and occupational adaptation of disabled workers with special difficulties in finding employment in companies in the ordinary labour market with similar conditions to other workers performing similar jobs. Some actions are: the approaching and mutual assistance between the worker, employer and company personnel; the monitoring and evaluation of the worker process of integration into the workplace and advising and information to the company on the needs and processes of adaptation of the workplace.

5.1.2.4. Supported Employment Program

Regarding the indefinite hiring of disabled persons, companies will have a number of bonuses depending on:

- If the disabled person is less than 45 years and has an overall disability (EUR 4,500/year) whereas if you have a severe disability (people with cerebral palsy, mental illness or intellectual disability equal to or greater than 33% and physical or sensory disability equal to or greater than 65%) will receive a bonus of EUR 5,100/year;
- If the disabled person is a woman with a general disability, EUR 5,350/year, but if your disability is severe, EUR 5,950/year;
- And finally if recruits are over 45 general disability EUR 5,700/year, while if the disability is severe EUR 6,300/year bonus to the company;

These bonuses will persist until people with disabilities complete their contract or terminate the contract. All these bonuses are contained in Act 43/2006 for improving growth and employment.

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

The Commissioner for Human Rights of the Council of Europe, Nils Muiznieks, has published a report about Spain after a visit to the country in June 2013. In that visit Muiznieks said that the cuts 'have adverse impact on the enjoyment of human rights and that those most affected by this situation are children, young people and disabled, and that should make for them a "special protection"'.

It is true that people with disabilities are one part of the population that is less affected by the austerity measures. However, Muiznieks has specified that austerity is worsening the living conditions and the possibilities of social integration of people with disabilities. The Commissioner praised the work of the large number of active NGOs representing persons with disabilities throughout the country. They play an essential role in providing services to persons with disabilities and are involved in consultations with the authorities on all aspects of the rights of persons with disabilities, notably through CERMI (Committee of Representatives of Persons with Disabilities).

Nils Muiznieks has affirmed that whilst welcoming substantial improvements in the policy and legal framework that aims to promote and protect the human rights of the 3.8 million persons with disabilities in Spain, he is also worried about the serious impact that budgetary cuts have had on the living conditions of these persons and their social inclusion. No impact assessment of budgetary cuts on persons with disabilities has yet been carried out. Also the economic crisis and the financial restrictions have had a detrimental impact on most programmes and policies aimed at promoting the inclusion of persons with disabilities on an equal footing with others, including measures to improve accessibility to general services as well as employment and training programmes. Given the very high rate of unemployment among persons with disabilities, estimated at over 30%, the authorities are called on to avoid limiting training opportunities and assistance in the field of employment for these persons.

The Commissioner also welcomed the long-standing policy that advocates integration into mainstream education of children with disabilities in Spain and has resulted in an inclusion rate of 78% of children with disabilities in the general system education.

However, the Commissioner has stated with great concern that persons with disabilities in Spain recorded a considerably lower completion rates than the rest of the population rates. According to the latest available data, in 2008 11.5% of the disabled had not completed primary education (compared to 2.1% of the total population), and only 10.5 % of people with disabilities had attended university (compared to 24.1 % of the total population).

NGOs have informed the Commissioner that budget cuts have caused negative effects and was informed that in some schools all children with disabilities are grouped to constitute a separate class, and in other cases were included in regular classes, but without personalized support to allow them to receive education on an equal basis with other children.

This report caused a huge commotion in the country, because it looked like if the country were really going down and many social rights were violated. One of the consequences of this report is that the Government through the Ministries of Education, Health and Justice, has decided to reply to the Commissioner, and The Minister of Justice defended that 'as far as persons with disabilities are concerned, the Ministry of Justice is preparing a reform of the Civil Code to better fit it to the UN Convention on the Rights of Persons with Disabilities'.

The Minister of Education stood up for that the Law on Education states that comprehensive care to students with disabilities is to be governed by the principles of normalization and inclusion, and it also states that education authorities shall ensure the schooling of these students, arrange the procedures and resources needed to the early identification of their educational needs in order to enable them to reach the maximum development of their personal abilities and of general goals set forth by the Law. In turn, centres will have an adequate school organization and conduct the curricular adjustments and diversifications required to make it possible for all students to achieving the established objectives. Besides, talking about University, persons with disabilities are entitled to full exemption from fees and charges for studies leading to the award of a degree, if they have a recognized degree of disability equal to or greater than 33%. Moreover, the Ministry has signed a number of cooperation agreements with several foundations amounting to EUR 800,000, to promote the access and inclusion of persons with disabilities in the Spanish university system, in both public and private universities.

The Minister of Health refuted the view expressed by the Commissioner that the correspondence between levels of disability and access to services is problematic from the point

of view of the Convention on the Rights of Persons with Disabilities. It must be borne in mind that the Autonomy Law does not qualify disability, but dependency, the degree of which determines the access to the autonomy and dependency system services.

The official declaration of disability is regulated by other legislative acts, and evaluated as a social disadvantage against the person's environment and possible material, social, or cultural obstacles to live independently and be included in the community. The support needed by the person is associated to this level of social disadvantage.

5.2. Children and Young Persons (Article 17 ESC)

The different Spanish Governments had focused, since the crisis burst in 2008, not only in the support to children and young people, but also in the approval of measures to help the families and reduce the surging social polarisation which was being enhanced by the bigger impact of the crisis on the most vulnerable sectors of society.

Amongst the mentioned measures, we can point out the following⁴¹:

- Project of Law for the Modification of the Protection System of Childhood and Adolescence of 20 February 2015;
- II National Strategic Plan on Childhood and Adolescence 2013-2016 – II PENIA (*Plan Estratégico Nacional de Infancia y Adolescencia*).

These two documents will later be addressed in greater extent.

- Law 1/2013 of 14 March 2013, of Measures to Reinforce the Protection of Mortgage Debtors, Debt Restructuration and Social Renting, which includes the possibility to stop an eviction process in families where there are children up to 3 years old;
- National Plan for Social Inclusion 2013-2016 (*PNAES*);
- National Reform Program of 2014 which addresses 'poverty and social exclusion' (topics already seized in previous reform programs) and implements measures to achieve the objectives of Europe Strategy 2020;

⁴¹ This is a non-exhaustive list of the measures taken by the Government of Spain to support families. It includes only some of the most recent and important, but not the whole range of measures dedicated to implementing the effective enjoyment of their rights by children and young people. There needs to be remarked that there are many other executive measures put into place by the Autonomic Governments, who have competences in the matter.

- Social Subsidies obtained from IRPF's⁴² tax income, financing help programs for citizens and families living in a vulnerable situation with children under their responsibility. Those programs can be either implemented by the Ministry⁴³ or by non-lucrative entities, mainly Spanish Red Cross and Cáritas Spain. This kind of funds has grown to 20% in 2015 in relation to 2014;
- Guide of Annual Social Subsidies for Families (2014). Its main objective is give advice to people with family responsibilities about social aids. The Guide contains data about subsidies referring to social services, education, housing...;
- Guide of Social Subsidies for Large Families. Published in February 2015 and having its basis on Act 40/2003 for the Protection of Large Families (*Ley 40/2003, de 18 de Noviembre*). It introduces novelties in the amounts of subsidies and their compatibility. Amongst other matters, these subsidies refer to scholarships, aids for the acquisition of books and other education-related issues.;
- Europe Strategy 2020, a programme Spain is part of. It was issued in 2010. With 10-years duration, some of its 5 objectives are improving education, achieving social integration and reducing poverty;
- EU Strategy for Youth 2010-2018. Its objective is increasing the opportunities of young people regarding education and employment, as well as improving their integration to society through sport, health, volunteer work, social inclusion and participation in civic life through youth organizations.

Article 67 of the Civil Code establishes the obligation of the wife or husband together with its spouse to protect family relationships. This taking active care of the family and intervening to avoid any damage from the outside is the most general expression of the parental rights and duties (Spanish Law even establishes the threshold of 'acting as a good family father' to determine in general terms when a person's action is negligent).

The responsibility to 'act in the interest of the family' implies the need to take part in the breeding of the child in order to let him become a dignified and autonomous human being.

⁴² IRPF is the acronym for '*Impuesto de la Renta sobre Personas Físicas*', the tax imposed on the income of each physical person.

⁴³ Ministry of Health, Social Services and Equality, Government of Spain; <www.msssi.gob.es>; February 2015.

However, the family environment of the child sometimes does not gather the minimum requirements to be suitable for encouraging this integral development.

The Spanish legal system (the Organic Law 1/1996 for Juridical Protection of the Minor⁴⁴ together with the legislation of each Autonomic Administration) has created several figures of protection for minors depending on the degree of vulnerability that their personal situation entails: they can be in risk conditions -which do not justify their separation from the family- or in abandonment conditions. Under this last situation parental custody is taken from the parents by the authorities and the children can be subject to three different figures: administrative guard, family foster care and residential foster care. All these three figures do not prevent the child from being still considered a member of its biological family.

Another figure is adoption. A non-biological, but juridical parent-child relationship is designated, and the links of the child with its biological family disappear, going a step further than the measures previously mentioned.

This law considers children and young people as rightful and 'active, participative and creative, with the capacity to modify their own social and personal environment'. Therefore, family foster care is clearly privileged with respect to residential foster care. Plus, the child is heard so that he/she can express its own opinion about the measures taken.

This law also contemplates social services of two kinds: social services for primary attention and social services for specialised attention. The former detects risk conditions (for example, children living in families in risk of crossing the threshold of poverty) and gives support for families taking care of people with disabilities or other special requirements. The latter's protocols apply to specific cases, such as child mistreatment, attention to unaccompanied foreign children and young people, children who transgress the laws, etc.⁴⁵

Social services for specialised attention are supplied by a myriad of institutions whose purpose is suiting all the children's realities: play centres, pre-school educative centres, immediate shelter

⁴⁴ Organic Law 1/1996 will predictably be soon reformed by approving before the end of 2015 the Law for the Modification of the Protection System of Childhood and Adolescence (currently in the so-called step of 'Projects of Law' and being submitted to counselling institutions and parliamentary debate).

⁴⁵ In such cases is to be applied the Organic Law 5/2000 (of Criminal Responsibility of Minors) 2000 [Ley de Responsabilidad Penal de los Menores].

centres, home-orphanages, residences, specialised centres for young offenders and specialised centres for unaccompanied foreign children and adolescents.

The Ombudsman⁴⁶ informed on the need to precise under which conditions minors need to be interned in specialised bodies and to classify centres according to the different ages of the interns. As this specialised attention seeks to maintain the child in its original family environment as long as possible and intends to provide him other options to allow the child to enjoy family and social integration, the Ombudsman also recommended to set up a maximum length for the stay.

Due to the willingness to strengthen the role of the family all the measures set up agree with a series of principles (principle of need, principle of proportionality, and the therapeutic and restorative purpose of the measures). The most relevant of which is the principle of superior interest of the minor, which implies that the decisions taken need to be as favourable as possible for the child, taking into account the parents' and tutors' rights and duties.

This principle's literal inclusion in the legal text is one of the main changes that the future Law for the Modification of the Protection System of Childhood and Adolescence will introduce.

It is also included in it the four objectives of II PENIA 2013-2016 (a key instrument of the Government to continue the development of 'rights, responsibilities and duties of children and young people' started by I PENIA between 2006 and 2010).

On 20 February 2015 the Project of Law for the Modification of the Protection System of Childhood and Adolescence was approved by the Government and sent to the Parliament for the legislative power to manifest its acquiescence with its content.

This Law introduces for the first time, as it was recommended by the UN in 2013, positive law and procedural rule nature to the defence of the superior interest of the minor.

Since this Law has been approved, all the Laws and Regulations will compulsorily have to assess their impact on childhood and adolescence before they are approved.

⁴⁶ Ombudsman's report, '*Centros de protección de menores con trastornos de conducta y en situación de dificultad social*', [2009] [Spanish].

This Law sets up as well a new frame of rights and duties of children and adolescents, like the right to be heard, or duties in the familiar, scholar and social fields. The knowledge of these rights and duties will be assured by means of their inclusion in the educative programme.

It also tries to avoid bullying, to reinforce the protection of minors with foreign nationality and to assure minors with any kind of disability the access to all services.

In what concerns to foster care and adoption, the procedures are provided with further guarantees and their duration is diminished.

The final aim is that any minor under 3 years old can live in a family, and therefore avoid foster care centres. This purpose is favoured by implementing periods in which the family and the child live together before the adoption takes place.

The initiative also promotes open adoptions and the 'right of access to their origins' of adopted children when they grow up.

Finally, to prevent violence against minors as a transversal aim, they are expressly recognized for first time as victims of gender violence and protection against sexual abuse is reinforced.

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

Apart from being the sixth basic objective of the II PENIA, the right to a free primary and secondary education together with the duty of the States to 'encourage regular attendance at schools' is recognised in article 17 ESC.

The Commissioner for Human Rights' Report pointed at the estimate reductions in education during the years 2011, 2012 and 2013, and their negative effects on all the different educational levels, absenteeism and extra-school non-curricular activities. As a consequence, these measures led to more difficulties for the poorest kids to exercise their right to recreation and to play.

According to data from the Spanish Government, the investment in education has been increased between 2007 and 2013, and the current national expense per student exceeds the EU average (Spanish expense amounts to EUR 7,861 while EU average expense is of EUR 6,829).

The Spanish Government has also approved the Organic Law 8/2013 on Improvement of the Quality of Education (*LOMCE*), modifying the Organic Law on Education of 2006 (*LOE*),

which maintains the principles of the previous law and observes the requirement to integral training for children, including human and civic rights' education in the curricula (as accorded by the UN World Programme for Human Rights Education and the EU Strategy for Youth 2010-2018).

In primary education 'among the specific subjects of every course, and at the parents' or legal guardians' discretion, the student will take either Religion or Civic and Social Values', a provision which is moreover consistent with the mentioned article 27.3 of the Spanish Constitution, which recognizes the right of the parents to choose for their children an education consequent with their ideology. In secondary education, a similar system it is projected: 'the student will take (...) within the block of specific subjects, Religion or Ethical Values, at the parents' or legal guardians' or at the own students' discretion'.

This system does not entail the disappearance of the content, quite the contrary, reinforces it: those subjects will be marked, which contributes to the interest in learning, and additionally, civic and social values inspire the teaching of the whole curricula.

The Ministry has also set out a series of plans and strategies in education outside curricula. Amongst others, the Strategic Plan on Citizenship and Integration 2011-2014 and the 2nd National Human Rights Plan.

Students and their families benefit from scholarships to guarantee the access of every social collective to an equal education. The Guide of Annual Social Subsidies for Families 2014 contains Scholarships and Aids for training and it is provided by the Central Government.

These aids are offered to students of non-compulsory educational levels and students with special needs, as long as they gather all the requirements (which include having a level of revenues under a fixed threshold). Students taking studies at compulsory levels (primary and secondary education) can also benefit from aids for the purchase of books and school materials just by crediting that they are matriculated in any level in an educative centre.

In addition, Autonomic Governments provide their own Scholarships and Aids for children and young people who are citizens of their Autonomic Community or studying in their territory.

Both National and Autonomic aids intend to alleviate the impact of the austerity measures adopted, which have resulted in the reduction of the number of interim teachers and an increase in the number of school hours for the teachers who have retained their job.

Pre-school education is the sector which has experienced the biggest growth: the schooling rate at 3 years old is already of 99.1% even though at this level education is not compulsory, and the number of educative centres for children aged between 3 and 6 years old has increased to 1,146 new centres between 2008-09 and 2010-11. However, most families still cannot afford the costs of schooling their children between 0 and 3 years.

Policies for the inclusion of students with special needs have also been successful: 97.4% of students with special needs, study in the same centres as students without any special requirements.

The inclusion of migrant students is still a challenge for the Government, who, in addition to the difficulties of having a different culture or language, need to face the lack of basis from their origin educative systems.

Another two challenges that particularly affect Spain relating to education are early school dropout and academic failure. During the academic year 25.9% of the students did not finish secondary education and 17% did not finish primary education with the age they are supposed to (12 years).

According to Social Indexes (*Indicadores Sociales*) of the National Statistics Institute (*INE*), the aptitude tax (*tasa de idoneidad*) for 15-year-old children is of 58.6, meaning almost 40% of them needed to retake at least a school year.

To avoid this situation very different measures have been taken such as curricula modifications, support teachers, special education centres... the newest of all being the Initial Professional Qualification Programmes for students who did not manage to obtain a Secondary Education Certificate. Its purpose is allowing them to gain experience and training in order to facilitate their access to the labour market.

Between 2000 and 2008 the funds dedicated to ease the problem of school abandonment increased to 50%.⁴⁷

⁴⁷ National Statistics Institute [2010].

Before the beginning of the crisis in 2008, the rate of young people who had abandoned school was over 30%. The construction sector took most dropout students in. By 2010 the school abandonment rate was of 28.4%⁴⁸, a reduction that is also due to the difficulties to find a job in recessive economy.

Data concerning dropouts vary sharply from one Autonomic Community to another: in 2009 the Basque Country had the lowest rate (16%), while the Balearic Islands had the highest one (40%).

A direct reciprocity can be inferred between the investment in public expense per student and the rate of early school abandonment⁴⁹: in 2008 Andalucía's rate of school dropout doubled that of the Basque Country's, while the former's investment per student was half the amount of the latter's.

The reality of early school dropout currently affects mainly the Roma population (in 2007, only 1.6% of the gipsy population had completed secondary education, in comparison to 19.4% of the joint population) and male first-generation immigrants. The Government has put into place a pack of measures through the National Strategy for the Social Inclusion of the Roma Population in Spain 2012-2020.

The crisis situation and the data furnished by Member States have provoked the delay until 2020 of the objective of reducing the average European school dropout rate to 10%. The Council of Europe's initial provisions expected to achieve it by 2010.

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue

When talking of employment -or we would rather say unemployment- data is overwhelming: 56.13% of young people aged under 25 who want to find a job cannot find it⁵⁰, of which 35% of them has been in that situation for more than a year. That makes up to 15.6% of the 5 million of unemployed in Spain. The problem has increased in magnitude due to the financial crisis, but youth unemployment was already high before the crisis took off, as its causes are not simply temporary, but structural as well.

⁴⁸ Save the Children Spain, Doctors of the World, the Centre for the Economic and Social Rights (CESR), the Spanish Committee of Representatives of People with Disabilities and others, *Informe conjunto al comité de Derechos Económicos, Sociales y Culturales de la ONU examinando el 5º Informe Periódico de España* [2013] [Spanish].

⁴⁹ Ministry of Education, Government of Spain, *Sistema Estatal de Indicadores de la Educación* [2011] [Spanish].

⁵⁰ Ministry of Labour, Government of Spain, *Encuesta de Población Activa* [June 2014] [Spanish].

The two main structural causes are on the one hand, the higher risk of unemployment of poorly qualified young people in comparison to the risk of young, highly qualified people; on the other hand, over education of young people, which increased 1.5 percentage points between 2002 and 2010.

The case of over education is especially worrying in the sense that each time it is more usual that young people with higher levels of education carry out jobs for which they are over educated. Hence, the society is not obtaining all the profit it could from them, originating a stagnation of economic productivity –which would grow if these young people occupied posts in accordance with their qualifications–.

The number of young people in the world is reaching historical maximums and national economies are not capable of generating enough posts to give an answer to their needs. As a consequence, at a global level 1 of 8 young people are unemployed and at a EU level young people have 3 times more chances of being unemployed than adults.

Projections determine that young unemployment rate in the EU will get to 17% in 2015 and it will only diminish to 15.9% by 2018.

This situation originates a concept named '*déclassement*', meaning a loss of acquisitive power and quality of life conditions of young people in comparison to their parents' incomes and socio-professional category at the same age.

In order to face this reality the Government has put into place an Employment Promotion Programme and the Entrepreneurship and Youth Employment Strategy 2013-2016 to avoid the risk of losing a whole generation from getting involved into society through labour.

The Programme sets two main purposes: first, favouring youth participation and second, improving their situation with respect to the labour market and the quality and stability of their employments.

6. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

The Additional Protocol to the European Social Charter adopted on June 22 1995, which entered into force on July 1 1998, provided a system of Collective complaints. His objectives are, as stated in paragraph two of the preamble, to improve the effective enforcement of the social rights guaranteed by the Charter' and to increase the efficiency of supervisory machinery based solely on the submission of governmental reports.⁵¹

Under Article 1⁵², this collective complaint system, aims to strengthen the participation of business organisations, workers and non-governmental organizations.

To access to this procedure, according to international law, it is necessary that the State has ratified the Additional Protocol to the European Social Charter. Nonetheless, for unknown reasons, Spain has not ratified this protocol. Therefore the possibility of invoking this mechanism and the participation of non-governmental organisations representing collective interests protected by the Charter is not possible and the opportunity to influence against the actions of the States is lost.

The absence of a collective complaint system in Spain is unfortunate. This mechanism was declared in 1995 as the 'masterpiece' of the Charter⁵³ allowing trade unions, social organizations and employers' organizations to report the Government to the Committee when his public policies or legislations are contrary to the ESC. As the Royal Decree of Law 16/2012, of 20 April⁵⁴, about urgent measures to ensure the sustainability of the National Health System,

⁵¹ Article 6 of Additional Protocol to the European Social Charter «The introduction of a system of this type is designed to increase the efficiency of supervisory machinery based solely on the submission of governmental reports. In particular, this system should increase participation by management and labour and non-governmental organisations (already improved by the Protocol amending the Social Charter of 21 October 1991). The way in which the machinery as a whole functions can only be enhanced by the greater interest that these bodies may be expected to show in the Charter. The procedure provided for in the Protocol will also be shorter than that for examining reports. The system of collective complaints is to be seen as a complement to the examination of governmental reports, which naturally constitutes the basic mechanism for the supervision of the application of the Charter».

⁵² The Contracting Parties to this Protocol recognise the right of the following organisations to submit complaints alleging unsatisfactory application of the Charter: a) international organisations of employers and trade unions referred to in paragraph 2 of Article 27 of the Charter; b) other international non-governmental organisations which have consultative status with the Council of Europe and have been put on a list established for this purpose by the Governmental Committee; c) representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint.

⁵³ Pour un commentaire, voy. F. Sudre, « Le protocole additionnel à la Charte sociale européenne prévoyant un système de réclamations collectives », R.G.D.I.P., 1996-3, pp. 715 et s.; R. Brillat, « A new protocol to the European social charter Rev. trim. dr. h. (2001).

⁵⁴ RDL 16/2012, of 20 April http://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-5403.

improves the quality and safety of its services; or Law 16/2003 of 28 May⁵⁵, about Cohesion quality National Health System, whose dispositions exclude healthcare to irregular immigrants.

Spain has been continually criticized for his failure to observe the Charter.⁵⁶ In fact, on February 3 2015, the European Committee of Social Rights (ECSR) -through the conclusions XX-3 (2014)⁵⁷-, drew the attention to Spain because of the disagreement in seven different subjects related to individual employment rights, working conditions, collective bargaining, freedom of association and exercise of the right to strike.

These conclusions concerns the adequacy of the minimum wage; the flexibility of working time; compensation for overtime; compensatory measures for workers exposed to residual risks to health; reasonable period of notice for termination of the contract, including the trial period in the contract of support for entrepreneurs; the unilateral derogation of the collective agreement; the government interference in the exercise of the right to strike, through compulsory arbitration and the criminalization of participation in strikes.

In short, Spain excludes the most effective control mechanism of the charter, favouring economic arguments. It is essential to stimulate the ratification process, which would expand the range of social rights recognized and the implementation of effective mechanisms to demand their inclusion in legislation and public policy.

7. CONCLUSIONS

Spain was one of the European countries most affected by the crisis. As a result, Spain had to implemented austerity programmes which involved far-reaching cuts in public spending and in the remuneration of civil servants, privatisations or decreases in minimum wages. However, Spanish Government did not begin the austerity measures until 2010.

The ESCR'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

⁵⁵ Law 16/2003 of 28 May <http://www.boe.es/boe/dias/2003/05/29/pdfs/A20567-20588.pdf>.

⁵⁶ Conclusiones XX-2 (2013) Concerns Articles 3, 11, 12, 13 of the 1961 Charter.
http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/SpainXX2_en.pdf.

⁵⁷ Conclusions XX-3 (2014)
https://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/SpainXX3_fr.pdf.

scored negatively on 6 out of 17 points of the research⁵⁸, including the illegal migrants being excluded from receiving access to healthcare system or the scope of social benefits⁵⁹ –which its amount may be insufficient to meet some ESC's rights–.

Cuts in social, health and educational budgets have led to a worrying growth of poverty in Spain. This has had a particularly impact on social protection, social exclusion, enjoyment of human rights by children and persons with disabilities. The Spanish authorities should do more to ensure that the human rights of vulnerable groups are better respected in the context of austerity measures.

Austerity measures adopted by the Spanish Government, included in the 2012 Labour Reform have had a negative effect on citizen's work and social conditions. They even constitute a violation of the European Social Charter, specifically its Article 2 whose letter and spirit tries to promote economic activity through the dialogue between the parties, regulating their relations through collective agreements freely agreed, and settling their labour disputes through 'conciliation and voluntary arbitration'.

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 (that is how Spanish law names situation of persons who Are unable to secure adequate resources), through assistance or adequate social benefits, sufficiency which also preaches specifically pensions.

On the field of social exclusion, Spanish Government has approved on 2013 a Plan called "National Plan against Social Exclusion". Plan is vertebrate in three main axes: social inclusion through employment, warranty of an economic benefits system and basic public services. Moreover, Plan has been agreed by different ministries, Autonomic Communities and also city councils.

In the scope of social rights of person with disabilities, Spain has approved a royal Decree in 2013. This new regulation have supposed a great legislative progress to unify all existing legislation on the matter and ensure that disability is provided for all political actions, ensuring

⁵⁸ European Committee of Social Rights of Council of Europe, 'Conclusions XX-3 (2014)' (January 2014), p 8; in the same way.

⁵⁹ Royal Legislative Decree 16/2012 and Royal Decree 1192/2012, which excludes foreign nationals, present in Spain unlawfully, from receiving access to healthcare, save in 'special situations'.

their protection in all areas, including psychological aspects; as well as producing a significant change in the view of disability, to finally overcome the welfare perspective of persons with disabilities which, implicitly, has always existed in society, towards a conception more adapted to the current reality, based on human rights.

In the field of young people and children Spanish Government has also approved another plan on 2013 called 'Strategic National Plan of Childhood and Adolescence'. This plan establishes relevant principles in its provisions, like the principle of non-discrimination, the guarantee of the child to life and to the full development of its capacities, the right to education and the principle of participation (this last principle consists in the right of children to receive information appropriate to their age that allows them to create and express a grounded opinion).

8. TABLES OF CASE LAW AND LEGISLATION

8.1. Legislation

- EC Recommendation (Invest in childhood: breaking the cycle of disadvantages) 20 February 2013.

8.2. Case Law

- Spanish Supreme Court's judgment of 23 July 2013, about the validity of Ultra-activity clauses.
- Constitutional Court of Spain, Judgment 96/2006, BOE 106 [2006] 69 [Spanish].
- European Court of Human Rights, Case of D. v. United Kingdom, Application No. 30240/96 Judgment of May 2nd, 1997.

9. BIBLIOGRAPHY AND ONLINE RESOURCES

9.1. Reports

- UNICEF, “Children of the Recession: The impact of the economic crisis on child well-being in rich countries”, [2014].
- Ombudsman's report, “*Centros de protección de menores con trastornos de conducta y en situación de dificultad social*”, [2009] [Spanish].
- Save the Children Spain, Doctors of the World, the Centre for the Economic and Social Rights (CESR), the Spanish Committee of Representatives of People with Disabilities and others, “*Informe conjunto al comité de Derechos Económicos, Sociales y Culturales de la ONU examinando el 5º Informe Periódico de España*” [2013] [Spanish].
- Department of the European Social Charter, Directorate of General Human Rights and Rule of Law, Council of Europe, “Spain and the European Social Charter”, [January 2015].

- Commissioner for Human Rights, Council of Europe, “Report following his visit to Spain from 3 to 7 June 2013”, [9 October 2013].
- ELSA Spain, “Elsa for Children Final Report”, [2014].
- UNICEF, “*Infancia en España. Hacia un pacto de Estado por la infancia*”, [2014] [Spanish].
- Economic and Social Council, “*Sobre el Anteproyecto de Ley Orgánica complementaria de la Ley de Protección de la Infancia*”, [23 May 2014].
- Novia Salcedo Foundation, “*Situación actual del empleo juvenil en España*”, [2013] [Spanish].
- European Committee on Social Rights, Council of Europe, “Conclusions XIX-4, on Articles 7, 8, 16, 17 and 19 of the Charter”, [2011].
- OECD, “*The 2012 labour market reform in Spain: A preliminary assessment*”.

9.2. Official State Reports

- Ministry of Education, Government of Spain, “*Sistema Estatal de Indicadores de la Educación*” [2011] [Spanish].
- Ministry of Labour, Government of Spain, “*Encuesta de Población Activa*”, [June 2014] [Spanish].
- Ministry of Education, Culture and Sport, Ministry of Health, Social Affairs and Equality and Ministry of Justice, Government of Spain, “Comments by the Spanish Authorities on the Commissioner for Human Rights’ Report on Spain”, [October 2013].
- Ministry of Health, Social Affairs and Equality, Government of Spain, “*Guía de Ayudas Sociales para las Familias 2014*”, [2014] [Spanish].
- Ministry of Health, Social Affairs and Equality, Government of Spain, “*Estadística Básica de Medidas de Protección de la Infancia*”, Bulletin nº15, [Data from 2012] [Spanish].
- Ministry of Health, Social Affairs and Equality, Government of Spain, “*II Plan Estratégico Nacional de Infancia y Adolescencia (II PENIA)*”, [2013] [Spanish].

9.3. Articles

- Carmen Alemán Bracho, “*Políticas públicas y marco de protección jurídica del menor en España*”, [2014], *Revista de Derecho Político* n° 90, 99 [Spanish].
- Isabel Lázaro González, “*Política legislativa y reforma de la legislación de infancia: ¿dónde queda el interés del niño?*”, [5 January 2015], published in the webpage of ADDAI (Association for the Defence and Development of Adolescence and Childhood) <<http://www.addai.org/noticias-sobre-infancia/actualidad-informativa/39-pol%C3%ADtica-legislativa-y-reforma-de-la-legislaci%C3%B3n-de-infancia-%C3%A9d%C3%B3nde-queda-el-inter%C3%A9s-del-ni%C3%B1o.html>>, [Spanish].
- Borja Suárez Corujo, Professor of Labour Law and Social Security Law (Autonomous University of Madrid, Spain), “*Crisis and labour market in Spain*”.
- Vassilis Monastiriotis, Niamh Hardiman, Aidan Regan, Chiara Goretti, Lucio Landi, J. Ignacio Conde-Ruiz, Carmen Marín, Ricardo Cabral, “*Austerity Measures in Crisis Countries - Results and Impact on Mid-term Development*”, *Intereconomic*, review of European Economic Policies.

9.4. Websites

- Ministry of Health, Social Services and Equality, Government of Spain, <www.msssi.gob.es>, February 2015.
- Childhood Observatory, <<http://www.observatoriodelainfancia.msssi.gob.es/>>, March 2015.

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1. INTRODUCTION

The worldwide economic crisis, with its origins in the collapse of the US house market, had its effect on the European economic system as well. Due to the globalisation of the world markets and their economies, effects were felt throughout these economies. These effects were heavily felt in businesses as well as in normal households. The strong bonds between American and European economic markets caused a decline in stocks in Europe as well.

The Netherlands was also severely hit as a result of this crisis, as its economy rests heavily on the export of products such as food, chemical products, flowers, machines and other natural resources. Because of its geographical location on the West-European coast, The Netherlands is well known for the distribution of goods from the port of Rotterdam, which is the biggest port in Europe. Still, the Dutch economy can be seen primarily as a service economy.

In this National Report, we will look into the effects of the austerity measures on the rights that were laid down in the Revised European Social Charter (ESC) of 1996. First of all, the research will look into whether or not the Netherlands has ratified the ESC of 1961 or the revised version of 1996. Secondly, a brief overview will be given of the main austerity measures taken in the Netherlands to tackle the economic crisis. Thirdly, the research will expand on specific areas of labour law, such as collective bargaining, social protection, social exclusion and social rights of persons with disabilities, children and young people. After briefly describing the present situation in the Netherlands, the research will study the impact of austerity measures on these specific topics. After this, the ESC's collective complaint system will be reviewed on its contribution to alleviating the impact of austerity measures in the Netherlands. Finally, a conclusion will be drawn to describe the impact of austerity measures on the situation of the rights of the European Social Charter in the Netherlands.

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

If a careful look is taken at the list of signatures and ratifications provided on the website of the Council of Europe, we can see that The Netherlands, as many other states, signed the European

Social Charter 1961 on 18 October 1961. Yet, this 1961 Charter was only ratified on 22 April 1980, almost 20 years later.¹

This process did not take as much time for the Revised European Social Charter of 1996. It was signed on 23 January 2004 and ratified on 3 May 2006 by the Dutch government.

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

Throughout this research, austerity measures taken by the Dutch government will be reviewed in the light of the European Social Charter. In order to provide a short overview, the different austerity measures taken will be mentioned here briefly, ordering them by the chapter/group of people to which they belong.

First of all, if we analyse labour rights, social and collective bargaining are still respected. The measures taken by the government are implemented by discussing these with so-called social partners. Because of this, the rights of Dutch citizens to bargain collectively are taken into account when discussing measures that would have an effect on the Dutch economy.

In this research specific attention was given to certain categories and groups. These are the following; social security (containing persons who are unable to secure adequate resources, either by their own efforts or due to illness), social exclusion, persons with disabilities, children and young people.

In the area of social exclusion, structural reformation is currently being implemented by the Dutch government in order to tackle the effects of the economic crisis of 2008. In order to tackle unemployment, the unemployment benefit programs are still in place and almost EUR 1 billion is reserved for reintegration, the reduction of work hours as well as combating youth unemployment. Municipalities are more and more involved in this process. Next to this, measures are being taken to reduce dropouts at schools.

¹ Council of Europe, 'Signatures and ratifications of the European Social Charter, its Protocols and the European Social Charter (revised) ' (Coe.int 2012)
<https://www.coe.int/t/dghl/monitoring/socialcharter/presentation/SignaturesRatifications_en.pdf> accessed 5 May 2015.

Further measures have been taken for the aforementioned groups of people. Firstly, if we study the situation of persons with disabilities, existing policy ensures that there is suitable education present. However, the funding for this has been withdrawn and/or limited. Next to this, the period of service for disabled people was shortened.

Children and young people were affected as well. In general, measures have been taken to increase taxes and cut into existing budgets, driving up the unemployment rate, especially for young people. Connected to this, the budget on child-care services was also cut. However, to improve education, a budget increase has been made available for universities that reach a high level of quality of education. As for unemployment, an act has been adopted that aims to reduce unemployment.² As for child and youth care, municipalities have taken these responsibilities on themselves, making it more cost efficient.

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

Article 5 of the ESC concerns the right to organise. It states the following:

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

² Rijksoverheid, 'Maatregelen aanpak werkloosheid' (Rijksoverheid.nl 2015)
<<https://abonneren.rijksoverheid.nl/nieuwsbrieven/archief/artikel/42/dc125212-ac71-4bd3-913a-f336ee132c4e/e15b0a9b-cd89-4c2e-8146-e60839af2170>> accessed 5 May 2015.

This right is laid down in Article 8 of the Dutch Constitution. Also, the ILO core Conventions C87 and C98 were ratified by the Netherlands.³ Article 8 states that the right to organise is acknowledged but that it can be restricted by law in cases of law and order. For example, recently an organization, fighting for the rights of paedophiles, called 'MARTIJN' was banned for reasons of law and order.⁴ This right has a twofold; a negative and a positive one. On one hand, the right to organise is positive as it aims at the liberty of people to join any association. On the other hand, it assures that people are also free to not join an association if they do not want to.⁵ The Dutch national legislation is therefore in compliance with Article 5 of the European Social Charter.

If we then turn to the Dutch labour market, there are various labour associations/unions for each labour sector that come up for the rights of Dutch employees. Some of these unions are over a hundred years old.⁶ The biggest ones are *FNV* and *CNV*. Together, these worker federations have around 1.7 million members in the Netherlands.⁷ These trade unions also tend to work together and they negotiate with the social partners on general policy. Also, they negotiate on socioeconomic issues at the SER, the Socioeconomic Council.⁸ According to Jan de Vries the system, called the *poldermodel* is 'characterised by organized and autonomous social groups that are embedded in political structures that recognise – even depend upon – the legitimacy of these particularistic institutions and provide a political space for negotiation and compromise between sovereign authority and subsidiary institutions.'⁹ These social groups are often referred to as the social partners. Evidentially, worker federations try to look for the most

³ C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) 1948 <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312_232> accessed on 5 May 2015; C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98) 1949 <http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::no::P12100_Ilo_Code:C098> accessed on 5 May 2015.

⁴ *ECLI:NL:PHR:2013:2379* 2014 1 (AHR).

⁵ F. Kollen, *De vereniging in de praktijk* (2nd, Kluwer, Deventer, s.l. 2007)

⁶ Dick ter Steege, Esther van Groenigen, Rob Kuijpers and Jo van Cruchten, *Vakbeweging en organisatiegraad van werknemers*, (CBS, Sociaaleconomische trends, 4e kwartaal 2012), 9. <http://www.cbs.nl/NR/rdonlyres/B93BC030-43CE-47A9-B819-DB88CBC9AF01/0/2012k4v4p9art.pdf>.

⁷ 'Vakbonden, wat heb je eraan?' (Loonwijzer.com 2015) <<http://www.loonwijzer.nl/home/arbeidsvoorwaarden/cao/vakbond-wat-is-het-en-wat-heb-je-er>> accessed 5 May 2015.

⁸ Dick ter Steege, Esther van Groenigen, Rob Kuijpers and Jo van Cruchten, *Vakbeweging en organisatiegraad van werknemers*, (n 6), 13-14.

⁹ J. De Vries, 'The Netherlands and the Polder Model: Questioning the Polder Model Concept' [2014] 1, 101.

beneficial outcomes for the groups they represent. However, the main thing these federations aim for is some form of consensus with the other side, rather than a conflict as this will not be beneficial for both parties.

Article 6 ESC concerns the right to bargain collectively. It is defined as the following:

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

- To promote joint consultation between workers and employers;
- To promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
- To promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; and recognise:
- The right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

In the Netherlands, this right was laid down in the *Wet op de collectieve arbeidsovereenkomst* which was already established in 1927. Article 18 states that there is a maximum of five years for collective agreements.¹⁰ At the end of this period, new negotiations between employers and employees must take place.

A collective agreement is called a *collectieve arbeidsovereenkomst*, in short, a *CAO*. In the *CAO*, an agreement is made with one or more employers, or associations of employers and one or more associations of employees where first and foremost the labour conditions are laid down. Next to this, agreements can be laid down leading to the creation of obligations for both parties. Topics vary from child support to pension, from funds for education to wage increases.¹¹ These conditions must be taken into account when drafting employment contracts'.¹² In order to

¹⁰ Article 18, *Wet op de collectieve arbeidsovereenkomst*, Stb. 1927, 415.

¹¹ Stichting van de Arbeid, *CAO: wat en hoe?*, 7.
https://www.ser.nl/~media/files/internet/x_overig/de%20cao%20wat%20en%20hoe%20pdf.ashx.

¹² Article 1, *Wet op de collectieve arbeidsovereenkomst*, Stb. 1927, 415.

achieve these agreements, the so-called *poldermodel* is applied. These agreements in the Netherlands predominantly apply to an industry-wide scale. However, there are also some company collective agreements.¹³ The majority of Member States have statutory laws that order that the collective agreement applies to all employees of the labour sector, either directly (by signature) or indirectly (via his employers' association). This is called automatic extension. However, in the Netherlands it works slightly different. Even if an employee is not a member of a trade union, the employer who is bound by the collective agreement is obliged to respect these provisions for these employees.¹⁴ The length of these agreements cannot be longer than five years.¹⁵

When we look at hierarchy, the national laws still have the highest authority. These rules need to be respected by the employers. In the collective agreements, more specific rights can be laid down, such as wages, holidays and the period of notice.¹⁶

Next to this, the government can also declare a collective agreement applicable on all employees or on all employees of a specific sector. This is called an *algemeen verbindendheidsverklaring*.¹⁷ The collective agreements are generally renewed every year, however developments after 2008 have shown that negotiations have become harsher and agreements are harder reached. This resulted in collective agreements that have been extended on the same terms.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

As known, the economic crisis of 2008 struck a hole in government budgeting. In order to keep the deficit below the 3% allowed by the EU, the Netherlands had to come up with a large number of measures. Yet, in this respect, collective bargaining and respect of social dialogue have not been affected, they have actually been used in order to adopt the austerity measures.

¹³ A. Jacobs, *Labour and the Law in Europe, A Satellite View on Labour Law and Social Security Law in Europe*, 112.

¹⁴ Article 14, Wet op de Collectieve Arbeidsovereenkomst, Stb. 1927, 415.

¹⁵ Article 18, Wet op de Collectieve Arbeidsovereenkomst, Stb. 1927, 415.

¹⁶ 'Arbeidsovereenkomst en cao' (Rijksoverheid.nl s.d.)

<<http://www.rijksoverheid.nl/onderwerpen/arbeidsovereenkomst-en-cao/vraag-en-antwoord/waaraan-moet-mijn-werkgever-zich-houden-bij-een-arbeidsovereenkomst.html>> accessed 5 May 2015.

¹⁷ Article 2, Wet op het algemeen verbindend en het onverbindend verklaren van bepalingen van collectieve arbeidsovereenkomsten, Stb. 1937, 801.

The right to collective bargaining has not been affected in a legal way. Negotiations have gotten tougher but an eye is constantly being kept on the respect of social dialogue.¹⁸

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

Article 4 of the ESC lays down the right to a fair remuneration. It states the following:

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

- To recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
- To recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
- To recognise the right of men and women workers to equal pay for work of equal value;
- To recognise the right of all workers to a reasonable period of notice for termination of employment;
- To permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

If we study these 5 elements, we can determine that none have been significantly changed or altered due to austerity measures in the Netherlands.

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for:

¹⁸ R Guyet, D Tarren, CTriomphe, 'Social dialogue in times of global economic crisis' [2012] 1.

3.1.1. Persons who are unable to secure adequate resources either by their own efforts or from other sources?

The Dutch system of social assistance, in popular language also referred to as *Bijstand*, was formerly organised in the *Wet Werk en Bijstand* (the law on work and welfare), the *Wet Sociale Werkvoorziening* (Law on Social Work Aid) and a large part of the *Wet Werk-en arbeidsondersteuning jonggehandicapten* (Law on Work and Labour Assistance). As of 1 January 2015, those laws have been replaced by the *Participatiewet* (Participationlaw).

There are a couple of conditions that need to be met in order to be entitled to the *bijstandsuitkering*.

- One shouldn't be lawfully detained;
- One who refuses to comply with the lawfully ordered detainment and is evading prison;
- One who is part of the Dutch military;
- One should not avoid participation in the economy, either be it due to refusing work or social exclusion;
- One should not stay four or more weeks abroad;
- One should have reached the age of majority, which is 18 in the Netherlands.

Aside from those conditions, the municipality also considers the wealth of the applicant. Since the new law entered into force, a couple of things have changed for those entitled to a benefit under the *Bijstand*. All who are entitled have to fulfil the new obligations arising from this law. If one doesn't comply, the benefit shall decrease.¹⁹ One should accept offered labour and make sure to remain appointed.²⁰ Aside from that, one should accept the possibility that the commute to an eventual job may be up to a maximum of three hours a day. If the household is shared by other persons over the age of 21, the total benefit will be lowered according to the household costs. This is also referred to as the *kostendelersnorm*, where the split costs rule. Municipalities have

¹⁹ Art. 18 (2) Participatiewet; 'Gevolgen Participatiewet' (Rijksoverheid.nl s.d.)
<<http://www.rijksoverheid.nl/onderwerpen/participatiewet/gevolgen-participatiewet>> accessed 5 May 2015.

²⁰ Art. 9 Participatiewet; 'Gevolgen Participatiewet' (Rijksoverheid.nl s.d.)
<<http://www.rijksoverheid.nl/onderwerpen/participatiewet/gevolgen-participatiewet>> accessed 5 May 2015.

to create new regulations in which they reify the reciprocity. It should be clear what is actually expected, as regards to the duration, content and extent of the contemplated reciprocity.

3.1.2. Persons who are unable to secure adequate resources either by their own efforts or from other sources due to illness?

If the person is employed, the employer is obliged to continue to pay the wages for a maximum of two years, with a minimum of seventy percent of the wage. After those two years have passed, he or she will be subject to an assessment to indicate if he/she is entitled to an occupational disability benefit on the basis of Work and Income according to the Labour Capacity Act, also known as the WIA.²¹ The WIA is a law on promoting work or a return to work, in accordance with the labour capacity, of insured persons who are only partially fit for work and on the adoption of rules regulating an income for these persons, as well as for insured persons who are fully and permanently unable to work.²² If the person who falls ill has no employer, say an employee with a flexible employment contract or an employee who finds work through a temporary employment agency for example, he can still receive a benefit under the Sickness Benefits Act. This is a law in which governs that employees who have fallen ill are still entitled to a benefit, in case the obligation to continued payment of wages is not applicable. There are a couple of requirements which need to be fulfilled in order to apply for the benefit; the employee should either have a rather high risk of falling ill (again), or should not have an employer at all. The former is usually the case with no-risk health insurances, organ donors and pregnant women.

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

Article 13(1) ESC states that:

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

²¹ 'Q+A Continued payment of wages during illness' (Government of the Netherlands.nl s.d.) <<http://www.government.nl/government/documents-and-publications/leaflets/2011/12/21/q-a-continued-payment-of-wages-during-illness.html>> accessed 5 May 2015.

²² Overheid, 'Wet werk en inkomen naar arbeidsvermogen' (Overheid.nl 2015) <http://wetten.overheid.nl/BWBR0019057/Opschrift/geldigheidsdatum_13-03-2015> accessed 5 May 2015.

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

Although the requirements that need to be met in order to actually receive these social benefits have been made harder to fulfil, social benefits are still a big part of the total expenditures of the Dutch government. It must be noted that the general Dutch population did have to make some sacrifices in this department, however, it also needs to be said that people who do not receive any form of social aid are an exception.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

In the Netherlands there is an association for food aid organisations, *Vereniging voor Voedselbanken*. It is an organisation in which various foodbanks collaborate on providing the poorest of the society with free food-parcels.²³ There are various organisations which help parents who cannot afford gifts for their children, be it on their birthday or with Sinterklaas (Dutch national tradition) and/or Christmas, to do give something on those special occasions. A primary example is the *Jarige Job* foundation²⁴. Instead of providing the family with financial aid, they give a so-called birthdaybox, which is filled with a variety of items to make the birthday a success. Not only are there multiple gifts in the box (so brothers and sisters can give a gift as well and not just the parents), but also the ingredients for a cake and treats to share in school to celebrate their birthday properly. Also, venues of the *Leger des Heils* are situated throughout the country to support people who cannot sustain themselves. Clothes can be donated, food is offered and there is a place to sleep.²⁵

²³ 'Welkom bij de Vereniging van Nederlandse Voedselbanken' (Voedselbanken.nl s.d.) <<http://www.voedselbankennederland.nl/>> accessed 5 May 2015.

²⁴ 'Niet elke verjaardag is een feestje' (Jarige-Job.nl 2012) <<http://www.jarige-job.nl/over-stichting-jarige-job/>> accessed 5 May 2015.

²⁵ 'Waar kunnen we je mee helpen?' (legerdesheils.nl s.d.) <<http://www.legerdesheils.nl/>> accessed 5 May 2015.

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

The Dutch government is taking measures with the objective to overcome the economic crisis on the basis of a firm economy and, in order to achieve this, is taking steps and implementing reforms intended to, 'on the one hand, compensate for the negative impacts of the crisis, while on the other, addressing foreseen developments such as demographic ageing'.²⁶ Therefore, structural reforms in various areas are taking place, including employment, housing, training, education, culture and social and medical assistance.

While the percentage of the population at risk of poverty or social exclusion is above 40% in certain countries such as Bulgaria (47.1%), Romania (40.4%) and Latvia (40.1%), it ranges between 25% and 35% for Lithuania, Greece, Ireland, Italy, Poland and Spain, and it falls below 20% for 10 Member States, such as the Netherlands. Indeed, the Netherlands is one of the top performers with a 15.7% of the population at risk of poverty or social exclusion²⁷. In principle, the measures adopted by the government dealing with the promotion of access to these essential needs must have some connection with this result, however, some measures are definitely more influential than others and some external factors are very significant, as will be observed.

4.1 Employment and Training

The economic crisis is having a devastating effect on labour markets and unemployment. At the same time, high unemployment and fiscal austerity have a direct consequence and a rise in inequality, poverty and social exclusion unless effective counter measures are implemented.

²⁶ Ministry of Economic Affairs, '3 | National Reform Programme 2014 The Netherlands National Reform Programme 2014 The Netherlands' [2014] 1.

²⁷ '1 Europe 2020 Targets: Poverty and Social Exclusion Active Inclusion Strategies' [s.d.] 1.

Regarding employment, the unemployment insurance must be mentioned, as this constitutes the first level of a safety net in case of a job loss. The objective of this unemployment insurance is to insure that people losing their job will receive a replacement income, while facilitating the return to employment. Unemployment benefit programs are different in each country with variations in coverage, generosity, duration and strictness of eligibility. If we focus, for example, on the differences in generosity between countries, the Netherlands 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%, while it is only 30% in Greece and Romania.²⁸ Although it must be said that unemployment benefits are being cut as well starting from 2015 and as of 1 January 2016 through 2019 the period of unemployment benefits will be steadily reduced to 24 months.²⁹

Youth unemployment, particularly, is another very important issue in the Netherlands, and in Europe in general, as the economic crisis had a huge impact in this area. The youth unemployment rate in the EU-28 was more than double the overall unemployment rate in 2013 and the unemployment rate among young persons were higher than the rate for those aged between 25 and 74 in all Member States³⁰. With the objective of dealing with this situation and promoting effective access of young persons to job opportunities, the Netherlands is devoting almost EUR 1 billion for labour market issues relating to reintegration, reduction of work hours, and youth unemployment. Also, the government has opted for a dynamic approach to be implemented jointly with the social partners, municipalities and educational institutions consisting of measures aimed at preventing and dealing with youth unemployment by, for example, trying to reduce the number of early school drop outs. This reduction of school drop outs has taken place, as we will examine in more detail when considering the measures connected with education; but, for the moment, we can add that in the academic year 2012/2013, there were 27,950 early school drop outs, 8,300 fewer than one year earlier³¹.

²⁸ '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.

²⁹ Baker Tilly Berk, 'www.bakertillyberk.nl/arbeidsrecht Work & (Job) Security Act' [s.d.].

³⁰ Eurostat- Unemployment statistics (last modified on 2 March 2015, at 15:07) accessed 25 March 2015 <http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics> accessed 5 May 2015.

³¹ Ministry of Economic Affairs "National Reform Programme 2014 The Netherlands 28.

However, comparing the Netherlands with other European countries, Dutch youth unemployment rates are relatively low, even now during the economic crisis. Several policy measures implemented in the Netherlands have definitely helped in this aspect. Two of these measures have been demonstrated to be successful to a certain extent. First, measures to reduce early school leaving, as mentioned previously, and secondly, tailor-made reintegration plans at the local level have reduced the use of welfare and social assistance and may have contributed to higher employment rates.³² Local municipalities are responsible for defining individualized reintegration plans for people up to the age of 27 who apply for welfare or social assistance and, from 1 January 1 2004 onwards, local municipalities are responsible for welfare and social assistance. Also, from 1 January 2015 onwards, local municipalities are also responsible for young disabled persons. Additionally, to help integrate young people, especially those who live or risk living in a situation of poverty, into the labour market, in 2009 the Investment in the Young Act (*Wet Investeren in Jongeren*) 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.³³

What are the results of these measures taken by the Netherlands? Apparently, the Dutch labour market seems to work relatively well for young people if we compare it to other European countries. However, it is very complicated to know the reasons for this and if the measures described have had a big impact as the results may be partly caused by a well-performing institutional design and long-term measures and societal trends.³⁴

Furthermore, minimum wages play an important role in limiting the incidence of low pay and preventing social exclusion. This is another issue where significant variations can be found across Europe. There is a negative relationship between the minimum wage and the in-work poverty rate in the Netherlands, Belgium, France, the United Kingdom and Ireland, therefore, in the Netherlands there are high minimum wages and low in-work poverty rates, while Spain, Portugal and Greece, which have significantly lower minimum wage levels, have much higher levels of in-work poverty.³⁵

³² R Euwals, "Policy Measures on Youth Unemployment in the Netherlands" [2013] 1, 1.

³³ R Euwals, "Policy Measures on Youth Unemployment in the Netherlands" [2013] 1, 7.

³⁴ R Euwals, "Policy Measures on Youth Unemployment in the Netherlands" [2013] 1, 11.

³⁵ '1 Europe 2020 Targets: Poverty and Social Exclusion Active Inclusion Strategies ' [s.d.] 1.

FEANTSA, the European Federation of National Organisations working with the Homeless, was established in 1989 as a European non-governmental organisation to prevent and alleviate the poverty and social exclusion of people threatened by or living in homelessness. As homelessness and unemployment are inextricably linked, they also deal with unemployment issues and they emphasize some good practices of the Netherlands in promoting effective access of persons who live or risk living in a situation of poverty, as well as their families, to employment. For example, Bureau Dagloon is an initiative of the city of Utrecht that offers work opportunities for people who are homeless in cleaning public spaces, production and administrative work on a daily wage basis and a number of people achieved to find a job in the mainstream labour market afterwards.³⁶

However, despite these efforts, austerity measures have had consequences regarding employment, as there has been a decline of public sector employment in all sectors except hospitals;³⁷ concretely, job losses in central and local government reach almost 10 per cent.³⁸

4.2. Housing

FEANTSA is actually the only major European network that focuses exclusively on homelessness³⁹ and, among other tasks, it analyses and reveals the measures taken related to housing issues. Some of the Netherlands' good practice examples given by FEANTSA include the *T'Groene Sticht* initiative in Utrecht, which focuses on organising small jobs in the neighbourhood, in a second hand shop and a furniture workshop for residents of supported housing who have a history of homelessness and/or addiction.⁴⁰

However, on the 5 March 2014 the European Commission published an in-depth review of possible imbalances in the Dutch economy and in this review, the Commission also observed

³⁶ 'Netherlands: Good practice examples - Homelessness and Employment' (Feantsa.org 2011) <<http://www.feantsa.org/spip.php?article309&lang=en>> accessed 5 May 2015.

³⁷ This is mainly because of the growing need for hospital care related to the ageing population.

³⁸ Peter Liesing, Ulrike Weske and Eva Knies, 'Social dialogue and the public services in the aftermath of the economic crisis: strengthening partnership in an era of austerity - the case of the Netherlands' (European Commission Project, 2012) <<https://www.kcl.ac.uk/sspp/departments/management/Netherlands---Executive-Summary.docx>> accessed 23 June 2015.

³⁹ 'Netherlands: Good practice examples - Homelessness and Employment' (Feantsa.org 2011). <<http://www.feantsa.org/spip.php?article309&lang=en>> accessed 5 May 2015.

⁴⁰ 'Netherlands: Good practice examples - Homelessness and Employment' (Feantsa.org 2011) <<http://www.feantsa.org/spip.php?article309&lang=en>> accessed 5 May 2015.

that there are imbalances in the rental market as a result of which the private rental market is underdeveloped, the supply of social housing is not fully reaching its target group and that inefficiencies exist in the functioning of housing associations.⁴¹ Social housing was created for people that have a low income. In 2015, social housing was present for people with a maximum income of EUR 34,911. Housing companies are obliged to appoint 90% of the vacant houses to this group of people. Next to this, certain criteria can speed up the appointment of social housing, like medical indication, size of the family, age, etc.⁴²

As a consequence of this review and in response to the recommendations, some changes have already been made, as the government is taking steps to improve the functioning of the rental market and the allocation of social housing. For example, there has been a decision to increase rent based on income hoping that this will be an incentive for the higher income earners to leave the social housing sector, creating more room for the designated target group, and the lower income earners will be (partially) compensated for rent increases through the housing benefit. Also, those tenants whose income falls after an income-based rent increase will be granted a rent reduction to make sure that social housing remains affordable⁴³.

4.3. Education

When analysing education the evaluation of the outcome of the measures implemented is particularly difficult, because, even if there have been some successful measures, these still cannot illustrate the overall reduction in early school leaving due to a general trend towards higher levels of education that could have had a substantial influence in the results. However, it seems probable that the legal framework on the registration of school absenteeism has helped to the success of the programme as policy can only be directed towards pupils in need by measuring and administrating this need.⁴⁴ Also, intensive coaching of pupils in lower secondary education has been shown to reduce school dropout, concretely, they found out that one year of coaching reduces school dropout by 17 to 10 percentage points. And the effectiveness of coaching is greatest for students with a high ex-ante probability of dropout, such as older

⁴¹ Ministry of Economic Affairs, *National Reform Programme 2014 The Netherlands*, page 7.

⁴² <<http://www.rijksoverheid.nl/onderwerpen/huurwoning/sociale-huurwoning-huren>> accessed on 24 April 2015>

⁴³ Ministry of Economic Affairs, *National Reform Programme 2014 The Netherlands*, page 19, 20.

⁴⁴ R Euwals, "Policy Measures on Youth Unemployment in the Netherlands" [2013] 1, 11.

students, males and students with an adverse socioeconomic background, consequently, this measure is essential when dealing with people who live or risk living in a situation of poverty.

By observing the statistics we can conclude that the difference in education between those students with a higher economic or social status and those who could even risk living in a situation of poverty is not substantial. The best-performing school systems manage to provide high-quality education to all students and in the Netherlands, the average difference in results, between the students with the highest socio-economic background and those with the lowest, is 91 points, lower than the Organisation for Economic Co-operation and Development (OECD) average of 96 points.⁴⁵ This definitely implies that the school system in the Netherlands provides relatively equal access to high-quality education.

Even if many efforts has been made, Nils Muiznieks (CoE Commissioner), after his visit to the Netherlands, noted that the increasing child poverty rate in the Netherlands concerned him, as the number of children living in poverty in the Netherlands has augmented by over 100,000 since 2007.⁴⁶ The increase in poverty has direct consequences in children's education, as well as health, among other issues. Therefore, it has many long-term effects that could lead to social exclusion. Furthermore, Nils Muiznieks added that, according to the Children's Ombudsman, children are paying a high price for the crisis and the austerity measures are affecting more and more children in key areas, including education. The Children's Ombudsman also emphasized that the assistance children receive changes significantly depending on the municipality in which they live, and many of the assistance measures rely heavily on private initiatives.

4.4. Culture

The BankGiro Lottery is the national cultural lottery of the Netherlands. Its more than 600,000 participants have the chance to win prizes while supporting all forms of culture in Netherlands and thanks to their participation, the BankGiro Lottery could contribute more than EUR 62 million to culture in the Netherlands. An important amount of this total is then donated to organizations such as the Prins Bernhard Cultuurfonds and Stichting DOEN, which in turn

⁴⁵ OECD, 'Education' (OECD Better Life Index s.d.) <<http://www.oecdbetterlifeindex.org/topics/education/>>. accessed 5 May 2015.

⁴⁶ CoE Commissioner, 'Report following his visit to the Netherlands' <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2662990%20&SecMode=1&DocId=2218416&Usage=2>>.

provide support to the performing arts, visual arts, festivals, cultural projects and concerts. The other half will go to museums, windmills and historic buildings, including the Rijksmuseum, Vereniging der Hollandsche Molen and the Fries Museum.⁴⁷ However, cutbacks are also made on culture. For example, the Dutch government is cutting costs on the public TV channels. Out of the 21 broadcasting companies, only 8 can remain. Additionally, the budget is cut by 200 million by 2015.⁴⁸

4.5. Social and Medical Assistance

Inequalities in social and medical assistance are present in the Netherlands, and usually these inequalities are due to different opportunities and resources that are caused by the difference in social class, gender, country of origin, territory and age and other factors. These inequalities are clearly reflected in data and statistics, as 'not surprisingly, older people report poorer health, as do those who are unemployed, or who have less education or income. About 87% of adults with a disposable income in the top 20% in the Netherlands rate their health as 'good' or 'very good', compared to about 67% for those with a disposable income in the bottom 20%'.⁴⁹

With the objective of dealing with this matter, over the past decade the Dutch government has pursued a research-based approach to deal with the socioeconomic inequalities in health and the most recent phase in this approach is the development of a strategy aimed at reducing health inequalities in the Netherlands by an independent committee.⁵⁰ An example of this new approach could be found in the URBAN40. This is a quasi-experimental study on the health impact of a neighbourhood program that started in 2006 under the left-centre government, but was implemented since mid 2008. The main purpose of this study is to improve living conditions and social position of 40 'Attention Districts'. The government decided to focus on the districts

⁴⁷ 'BankGiro Lotterij' (rijksmuseum.nl) <<https://www.rijksmuseum.nl/en/join-us/funds/bankgiro-lottery>> accessed 5 May 2015.

⁴⁸ 'Wat is de overheid van plan met de publieke omroep?' (Rijksoverheid.nl s.d.) <<http://www.rijksoverheid.nl/onderwerpen/media-en-publieke-omroep/vraag-en-antwoord/wat-is-de-overheid-van-plan-met-de-publieke-omroep.html>> accessed 5 May 2015.

⁴⁹ OECD, 'Health' (OECD Better Life Index s.d.) <<http://www.oecdbetterlifeindex.org/topics/health/>> accessed 5 May 2015.

⁵⁰ A Kunst, D Kramer, M Droomers, B Jongeneel, K Stronks, 'Health Impacts of the Dutch National Urban Regeneration Program for 40 Priority Districts: The URBAN40 project' [2014] 1.

due to the fact that health inequalities tend to be greater in urban areas with disadvantaged and poor populations, affecting, as a result, all city residents.⁵¹

Some measures, such as the decentralization of youth mental health care, have been considered by the Children's Ombudsman, as possibly leading to a number of difficulties; concretely, the Children's Ombudsman has emphasised that the Netherlands such ensure proper monitoring of the municipalities' work in this respect, particularly by establishing a standardised monitoring tool.⁵²

The problem in the Netherlands with regards to social and medical assistance, therefore, 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.⁵³

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

In the Netherlands education is organised around a centralised system and policy, developed on the basis of the right to education guaranteed by article 23 of the Constitution. This article falls within the chapter containing the basic rights, according to the Constitution itself being all equal in value and importance. As such the right to education enshrined in this article is absolute, as well as equality between public mainstream school and special schools, both to be financed by the state. Furthermore, the government is responsible for funding and economically sustaining

⁵¹ WHO, *Hidden Cities: Unmasking And Overcoming Health Inequities In Urban Settings* (World Health Organization, Geneva 2010)
<http://apps.who.int/iris/mobile/bitstream/handle/10665/44439/9789241548038_eng.pdf?sequence=1>
accessed 5 May 2015.

⁵² Children's Ombudsman, Marc Dullaert, 'Lessons from Denmark', ESCAP.

⁵³ 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>>.

all schools in the country, so as to guarantee equality between them even further. Overall therefore the article confirms the importance given by the Dutch government to education, highlighted also by the fact that municipalities are required and have the duty to provide for sufficient primary schools.

However, there is more than the mere right to education. Independence, integration and participation in community life are other rights that must be guaranteed to all those affected by disabilities, irrespective of the nature and origin of such disability, as confirmed in article 15 ESC (European Social Charter). As a consequence article 15(1) ECS highlights the necessity to develop efficient measures aimed at guidance, education and vocational training to be offered them is of fundamental importance.

Different types of schools are part of the Dutch educational system and together they offer different curricula aimed at meeting the pupils' needs in the most efficient way and special education is guaranteed especially to those experiencing learning and behavioural difficulties. The framework upon which the educational system is organised comprises the Primary Education Act (WBO) and the Secondary Education Act (WVO). Starting then from primary education, the system is divided between general primary school, mainstream schools that also cater for pupils with special needs and special schools for children with difficulties and disabilities, targeted to all children between four and twelve years. The latter categories are referred to SBAO since 1998, when schools for children with learning and behavioural difficulties (lom) and children with moderate learning difficulties (mlk) were converted into this new system. This type of special education is provided for through the Special Education Interim Act (ISOVSO).

It is important to remember that aim of the Dutch policy is referred to as *passend onderwijs* (Education that fits) and is aimed at guaranteeing the most suitable type of education especially to those requiring special educational needs and in order to do that every single school has a primary responsibility, since it must be able to provide education and support to all kids, independently of their specific educational needs. In this way the school must guarantee that

every child attending it won't be left behind, e.g. by pursuing cooperation between schools and other organisations and institutions dealing with the care and well-being of children.⁵⁴

Special schools, as stated, are present, but part of the policy mentioned above is the reduction of the number of kids sent to those institutions. For this reason access to the latter is more restricted and there is an emphasis on the possibility to integrate the child in the mainstream education system and offering in return peripatetic supervision from (secondary) special schools. To understand in practice what has happened recently, since the beginning of this decade the number of kids receiving such supervision amounted roughly to 20,000 and is still in constant increase, while the decade before only about 10,000 children followed this path.⁵⁵ Indeed, when possible children with disabilities are encouraged to attend mainstream schools, but a final decision is always up to the parents.⁵⁶ Mainstream schools can apply for extra funding to meet the costs incurred in accommodating children with special needs (such as modifications to the building).

Special schools are organised on a regional level ever since the introduction in 2003 of the law on Expertise Centres, which led to the creation of local consortia organised in four blocks, each addressed to different disabilities. Indeed, the first one refers to visual disabilities, the second to hearing and communicative disabilities, the third to physical, intellectual and multiple disabilities and the fourth to behavioural disorders.⁵⁷ It is therefore evident how the Dutch educational system aims at addressing these disabilities efficiently by providing for different curricula and special types of education organised on the basis of the type of disability. The organisation on a regional level is fundamental, because it guarantees a better access to special education, since such schools are located all around the country, not making access to special schools harder for children with disabilities. Indeed each municipality is responsible for the educational needs of all

⁵⁴ European Agency for Special Needs and Inclusive Education, 'Netherlands - Special needs education within the education system' <<https://www.european-agency.org/country-information/netherlands/national-overview/special-needs-education-within-the-education-system>> accessed 5 May 2015.

⁵⁵ European Agency for Special Needs and Inclusive Education, 'Netherlands - Special needs education within the education system' <<https://www.european-agency.org/country-information/netherlands/national-overview/special-needs-education-within-the-education-system>> accessed 5 May 2015.

⁵⁶ Anglo Info South Holland, 'Special Needs Education in the Netherlands' <<http://southholland.angloinfo.com/information/family/schooling-education/special-needs-education/>> accessed 5 May 2015.

⁵⁷ European Agency for Special Needs and Inclusive Education, 'Netherlands - Special needs education within the education system' <<https://www.european-agency.org/country-information/netherlands/national-overview/special-needs-education-within-the-education-system>> accessed 5 May 2015.

children in its area, having the responsibility *inter alia* to provide for access to education and for transports.⁵⁸ In accordance with the Compulsory Education Act, municipalities therefore have the duty to control whether pupils have been admitted as necessary and such a task is carried out in each area by a local compulsory education office.

The legal basis for the existence of two different types of schools is to be found first of all in the concept of equality before the law. Indeed a fundamental value of the Dutch Constitution is the prohibition of discrimination. Being absolute and admitting restriction only if an objective justification is present, the article clearly provides *inter alia* for equal treatment for disabled children in respect of the rights to education. Moreover, together with the division of education into different layers, another important measure relied upon in the Netherlands is a financial mechanism based on the singular student. This means that each child meeting some set criteria is allowed to choose between special or mainstream education and in the second case is also allowed to ask (or not to ask) for peripatetic supervision.⁵⁹

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

When dealing with disabled people and employment opportunities, equal treatment covers a fundamental role. Indeed according to Dutch legislation employees cannot be treated in a less favourable way due to religion, race, gender, nationality, sexual orientation, age, handicap or chronic illness and other grounds for discrimination.⁶⁰ Considering that disabled persons cannot

⁵⁸ Anglo Info South Holland, 'Special Needs Education in the Netherlands' <<http://southholland.angloinfo.com/information/family/schooling-education/special-needs-education/>> accessed 5 May 2015.

⁵⁹ European Agency for Special Needs and Inclusive Education, 'Netherlands - Special needs education within the education system' <<https://www.european-agency.org/country-information/netherlands/national-overview/special-needs-education-within-the-education-system>> accessed 5 May 2015.

⁶⁰ Ministerie van Sociale Zaken en Werkgelegenheid, 'Living and working in the Netherlands: Information for European workers in the Netherlands' (Order number 148E, January 2009) <<http://www.google.nl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=0CEUQFjAE&url=http%3A%2F%2Fwww.government.nl%2Ffiles%2Fdocuments-and->

be integrated in the social and working environment under normal conditions, in the Netherlands several instruments have been available and can be relied upon. This was done also because, being a Member State of the European Union, the country is obliged to enact legislation to prohibit discrimination towards people with disabilities in the field of employment and professional education, as required by Directive 2000/78/EG, passed in November 2000.

The main concept upon which the employment policy and organisation are therefore based is the principle of equality and the prohibition of discrimination on grounds of disability or chronic illness. As such this is guaranteed primarily by the Equal Treatment Act 2003, which states inter alia that discrimination is prohibited both in relation to the offer of an employment, to the entrance into it and to the termination of it.⁶¹

In order to guarantee the most extensive and efficient protection, the Dutch disability policy has undergone some changes during the last decade, e.g. in 2006 the Work and Income Employment Capacity Act (WIA) took the place of the Invalidity Insurance Act (WAO). The two main aims of the new WIA legislation are the promotion of an effective reintegration process in the working arena and the protection of the income to be guaranteed to those workers who due to the disability cannot be fully active in the work.⁶² Indeed the idea is that training and guidance could be able to offer better opportunities in relation to the approach a disabled person can have to the open labour market and to the concrete opportunities to choose from. Some of the measures introduced focus on support through job coaching, training on the job and ongoing support. Adults with disabilities are indeed offered the possibility to be integrated in the job market through the Disability Reintegration Act (REA) and through (re)training and schooling. In this regard, with the aim of allowing disabled to exercise their freedom of choice when being integrated in the society, since 2004 it is possible to elaborate an own IRO (Individual Reintegration Plan), according to which the disabled can choose both the reintegration company

[publications%2Fleaflets%2F2011%2F09%2F02%2Fliving-and-working-in-the-netherlands%2Fliving-and-working-in-the-netherlands.pdf&ci=qivwVOKkDpHcasGogNgL&usg=AFQjCNGMyfoPJAGKkPooFpYbVH4uMdm5qw&sig2=v-IPN-OSE-EjKrm0oTnZaQ&bvm=bv.87269000,d.d2s](#)> accessed 5 May 2015.

⁶¹ Section 4, Equal Treatment Act 2003.

⁶² 'Sickness and Disability Schemes in the Netherlands' (OECD Disability Review, November 2007), 12 <www.oecd.org/social/soc/41429917.pdf> accessed 5 May 2015.

and the means to which he will resort, i.e. education, training or work placement.⁶³ The procedure to follow to set up such a plan starts with cooperation between the individual in question and the UWV, who then together with the company analyses the plan suggested and comes up with a concrete reintegration process. Next to this, employees can apply for benefits if someone is hired with certain disabilities.

The Dutch policy makes a fundamental distinction between those who are permanently and those who are temporarily incapacitated. For those falling under the first category an adequate income is guaranteed by the Government on the basis of the IVA (Regulation governing income protection for individuals registered as fully and sustainably incapacitated), which provides for a payment amounting to the 75% of the full daily wage.⁶⁴ Furthermore benefit is considered to be payable until the age of 65.⁶⁵ A clear definition of what permanently incapacitated means is to be found in article 4 of the WIA: there must be a medically stable or deteriorating situation, with a disability percentage of 80% and an yearly assessment must be carried out during the first five years after they become entitled to the benefit to verify that the condition of fully disabled is respected.⁶⁶ If the percentage is smaller than the one previously required, but bigger than 35%, another type of benefit can be provided under the WIA, i.e. the WGA benefit, a type of occupational disability benefit.⁶⁷ As a consequence the disabled is guaranteed 70% of the previous wage.⁶⁸

Furthermore the entry into the working world is encouraged inter alia by stimulating employers to hire and keep such employees with disabilities, e.g. through the possibility to be charged for

⁶³ 'Sickness and Disability Schemes in the Netherlands' (OECD Disability Review, November 2007), 26 <www.oecd.org/social/soc/41429917.pdf> accessed 5 May 2015.

⁶⁴ *ibid.*

⁶⁵ Frans Pennings, 'The New Dutch Disability Benefits Act: The Link between Income Provision and Participation in Work' (2011), 86 <<http://dspace.library.uu.nl/bitstream/handle/1874/242537/PenningsNew%20Dutch%202011.pdf?sequence=3>> accessed 5 May 2015.

⁶⁶ *ibid.*

⁶⁷ Ministerie van Sociale Zaken en Werkgelegenheid, 'Living and working in the Netherlands: Information for European workers in the Netherlands' (Order number 148E, January 2009), 14 <<http://www.government.nl/files/documents-and-publications/leaflets/2011/09/02/living-and-working-in-the-netherlands/living-and-working-in-the-netherlands.pdf>> accessed 5 May 2015.

⁶⁸ Pennings, 'The New Dutch Disability Benefits Act: The Link between Income Provision and Participation in Work' (2011), 88.

part of the costs of disability benefits.⁶⁹ Other advantages are no risk policies, subsidies and contributions for social security.⁷⁰ In relation to the subsidies given, when employing a disabled the employer can apply for employee insurance contributions, i.e. WIA and WW. The first requirement to be fulfilled to qualify is that the employee must receive a benefit on the basis of WIA and secondly that he must present a document of the Employee Insurance Agency (UWV) stating that he had been given benefits by the state in the period before the employment, to be issued by the municipality.⁷¹ Moreover, the employer can apply for a mobility bonus, to be received for a period up to 3 years. If given, it will allow him to receive EUR 7,000 per year for every occupationally disabled person employed and given a minimum wage and EUR 3,500 per year for an occupationally disabled person who, while working, is given wage dispensation.⁷² Subsidies can be given also if required in order to set up the facilities required by the disabled person, as long as the costs are not marginal.⁷³ Furthermore, other benefits have also been introduced and guaranteed for those affected by disabilities, e.g. in accordance with the Act on Facilities for the Disabled, it is possible to apply for various adaptations to means of transportation and other facilities also on the working place.

According to EU law, employers are required to provide for reasonable accommodation. However, in the Netherlands such terms are substituted with the term 'effective accommodation' and the standard to be respected is determined by considering when it would become a disproportionate burden to the employer who would have to offer the accommodation. Some factors therefore must be considered, e.g. the size of the company, the necessary investment to realise the accommodation, availability of financial support and financial capacity of the company.⁷⁴

⁶⁹ Jacqueline Schoonheim and Jose Smits, 'Report on the employment of disabled people in European countries' (Academic Network of European Disability experts, 2007) <<http://www.disability-europe.net/content/aned/media/NL%20Employment%20report.pdf>> accessed 5 May 2015.

⁷⁰ 'Sickness and Disability Schemes in the Netherlands' (OECD Disability Review, November 2007), 25 <www.oecd.org/social/soc/41429917.pdf> accessed 5 May 2015.

⁷¹ 'Contribution discount for employers' (Answersforbusiness.nl 2015) <<http://www.answersforbusiness.nl/subsidy/contribution-discount-employers>> accessed 5 May 2015.

⁷² 'Mobility bonus for employers' (Answersforbusiness.nl 2015) <<http://www.answersforbusiness.nl/subsidy/mobility-bonus>> accessed 5 May 2015.

⁷³ 'Sickness and Disability Schemes in the Netherlands' (OECD Disability Review, November 2007), 29 <www.oecd.org/social/soc/41429917.pdf> accessed 5 May 2015.

⁷⁴ Agnes van Wijnen, 'Disability rights going Dutch' <http://www.disabilityworld.org/01-03_03/gov/dutch.shtml> accessed 5 May 2015.

Furthermore, when a person affected by disabilities cannot enter the labour market, he or she can resort to sheltered employment, i.e. the creation of working opportunities for those who cannot work in the open labour market yet. In this case preparation will be offered to those persons so that they will eventually obtain a job and in the Netherlands. This is dealt through the Sheltered Employment Act (WSW). Such measures fall under the responsibility of municipalities, which are given by the state, who finances the project, subsidies for the implementation of the program.⁷⁵ This approach, aimed at reaching a final stage of a regular employment contract, was given much importance by the Dutch government, which as such established as well a 'no risk policy' according to which when offering a position to a WSW person an employer does not risk a financial loss.

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

Due to the imposition of austerity measures, as other countries, the Netherlands also had to adapt their policies and implement some changes. Indeed the government decided to withdraw or limit the employment funding. Concretely this means that regional governments had to deal with both smaller contributions coming from the central Government and with a decentralisation of welfare arrangements which reserves savings for the regions which are considered to be able to make use of them most efficiently.⁷⁶ Such changes, to be implemented between 2011 and 2017, amounted on average to EUR 7 billion a year and led to an incredible rise of the unemployment rate, under 5% in the 90s and up to 8.5% in 2013.⁷⁷

One of the most discussed proposals was to require disabled people perform some form of community service in order to be given in return some benefits such as access to the health care

⁷⁵ 'Sickness and Disability Schemes in the Netherlands' (OECD Disability Review, November 2007), 39 <www.oecd.org/social/soc/41429917.pdf> accessed 5 May 2015.

⁷⁶ Peter Liesing, Ulrike Weske and Eva Knies, 'Social dialogue and the public services in the aftermath of the economic crisis: strengthening partnership in an era of austerity - the case of the Netherlands' (European Commission Project, 2012) <<https://www.kcl.ac.uk/sspp/departments/management/Netherlands---Executive-Summary.docx>> accessed 5 May 2015.

⁷⁷ Oxfam, 'The true cost of austerity and inequality: the Netherlands case study' (Oxfam case study, 2013) <<https://www.oxfam.org/sites/www.oxfam.org/files/cs-true-cost-austerity-inequality-netherlands-120913-en.pdf>> accessed 5 May 2015.

system and the social services offered by the country.⁷⁸ Such a proposal was made in 2013 by the Health Minister Martin van Rijn. This led to a shift from a system in which such service was required only in the case of unemployed people to one in which it is imposed also on the disabled. This is a clear confirmation of the fact that austerity measures did have an impact on the social policies, also in the Netherlands. The reasons for this decision were the limitations imposed on the government's budget and the King himself talked in the *Troonrede*, a piece of text spoken out by the King to present the new financial policy, about the need of a bigger personal responsibility for every citizens, based on the fact that less citizens couldn't have relied on the country as much as before.⁷⁹ Furthermore, in order to divide the resources in the most efficient way, a reassessment of the disability eligibility and a cut in the allowances and benefits has to be carried out and the periods of services offered to disabled people were considerably shortened.⁸⁰

The general cut in available working places had as a consequence an even more drastic cut in the number of disabled employed, but problems exist also in relation to the educational system, since now it is affected by the imposed wage freeze and is given reduced funds.⁸¹ The austerity measures introduced in the Netherlands do not amount to a real breach of the Charter, however, they still have an impact on human right and in particular on the most vulnerable groups. In fact, concerns were presented by the CoE Commissioner, Nils Muižnieks, after his visit to the Netherlands a couple of years ago.⁸²

5.2. Children and Young Persons (Article 17 ESC)

⁷⁸ Palash Gosh, 'No Dutch Treat: Old, Sick And Disabled People In Holland May Have To Work To Receive Social Services' *International Business Times* (4 October 2013) <<http://www.ibtimes.com/no-dutch-treat-old-sick-disabled-people-holland-may-have-work-receive-social-services-1415088>> accessed 5 May 2015.

⁷⁹ *ibid.*

⁸⁰ Harald Hauben, Michael Coucheir, Jan Spooren, Donal McAnaney and Claude Delfosse, 'Assessing the impact of European governments' austerity plans on the rights of people with disabilities' (Bernard Brunhes International BPI group, October 2012) <http://www.enil.eu/wp-content/uploads/2012/12/Austerity-European-Report_FINAL.pdf> accessed 5 May 2015.

⁸¹ Peter Liesing, Ulrike Weske and Eva Knies, 'Social dialogue and the public services in the aftermath of the economic crisis: strengthening partnership in an era of austerity - the case of the Netherlands' (European Commission Project, 2012) <<https://www.kcl.ac.uk/sspp/departments/management/Netherlands---Executive-Summary.docx>> accessed 5 May 2015.

⁸² CoE Commissioner, 'Report following his visit to the Netherlands', Comm.DH(2014)18 <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2662990&SecMode=1&DocId=2218416&Usage=2>> accessed 16 June 2015.

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

Article 23 of the Dutch Constitution guarantees freedom of education. Children start with primary education, which includes a general and a special primary education as well as an advanced special education for children suffering from behavioural and learning difficulties. Generally, they all start as from their fourth year of age (legally from their fifth year) until they turn 12.⁸³ The Compulsory Education Act of 1969 lays down that children need to attend school *'from the first school day of the month following their fifth birthday'*, the aforementioned Act requiring municipal authorities to check whether children below school-leaving age are effectively enrolled in the institution where they reside.⁸⁴ After primary school comes secondary education. Between primary and secondary school children are required to take a test, i.e. Cito test, on the basis of whole results schools advice the parents about the type of education the child should follow after primary education.⁸⁵ Such a multiple-choice question test allows to verify which branch best suits the child, but no other specific test is required.⁸⁶ This happens because secondary education includes three different branches, namely: (1) preparatory secondary vocational education (VMBO); (2) senior general secondary education (HAVO); (3) pre-university education (VWO). It must be pointed out that the Ministry of Education, Culture and Science is responsible for the financing of schools.⁸⁷ The country's main goal is to provide young people with a basic qualification when leaving school. Free and compulsory education is the norm in the Netherlands. As a result, a Bill has been adopted by the Parliament in 2001 in order to tackle

⁸³ De Kempel, 'The Education System in the Netherlands' (de Kempel.nl s.d.) <<http://www.kempel.nl/dekempel/documents/educationssysteminthenetherlands.pdf>> accessed 5 May 15.

⁸⁴ Cor J.W. Meijer, 'Legal System - Netherlands ' (The European Agency for Special Needs and Inclusive Education, 26 March 2010) <<https://www.european-agency.org/country-information/netherlands/national-overview/legal-system>> accessed 5 May 15; See also Compulsory Education Act 1969.

⁸⁵ Marleen van der Lubbe, 'The End of Primary School Test ' (Iaea.info) <http://www.iaea.info/documents/paper_1162d212f6.pdf> accessed 18 June 2015.

⁸⁶ 'Secondary School' (I amsterdam 2015) <<http://www.iamsterdam.com/en/local/move/dutch-education-system/secondary-school>> accessed 5 May 15.

⁸⁷ P Leisink, U Weske, E Knies, 'Social dialogue and the public services in the aftermath of the economic crisis: strengthening partnership in an era of austerity in the Netherlands National report' [2012] 1, 37.

early school leaving in ordinary and special secondary schools.⁸⁸ Subsequently, in august 2007 the Compulsory Education Act was amended. Accordingly, children need to receive a basic qualification at the secondary education level (*HAVO*, *VWO* or secondary vocational education (*MBO-2*)) besides the obligation to take part in mandatory courses until 16 years-old.⁸⁹ This is extremely stimulating not only for education but also on the social-integration side.

In order to help providing sufficient and adequate education for children, the Netherlands grants a so-called family allowance.⁹⁰ The latter is made in order to provide a contribution in bringing up children below 18 years old, something that is extremely useful and effective in promoting education, as parents may decide to invest that amount of money received into their child's school. Furthermore, after the secondary school one has the possibility to pursue a higher education. The latter comprises higher professional education (*HBO*) and university education (*WO*).⁹¹ In this respect, the Dutch government offers grants to families having difficulties in covering living costs or university's tuition fees. Moreover, parents of child who do not receive student finance can apply for a tax benefit for the child's maintenance.⁹² It can be said that the Dutch government does take measures in order to facilitate students' access to universities (tertiary education) once the compulsory courses or primary and secondary school ends. However, cutbacks are also made, by cutting the study allowance from 1 September 2015 onwards for all students.

Overall the number of schools is highly sufficient, as confirmed by the fact that more than 6,800 primary schools are present in the Dutch territory. In order to understand how strong the educational system is we can take the example of Amsterdam. In the capital there are 190 primary schools and 30 secondary schools, a number which allows every family to have access to

⁸⁸ Cor J.W. Meijer, 'Legal System - Netherlands ' (The European Agency for Special Needs and Inclusive Education, 26 March 2010) <<https://www.european-agency.org/country-information/netherlands/national-overview/legal-system>> accessed 5 May 15.

⁸⁹ *ibid.*

⁹⁰ Ministry of Social Affairs and Employment, 'Living and Working in the Netherlands' (2009) 3, 16 and 21.

⁹¹ Government of the Netherlands, 'Higher Education ' (Government of the Netherlands s.d.) <<http://www.government.nl/issues/education/higher-education>> accessed 5 May 15.

⁹² Eurydice, 'Modernisation of Higher Education in Europe: Funding and the Social Dimension' (2011) 7, 84.

education for its children.⁹³ Furthermore, students benefit from an interpersonal teacher-student relationship.⁹⁴

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

In the Netherlands, the term youth refers to all children and young people aged between 0 and 24.⁹⁵ The protection and help for the most vulnerable of those children is to be guaranteed first of all by the provinces, which are said to be able to put into action a better protection system due to a more specific and small scale approach. Indeed there is not a national law or a Ministry responsible for coordinating such policies, that fall falling under the control of the 12 provincial authorities, which are given a great degree of autonomy in developing youth policies and fights against child poverty.⁹⁶ This happens because the Netherlands is a decentralised country.

The wellbeing of a child is to be guaranteed first of all by the family, but in case problems arise with the latter youth care agencies are required to intervene. In relation to parenting problems, protection is offered to the children through the Youth Care Act, which provides for either in family support or support in another institute. Such protection is offered until the 18th year to all of those experiencing problems which cannot be solved by resorting to the general educational, health care and social support.⁹⁷ Despite the fact that the policies are administered on a local level, the state is still responsible for controlling them through different Ministries. Indeed the overall policy is supervised by the Ministry of Health, Welfare and Sport, while child care is dealt with by the Ministry for Security and Justice, responsible inter alia for the Child Care and

⁹³ Iamsterdam, 'Dutch Education Overview' (Iamsterdam.com 2015)

<<http://www.iamsterdam.com/en/local/move/dutch-education-system>> accessed 18 June 2015.

⁹⁴ Eindhoven School of Education, 'The differential effect of the teacher-student interpersonal relationship on student outcomes for students with different ethnic backgrounds.' (Ncbi.com 2010)

<<http://www.ncbi.nlm.nih.gov/pubmed/19619406>> accessed 18 June 2015.

⁹⁵ Netherlands Youth Institute, 'Child protection and welfare' <<http://www.youthpolicy.nl/yp/Youth-Policy/Youth-Policy-subjects/Child-protection-and-welfare>> accessed 5 May 2015.

⁹⁶ T. Nederland, J. Mak, M.M.J. Stavenuiter, H.R.A.M. Swinnen and Verwey-Jonker-Institute, 'Tackling child poverty and promoting the social inclusion of children' (On behalf of the European Commission DG Employment, Social Affairs and Equal Opportunities, May 2007), 8

<<http://ec.europa.eu/social/BlobServlet?docId=5157&langId=en>> accessed 5 May 2015.

⁹⁷ Ministry Of Health, Welfare and Sport, 'Youth Care in the Netherlands: the Youth Care Act' (International Publication Series Health Welfare and Sports nr.21, 2005) 5

<http://www.law.yale.edu/rcw/rcw/jurisdictions/eurow/netherlands/Neth_Youth.pdf> accessed 5 May 2015

Protection Board.⁹⁸ Indeed ministers delegate to the provinces the responsibility for the child and youth care and to municipalities for the youth policy, but the primary responsibility still belongs to the ministerial departments.⁹⁹ Coordination therefore plays a fundamental role and for this reason the government requires each province to lay down a policy framework every four years, which has to be approved by the government itself before being adopted by the provincial authorities.¹⁰⁰ However, also after the approval of a specific plan, the region can change the plan in order to make improvements. Apart from the control obtained and imposed in this way, a new principle was introduced by the Act, according to which entitlement to youth care is to be governed by the fact that a person can receive it as long as the agency considers it favourable and as long as some requirements, such as a time limit and the appropriate nature of the care, are respected.¹⁰¹ Furthermore, the quality of the care is also provided for through a coaching service, assigned to the specific case in order to guarantee not only that the families in difficult conditions, if present, still respect the needs of the children but also to ensure that, if a family is not present, the institute responsible for the care of the child does take care of him efficiently, with the aim of 'ensuring that the various forms of care are harmonised and supporting the family as necessary'.¹⁰² It follows that the main ways in which control is exercised over the care policies are the imposition of some standards and requirements to be respected before providing the care and the control exercised over the institute once the care has started to be provided, with the aim of ensuring coordination and effectiveness.

⁹⁸ European Agency for Special Needs and Inclusive Education, 'Netherlands - Special needs education within the education system' <<https://european-agency.org/country-information/netherlands/national-overview/special-needs-education-within-the-education-system>> accessed 5 May 2015.

⁹⁹ Netherlands Youth Institute, 'Youth Policies in the Netherlands: an overview of policies, structures and provisions concerning children and young people living in the Netherlands' (2007) 5 <<http://planipolis.iiep.unesco.org/upload/Youth/Netherlands/NetherlandsYPOverview.pdf>> accessed 5 May 2015.

¹⁰⁰ Ministry Of Health, Welfare and Sport, 'Youth Care in the Netherlands: the Youth Care Act' (International Publication Series Health Welfare and Sports nr.21, 2005) 7 <http://www.law.yale.edu/rcw/rcw/jurisdictions/eurow/netherlands/Neth_Youth.pdf> accessed 5 May 2015.

¹⁰¹ Ministry Of Health, Welfare and Sport, 'Youth Care in the Netherlands: the Youth Care Act' (International Publication Series Health Welfare and Sports nr.21, 2005) 6 <http://www.law.yale.edu/rcw/rcw/jurisdictions/eurow/netherlands/Neth_Youth.pdf> accessed 5 May 2015.

¹⁰² Cor J.W. Meijer, 'Legal System - Netherlands' (The European Agency for Special Needs and Inclusive Education, 26 March 2010) <<https://www.european-agency.org/country-information/netherlands/national-overview/legal-system>> accessed 5 May 15.

A comparison between the care provided by institutes and by foster families highlights how in the Netherlands the second option is preferred. Foster care can be either long or short term. Indeed in emergency situations, foster carers will look after under age children for a maximum of four weeks, after which the child can return home, go to another family or to a care home. On the other hand when dealing with long term care, the child stays with the family until he is 18.¹⁰³

As stated in the Youth Care Act, when making support available the needs and condition of the child must be the focus. Indeed one of the basic principle upon which the act is based is the fact that the needs of the client come first, since now such needs are taken as a basis and the care is not organised according to what was given to institutes and organisations anymore.¹⁰⁴ When putting a child under foster care, the needs and wishes are to be considered by addressing him to the most suitable form of foster care. For this reason the Netherlands encourage to resort to foster care provided by family or friends, i.e. kinship care, since a known person will have the child feel more at ease and will make it easier for him to adapt to the new situation.¹⁰⁵ Furthermore, respect for their well being is guaranteed also through several rights given to foster children, e.g. the right to know the decisions made about them, to have access to the file and most of all to have contact with the family, the latter being a necessary element especially for the psychological condition and stability of the child. Moreover, the possibility to have foster care is considered only if the Youth Care Office suggested it, therefore it must be considered necessary when weighting the psychological and physical condition of the child and the need to provide care for him.¹⁰⁶ Children who are asylum seekers and who are unaccompanied receive foster thanks to the activity of Foundation Nidos, one of the many organisations in the Netherlands responsible for dealing with those children.¹⁰⁷ Children who are less than 12 are put in families with a similar culture as the original family, in order to make it easy for the kid to stay with the

¹⁰³ Government of the Netherlands, 'Types of foster care' <<http://www.government.nl/issues/foster-care/types-of-foster-care>> accessed 5 May 2015

¹⁰⁴ Government of the Netherlands, 'Higher Education ' (Government of the Netherlands s.d.) <<http://www.government.nl/issues/education/higher-education>> accessed 5 May 15

¹⁰⁵ Government of the Netherlands, 'Foster care' <<http://www.government.nl/issues/foster-care/foster-children>> accessed 5 May 2015

¹⁰⁶ *ibid.*

¹⁰⁷ Dutch National Contact Point for the European Migration Network, 'Unaccompanied minors in the Netherlands ' (Ec.europa.eu 2010) 5 <http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/19a_netherlands_national_report_on_unaccompanied_minors_final_version_2feb10_en.pdf> accessed 18 June 2015.

foster family, while older children are allocated by the COA according to their individual development.¹⁰⁸ After an initial period with a foster family, other alternatives are possible for asylum children. In fact, they can be put into a Child Residential Group, where continuous supervision is offered and where children between 13 and 17.5 years are accepted, otherwise another option is a Small Residential Unit, where 28 hours of supervision a week are guaranteed for a group of 4 minors between 15 and 17.5 years.¹⁰⁹ Furthermore, another alternative where 24 hours supervision is offered is a Campus, where up to 100 children can reside as long as they are between 15 and 18 years.¹¹⁰

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

The Netherlands strives to provide education for all. Primary and secondary schools are free of charge, even though parents can be asked to pay certain things such as swimming lessons, school trips etc. Beside the regular schooling programme there are also international schools where children learn French, English and other languages. For these kinds of schools, parents need to pay fees of inscription.¹¹¹ The Primary Education Act and the Secondary Education Act (as amended) include the essential sentence specifying that education shall '*stimulate active citizenship and social integration*'. To attain this goal, the Dutch system has implemented already in 1969 the Compulsory Education Act which –as mentioned earlier- has been then amended in 2007, including the obligation for students to take part to courses until 16 years old as well as a compulsory basic education obtained through a certificate at *HAVO*, *VWO* or *MBO-2* level.¹¹²

¹⁰⁸ Dutch National Contact Point for the European Migration Network, 'Unaccompanied minors in the Netherlands' (Ec.europa.eu 2010) 7 <http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/19a_netherlands_national_report_on_unaccompanied_minors_final_version_2feb10_en.pdf> accessed 18 June 2015.

¹⁰⁹ *ibid*, 35.

¹¹⁰ *ibid*.

¹¹¹ 'Primary and secondary education' (Just Landed.com s.d.) <<https://www.justlanded.com/english/Netherlands/Netherlands-Guide/Education/Primary-and-secondary-education>> accessed 5 May 15.

¹¹² Cor J.W. Meijer, 'Legal System - Netherlands' (The European Agency for Special Needs and Inclusive Education, 26 March 2010) <<https://www.european-agency.org/country-information/netherlands/national-overview/legal-system>> accessed 5 May 15.

Moreover, higher education (also known as tertiary education) in the Netherlands consists of three levels: bachelor, master and PhD degree. It has a binary higher education system, meaning that there exists two types of higher education, namely research-oriented and profession-oriented. Contrarily to the primary and secondary education, tertiary education is subject to payment. A possible explanation to this is that the Compulsory Education Act only concerns mandatory primary and secondary education, thus university is subject to the free choice of pupils. From recent statistics, it is showed that full-time students need to pay around EUR 1,906, and part-time students approximately EUR 1,500.¹¹³ Compared to Belgium, Switzerland and Spain fees are much higher in the Netherlands. For instance, it did not implement any measure in the attempt to provide free access to these types of education but the Dutch government offers grants to students in order to support them in paying either tuition fees or living costs. The amount depends on both whether the student still lives at home and on the parents' income. The Dutch Constitution centres on an equal funding of all public and private schools in the Netherlands. Statutory regulations need to be respected, these being that there must be at least 260 students, teachers who possess a license as well as '*a school plan with attainment targets approved by the government-appointed school inspector*'.¹¹⁴ Furthermore, until the age of sixteen children do not need to pay any fee –except for occasional fees such as those for books. From sixteen until eighteen, students pay an annual tuition fee –although there are exceptions for low-income families, which may apply for student grants or loans until twenty-seven years old. According to a report from 2008, '*the Netherlands spent 5.6% of its GDP on education, just below the OECD average of 5.9%. The same year, the Netherlands spent USD 10,704 per student in all levels of education*'.¹¹⁵ Since 2006, the Ministry decided to provide funding to all primary schools in block grants in order to secure the autonomy of such institutions over spending.¹¹⁶ In addition, since Dutch schools are free of fees, 'hidden' costs need to be paid, these including lengthier school trips,

¹¹³ B Jongbloed, 'Funding higher education: a view from Europe ' (2008) 3, 16.

¹¹⁴ 'Netherlands - System and School Organization ' (Centre on International Education Benchmarking 2009) <<http://www.ncee.org/programs-affiliates/center-on-international-education-benchmarking/top-performing-countries/netherlands-overview/netherlands-system-and-school-organization/>> accessed 5 May 2015.

¹¹⁵ *ibid.*

¹¹⁶ *ibid.*

lunchtime and after-school care.¹¹⁷ Low-income families may try to ask for some assistance from the State.

Concerning higher education, three types of institutions provide this: the government-funded ones, receiving funding from the Ministry of Education, Culture and Science or the Ministry of Economic Affairs, Agriculture and Innovation. The 'legal entities providing higher education' created on basis of the Higher Education and Research Act—not funded by the aforementioned ministries as they are free to decide on the amount of their fees, and finally the private-sector institutions, not covered by the Higher Education and Research Act.¹¹⁸ The list of government-funded universities is a *numerus clausus* one, which includes: Education, Economics, Behaviour and Society, Language and Culture, Engineering and Technology, Agriculture and the Natural Environment, and Health Care.¹¹⁹ Moreover, the Student Finance Act of 2000 is applicable to all students who started their higher education before the age of 30 and who satisfy certain given requirements and conditions to be entitled to financial assistance. The latter comprises a basic grant, a supplementary grant and an interest-bearing loan.¹²⁰ The system now is changing now. Whereas students would get an allowance if they studied, this allowance will be cut from the 1st of September 2015. The system will change into a social loan system, meaning that students are able to borrow their tuition against a low interest from the government. Fears are high that people will end up with large debts and that children from low income families will not take the step to go and study at universities as it is too expensive.

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue

¹¹⁷ 'Education in the Netherlands' (Expatica 2015) <http://www.expatica.com/nl/education/Education-in-the-Netherlands_100816.html> accessed 5 May 2015.

¹¹⁸ 'The Netherlands Higher Education System' (EuroEducation.net s.d.) <<http://www.euroeducation.net/prof/netherco.htm>> accessed 5 May 2015.

¹¹⁹ *ibid.*

¹²⁰ '08 - Netherlands - Financial support for students' (Studentnews.eu 2009) <<http://tertiary-education.studentnews.eu/s/2328/57788-tertiary-education/2910665-08-netherlands-financial-support-for-students.htm?c1=16138>> accessed 5 May 2015.

Statistics in 2011 showed youth unemployment rates in the Netherlands as the lowest in the European Union.¹²¹ Nowadays, *'unemployment Rate in Netherlands remained unchanged at 7.20 percent in January of 2015 from 7.20 percent in December of 2014'*.¹²² Meanwhile in 2013, youth unemployment reached 11.4% compared to the general unemployment rate which reached 8.3%.¹²³ All in all, it can be established that youth unemployment is higher than general unemployment rates, the Netherlands being one of the most well placed countries when it comes to unemployment in Europe nowadays. Nevertheless, at a time of economic crisis where young people are particularly vulnerable the central government had to take measures in order to prevent drastic consequences. Effectively, it invested EUR 50 million in 2013 and 2014 with the aim of reducing unemployment and getting more young people into work. In an international context, youth unemployment in the Netherlands is low: in 2013, it reached 11.4% compared to 23.1% in the entire euro zone and the net employment rate of young people was the highest in the EU (61.8% in the Netherlands and 32.3% in Europe).¹²⁴

In order to tackle and prevent that youth unemployment increases, measures have been adopted at a municipal and sectorial level. Municipalities have received extra funds for the years 2013-2015 and social partners and the government have concluded a so-called social agreement in 2013, consisting of reforms for the labour market and measures tackling unemployment in the short run.¹²⁵ The idea was that temporary contracts could be extended only 2 times instead of 3, thereby shortening the period of time that people would serve under a temporary contract. Subsequently, people would receive a permanent contract quicker. However, this assumption does not reflect reality. A nationally appointed ambassador is responsible from 2013 until 2015 for the supervision and control of the aforementioned measures. Finally, the Participation Act

¹²¹ Martijn Souren, 'Youth unemployment in the Netherlands lowest in the European Union' (Cbs Netherlands 2011) <<http://www.cbs.nl/en-GB/menu/themas/arbeid-sociale-zekerheid/publicaties/artikelen/archief/2011/2011-3420-wm.htm>> accessed 5 May 2015.

¹²² Index Mundi, 'Netherlands Unemployment rate' (Indexmundi.com 2014) <http://www.indexmundi.com/netherlands/unemployment_rate.html> accessed 5 May 2015.

¹²³ 'The World Factbook: Unemployment Rate' (Central Intelligence Agency s.d.) <<https://www.cia.gov/library/publications/the-world-factbook/fields/2129.html>> accessed 5 May 2015; Netherlands Youth Institute, 'Youth unemployment' (Youthpolicy.nl 2014) <<http://www.youthpolicy.nl/yp/Youth-Policy/Youth-Policy-subjects/Education-and-Youth-Unemployment/Youth-Unemployment>> accessed 5 May 2015.

¹²⁴ Netherlands Youth Institute, 'Youth unemployment' (Youthpolicy.nl 2014) <<http://www.youthpolicy.nl/yp/Youth-Policy/Youth-Policy-subjects/Education-and-Youth-Unemployment/Youth-Unemployment>> accessed 5 May 2015.

¹²⁵ *ibid.*

must be mentioned as its main aim will be to help people find work, thus reducing unemployment. Nevertheless, such an Act will be coming into force on 1 January 2015.¹²⁶

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

Since the start of the crisis in 2008, many banks and insurance companies needed financial help from the Dutch government. The total help received was equivalent to almost 30% of the total GDP and by 2012 EUR 80 billion were at risk of not being fully paid back to the government (which is the equivalent of 15% of the total Dutch GDP). Subsequently, in 2011 the State adopted austerity measures based on tax increases and budget cuts, to be implemented between 2011 and 2017 representing roughly more than 1% of the total GDP a year. This had an impact on the unemployment rate, which started to rise dramatically: between 2012 and 2013, employment fell of 1.9%. Since 1995, this is one of the greatest falls. According to statistics in fact, in January 2013 unemployment was recorded at 7.2%, reaching 8.5% in July 2013.¹²⁷ Not surprisingly, child-care services were also subject to a cut, an element playing an essential role in supporting and developing early education. The hardest consequences were seen in the care centers for children between 2 and 4. In this case families can choose between daycare centers, i.e. kinderdagverblijf, and playgroups, i.e. peuterspeelzaal, the different between those being that the former offer a longer time solution and the latter a part time one.¹²⁸ In order to guarantee access to such care for their children, parents in the Netherlands are given subsidies for child care which are paid by considering the income of the family and the total number of children who benefit from childcare.¹²⁹ As a consequence of the austerity measures subsidies were substantially cut in 2012 and this led to a situation in which parents were forced to pay an extra EUR 0.13 per hour for which no subsidies were given.¹³⁰ The number of children being sent to child care institutes was consequently reduced, as also the quality of the latter. A negative

¹²⁶ *ibid.*

¹²⁷ OXFAM, *The true cost of austerity and inequality : The Netherlands Case Study* (Oxfam GB , Oxford 2013), <<https://www.oxfam.org/sites/www.oxfam.org/files/cs-true-cost-austerity-inequality-netherlands-120913-en.pdf>> accessed 5 May 2015.

¹²⁸ Y Akgunduz, E Jongen, P Leseman and J Plantenga, 'Cutting from the future? Impact of a subsidy reduction on child care in the Netherlands' [2013] Tjalling C. Koopmans Research Institute, 5. Available at <http://www.uu.nl/sites/default/files/rebo_use_dp_2013_13-18.pdf> accessed 19 June 2015.

¹²⁹ *ibid.*

¹³⁰ *ibid.*, 6.

effect of children care and education was further brought indirectly also by the rising of the unemployment level for women, since mothers started also to resort to child care providers anymore and this had a negative influence in particular on those children that do not speak Dutch as a first language.¹³¹ The cuts introduced as a consequence of austerity in the Netherlands result to be, at least partially, in contract with the Charter. More specifically, Article 16 is aimed at guaranteeing the rights of a family and between those the right to financial assistance as part of family policy. In this light the state must ensure the existence of a sufficient child benefit scheme.¹³² Child care must then be easily accessible to all families and as such the cuts introduced by the Netherlands, since they made it harder for some families to benefit from the child care services due to limited resources, result to be in contrast with the Charter. According to UNICEF the Netherlands, even after the implementation and imposition of the austerity measures, still cover a leading position when it comes to child well-being.¹³³ In comparison with other countries, where the poverty rate for children goes up to 20%, the percentage in the Netherlands is between 6% and 8%. Together with the topic of poverty, also in relation to education the situation of the Netherlands is still satisfactory, with the country being in a top position also when considering the educational solutions and educational well-being of children.¹³⁴ Indeed, 'early childhood education is virtually universal in ...the Netherlands'.¹³⁵

It can be concluded that despite the fact that the Netherlands adopted austerity measures since the beginning of the economic crisis, these had a limited impact. However, according to the Netherlands Bureau for Economic Policy Analysis the Dutch government struggles to meet certain budget-deficit targets agreed to with the European Commission, something that has an impact on the fragile recovery from the economic crisis.¹³⁶ Education, amongst other things, has

¹³¹ Oxfam, 'The true cost of austerity and inequality: The Netherlands Case Study' (Oxfam.org 2013) 3 <<https://www.oxfam.org/sites/www.oxfam.org/files/cs-true-cost-austerity-inequality-netherlands-120913-en.pdf>> accessed 19 June 2015.

¹³² Secretariat of the ESC, 'Childrens\' rights under the European Social Charter' (Coe.int) 3 <http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Theme%20factsheets/FactsheetChildren_en.pdf> accessed 19 June 2015.

¹³³ Peter Adamson, 'Child well-being in rich countries: A comparative overview' (Innocent Report Card 11, UNICEF Office of Research, 2013), 3 <http://www.unicef-irc.org/publications/pdf/rc11_eng.pdf> accessed 5 May 2015.

¹³⁴ *ibid.*

¹³⁵ *ibid.*

¹³⁶ R Van Daalen, 'Dutch Growth Outlook Faces Further Blow From Austerity' [2013] *The Wall Street Journal* <<http://www.wsj.com/articles/SB10001424127887323981304579078880582454124>> accessed 5 May 2015.

suffered from this: according to statistics from the Ministry of Education, '*the decline in the number of jobs is more rapid than the decline in pupil attendance numbers*' and, as a result of austerity measures, roughly 6,565 schools dismissed more than 4,500 full-time teachers. The reason why more and more teachers are getting fired is yet unknown, but it is most likely that schools could not be able to promptly react to the demographic decrease in pupil numbers and are now trying to balance budgets by dismissing teachers.¹³⁷

Furthermore, higher education reforms led the Ministry of Education to plan to make additional funding available (EUR 80 million in 2012 and EUR 325 million in 2016) for universities showing strong academic profiles 'in the next five years'. In order to receive this extra funding, universities will have to compete with one another.¹³⁸ Finally, when students need more than the given time to pass their Bachelor's degree, the government introduced fees of EUR 3,000 which they will need to pay in order to advance their studies.¹³⁹

6. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

An Additional Protocol to the European Social Charter was adopted in 1995, which includes a mechanism that allows social partners and certain NGOs to file collective complaints alleging that a state has failed to comply with its obligations. It entered into force in 1998 and the Netherlands ratified 3 May 2006.¹⁴⁰

Until now, there have been no complaints that have been considered inadmissible or where the Committee found no violation, as well as no complaints where the Committee found a violation that has been remedied, but there have been two complaints where the Committee found a

¹³⁷ Education In Crisis, 'Netherlands: Overview' (Educationincrisis.net 2012) <<http://www.educationincrisis.net/country-profiles/europe/item/417-netherlands>> accessed 5 May 2015.

¹³⁸ *ibid.*

¹³⁹ *ibid.*

¹⁴⁰ Department of the European Social Charter Directorate General of Human Rights and Rule of Law, 'The Netherlands and the European Social Charter' (Coe.int 2015) <http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Netherlands_en.pdf> accessed 5 May 2015.

violation and where progress has been made but not yet examined by the Committee (Conference of European Churches (CEC) v. the Netherlands, No. 90/2013 and European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, No. 86/2012). Also, there is a complaint where the Committee found a violation that has not yet been remedied (Defence for Children International v. the Netherlands, No. 47/2008).¹⁴¹

FEANTSA complained on 4 July 2012 alleging that the Netherlands' legislation, policy and practice regarding sheltering the homeless people was incompatible with several provisions of the Revised Social Charter, concretely articles 13 (right to social and medical assistance), 16 (right of the family to social, legal and economic protection), 17 (right of children and young persons to social, legal and economic protection), 19 (right of migrant workers and their families to protection and assistance), 30 (right to protection against poverty and social exclusion) and 31 (right to housing).

What FEANTSA claimed was that access to emergency shelter was made subject to what is known as the local connection criteria, as well as to other criteria and these limitations affect the rights of various groups in need of shelter, such as homeless persons who are nationals of the respondent state and migrants residing in the Netherlands either regularly or irregularly.¹⁴² Concretely, the majority of the 43 municipalities apply this local connection criterion when deciding on access to shelter services. Moreover, FEANTSA added that the availability and quality of emergency shelters were insufficient.¹⁴³ Homeless persons needed to demonstrate that they had resided within the same region for the period of two out of three years prior to their application for a placement at an emergency shelter.¹⁴⁴ FEANTSA mentioned the problems of other sensitive groups; for example, women, children and youth do not have enough quality shelters, taking into account that they are vulnerable groups who cannot be safely

¹⁴¹ *ibid.*

¹⁴² *European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands*, Complaint No. 86/2012, Council of Europe: European Committee of Social Rights, 2012, para.18 <http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Complaints/CC86Merits_en.pdf> accessed 5 May 2015.

¹⁴³ *ibid.*, para.19.

¹⁴⁴ *ibid.*, para.63.

accommodated in general shelters lacking sufficient privacy.¹⁴⁵ Also, not all the people affected by these measures are aware of the possibility of seeking judicial review, as information on the entitlement to appeal is generally not clearly determined. FEANTSA accordingly argues that the right to challenge a shelter decision is not effective in practice.¹⁴⁶

The Committee was unanimous in its conclusions that there was a violation of Article 31.2, Article 13.1 and 13.4, Article 19.4(c) and Article 30 of the Revised European Social Charter. The Committee's decision also indicated that treatment and access to rights was not reasonably uniform across the country, and condemned the use of local connection criteria as further restricting access to community shelter as part of current Dutch legislation on provision of shelter for homeless people.¹⁴⁷ Furthermore, the Committee did not find acceptable the excuse based on the economic downturn for failing to provide access to more permanent housing. Additionally, the Committee also considered that the Netherlands disproportionately denied the right to emergency assistance to migrants, including those in regular and irregular situations, by using restrictive criteria to target vulnerable groups.

Although there are no complaints where the Committee found a violation that has been remedied, this decision has had several positive consequences; for example, a motion was adopted in Haarlem on November 7 on access to basic shelter for all in the city.¹⁴⁸ And it is this collective complaint won by FEANTSA highlighting the unfair criteria of local connection in order to access shelter what has influenced this motion¹⁴⁹.

However, *Conference of European Churches (CEC) v. the Netherlands*, No. 90/2013, caused different reactions and, although some progress could be appreciated, even after the European Committee of Social Rights of the Council of Europe ruled against The Netherlands in this collective complaint holding that the Dutch government 'failed to fulfil its obligations under the

¹⁴⁵ *ibid*, para.76.

¹⁴⁶ *ibid*, para.74.

¹⁴⁷ European Federation of National Organisations Working with the Homeless, 'Landmark decision condemns Dutch government for violations on housing rights' (Feantsa.org 2014) <http://www.housingrightswatch.org/sites/default/files/2014-11-10%20NL%20coll_com_decision_press_release_feantsa.pdf> accessed 5 May 2015.

¹⁴⁸ 'Motie Daklozenopvang voor iedereen' (Feantsa.org 2014) <www.feantsa.org/spip.php?action=accéder_document&arg=2297&clic=6ca4df068d1013671c51fc622e857830398c5e00&file=pdf%2Fmotie_daklozenopvangvooriedereen-c.pdf> accessed 5 May 2015.

¹⁴⁹ 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.

Revised Social Charter to respect the rights of undocumented adults to food, clothing and shelter', many Dutch politicians were not convinced with the decision and not willing to make changes.¹⁵⁰ So, even if the Committee emphasizes that the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact¹⁵¹, in the end it is the Dutch government the one who has to implement the necessary measures and make the required changes.

We can extract that, although some changes have been made after two of these decisions and they have alleviated the impact of austerity measures to a certain extent, the results are far from impeccable. In *Defence for Children International (DCI hereinafter) v. the Netherlands*¹⁵² the Committee found a violation but it has not been remedied yet and no progress have been made either (the decision was published 20 October 2009 therefore, there has been more than enough time to make the necessary adjustments), consequently, this complaint mechanism is useful but only to a certain extent, as the cooperation of the affected State is crucial.

In this last case DCI affirmed that Dutch legislation and practice that denies children unlawfully present in its territory access to adequate housing was a violation of Article 31 taken alone or in conjunction with Article E of the Revised Charter.¹⁵³ DCI focused their attention concretely in the *linkage principle* as set out in the Benefit Entitlement (Residence Status) Act *Koppelingswet* of 1 July 1998 (the *Koppelingswet*¹⁵⁴ made legal residency status in the Netherlands a pre-requisite in order to receive a variety of community services, therefore establishing a link between the

¹⁵⁰ A. Gavin, F. Guedes and X. Rooderkerk, "We Are Here and We Will Fight. Freedom of Movement Is Everybody's Right!" The Case of Rejected Asylum Seekers in the Netherlands' [2014] Humanity in Action <http://www.humanityinaction.org/knowledgebase/561-we-are-here-and-we-will-fight-freedom-of-movement-is-everybody-s-right-the-case-of-rejected-asylum-seekers-in-the-netherlands> accessed 5 May 2015.

¹⁵¹ *International Commission of Jurists v. Portugal*, Complaint No. 1/1999, Council of Europe: European Committee of Social Rights, 1999, para. 32 <https://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC1Merits_en.pdf> accessed 5 May 2015.

¹⁵² *Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, Council of Europe: European Committee of Social Rights, 2009 <<http://www.refworld.org/docid/4b9e37ea2.html>> Paragraph 62, accessed 5 May 2015.

¹⁵³ *ibid.*

¹⁵⁴ Rijksoverheid, 'Wat is de Koppelingswet?' (Rijksoverheid.nl 2014) <<http://www.rijksoverheid.nl/onderwerpen/immigratie/vraag-en-antwoord/wat-is-de-koppelingswet.html>> accessed 5 May 2015.

residency status of aliens and the public services provided by the government¹⁵⁵), which was incorporated in the Aliens Act 2000. Although the committee concluded that children unlawfully present on the territory of a State Party do not come within the personal scope of Article 31§1¹⁵⁶, and therefore this article did not apply in this case, it did conclude that Article 31§2 (prevention and reduction of homelessness) was violated. The Committee emphasised constantly that Article 31§2 of the Revised Charter has as one of its main objectives the prevention of homelessness with its adverse consequences on individuals' personal security and well-being¹⁵⁷, adding that 'where the vulnerable category of persons concerned are children unlawfully present in the territory of a State as in the instant case, preventing homelessness requires States to provide shelter as long as the children are in its jurisdiction'.¹⁵⁸ Moreover, the committee goes on to establish certain requirements of dignity in housing, giving some examples such as the need to fulfil the demands for safety, health and hygiene.¹⁵⁹ However, what is the point of this conclusion if no progress has been made concerning this topic since 20 October 2009, when the decision was published? There is still no explicit legal right to housing for undocumented children with their families, and we need to bare into account the consequences of this situation in other spheres such as racism and discrimination these families face, or the fact that they need to sub-let rooms from others illegally, making their situation as tenants more precarious and, moreover, the fact that they are forced to live in sub-standard conditions, which do not comply with the previously mentioned requirements of dignity (overcrowded, unsanitary places)¹⁶⁰.

¹⁵⁵ European Migration Network (EMN), 'Illegal Resident Third Country Nationals in the EU Member States: State approaches towards them and their profile and social situation' [2005] <http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/legal-migration/pdf/general/emn_synthesis_report_illegal_immigration_final_january_2007.pdf> accessed 5 May 2015.

¹⁵⁶ *Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, Council of Europe: European Committee of Social Rights, 2009 <<http://www.refworld.org/docid/4b9e37ea2.html>> Paragraph 62, accessed 5 May 2015.

¹⁵⁷ *European Roma Right Centre v. Italy*, Complaint 27/2004, Council of Europe: European Committee of Social Rights, 2005 <http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC27Merits_en.pdf> access 5 May 2015.

¹⁵⁸ *Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, Council of Europe: European Committee of Social Rights, 2009 <<http://www.refworld.org/docid/4b9e37ea2.html>> Paragraph 62, accessed 5 May 2015.

¹⁵⁹ *ibid.*

¹⁶⁰ Platform For International Cooperation on Undocumented Migrants (PICUM), 'Building Strategies to Improve the Protection of Children in an Irregular Migration Situation in Europe ' [2011]

7. CONCLUSIONS

As in most of the countries in the world, the economic crisis of 2008 had had its effect on the Netherlands too. However, repercussions tend to not be as devastating as in other parts of Europe. In order to show these effects, elaborations are made on various topics concerning the rights laid down in the European Social Charter (ESC). The ESC was ratified by the Netherlands.

First of all, under article 5 and 6 of the ESC, the right to organise and the right to collective bargaining was laid down. Both of these rights were implemented in the Dutch constitution, thereby expressing their importance. As for the right to organise there is a negative and positive aspect. On the one hand, everybody can become a member of an organisation. On the other hand, you can choose to refuse from joining one. As for the right to collective bargaining, a specific system is in place in the Netherlands. The so-called *poldermodel* creates a platform where organised and autonomous social groups meet and discuss measures taken by the government. It can be seen as a control mechanism where the three parties (the worker associations, the employee associations and the government) convene to make collective bargains. Due to the economic crisis, these meetings tend to take longer and show less result than they did before. In that perspective, the right to collective bargaining would not be affected but set goals are harder to reach.

Secondly, the area of social protection was covered. In the Netherlands, the *bijstand*, which is the lowest safety net provided. This was created to provide a basic income for people that are unable to secure adequate resources. Due to the economic crisis, requirements have gotten stricter. For example, one should accept offered labour. If not, benefits granted will decrease. Logically, there are also citizens that have fallen sick and are therefore not able to work. For these people for a period of two years, a benefit is received. After that period, he or she will be subject to an assessment to find out if he/she is entitled to an occupational disability benefit on the basis of the Work and Income according to the Labour Capacity Act, also known as the WIA. This law is focussed on promoting work or a return to work. The austerity measures in this perspective have

<http://picum.org/picum.org/uploads/publication/UK%20Workshop%20Brief_updated.pdf> accessed 5 May 2015.

not significantly changed the situation. However, expenditures on social protection are still high. Next to this, private services are present to support low income families (foodbanks).

Next, the area of social exclusion needs to be elaborated on. Also structural reforms are taking place in this area, affecting categories such as employment, housing, training, education, culture and social and medical assistance. Austerity measures tend to affect vulnerable people the most. In the Netherlands, the rate of risk of poverty/social exclusion is one of the lowest in Europe (15.7%). In order to avoid poverty, employment is needed. The economic crisis is having a devastating effect on labour markets and unemployment. Unemployment rates rose quickly which had a huge effect on the expenses of the government by the payment of unemployment benefits. In order to break this vicious circle, the Netherlands is devoting almost EUR 1 billion for labour market issues relating to reintegration, reduction of work hours, and youth unemployment. Because of this, especially for youth unemployment, the rates are relatively low compared to other European countries, but still, it amounted to 11.4% (compared to the EU-average, 23.1%). Another related issue is the minimum wage. In the Netherlands there are high minimum wages and low in-work poverty rates.

Related to this, housing is a pivotal point. In the Netherlands, a system of social housing is present. As for 2015, families that earn under EUR 34,911 are entitled to have such a house appointed. However, the target group is not fully reached. This is caused by people abusing the presence of social housing as these families could actually afford to live in normal housing and therefore they occupy the space that essentially should be appointed to someone that needs it more. Because of this, proposals are made to increase rent by income, in order to make the proclaimed system work.

Regarding education, people who live or risk living in a situation of poverty are not necessarily excluded from (basic) education. However, dropout rates rose during the economic crisis. To reduce this, intensive coaching of pupils in lower secondary education has been shown to lower school dropout, concretely, they found out that one year of coaching reduces school dropout from 17 to 10 percentage points.

Finally, as it was essential for the Dutch government to cut its budget, this has affected culture too. The most visual example of this is the cut of budget of the public TV channels.

Now, if we turn to social rights, those people that are vulnerable within society need specific attention. These people include disabled people, children and young people. As for education, it seems that people with a disability are more and more placed within ordinary schools, rather than special schools. This has to do with a cut in budget. Because of the needs of disabled, ordinary school can apply for benefits.

After education, employment is what most people seek, including disabled people. Because it is more unattractive for employees, a benefit is offered to them if they hire a disabled person. If given, it will allow the employee to receive EUR 7,000 per year for every occupationally disabled person employed and given a minimum wage and EUR 3,500 per year for an occupationally disabled person who while working is given wage dispensation. An austerity measure in this field, as all conditions get stricter, reassessments have taken place for disability allowances, followed by a cut in this benefit.

The second category is comprised of children and young people. Related to poverty, the Dutch Constitution guarantees free primary education for everybody. For further education, fees need to be paid. The economic crisis had its effect on the available jobs for teachers. About 4,500 lost their jobs as result of a drop of pupil numbers due to demographic decreases. For universities, a system was set up to support all students by giving them an allowance. However, due to the high expenditures of the government, these allowances will be cut from 1 September 2015. For child welfare the system has recently been changed. Whereas at first the government was responsible, now the system has been decentralised in order to make it more cost-efficient.

Finally, the complaint system of the ESC is open to Dutch organisation because the Dutch government ratified the Additional Protocol in 2006. Until now there have been two complaints where the Committee has found a violation and where progress has been made but not yet examined by the Committee (Conference of European Churches (CEC) v. the Netherlands, No. 90/2013 and European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, No. 86/2012). However, there is a complaint where the Committee has found a violation that has not yet been remedied at all (Defence for Children International v. the Netherlands, No. 47/2008). What can be concluded from this is the fact that even if the Committee finds that a right has been violated, the States are not bound by this decision.

To conclude, by the findings of this research regarding the position of the Netherlands, we can say that most conditions regarding all areas have been made stricter, such as unemployment benefits, disabilities, social housing etc. However, even after these austerity measures, the rights laid down in the ESC are still taken into consideration and are sufficiently respected.

8. CASE LAW, LEGISLATION, BIBLIOGRAPHY AND ONLINE RESOURCES

8.1. International Literature

- Gavin A., *We Are Here and We Will Fight. Freedom of Movement Is Everybody's Right!* The Case of Rejected Asylum Seekers in the Netherlands, 2014.
- Gosh P., *No Dutch Treat: Old, Sick And Disabled People In Holland May Have To Work To Receive Social Services*, 2013.
- Guyet R, Tarren D and Triomphe C, *Social dialogue in times of global economic crisis*, 2012
- Hauben H., *Assessing the impact of European governments' austerity plans on the rights of people with disabilities*, (Bernard Brunhes International BPI group, 2012).
- Jacobs A., *Labour and the Law in Europe, A Satellite View on Labour Law and Social Security Law in Europe*, 2011.
- Meijer J.W., *Legal System - Netherlands*, (The European Agency for Special Needs and Inclusive Education, 2010).
- Nederland T., *Tackling child poverty and promoting the social inclusion of children*, 2007.
- Schoonheim J. and Smits J., *Report on the employment of disabled people in European countries* (Academic Network of European Disability experts, 2007).
- Souren M., *Youth unemployment in the Netherlands lowest in the European Union*, 2011.
- Van Daalen R, *Dutch Growth Outlook Faces Further Blow From Austerity*, 2013.
- Van Wijnen A., *Disability rights going Dutch*, 2015.

8.1.1. International Case Law

- *Defense for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, Council of Europe: European Committee of Social Rights, 2009.
- *European Roma Right Centre v. Italy*, Complaint 27/2004, Council of Europe: European Committee of Social Rights, 2005.

8.1.2. International Official Documents

- Children's Ombudsman, Marc Dullaert, 'Lessons from Denmark', ESCAP.
- Council of Europe, Signatures and ratifications of the European Social Charter, its Protocols and the European Social Charter (revised) (Coe.int 2012).
- Europe 2020 Targets: Poverty and Social Exclusion Active Inclusion Strategies.
- European Federation of National Organisations Working with the Homeless, Landmark decision condemns Dutch government for violations on housing rights.
- European Migration Network (EMN), Illegal Resident Third Country Nationals in the EU Member States: State approaches towards them and their profile and social situation [2005].
- Eurydice, 'Modernisation of Higher Education in Europe: Funding and the Social Dimension' (2011).
- Habitatact, European exchange forum on local homeless strategies [2014].
- International Labour Organisation, Freedom of Association and Protection of the Right to Organise Convention C87, 1948.
- OECD, 'Education' (OECD Better Life Index s.d.)
<<http://www.oecdbetterlifeindex.org/topics/education/>>.
- OECD, 'Health' (OECD Better Life Index s.d.)
<<http://www.oecdbetterlifeindex.org/topics/health/>>.
- Platform For International Cooperation on Undocumented Migrants (PICUM) , Building Strategies to Improve the Protection of Children in an Irregular Migration Situation in Europe [2011].
- Secretariat of the ESC, Children's rights under the European Social Charter.
- WHO, Hidden Cities: Unmasking And Overcoming Health Inequities In Urban Settings (World Health Organization, Geneva 2010)
<http://apps.who.int/iris/mobile/bitstream/handle/10665/44439/9789241548038_eng.pdf?sequence=1>.

8.2. National Literature

- Akgunduz Y., *Cutting from the future? Impact of a subsidy reduction on child care in the Netherlands*, 2013.
- De Vries J., *The Netherlands and the Polder Model: Questioning the Polder Model Concept*, 2014.
- Euwals R., *Policy Measures on Youth Unemployment in the Netherlands*.
- Jongbloed B., *Funding higher education: a view from Europe*, 2008.
- Kollen F., *De vereniging in de praktijk*, (2nd Kluwer, Deventer, 2007).
- Kunst A., *Health Impacts of the Dutch National Urban Regeneration Program for 40 Priority Districts: The URBAN40 project*, 2014.
- Liesing P., *Social dialogue and the public services in the aftermath of the economic crisis: strengthening partnership in an era of austerity - the case of the Netherlands*, (European Commission Project, 2012.)
- Pennings F., *The New Dutch Disability Benefits Act: The Link between Income Provision and Participation in Work*, 2011.
- Stichting van de Arbeid, *CAO: wat en hoe?*, 2004
https://www.ser.nl/~media/files/internet/x_overig/de%20cao%20wat%20en%20hoe%20pdf.ashx.
- Ter Steege J., *Vakbeweging en organisatiegraad van werknemers*, (Sociaaleconomische trends, 4e kwartaal, 2012).

8.2.1. National official documents

- Rijksoverheid, 'Maatregelen aanpak werkloosheid' (Rijksoverheid.nl 2015)
<<https://abonneren.rijksoverheid.nl/nieuwsbrieven/archief/artikel/42/dc125212-ac71-4bd3-913a-f336ee132c4e/e15b0a9b-cd89-4c2e-8146-e60839af2170>>.
- (i) —, 'Wat is de Koppelingswet?' (Rijksoverheid.nl 2014)
<<http://www.rijksoverheid.nl/onderwerpen/immigratie/vraag-en-antwoord/wat-is-de-koppelingswet.html>> accessed 5 May 2015.

- (ii) —, 'Wat is de overheid van plan met de publieke omroep?'
<http://www.rijksoverheid.nl/onderwerpen/media-en-publieke-omroep/vraag-en-antwoord/wat-is-de-overheid-van-plan-met-de-publieke-omroep.html>.
- Ministry of Economic Affairs, '3 | National Reform Programme 2014 The Netherlands National Reform Programme 2014 The Netherlands' [2014].
- Ministry Of Health, Welfare and Sport, 'Youth Care in the Netherlands: the Youth Care Act'.
- Ministry of Social Affairs and Employment, 'Living and Working in the Netherlands' (2009).

8.2.2. National case law

- ECLI: NL: PHR: 2013: 2379 2014 1.

8.2.3. National law provisions

- Participatiewet.
- Wet op de collectieve arbeidsovereenkomst, Stb. 1927, 415.
- Wet op het algemeen verbindend en het onverbindend verklaren van bepalingen van collectieve arbeidsovereenkomsten, Stb. 1937, 801.
- Wet werk en inkomen naar arbeidsvermogen.

8.3. NGO's

- Jarige-Job.nl, 'Niet elke verjaardag is een feestje' (2012) <<http://www.jarige-job.nl/overstichting-jarige-job/>> accessed 5 May 2015.
- 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>>.
- Leger des Heils 'Waar kunnen we je mee helpen?' <<http://www.legerdesheils.nl/>>.
- Voedselbank, 'Welkom bij de Vereniging van Nederlandse Voedselbanken' <<http://www.voedselbankennederland.nl/>> Accessed 5 May 2015.

8.4 Web sources

- CoE Commissioner, 'Report following his visit to the Netherlands'
<<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2662990%20&SecMode=1&DocId=2218416&Usage=2>> accessed
16 June 2015.
- Rijksmuseum 'BankGiro Lotterij' <<https://www.rijksmuseum.nl/en/join-us/funds/bankgiro-lottery>> . Accessed 5 May 2015.
- 'Q+A Continued payment of wages during illness'
<<http://www.government.nl/government/documents-and-publications/leaflets/2011/12/21/q-a-continued-payment-of-wages-during-illness.html>>
Accessed 5 May 2015.

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

The United Kingdom (UK) ratified the 1961 ESC on the 11 July 1962. The UK signed the 1996 Revised Edition on the November 7 1997, however it has not yet been ratified.

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

Since 2008 UK Governments have introduced numerous austerity provisions. For example reducing VAT from 17.5% to 15% on 1 December 2008 in response to the banking crisis, however it was later increased VAT was increased back to 17.5% on 1 January 2010 and further increased to 20% on 1 January 2011 as part of the Government's austerity package.

Most of the austerity measures taken by the 2010 Coalition have consisted of cutting public spending.¹ Some of these savings have had to come from cutting local government wages, via a national public sector pay freeze² or redundancy and reducing the provision of services provided by local authorities. For example the 2014 Trade Union Congress (TUC) report on Government Spending³ stated that local governments have decreased spending on Children's Centres by 28% between 2010 and 2013.⁴

¹ National Audit Office, 'The impact of funding reductions on local authorities' (Local Government Report, 2014) <<http://www.nao.org.uk/report/the-impact-funding-reductions-local-authorities>> accessed 14 March 2015.

² First announced in June 2010 and still in effect, public sector workers can only receive a pay increase of up to 1%, below the average rate of inflation.

³ Centre for Local Economic Strategies, 'Austerity Uncovered' (Presented by TUC, 2014) <https://www.tuc.org.uk/sites/default/files/TUC%20Final%20Report%20Dec'14_1.pdf>, accessed 14 March 2015.

⁴ As a result 580 Children's Centres have had to close due to reduced funding.

In 2011 it was announced that government departments which were not 'ring-fenced' against spending cuts⁵ would need to achieve a 25% reduction in spending by 2014 it has been estimated that this could actually be up to a third.⁶

Other examples include the removal of the spare room subsidy, introduced in the 2012 Welfare Reform Act. Referred to in the media and by the Opposition as the 'Spare Room Tax,' this is where working aged people living in social housing have a room considered 'spare' and as a result face a reduction in housing benefit received which they must cover with their other income or face going into rent arrears. Additionally the Government has introduced a cap on welfare payments, the limit is GBP 350 for single adults and GBP 500 for couples and single parents total income from all benefits including Housing Benefit.

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

Traditionally social and collective bargaining rights have been exercised in the UK through the Trade Unions, although membership has been in decline recently and today only a minority of people working in both the public⁷ and private sector (2.6 million, 14%)⁸ are members of a Union. However, agreements between individual employers or employers' associations and Trade Unions remain the most common method of exercising the right to collectively bargain.

The rules and practice governing collective bargaining involving a Trade Union (TU) can be found in the Trade Union and Labour Relations (Consolidation) Act 1992 (The 1992 Act), as well as in guides and codes of practice issued by the Advisory, Conciliation and Arbitration Service (ACAS).

⁵ The ringfenced departments are Health, Education and Overseas Aid, for further details see The Prime Minister's Office, 'The Coalition: Our Programme for Government' (HM Government, 2010).

⁶ Chris Giles, 'Britain and the cuts: Non-protected departments in line of fire.' *The Financial Times* (London, November 9, 2014 7:00 pm) <<http://www.ft.com/cms/s/0/9002303a-6346-11e4-8a63-00144feabdc0.html#slide0>> accessed 14 March 2015.

⁷ Department for Business Innovation & Skills and the Office for National Statistics, 'Trade Union Membership 2013: Statistical Bulletin' (HM Government, 2014) <<https://www.gov.uk/government/statistics/trade-union-statistics-2013>> accessed 14 March 2015.

⁸ Ibid.

Section 178(1) of The 1992 Act states defines a ‘collective agreement’⁹ and s178(2) elaborates on what matters are covered by this section and include ‘the terms and conditions of employment, physical conditions in which any workers are required to work, engagement, termination, suspension and duties of employment, allocation of duties of employment, disciplinary matters, memberships.’¹⁰

2.1.1. Protection for Union Members

An employer may not attempt to provide a financial incentive for an employee to renounce their union rights.¹¹ Nor are they permitted to refuse to hire somebody because they are a member of a TU.¹² Section 3 of the 1999 Employment Relations Act prohibits blacklisting due to Union Membership and criminal prosecutions were brought by the Information Commissioner's Office (ICO) using the Data Protection Act 1998 when they found evidence of blacklisting taking place in the construction industry.

As well as the prohibition on blacklisting employers are also prohibited from treating employees detrimentally in order to discourage them from joining a union, taking part in union activities or making use of union services or to force them to join a union,¹³ employers who do so will be liable to pay compensation.¹⁴

2.1.2. Collective Bargaining Powers of a Trade Union

Sections 181 to 185 of the 1992 Act contains details of the general duty to disclose in conjunction with the ACAS Code Of Practice No 2 – Disclosure of Information to Trade Unions.

Employers have a duty to disclose relevant information requested by a TU in relation to areas it is recognised in for collective bargaining¹⁵

⁹ Trade Union and Labour Relations (Consolidation) Act 1992, s178(1).

¹⁰ *ibid*, s178(2).

¹¹ *Case of Wilson, National Union of Journalists and Others v The United Kingdom* [2002].

¹² Trade Union and Labour Relations (Consolidation) act 1992, s 138.

¹³ Trade Union and Labour Relations (Consolidation) Act 1992, s 146. The latter was introduced to put an end to ‘closed shops’ where all employees were required to be members of the Union.

¹⁴ *ibid*, s149.

¹⁵ *ibid*, s181.

The ACAS Code emphasises that there should be an agreement on what to disclose, however where no agreement can be reached the TU can make a statutory request in writing, which the employer must respond in kind.

Section 182(2) states that the employer is not required to produce original documentation where the burden of compilation would be out of proportion to the value of the information.¹⁶ Where the employer fails comply with the information request the TU may bring a claim to the CAC.¹⁷

Collective agreements are presumed not to have the intent to create a legally binding contract unless they are in writing and explicitly provide for such.¹⁸ Additionally employees are considered to be 3rd parties thus generally cannot enforce such agreements themselves unless the facts of the case suggest otherwise, TUs are not considered to be the employees' agents.¹⁹

2.1.3. Other means of Collective Bargaining and Consultation

European Works Council Directive 94/45, transposed into UK law by the Transnational Information and Consultation of Employees Regulation²⁰ and Information and Consultation Directive 2002/14/EC, which was transposed in the Information and Consultation of Employees Regulation,²¹ permit for European Work Councils and Information and Consultation Schemes to be set up. This allows for employees outside of a Trade Union to be consulted, however in ACAS's review titled 'The Future of Workplace Relations' it was noted that non union reps were playing an influential role on employee forums and joint consultative committees and that hybrid consultative committees are now quite common.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

¹⁶ *ibid*, s182.

¹⁷ *ibid*, s 183 and 184.

¹⁸ *Ibid*, s179.

¹⁹ *Holland v London Society of Compositors* (1924) 40 TLR 440; *Edwards v Skyways Ltd* [1964] 1 All ER 494; *Burton Group Ltd v Smith* [1977] IRLR 351.

²⁰ SI 1999/3323.

²¹ SI 2004/3426.

Collective bargaining and social dialogue has not been strongly affected by austerity measures, perhaps this is because Union membership is a minority and legal provisions for collective bargaining are not as strong as in other member states.

However Local Governments and other employers are beginning to use derecognition of a union as a tactic to avoid opposition to their own austerity measures.²² These actions may fail to protect an individual's right to join a union. as there will be none recognised at the workplace. Also failing to allow Trade Unions to effectively negotiate is problematic because if they do not back down to the employer's demands or threaten strike action then they may find themselves derecognised.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

From the 6 April 2012 the UK Government has doubled the minimum amount of time employees must have been employed to qualify for unfair dismissal payment or the right to require a written statement setting out reasons for dismissal. As a result employees have extremely limited protection from being dismissed for the first 2 years of their employment.

Under the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, legal aid is no longer available for most²³ employment cases. Thus individuals in a dispute will not be entitled to any funding or assistance to pay for legal advice. This will result in increased reliance on charities (such as the citizens advice bureau) or self funding. Many will often have to represent themselves in *pro se* in front of the Employment Tribunal (ET) or court.

As well as the removal of legal aid the UK government has introduced fees to issue Tribunal claims and for hearings. These fees are non-refundable and will not be reimbursed if the case is

²² For example see Dan Milmo and Matthew Taylor, 'Unions warn councils against copycat tactics after Unison banned from talks' *The Guardian* (London, 2 September 2011) <<http://www.theguardian.com/politics/2011/sep/02/unions-warn-councils-after-unison-banned>> accessed 14 March 2015 and Dan Milmo, 'Unite clashes with Honda over "union derecognition" documents' *The Guardian*, (London, 16 October 2011) <<http://www.theguardian.com/business/2011/oct/16/unite-union-honda-carmaker-derecognition-row>> accessed 14 March 2015.

²³ Cases claiming discrimination under the Equality Act 2010 and previous equality legislation may still receive legal aid for advice under Schedule 1 Part (1) 43(1) of the Legal Aid, Sentencing and Punishment of Offenders Act [2012].

lost, in addition applicant may need to reimburse the respondent's fees if the case is found in the respondent's favour.

Although this does not directly affect an individual's rights to fair remuneration under Article 4 ESC it does create a barrier preventing individuals from obtaining advice about their rights and can prevent individuals from actually seeking to protect those rights through legal redress. For example the Citizens' Advice Bureau found in its 2015 report²⁴ that 'since the introduction of ET fees in July 2013 there has been a 66% reduction in applications.' And found that the current fee system meant that 82% of the 361 if the clients surveyed were deterred from or less likely to claim.

Essentially while individuals rights remain the same by deterring people from exercising those rights they are effectively nullified, which it is submitted could not only constitute a breach of Article 4 of the ESC but also a breach of Article 6, the right to a fair trial, of the European Convention on Human Rights.

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for:

In the light of the financial crisis of 2008 'the Coalition government has announced the biggest cuts to state spending since the Second World War'²⁵.

In *Stricto sensu*, this section focuses on the implementation of the Welfare Reform Act 2012 (WRA). Indeed, the WRA has been a measure of drastic change. In the past five years they have adopted 'the most extensive reforms of the benefits system for a generation'²⁶. However, whether this fostered social protection is a dubious issue. Precisely, under the European Social Charter (ESC), one cannot disregard the importance of conformity. Nonetheless, conformity

²⁴ Tom Brooks, 'Fairer fees: fixing the employment tribunal system' (*The National Association of Citizens Advice Bureaux*, 2014) <http://www.citizensadvice.org.uk/index/policy/policy_publications/er_employment/fairer-fees.htm> accessed 14 March 2015.

²⁵ Oxfam, *The true cost of austerity and inequality: UK Case study* (2013) <<http://www.oxfam.org/sites/www.oxfam.org/files/cs-true-cost-austerity-inequality-uk-120913-en.pdf>> accessed 15 March 2015.

²⁶ *Universal Credit at Work – Spring 2015* (Report from the Department of Work and Pensions February 2015) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/405921/uc-at-work-spring-2015.pdf> accessed 15 March 2015.

does not mean that the social security scheme has necessarily benefited from the measures that have been adopted. On the one hand, the UK is in conformity with sections 1 and 3 of Article 13 (The right to social and medical assistance)²⁷; on the other hand, the government's attempt to reform the welfare system for the sake of simplification²⁸, is actually the reduction of benefit allowance in disguise.

3.1.1. Persons who are unable to secure adequate resources either by their own efforts or from other sources?

The crux of the issue is whether there is a link, between social protection under the United Kingdom's social security scheme and its austerity measures. The focal point is on social protection of old people and women that are unable to secure adequate resources by their own efforts or from other sources. Ensuring that every person has adequate resources is vitally important so that citizens may live life with dignity.

3.1.1.1. Old Age Pensions And Benefits

The Basic state pension is government-administered. An eligible person will be notified four months prior to him/her reaching the state pension age. The state pensionable age is 65 for men born on or before 5 April 1959 and 60 for men born on or before 5 April 1950. According to the European Commission Department of Employment, Social Affairs and Equal opportunities, the state age pension will increase for both men and women from age 65-68 between 2024 and 2046. That is a result of a reform that has started in 2010, attempting to equalise State Pension Age for men and women.²⁹ It is based on the number of qualifying years gained through National Insurance contributions (NICs) paid or credited throughout the applicant's working life. A person will be sent a claim form four months before he/she reaches State Pension Age.

²⁷ Conclusions 2013 and XX-2 (2013) of the European Committee of Social Rights on the Implementation of the European Social Charter.

<http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/UKXX2_en.pdf> accessed 15 March 2015.

²⁸ <<https://www.gov.uk/government/policies/simplifying-the-welfare-system-and-making-sure-work-pays>> accessed 15 March 2015.

²⁹ Age UK factsheet 19 April 2014 <http://www.ageuk.org.uk/Documents/EN-GB/Factsheets/FS19_State_Pension_fcs.pdf?dtrk=true> accessed 15 March 2015.

A person can claim for State pension given that he/she reaches State Pension age on or after 6 April 2010 and that he/she has 30 qualifying years. A qualifying year is a tax year where a worker has sufficient income to pay NICs, or is treated as having paid or being credited with NICs³⁰.

	GBP
Category A pension ³¹	113.10
Category B pension based on late spouse's or civil partner's National Insurance contributions ³²	113.10
Category B pension based on spouse's civil partner's National Insurance contributions	67.80
Category D non contributory, over 80-pension	

Figure 1. Table of full weekly rates of State Pension. Source: Age UK factsheet.

3.1.1.2. *The Impact Of Austerity Measures*

Between 2008 and 2016 the government's public spending is estimated to be reduced by 13.5%.³³ Inter alia, Pensions are not affected by the reduction of government spending. As shown in Figure 2, pensions, foreign aid and Central Government show an increase. In fact, in the Department of Work and Pensions report, it is shown that there has been an increase in the weekly rate of state pensions for Categories A, B, C and D from 2013 to 2014.³⁴

³⁰ <http://ec.europa.eu/employment_social/empl_portal/SSRinEU/Your%20social%20security%20rights%20in%20United%20Kingdom_en.pdf> accessed 15 March 2015.

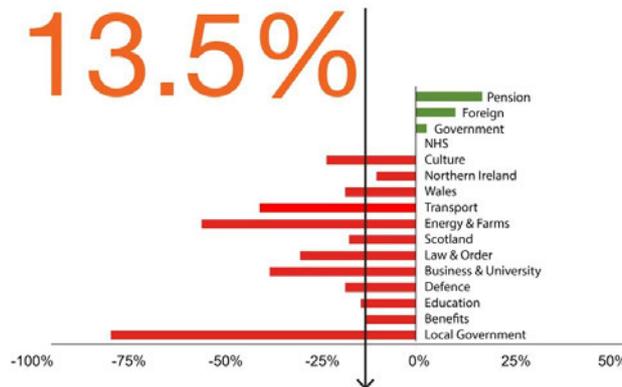
³¹ Category A state pensions are generally based on an individual's own National Insurance contributions record.

³² Category B State Pensions are based on a spouse's or civil partner's record. Both Category A and B pensions may consist of a basic and/or Additional State pension.

³³ S.Duffy *Counting the Cuts: What the government doesn't want the public to know* (The Centre for Welfare Reform 2014)

³⁴ Report by the Department of Work and Pensions: Proposed benefit and pension rates 2014 to 2015 <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275291/Benefit_and_Pension_rates_2014-15.pdf> accessed 15 March 2015.

Overall spending is being reduced by



Reduction in UK Central Government Spending 2008-16

Facts, figures and references available: <http://bit.ly/cuts-data>

Figure 2. Source: S.Duffy *Counting the Cuts: What the government doesn't want the public to know* (The Centre for Welfare Reform 2014)

3.1.1.3. Women and their Role as Careers

The welfare state in the UK provides a number of benefits for women who are in employment. The two main options are Statutory Maternity Pay (SMP) or Maternity Allowance (MA). The SMP is payable for up to 39 weeks starting, at the earliest, 11 weeks before the expected week of confinement (EWC). A pregnant woman has a choice of when to end her work. However, the latest the SMP will be payable from the day following the birth of her baby. Also, a pregnant woman is allowed to work 10 'Keeping in Touch days' without losing any SMP. In order to be able to claim an SMP, a pregnant woman's weekly earning need be at least equal to the lower earnings limit for National insurance (NI) purposes.

In the latter case of being eligible for the MA, a pregnant woman must have been employed and/or self-employed and earned an average at least equal to the Maternity Allowance Threshold (MAT) in force at the beginning of her test period. The requirement to qualify for an MA is that a pregnant woman must have been employed and/or self-employed for at least 26 weeks in her 66-week test period. The test period is the period of 66 weeks up to and including the week before the week her baby is due. She will be entitled to 30 GBP a week and her average weekly

earnings must be at least 30 GBP. The average weekly earnings are calculated using earnings from any 13 weeks in the test period. If the employment rule and the earnings rule are satisfied, she will be entitled to MA for a maximum of 39 weeks.

In addition, a woman might also be eligible for child benefit, a cash benefit, if she is responsible for one or more children under the age of 16, or up to the age of 20 if the child is in full time education (but not in a degree or other advanced course) or approved unwaged training. The only requirement for a woman to claim child benefit is for her, or her partner, and the child to be present in the UK. There is also a requirement of the right of residence and actual residence in the UK.

The Child Tax Credit is another benefit to support families with children. It is an income-related payment, and a woman can claim it if she, or her partner, are responsible for one or more children under the age of 16, or if the child is in full-time education (but not if on a degree or other advanced course) or approved unwaged training, who usually lives with her. There are no contribution conditions in order to claim this benefit but the requirement of residence and the right to reside in the UK is evident.³⁵

3.1.1.4. The Impact of Austerity Measures

The cuts have a tremendous impact on women in particular. A survey carried out by UNISON has shown support for women has been increasingly diminishing, especially in regards to children's centers for children under the age of five living in deprived areas.' Women are the most severely hit by the cuts and 60% of women that use children's centers have claimed that there are 'fewer types of support available'.³⁶ Most working age benefits will be affected as well as the child benefit.³⁷ In regards to the role of women as carers, in particular, the cuts are likely to affect children's centers. Recently centers have closed across North Tyneside and Newcastle. As

³⁵ <http://ec.europa.eu/employment_social/empl_portal/SSRinEU/Your%20social%20security%20rights%20in%20United%20Kingdom_en.pdf> accessed 15 March 2015.

³⁶ Unison, Counting the cost: How cuts are shrinking women's lives <<https://www.unison.org.uk/catalogue/22422>>.

³⁷ Women's Budget Group, Budget 2014—giveaways to men paid by women: A briefing from the UK Women's Budget Group on the gender impact of measures announced in the 2014 Budget <<http://www.wbg.org.uk/wp-content/uploads/2014/03/Budget-Briefing-2014.pdf>>.

a result, parents will have to bear the burden of childcare and could have adverse affect on employment prospects.³⁸

3.1.2. Persons who are unable to secure adequate resources either by their own efforts or from other sources due to illness?

Persons that are unable to secure adequate resources due to illness may be eligible for social assistance in the form of Statutory Sick Pay (SSP) or Employment and Support Allowance (ESA). Eligibility for SSP depends on the person's earnings and the frequency of illness. A person may be able to get SSP from his/her employer if they have done some work under their conduct of employment and he/she is sick for a minimum of four consecutive days (including weekends, bank holidays and days that he/she does not normally work). In addition, he/she must have average weekly earnings of at least equal to the lower earning limit (LEL).

In case that a person is not eligible to claim for SSP, they might be able to claim for ESA. ESA was introduced in 2007 by the Labour government to replace and to combat the problems of the Incapacity Benefit. A person might claim for ESA when he/she is incapable of work because of illness or disability if the period of his/her illness is four days or more and if he/she is not entitled to payment of SSP from an employer for that period. However, a person will not be able to get a benefit for the first three days of incapacity. ESA is a conditional on the contributions made by the person in question. A person may claim for the SSP for a maximum of 28 weeks in a period of incapacity for work. In case a person continues to suffer from the illness after the period of 28 weeks has come to an end, then that person will be able to claim ESA from the Department of Work and Pensions. However, in the exception, a person may be able to claim for an increase in the short-term incapacity benefit after the 28 weeks have elapsed, if that person has dependent children or if a partner is aged 60 or over.

3.1.2.1. Impact of Austerity Measures on the Level of Social Assistance for Persons who are Sick and/or Disabled

³⁸ Women's resource centre, The impact of austerity measures upon women: A case study of the North East of England (2013) <<http://thewomensresourcecentre.org.uk/wp-content/uploads/NEWN-impact-of-austerity-measures-case-study-June-2013-.pdf>>.

In the light of the tough austerity measures, the government will reduce public expenditure by 14.1%, over the next five years.³⁹ Whilst it is true that Pensions and Healthcare benefits have not been reduced in England⁴⁰, the burden of the cuts rests on the shoulders of specific groups in society. In fact, disabled people will be faced with a reduction of benefit allowance GBP 4,410 per person which places a burden on disabled persons 5 times more than other citizens⁴¹. The Campaign for a Fair Society has concluded that social assistance for adults in England has been reduced by GBP 991 million by 2011⁴² and was further reduced by GBP 890 million by the following year.⁴³ In this context, persons suffering from an illness or a disability may suffer the brunt of the cuts.⁴⁴

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

N/A

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

The UK government has a comprehensive system of providing information and advice in regards to benefits and other services and it is available on-line.⁴⁵ *Inter alia*, the largest non-governmental organisation is the Citizens Advice Bureau (CAB). Citizens Advice is a registered charity and it serves as the membership organisation for bureaux. Together they are the Citizens Advice Service.⁴⁶ The work of CAB aims to compensate citizens for their lack of understanding

³⁹ <http://www.theguardian.com/business/2015/feb/04/ifs-50bn-pounds-spending-cuts-conservatives-election>.

⁴⁰ See Figure 2.

⁴¹ Simon Duffy on behalf of the Campaign for a Fair Society, *A fair society? How the cuts target disabled people* (2013) *The Centre for Welfare Reform* 7.

⁴² See *ADASS Budget Survey 2011*, report produced by Directors of Adult Social Services.

⁴³ See *ADASS Budget Survey 2012*, report produced by Directors of Adult Social Services.

⁴⁴ Simon Duffy on behalf of the Campaign for a Fair Society, *A fair society? How the cuts target disabled people* (2013) *The Centre for Welfare Reform* 7.

⁴⁵ www.gov.uk/benefits-adviser.

⁴⁶ 32nd national report of the UK 2013 Cycle XX-2.

of the sophisticated benefits system.⁴⁷ In fact, in the last year alone, the CAB has helped 2.1 million people with 6.6 million problems.⁴⁸

Since its first opening in 1939, the CAB continues to play a vital part in the social protection of Britain's most vulnerable citizens. 'The national outcomes for the Citizens Advice service in 2012/13 show that 48,000 clients achieved an on-going benefit award of GBP 5,700 on average.'⁴⁹

3.3.1. Impact of austerity measures on the Citizens Advice Bureau

'These [cuts] are wicked, wicked in an old fashion sense'⁵⁰—Lord Bach

This refers to the changes to Legal Aid in England and Wales that came into effect on 1 April 2013.⁵¹ The cuts in public expenditure have had a great impact on the provision of help and advice by organisations such as Citizens Advice. The reforms in Legal Aid have an effect on the most disadvantaged in society.⁵² In other words, persons who need legal advice, bear most of the burden.⁵³ Reductions in legal aid to organisations such as CAB, may have devastating effects on the social protection of persons without adequate resources. The large number of potential claims that went unclaimed in 2009/10⁵⁴ foreshadows a dangerous reality; now with the reduction of free legal advice, citizens who cannot afford to pay for legal advice will often not claim for the benefits that the social security system entitles them to.

The effect of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) was to curtail citizens' awareness of their social welfare rights. There are doubts that citizens know their rights,⁵⁵ in fact, studies have shown that citizens 'most often appeared unable to articulate their

⁴⁷ Citizens Advice Bureau, The impact of welfare benefits advice http://webcache.googleusercontent.com/search?q=cache:U7UvIBSbkzAJ:www.citizensadvice.org.uk/the_impact_of_welfare_benefits_advice.pdf+&cd=1&hl=en&ct=clnk&client=safari.

⁴⁸ <<http://www.bbc.co.uk/news/uk-politics-22936684>>.

⁴⁹ The impact of welfare benefits advice <www.citizensadvice.org.uk/the_impact_of_welfare_benefits_advice.pdf>.

⁵⁰ <http://www.theguardian.com/law/2012/may/02/labour-peer-legal-aid-cuts>.

⁵¹ Legal Aid, sentencing and punishment of offenders Act 2012 (UK).

⁵² <https://justiceallianceuk.wordpress.com/what-is-happening/>.

⁵³ Citizens Advice Briefing on legal aid reforms <http://webcache.googleusercontent.com/search?q=cache:Z6z9TvkgS_gJ:www.citizensadvice.org.uk/citizens_advice_briefing_on_legal_aid_reforms.pdf+&cd=1&hl=en&ct=clnk&gl=gr>.

⁵⁴ See n 24.

⁵⁵ The report of the PLEAS Task Force, 'Developing capable citizens: the role of public legal education' (2007) <<http://www.pleas.org.uk/uploads/PLEAS%20Task%20Force%20Report.pdf>>.

rights.⁵⁶ According to the Centre for Economic and Social Inclusion take up reduces poverty and the increased income contributes to in areas such as health, family and well being as well as employment participation.⁵⁷ The elimination and prevention of social exclusion is an issue considered in section 4.

As a result, the cuts in England have had great effects on persons who cannot secure adequate resources Especially in terms of rights awareness, benefit allowance and those who are unable to secure adequate resources. Nonetheless, it is submitted that pensions for the elderly have not been affected by austerity measures to a large extent.

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

The UK is suffering from wealth inequality as millions of its citizens are socially excluded from society, living in a situation of poverty and deprivation. This section deals with the measures taken by the UK in an attempt to eradicate poverty and social exclusion through education, employment and training as well as correcting the existing legislation in regards to housing benefits.

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.⁵⁸

⁵⁶ Catrina Denvir , Nigel J. Balmer & Pascoe Pleasence (2013) When legal rights are not a reality: do individuals know their rights and how can we tell?, 35(1) Journal of Social Welfare and Family Law 156.

⁵⁷ Dann Finn and Jo Goodship on behalf of the Centre for Economic and Social Inclusion, 'Take-up of benefits and poverty: an evidence and policy review' (2014) <http://www.cesi.org.uk/sites/default/files/publications/Benefit%20Take%20Up%20Final%20Report%20Inclusion%20proofed%20June%202014%20pdf.pdf>.

⁵⁸ Digest of the case law of the European committee of social rights <http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf>.

While *prima facie* out of sync with the policy of the UK government,⁵⁹ nonetheless, they seek to eradicate the situation where persons from disadvantaged backgrounds are socially excluded from society. As a result, the government has taken a number of measures to tackle the problem.

4.1. Education

The risks associated with youth offending relate to inadequate access to education, training and employment⁶⁰. In order to promote the effective access of persons living or risk of living in a situation of poverty, the government has been providing GBP 2.5 billion of pupil premium funding to schools.⁶¹ The funding is set to increase from the year 2015 to 2016. The government has invested GBP 136 million through the Education Endowment Foundation, which aims to help schools raise the attainment of students coming from disadvantaged backgrounds.⁶² 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.⁶³ The government also seeks to monitor the performance of disadvantaged students by requiring schools to produce performance tables through Ofsted inspections.⁶⁴

4.2. Employment and Training

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 age of 18-24, with valuable work experience placements ranging from 2 to 8 weeks available through the Youth Contract.⁶⁵ In regards to sector-based work academies, the government offers pre-employment

⁵⁹ The Guardian 19 June 2014 <http://www.theguardian.com/society/2014/jun/19/poverty-hits-twice-as-many-british-households>.

⁶⁰ Pritchard C and Williams R 2009, *Does social work make a difference?: A controlled study of former "looked-after-children" and "excluded from school" adolescents now men aged 16-24 subsequent offences, being victims of crime and suicide*, Journal of Social Work 9.

⁶¹ <<https://www.gov.uk/government/policies/raising-the-achievement-of-disadvantaged-children/supporting-pages/pupil-premium>> accessed 15 March 2015.

⁶² <<https://www.gov.uk/government/policies/raising-the-achievement-of-disadvantaged-children>> accessed 15 March 2015.

⁶³ <<http://educationendowmentfoundation.org.uk/toolkit/toolkit-a-z/about-the-toolkit/>> accessed 15 March 2015.

⁶⁴ See fn 39.

⁶⁵ <<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.

training, work placements and a guaranteed interview in sectors with high volume of local vacancies for those receiving the Jobseeker's Allowance and the Employment and Support Allowance.⁶⁶

4.3. Housing

A significant number of people are living on the 'margin' of society. For a large percentage of the population in the UK, adequate housing conditions are non-existent. In fact, '9% of households cannot afford to heat the living areas of their home' and '10% of households live in a damp home.'⁶⁷ Also, an estimated 13 million people aged 16 and over, live in households without adequate housing conditions in comparison with an estimated 9.5 million in 1999 and 10 million in 1990. 'That's an increase of over 3 million people living in inadequate housing on this basis since 1999'.⁶⁸ Another important factor for the deterioration of housing conditions, is overcrowding. In fact, 'in 2012 9% of households (11% of children) couldn't afford enough bedrooms for every child aged 10 or over of a different sex to have their own bedroom. This is roughly the same percentage as in 1983 (10%) having dropped during the 1990s to 3% in 1999.

In light of the WRA, a number of drastic reforms have been implemented. One of those was the 'Bedroom tax'. The controversial measure imposes a cap on claims for housing benefits. In turn, a housing benefit claimant will have 14% of his/her benefit reduced if he/she has one 'spare' bedroom and 25% for two or more 'spare' bedrooms. The reforms in housing benefits have impacted those that live in a situation of poverty or risk being in a situation of poverty. This is because it did not limit the problem of overcrowding of households.⁶⁹

Th setbacks were encapsulated in *Gorry v Wiltshire Council*⁷⁰. It was held that disabled children who are unable to share a room because of their disability were unlawfully discriminated against

⁶⁶ Ibid.

⁶⁷ David Gordon, Joanna Mack, Stewart Lansley, Gill Main, Shailen Nandy, Demi Patsios, Marco Pomati and the PSE team from the University of Bristol, Heriot-Waatt University, National Centre for Social Research, Northern Ireland Statistics & Research Agency, The Open University, Queen's University Belfast, University of Glasgow and the University of York, PSE UK first results: The impoverishment of the UK: Living Standards (2013) <http://www.poverty.ac.uk/sites/default/files/attachments/The_Impoverishment_of_the_UK_PSE_UK_first_results_summary_report_March_28.pdf> accessed 15 March 2015.

⁶⁸ Ibid.

⁶⁹ <http://england.shelter.org.uk/get_advice/housing_benefit_and_local_housing_allowance/changes_to_housing_benefit/bedroom_tax> accessed 15 March 2015.

⁷⁰ [2012] EWCA Civ 629.

as a result of the size criteria used to determine allowance for housing benefits in the social rented sector. The claimants brought a case under Article 14 of the European Convention on Human Rights (ECHR). The regulations provide that if the child is in receipt of the middle or higher rate of the care component of DLA, and by reason of their disability they are not reasonably able to share a bedroom with another child, that this would constitute an exception to the size criteria. As a result the UK implemented The Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2013 (SI 2013/2828) to give effect to the Court of Appeal decision.

4.4. The Impact of Austerity Measures on the Poverty Level, Deprivation and Social Exclusion

Over 30 million people are suffering to some degree from financial austerity [and] almost 18 million in the UK today cannot afford adequate housing conditions', this is despite economic growth.⁷¹ Growth of wealth does not equal equality of wealth, especially in the UK. In fact, 'the UK is the only G7 country to record rising wealth inequality in 2000-2014'.⁷² 'The wealth-income ratio of the UK had risen above 9, the highest level recorded for any country apart from Japan at the peak of its asset price bubble in the late 1980s.'⁷³

The financial crisis and the tight austerity measures that followed it have had a huge impact on people already living in a situation of poverty and without the adequate living standards. Interestingly, the austerity measures have impacted citizens' perspectives of what constitutes minimum living standards. In fact, 'the views expressed in 2012 are less generous than those in 1999'.⁷⁴ The tight austerity measures of the current coalition government are set to hit persons living without adequate living standards the hardest.

⁷¹ *ibid.*

⁷² <<http://www.theguardian.com/commentisfree/2014/oct/15/wealth-inequality-uk-ticking-timebomb-credit-suisse-crash>> accessed 15 March 2015.

⁷³ Credit Suisse, Global Wealth Report 2014 <<https://publications.credit-suisse.com/tasks/render/file/?fileID=60931FDE-A2D2-F568-B041B58C5EA591A4>> accessed 15 March 2015.

⁷⁴ See fn 44.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

Article 15 of the European Social Charter protects the right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement. Disability is defined under the Equality Act 2010⁷⁵ (s.6).

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

Children with special education needs can attend special schools⁷⁶, however if the parents wish for their children to attend mainstream schools, Local Authorities are under a qualified duty to place the child in such schools provided that certain qualifications are met⁷⁷. In England, disabled students aged 16 or above may continue their education in “mainstream schools, mainstream further education or in special schools or colleges”. Furthermore, the Learning and Skills Council, established under the Learning and Skills Act 2000, ensures that 16-19 year-olds receive training and education. The Department for Children, Education, Lifelong Learning and Skills is responsible for ensuring education and training in Wales. Moreover, the Disabled Student’s Allowance provides some financial support to students in higher education.

Discrimination or disadvantageous treatment against students with special needs is prohibited under the Special Educational Needs and Disability Act 2001. The act also insures the promotion of inclusion, covering not just pupils with special education needs but also vulnerable and marginalised.

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment,

⁷⁵ Disability Discrimination Act 1995 in Northern Ireland.

⁷⁶ ‘Types Of School’ <https://www.gov.uk/types-of-school/overview>, Accessed 20 February 2015.

⁷⁷ ‘Complete national overview - United Kingdom (England)’ (n 18).

adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

WorkChoice, a specialist disability employment programme introduced in October 2010, is the main employment service currently available to persons with disabilities. By combining the benefits of the two programmes it replaced (WORKSTEP, Work preparation). The main aim of WorkChoice is to provide disabled persons with training and the necessary skills to enter but also remain in employment. Although the programme is partly funded by the government, the Department for Work and Pensions contracts with eight contractors whose responsibility it so deliver the services provided by WorkChoice.

A disabled person looking for a job can seek for assistance from the local Jobcentre's Disability Employment Adviser (DEA). DEA's are the first point of contact for disabled jobseekers, assisting them to locate employment opportunities but also, if the person qualifies, refer them to a WorkChoice provider for further training and support. The providers are responsible to deliver specialist support both to employed and unemployed disabled persons seeking to enter or remain within employment or to persons wishing to progress to unsupported employment. They provide training modules, workshops and seminars but also support with finding a job, drafting of applications and CV's as well as preparing for an interview. In the case where there are no suitable training courses available locally, an unemployed disabled adult has the opportunity to apply for residential training.

Once in employment, additional support may be provided by the Access to Work scheme. Financial assistance covers costs related to adaptations to equipment or the purchase of special equipment, transportation, support worker or service, disability awareness training for colleagues etc.⁷⁸

Additionally, disabled persons are entitled to an Employment and Support Allowance (ESA). Besides financial support, receivers of ESA receive work-related support such as meeting job goals and improving skills⁷⁹.

⁷⁸ 'Access To Work' <https://www.gov.uk/access-to-work/eligibility>, Accessed 17 February 2015.

⁷⁹ 'Employment And Support Allowance (ESA)' <https://www.gov.uk/employment-support-allowance/overview>, Accessed 17 February 2015.

5.1.2.1. Providing Financial Support to Employers

The access of persons with disabilities to employment has been, traditionally, enhanced by providing financial support to employers in order to either employ or retain in employment disabled persons. Currently, under the WorkChoice program, such financial support is in decline. Although there has been some continuation of financial support, under the new framework providers of WorkChoice avoid such practices⁸⁰.

Although short-term financial incentives provided by Jobcentre Plus have been terminated under WorkChoice, a small number of providers continue to provide short-term relief for employers. This method proved to be useful as it compensates employers for the lower productivity of disabled persons during the first weeks of employment⁸¹. However, long-term payments to employers are not considered as good practice and are rarely provided. Alternatively, numerous providers find it more beneficial to pay for training and start-up costs for disabled persons entering employment or self-employment. Ultimately, the decision for financial support lays with the individual WorkChoice providers, thus there is no unitary approach to this issue.

As of 2012, WorkChoice has introduced wage incentives for young (18-24) disabled persons. Although such an incentive proved attractive for small-scale employers, larger public and private sector employers appeared indifferent as to the incentive⁸². Additionally the age limit and excessive paper work required reduce the effectiveness of the scheme.

5.1.2.2. Protected Businesses

Prior to the introduction of WorkChoice, WORKSTEP provided 14,000 places within supported businesses (otherwise known as sheltered employment⁸³), providing a flexible and supportive working environment for disabled people, a benefit greatly appreciated by those in employment⁸⁴. However, under the current regime there are only 3,000 workspaces within supported businesses. Although WorkChoice providers are responsible for maintaining

⁸⁰ Ann Purvis and others, 'Evaluation Of The Work Choice Specialist Disability Employment Programme' (*Department for Work and Pensions Research Report No 846*, 2013) 135–36.

⁸¹ *Ibid*, 136.

⁸² *Ibid*, 137.

⁸³ Section 7 of the Public Contract Regulations (2006) defines supported businesses as: 'a service where more than 50 per cent of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market'.

⁸⁴ Purvis and others (n 4) 139.

supported working spaces and are subsidised with the amount of GBP 4,800 per full-time place⁸⁵, the tendency is to prepare disabled workers to move into open employment. This is evident by the fact that WorkChoice provides a module specifically orientated towards persons in protected employment, preparing them to move into the open employment⁸⁶.

5.1.2.3. Reasonable Adjustments

Under Section 20 of the Equality Act 2010, an employer is required to make reasonable adjustments in order to give access to disabled persons to employment. Examples of reasonable adjustment include improving physical access to workspace, removing obstacles, providing specialised equipment etc.⁸⁷

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

Although disabled persons have been greatly affected by cuts in spending adopted after the 2008 crisis, it cannot be said that disability employment programmes have been affected by the introduction of austerity measures in the UK. The reason for this is a re-allocation of resources, which means that other avenues of support, such as supported employment, come under severe pressure⁸⁸.

On a bigger scale, disabled persons bear a disproportionate cost to the effects of austerity measures. Despite the government's initial declarations not to disproportionately disadvantage specific demographic groups such as disabled people, the cuts did indeed affect vulnerable sections of the population. Disabled persons amount for the 8% of the population and "bear 29% of all cuts"⁸⁹, 19 times more than any other group⁹⁰. Cuts, estimated to GBP 9bn⁹¹, include:

The closure of the Independent Living Fund;

⁸⁵ Ibid.

⁸⁶ 'Making Work A Real Choice' (*Shaw Trust Interim Report and Consultation*, 2013) 19.

⁸⁷ For further details and examples see: 'Work Place Adjustments' <http://www.equalityhumanrights.com/your-rights/employment/work-place-adjustments>, Accessed 17 February 2015, 'Reasonable Adjustments For Disabled Workers' <https://www.gov.uk/reasonable-adjustments-for-disabled-workers>, Accessed 17 February 2015.

⁸⁸ Harald Hauben and others, 'Assessing The Impact Of European Governments' Austerity Plans On The Rights Of People With Disabilities' (*Bernard Brunches International BPI Group*, 2012) p 101.

⁸⁹ Simon Dufy, 'A Fair Society? How The Cuts Target Disabled People' (*The Centre for Welfare Reform*, 2013) 22.

⁹⁰ Ibid 24.

⁹¹ Claudia Wood, 'Destination Unknown: Summer 2012' (*Demos*, 2012).

The introduction of the bedroom tax, the decrease of funding provided to local authorities for social care;

The intended cuts in the Disabled Students Allowance, the introduction of a benefit cap;

And the restricted access to major disability benefits – Employment and Support Allowance (ESA) and Disability Living Allowance (DLA), currently being replaced by the more restrictive Personal Independence Payment (PIP)⁹².

5.2. Children and Young Persons (Article 17 ESC)

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

Under the Education Act 1996 Local Authorities are responsible for the “spiritual, moral, mental and physical development of the community by securing efficient primary education, and secondary education”⁹³. In England, education is compulsory for all children between the ages of 5 and 16⁹⁴. Therefore, primary and secondary⁹⁵ education is compulsory, further and higher education is voluntary, while children from the age of 3 are entitled to receive part-time or full time nursery education in state nursery schools⁹⁶.

All children are entitled to a place in a state primary school following the national curriculum, ensuring that children between the ages of 5 to 11(or 12) develop “basic literacy and numeracy...as well as establishing foundations in science, mathematics and other subjects”⁹⁷. Likewise, although education after the age of 16 is not compulsory, those wishing to continue into further education may do so without having to pay any fees (other than the cost of A-Level exams).

⁹² Teodor Mladenov, ‘Disability And Austerity’ (*Cost Of Living*, 1 August 2014) <http://www.cost-of-living.net/disability-and-austerity/>, Accessed 20 February 2015.

⁹³ s.13 EA 1996.

⁹⁴ s.8 Education Act 1996.

⁹⁵ s.1-2 EA 1996.

⁹⁶ Education System In The UK’ (*Department of Education*) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/219167/v01-2012ukes.pdf, Accessed 20 February 2015.

⁹⁷ Ibid.

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

The UK has enacted a number of important legislation targeted towards improving the living conditions of children and young persons. Under the Children Act 1989 (s.23CA, 24B, 28, 36), Local Authorities are under a responsibility to provide support and guidance to children or young persons who are deprived of their family's support or lack a support network. Additionally, in 2004 the government recognised the adverse effects neglect could have on a child or young person. The 2004 Act (along with The National Service Framework for Children, Young People and Maternity Services⁹⁸) moves from “intervention to prevention and services working together more effectively”⁹⁹. It holds “Health Authorities, Primary Care Trusts, NHS Trusts and Local Authorities”¹⁰⁰ responsible for identifying the need for, and providing, protection, assistance and support to neglected children and young persons. More specifically, s.10 of the Children Act 2004, requires local authorities to liaise between the various authorities, charities, persons or other bodies within their authority's area working with children so as to ensure the improvement of a child's wellbeing and to protect them from harm and neglect.¹⁰¹

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

Primary and secondary education is financed by the central government through a Dedicated Schools Grant¹⁰². Although the UK provides access to some of the best higher (tertiary)

⁹⁸ ‘The National Service Framework For Children, Young People And Maternity Services’ (*Department for Education and Skills, Department for Health*, 2004) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/199952/National_Service_Framework_for_Children_Young_People_and_Maternity_Services_-_Core_Standards.pdf Accessed 20 February 2015.

⁹⁹ ‘Every Child Matters: Change For Children’ <http://www.hertsdirect.org/infobase/docs/pdfstore/ECMCFCsummary.pdf>, Accessed 23 February 2015.

¹⁰⁰ ‘The National Service Framework for Children, Young People and Maternity Services’ (n 26) 151.

¹⁰¹ See also: ‘Working Together to Safeguard Children’ (*HM Government*, March 2013). This document replaces ‘Working Together to Safeguard Children (2010)’; The Framework for the Assessment of Children in Need and their Families (2000); and Statutory guidance on making arrangements to safeguard and promote the welfare of children under section 11 of the Children Act 2004 (2007).

¹⁰² ‘Complete National Overview - United Kingdom (England)’ (*European Agency for Special Needs and Inclusive Education*, 1 December 2013) <https://www.european-agency.org/country-information/united-kingdom-england/national-overview/complete-national-overview>, Accessed 20 February 2015.

education institutions in the world, receiving higher education is not free. Fees apply in all UK Universities with the exception of Scottish students studying in Scottish Universities.

Under section 7 Education Act 1996¹⁰³, a parent is responsible for ensuring a child attends school; alternatively a parent has the option to educate the child at home. Moreover, a Local Authority is required to establish the identity of all children residing in their area and are not receiving a suitable education¹⁰⁴. In such cases, the local authority is required to issue a School Attendance Order¹⁰⁵ to the parents¹⁰⁶ of the child, requiring them to make suitable arrangements for the child to receive education. Failure to comply constitutes an offence under s.443 EA 1996. Also, schools are under an obligation to ensure regular attendance by monitoring attendance¹⁰⁷.

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures your MS has taken to address this issue

Youth (18-24) unemployment rose rapidly after 2008, increasing at a higher rate compared to other age groups¹⁰⁸. In 2010, a report issued by the House of Commons acknowledges that the youth are disproportionately affected by rising unemployment¹⁰⁹. That amounts for 929,000 people aged 16-24, a “rise of 220,000 compared to three years ago”¹¹⁰. The government has responded to youth unemployment through ‘Youth Contract’. The scheme, worth around GBP 1 billion, included wage incentives for employers, funding apprenticeships, work experience placements and internships¹¹¹. By providing wage incentives to employers who offer vocation to unemployed youth, the government hopes to stipulate youth employment. Evidence has showed

¹⁰³ Duty of parents to secure education of children of compulsory school age. The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable— (a) to his age, ability and aptitude, and (b) to any special educational needs he may have, either by regular attendance at school or otherwise.

¹⁰⁴ s.436A of the Education Act 1996 (inserted by section 4 of the Education and Inspections Act 2006).

¹⁰⁵ s.437 of the Education Act 1996.

¹⁰⁶ As defined by s.576 EA1996.

¹⁰⁷ The Pupil Registration Regulations, Keeping Pupil Registers (Guidance on applying the Regulations) and Guidance on the use of the Attendance and Absence Codes, available at <http://www.dcsf.gov.uk/schoolattendance/legislation/>.

¹⁰⁸ Romesh Vaitilingam, ‘RECESSION BRITAIN: Findings From Economic And Social Research’ (ESRC) 18.

¹⁰⁹ Ed Potton, ‘Key Issues For The New Parliament 2010: Young People In The Labour Market’ (House of Commons, 2010).

¹¹⁰ Ibid.

¹¹¹ March Nye Cominetti, ‘With Nearly 1 Million Unemployed Youths In The UK, New Policy Proposals Aimed At Tackling The Issue Are Necessary’ (British Politics and Policy at LSE, 12 March 2014) <http://blogs.lse.ac.uk/politicsandpolicy/youth-unemployment-policy-take-two/>, Accessed 24 February 2015.

that wage incentives are more important, and therefore effective, with small employers rather than larger public and private employers¹¹². Importantly, 88% of the employers who hired a person under the scheme reported to have retained the worker after the expiration of the wage incentive¹¹³. The scheme may have improved the perception of employers towards unemployed youth¹¹⁴, however the extent to which the scheme has indeed tackled the problem of youth unemployment is, indeed, questionable¹¹⁵. Figures indicate that between April 2012 and November 2013 only 4.100 payments have been made to employers¹¹⁶, indicating the low impact of the scheme. The other measures adopted under Youth Contract faced a similar fate, rendering the scheme unsuccessful in the long term.

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

A reduction in real-terms government funding to Local Authorities (37%) combined with a 25% reduction in income amount to a 40% real-terms funding reduction¹¹⁷. As a result, the services provided by Local Authorities have been reducing steadily as a result of such cuts. The measures described above have also been affected as spending on public education has been falling since 2008¹¹⁸, with Parliament calculating the average real annual increase for 2010-11 to 2013-14 to -2.20% (Thus a reduction of GBP 2.07 billion)¹¹⁹.

For example, Children's Centres run by Local Councils and providing support to young children and their families did not close down due to reduced funding but their numbers have diminished as part of "local reorganisation"¹²⁰. It is arguable whether cuts in public spending affect the

¹¹² Nick Coleman and others, 'Evaluation Of The Youth Contract Wage Incentive' (*Department for Work and Pensions*, 2014) 15.

¹¹³ Ibid 16.

¹¹⁴ Coleman and others (n 40).

¹¹⁵ Cominetti (n 39).

¹¹⁶ Ibid.

¹¹⁷ 'The Impact Of Funding Reductions On Local Authorities' (*National Audit Office*, 2014) <http://www.nao.org.uk/wp-content/uploads/2014/11/Impact-of-funding-reductions-on-local-authorities.pdf>, Accessed 23 February 2015.

¹¹⁸ Haroon Chowdry and Luke Sibieta, 'Trends In Education And Schools Spending' (*ESRC*, 2011).

¹¹⁹ Paul Bolton, 'Education Spending In The UK' (*House of Commons*, December 2014).

¹²⁰ 'The Red Book 2012: The Annual Review Of The Impact Of Spending Decisions On Vulnerable Children And Families.' (*Action for Children*, 2012).

standards of education¹²¹, however services provided to schools, such as school improvement and curriculum support, have been significantly reduced¹²². Moreover, the Children's Society believes that due to the cuts, free school meals provided to 350,000 children will be affected¹²³. Although social work services to children with special education needs have not been so greatly affected¹²⁴, "the needs of vulnerable children, young people and families is escalating"¹²⁵ due to reduction in benefit entitlement.

6. OTHER ISSUES

Are there any other relevant issues regarding the ESC, and not covered by the questions above, in your MS? Please describe the applicable legal framework and explain how it is not in compliance with the ESC

With the introduction of the WRA, the UK government has made substantial changes to the Employment and Support Allowance (ESA), which as the Committee of Ministers recognizes¹²⁶, could possibly be incompatible with Article 17 of the Charter. The WRA 2012 altered the duration of the ESA from a life-term to a short-term benefit, reducing the duration of the benefit to a year. The Department for Work and Pensions argued that under the current fiscal policy, it needed to review the "balance between contributions paid and indefinite entitlement to support"¹²⁷ in establishing a fairer balance between National Insurance contributions and the receipt of benefits. However, the Committee argues that both the toughening of the qualifying conditions combined with the reduced duration of the ESA results in the "outright reduction of

¹²¹ Sean Coughlan, 'School Cuts "No Harm To Standards"', *BBC* (21 May 2013) <http://www.bbc.co.uk/news/education-22596030>, Accessed 26 February 2015.

¹²² 'Living Precariously: Families In An Age Of Austerity' (*Family and Childcare Trust*, 2013) 17.

¹²³ Sam Royston and others, 'A Policy Report On The Future Of Free School Meals' (*The Children's Society*) http://www.childrensociety.org.uk/sites/default/files/tcs/fair_and_square_policy_report_final.pdf, Accessed 20 February 2015.

¹²⁴ 'Living Precariously: Families in an Age of Austerity' (n 50) 18.

¹²⁵ 'The Red Book 2012: The Annual Review Of The Impact Of Spending Decisions On Vulnerable Children And Families.' (no 47).

¹²⁶ Resolution CM/ResCSS(2013)20, on the application of the European Code of Social Security by the United Kingdom, <https://wcd.coe.int/ViewDoc.jsp?id=2101131&Site=CM> Accessed 10 March 2015.

¹²⁷ *Ibid.*

protection offered by the sickness benefit, which, though well explained by the government, could hardly be seen as keeping with the objective of Article 17 of the Code”¹²⁸.

7. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

At the heart of the functioning of the European Social Charter (the Charter) is a system of reporting, compelling states that have ratified the Charter to report every two years on their progress and implementation of it. The European Committee on Social Rights (ECSR)¹²⁹ would then examine these reports. Both the ECSR's opinions and the reports themselves are then scrutinised by the Governmental Committee and the Committee of Ministers. The latter committee may then choose to make a recommendation to the state in question if it considers that the state is not complying with the provisions it has ratified under the Charter.¹³⁰

In 1995, however, the Council of Europe overhauled the reporting procedure by implementing a new compliance mechanism.¹³¹ This was the so-called Additional Protocol to the European Social Charter Providing for a System of Collective Complaints that came into force on 1st July 1998. One major change that this Collective Complaints Protocol (the Protocol/ CCP) introduced was its conferral of power to the Council of Europe to hear complaints by non-governmental organisations (NGOs).¹³²

Around 17 years after the Protocol came into existence, the search has been for the firm establishment of effective remedial powers and a solution to the protocol's “structural and procedural weaknesses”.¹³³ Accordingly, the question arises as to what degree these weaknesses

¹²⁸ Ibid.

¹²⁹ Previously known as the Committee of Independent Experts (CIE).

¹³⁰ Cf. 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), pp.417-456, pp.418-9.

¹³¹ Ibid., p.418.

¹³² Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, Strasbourg 9.XI.1995, ETS. No.158, Preamble.

¹³³ Cullen, H. (2009). “The Collective Complaints System of the European Social Charter: Interpretative Methods of the European Committee of Social Rights”. *Human Rights Law Review* 9(1), pp.61-93, p.62.

and issues have posed a bar, in the United Kingdom, to the due and just consideration of a complainant's cause and helped for the alleviation of general austerity measures. The following essay will outline the Collective Complaints Procedure, evaluate the relationships between the European Committee on Social Rights, the European Court of Human Rights and the Committee of Ministers and highlight recent criticism as to the functioning of the Collective Complaints Procedure and evaluate its impact on UK austerity measures.

7.1. The Collective Complaints Procedure

The European Social Charter allows parties to indicate which provisions they accept.¹³⁴ However, they must accept a certain minimum of provisions.¹³⁵ A complaint against a state that fails to comply with one or more of the accepted provisions of the ESC, can be brought by a number of organisations¹³⁶ as is laid down in Article 1 of the Collective Complaints Protocol:

Signatory parties are further given the option to allow complaints from national NGOs under Article 2. Article 4 sets out the admissibility requirements to initiate a complaint. This requires the applicant to relate to the concerned provision that has been accepted by the Contracting party and to explain in what respect that provision has been breached or unsatisfactorily implemented. This must be done in writing and, according to Article 5, be addressed to the Secretary General who will transfer the complaint to the European Committee on Social Rights.

The ECSR's rather generous approach to the admissibility of complaints was confirmed in the case of European Council of Police Trade Unions (CESP) v France¹³⁷, in which the Committee emphasised that "there is no victim requirement, no requirement to exhaust domestic remedies and no time limit for bringing the complaint."¹³⁸ Once a complaint has been deemed admissible, the ECSR will ask for written submissions on behalf of both parties to examine the merits of the

¹³⁴ European Social Charter, Turin 18.X.1961, ETS no.35, Art.20.

¹³⁵ European Social Charter (revised), Strasbourg 3.V.1996, ETS no.163, Art.A(1)(b-c): A party must "consider itself bound by at least six of the following nine articles (...): Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20; [and] (...) consider itself bound by an additional number of articles or numbered paragraphs (...) which it may select, provided that the total number of articles or numbered paragraphs by which it is bound is no less than sixteen articles or sixty-three numbered paragraphs."

¹³⁶ Only those international and national NGOs that have been recognised (cf. Article 1 and 2 of the Protocol) as having particular competence in a specific area can bring claims in those matters against a state. (Collective Complaints Protocol, Art.3).

¹³⁷ Complaint No.38/2006, European Council of Police Trade Unions (CESP) v France, Merits, 3 December 2007, para.12.

¹³⁸ Cullen, H. op. cit., p.64.

complaint.¹³⁹ Under Article 7(4) of the Protocol, the ECSR has the option to invite representatives of both parties to come together for an oral hearing of the case, however, this right has only rarely been exercised. The procedure is concluded with the ECSR issuing a report rather than a decision.¹⁴⁰ This report is then transmitted to the Committee of Ministers: “If the Committee of Independent Experts [i.e. the European Committee on Social Rights] finds that the Charter has not been applied in a satisfactory manner, the Committee of Ministers shall adopt, by a majority of two-thirds of those voting, a recommendation addressed to the Contracting Party concerned.”¹⁴¹ Put differently, the ECSR is primarily responsible for “making legal determinations and the Committee of Ministers [for] making a political decision as to the follow-up.”¹⁴²

7.2. The Relationships between the European Committee on Social Rights, the Committee of Ministers and the European Court of Human Rights.

Although the ECSR has exclusive competence in its legal interpretation of the Charter, the power to make a recommendation to a member state lies wholly with the Committee of Ministers.¹⁴³ The most important case, in which the ECSR drew a clear line between its own competencies and those of the Committee of Ministers is the case of *Confédération française de l'Encadrement CFE-CGC v France*¹⁴⁴, in which the respondent argued that the Committee of Ministers' decision, in a previous case involving the same state and the same area of law, to not issue a recommendation was a proof that there could reasonably be no violation of the revised Charter.¹⁴⁵

A novel kind of relationship emerged between the European Committee on Social Rights and the Strasbourg Court in *Wilson v The United Kingdom*¹⁴⁶. The European Court of Human Rights held in reliance on an earlier verdict of the European Committee on Social Rights, that

¹³⁹ Collective Complaints Protocol, Art.7(1) to (3).

¹⁴⁰ *Ibid.*, Art.8(1).

¹⁴¹ *Ibid.*, Art.9(1).

¹⁴² Cullen, H. *op. cit.*, p.67.

¹⁴³ *Ibid.*, p.70.

¹⁴⁴ Complaint No.16/2003, *Confédération française de l'Encadrement CFE-CGC v France*, 30 November 2004.

¹⁴⁵ *Ibid.*, para.21.

¹⁴⁶ Case of *Wilson, National Union of Journalists and Others v The United Kingdom* (Application nos. 30668/96, 30671/96 and 30678/96). (2002) 35 EHRR 523.

the United Kingdom violated Article 11 of the European Convention on Human Rights, because it failed to “prohibit employers from offering financial inducements to employees to renounce trade union membership.”¹⁴⁷ Similarly, in *ASLEF v The United Kingdom*¹⁴⁸ the Strasbourg Court put considerable emphasis on the reasoning and importance of the conclusions of the ECSR, which held five years before *ASLEF* was decided that:

Section 174 of the [Trade Union and Labour Relations (Consolidation Act)] 1992 Act limits the grounds on which a person may be refused admission to or expelled from a trade union to such an extent as to constitute an excessive restriction on the rights of a trade union to determine its conditions for membership and goes beyond what is required to secure the individual right to join a trade union....The Committee concludes that, in light of the provisions of the Trade Union and Labour Relations (Consolidation Act) 1992 referred to above (sections 15, 65, 174 and 226A) the situation in the United Kingdom is not in conformity with Article 5 of the Charter.^{149,150}

On this basis, the Human Rights Court found a violation of Article 11 of the Convention, which denies state interference with union policies, using the ECSR interpretation of Article 5¹⁵¹, the right to organise, of the European Social Charter to support its own reasoning. Equally, the binary nature of the relationship between Strasbourg and the ECSR is further affirmed by the ECSR’s practice to use both the European Court of Human Rights decisions and the Convention itself to interpret complaints.¹⁵² For example, the ECSR made clear that it “interprets Article E Revised ESC, which prohibits discrimination, as equivalent to Article 14 ECHR.”¹⁵³ The ECSR further used cases like *Tyrer v The United Kingdom*¹⁵⁴, *Campbell and Cosans v The United Kingdom*¹⁵⁵ and *A v The United Kingdom*¹⁵⁶ to underpin its reasoning in

¹⁴⁷ *Ibid.*, paras.30-3.

¹⁴⁸ *Case of Associated Society of Locomotive Engineers & Firemen (ASLEF) v The United Kingdom* (Application no. 11002/05). (2007) 45 EHRR 34.

¹⁴⁹ European Committee on Social Rights, Conclusions XVI-1, p.684

¹⁵⁰ *Cf.* *Case of Associated Society of Locomotive Engineers & Firemen (ASLEF) v The United Kingdom*, *op. cit.*, paras.22-4 and 39.

¹⁵¹ European Social Charter (1961) Article 5: “With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. (...)”.

¹⁵² Cullen, H. *op. cit.*, p.72.

¹⁵³ *Ibid.*, p.72.

¹⁵⁴ *Tyrer v The United Kingdom* (1979-80) 2 EHRR 1.

¹⁵⁵ *Campbell and Cosans v The United Kingdom* (1982) 4 EHRR 293.

relation to five complaints¹⁵⁷, regarding the corporal punishment of children, brought by the World Organisation against Torture (OMCT) in 2003.¹⁵⁸ It thus follows that whereas the European Committee on Social Rights attempts to clearly distinguish its competencies and powers from those of the Committee of Ministers, the former and the European Court of Human Rights often complement each other.

7.3. Academic criticism of the Collective Complaints Protocol and its impact on UK austerity measures

The most important flaws and weaknesses of the Protocol are (1) standing, (2) individual claims and (3) remedies.¹⁵⁹

Article 1 of the Protocol allows *locus standi* to employer's organisations, trade unions and NGOs claiming unsatisfactory application of the Charter. No such provision is made for individuals. An individual is thus required to form an organisation within the characteristics of one of the three possibilities mentioned above in order to represent his or her interest in front of the ECSR. In contrast to the Charter, the Hague Convention allows under Article 34 that individuals can file an application regarding their violation of rights in front of the European Court of Human Rights.¹⁶⁰

Article 6 of the Protocol refers to the admissibility of claims, which is to be determined by the ECSR. The Explanatory Report of the Protocol stipulates that "because of their 'collective' nature, complaints may only raise questions concerning non-compliance of a state's law or practice with one of the provisions of the Charter. Individual situations may not be submitted."¹⁶¹ The inadmissibility of individual claims raises serious issues in regards to the

¹⁵⁶ A v The United Kingdom (1998) 27 EHRR 611.

¹⁵⁷ Complaint No. 17/2003 World Organisation against Torture (OMCT) v Greece, 7 December 2004; Complaint No. 18/2003 World Organisation against Torture (OMCT) v Ireland, 7 December 2004; Complaint No. 19/2003 World Organisation against Torture (OMCT) v Italy, 1 August 2003; Complaint No. 20/2003 World Organisation against Torture (OMCT) v Portugal, 26 January 2005; Complaint No. 21/2003 World Organisation against Torture (OMCT) v Belgium, 7 December 2004 and Complaint No. 34/2006 World Organisation against Torture (OMCT) v Portugal, 5 December 2006. Cf.: Cullen H. (2005). "Is the European Social Charter a Charter for Children?" 50 Irish Jurist 60.

¹⁵⁸ Ibid., p.72.

¹⁵⁹ 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, pp.50-66, p.53.

¹⁶⁰ Ibid., p.53.

¹⁶¹ Collective Complaints Protocol, Explanatory Report, Art.4(31).

impact of UK austerity measures on individuals. Public spending cuts, especially benefits, hits those at the bottom of society the hardest. Child poverty and rising rates of housing evictions for those whose income has been cut with the implementation of austerity measures are just two of a multitude of manifestations of the consequences of cuts in public spending. The requirement to link the protection of social rights like housing and health to the need of filing the claim as a collective entity is arguably problematic and sits uncomfortably with Article 30 of the revised European Social Charter that specifically guarantees protection from poverty and social exclusion.

Under Article 9(1) and (2) of the Protocol the Committee of Ministers has two options as to how it can exercise its power in cases where the ECSR found an unsatisfactory application of the rights granted under the Charter. Firstly, to adopt a recommendation by two thirds majority of the vote of the Contracting Parties or secondly to consult the Governmental Committee¹⁶² where the report by the ECSR raises new issues, if a majority of two thirds of the Contracting Parties vote to do so.¹⁶³ A further problem in regards to austerity measures is based on the composition of the Governmental Committee. The Committee is unlikely to allow for impartial criticism of the state, because the Committee itself involves representatives of the state against which a recommendation should be filed. Accordingly, also a very soft approach is undertaken in regards to the compliance with a recommendation, which is a strong contrast to the binding nature of a judgement of the European Court of Human rights on the involved parties.¹⁶⁴ The recommendation further aims to alter and modify the law rather than to provide compensation for a past wrong. Those affected by austerity measures have therefore, even if represented by a collective entity, no claims for compensation under the Charter. Thus whilst states that have ratified the European Social Charter are bound by the provisions they have accepted, Article 10 of the Protocol does not attempt to craft a binding obligation, but the state concerned is merely required to “provide information on the measures it has taken to give effect to the Committee of

¹⁶² Under Article 27(2) of the European Social Charter, the Governmental Committee shall be composed of “one representative of each of the Contracting Parties”.

¹⁶³ Novitz, T. op. cit., p.54 and Collective Complaints Protocol Art.9(1) and (2).

¹⁶⁴ Novitz, T. op. cit., p.55.

Ministers' recommendation, in the next report which it submits to the Secretary General under Article 21 of the Charter."¹⁶⁵

However, in contrast to these problems of the Collective Complaints Protocol that are best seen in practice, there is a further significant and more theoretical issue. namely whether social rights are necessarily collective rights? The first question that arises is why collective rights should take precedence over the rights of an individual. In contrast to the utilitarian notion of rights, a more modern approach to rights is found in the texts of Ronald Dworkin and Jeremy Waldron.¹⁶⁶ The former defines rights as trumps over "collective goals".¹⁶⁷ One can argue a person has an intrinsic moral right against the state, where the state treats him or her wrongly.¹⁶⁸ Similarly, the latter has argued that rights are inherently individualistic.¹⁶⁹ Unlike *will* and *choice* theories of rights¹⁷⁰, an *interest* theory of rights gives access to the way a right can be constituted and thus allows for an analysis of collective and individualistic notions of rights.¹⁷¹ Such an interest type understanding reasons that a right arises whenever "some aspect of X's well-being constitutes an interest sufficient to hold another person to be under a duty."¹⁷² In accordance to this notion of rights, three types of collective rights follow: (1) rights concerning collective interests, (2) rights concerning the imposition of collective duties and (3) rights that are held by a collectivity.¹⁷³

Firstly, rights concerning collective interests arise where people, unlike an individual, have an interest in a public good. The legitimacy of this understanding seems to lie in the democratic power a community can exercise and therefore justify its causes and actions.¹⁷⁴ Building on this there are three reasons why the rights as put forward in the Charter seem more collective rather than individualistic: The rights are primarily conferred on classes of persons, they are wide in

¹⁶⁵ Collective Complaints Protocol, Art.10.

¹⁶⁶ Novitz, T. op. cit., p.56.

¹⁶⁷ Dworkin, R. (1977). Taking Rights Seriously, p.26.

¹⁶⁸ Ibid., p.139.

¹⁶⁹ Waldron, J. ed. (1987). Nonsense on Stilts: Bentham, Burke and Marx on the Rights of Man, p.185.

¹⁷⁰ Cf. McCormick. (1982). Legal Right and Social Democracy: Essays in Legal and Political Philosophy, p.164.

¹⁷¹ Cf. Waldron, J. (1984). Theories of Rights, pp.11-2.

¹⁷² Novitz, T. op. cit., p.57 and cf. Raz. J. (1986). The Morality of Freedom. P.166 and pp.180-2.

¹⁷³ Novitz, T. op. cit., p.57.

¹⁷⁴ Ibid., p.58.

breadth stipulating general principles rather than specific ones, and are further goal based rather than being based on an individual's protection.¹⁷⁵

Secondly, collective rights can arise where a duty compels people to exercise it collectively, especially where collectively held resources are to be worked with or redistributed.¹⁷⁶ For example, the positive obligations contained within the Charter require collectivities like states to redistribute collective resources in order to protect the state's citizens' welfare. A key point to note here is the fact that external decisions on the allocation of state resources have always been regarded as non-binding, because of the lack of democratic justification which lies purely in the hands of an elected government. Accordingly, it is no surprise then that "whereas civil and political rights are generally regarded as justiciable"¹⁷⁷, social rights are not and form merely part of a political agenda. The Collective Complaints Protocol follows exactly this reasoning. Neither the ECSR's examination nor the Committee of Ministers' recommendation is binding upon the contracting party. There two major flaws with this logic: It presumes a narrow view of civil and political rights and "assumes that all duties imposed on the state by social rights require the devotion of material resources."¹⁷⁸ It follows that considering social rights as collective rights on the basis that the redistribution of material resources is a collective enterprise by virtue of its need for democratic justification, is unreasonable.

Thirdly, whilst rights protect individuals they may require collective representation in order to be exercised. Comparing the Convention with the Charter, it becomes apparent that whereas the former allows both individuals and a collectivity to bring a claim, the latter does not do so for individuals. The problem with this distinction is highlighted in *Young, James and Webster v The United Kingdom*¹⁷⁹. The court held¹⁸⁰ in this case that "workers do not have only a positive right to associate in trade unions, they also have a negative right to disassociate themselves from such organisations."¹⁸¹ This reasoning in conjunction with the Convention's Article 11, the right to freedom of association, seems inconsistent with the Charter's Article 5 and 6 provisions that

¹⁷⁵ Ibid., pp.58-61.

¹⁷⁶ Ibid., p.61

¹⁷⁷ Ibid. p.62.

¹⁷⁸ Ibid., p.62.

¹⁷⁹ *Young, James and Webster v The United Kingdom* (1982) 4 EHRR 38.

¹⁸⁰ Ibid., para.59.

¹⁸¹ Novitz, T., op. cit., p.65.

allow for specific rights for collective entities only. It follows that an individual's disassociation with a trade union, for example, would consequently be factually on an equal footing with giving up one's own right to the protection granted under the Charter's supervisory mechanism. This is based on the Charter's requirement for collective association as a prerequisite for protection. In other words, on the strict application of the Charter and the Protocol "this negative right to disassociate arguably becomes meaningless."¹⁸²

Thus it seems unreasonable to have an arbitrary distinction between the civil and political rights protected by the Convention for both individuals and a collectivity and the social rights as protected by the Charter for a collectivity only.

Consequently, the Protocol's impact in alleviating the impact of austerity measures within the United Kingdom is limited, as seen in the considerations outlined above. The ECSR is committed in its teleological interpretation of Strasbourg jurisprudence to a set of specific values that must shine through the Charter and its application.¹⁸³ These values have been expressly specified in *International Federation of Human Rights Leagues v France*.¹⁸⁴ The restrictions to the admissibility of claims under the Collective Complaints Protocol to collective entities only in conjunction with the lack of effective remedies make it difficult for those that lost out in a time of austerity measures to have their due share in the aforementioned values. It seems illogical to protect civil and political rights under the Convention, whilst imposing additional hurdles and bars under the CCP for those in need of protection of their social rights and welfare. All human rights are "universal, indivisible and interrelated"¹⁸⁵. The Collective Complaints Protocol should accordingly give effect to these declarations and remove the secondary treatment of social rights in comparison to civil and political rights.

¹⁸² *Ibid.*, p.65.

¹⁸³ Cullen, H. *op. cit.*, p.76.

¹⁸⁴ Complaint no. 14/2003, *International Federation of Human Rights Leagues v France*, 8 September 2004.

¹⁸⁵ Vienna Declaration, World Conference on Human Rights, Vienna, June 14-25, 1993, U.N. DOC. A/CONF. 157/24 (Part I) (1993).

8. CONCLUSIONS

The reform of the welfare state, envisaged in the Welfare Reform Act 2012, has had a great impact on the most disadvantaged of Britain's society. Notwithstanding the great impact of austerity measures on the level of social assistance provided for people that are unable to secure adequate resources by their own efforts or from other sources, and for those that are unable to do so due to illness, the UK is in conformity with Article 13 paragraph (1) of the European Social Charter. Even though the UK did not ratify the 1996 Revised Charter, Article 13 paragraph 1 has not been amended within the new Charter. Furthermore, as regards the provision of legal advice, the UK has a comprehensive system of providing Legal Advice.

However, the cuts to Legal Aid, as a result of austerity measures, have had a great impact on the provision of free legal advice and help for the most disadvantaged of society. Nevertheless, the European Committee on Social Rights, in its 2013 conclusion, found that the UK is in conformity with Article 13 paragraph 3. Article 13 paragraph 3 has not been amended by the Revised Charter. Lastly, section 4 deals with Article 30 ESC which is a new provision that did not exist in the ESC of 1961. The section deals with the UK's plans and projects to eliminate social exclusion. Even though austerity measures have had an impact on housing, especially, with the introduction of the Bedroom Tax, it can be assumed that the UK has taken appropriate measures against the problem of social exclusion overall. As a result, it is submitted that the UK might have been in conformity with Article 30 ESC, if the Revised Charter 1996 had been ratified by the UK and had been legally binding upon the UK.

The UK has in place adequate legislation to protect and promote the rights and interests of disabled persons. Charities and public bodies are in a constant dialogue with policy makers in order to improve and increase the efficiency of the existing framework. With the introduction of austerity measures and strict budgetary cuts, this framework has been under immense pressure. Despite the fact that disability employment programmes have not been directly affected by cuts in spending, disabled persons have been greatly affected by budgetary cuts as they bear a disproportionate share of the burden. Moreover, it is uncertain whether the government's restructuring of the Employment and Support Allowance (ESA) under the Welfare Reform Act 2012 (WRA 2012) is compatible with Article 17 of the charter.

The education system in place ensures the access of children and more generally the youth to education. Local authorities are responsible for providing free education for every child while their parents are under a strict obligation to make sure that every child attends school. The UK has enacted a number of important legislation targeted towards improving the living conditions of children and young persons (Children Act 1989, 2004), while no child is discriminated against. Children and young persons have greatly been affected by austerity measures. Young persons face increasing unemployment while funding to local authorities reduced dramatically, affecting the standard of education and their capacity to provide support to more vulnerable sections of the population.

The so-called Additional Protocol to the European Social Charter Providing for a System of Collective Complaints came into force on 1st July 1998. The Protocol's structural and procedural weaknesses in conjunction with its weak remedial powers were often at the heart of scholarly debate and this essay sought to cast light on these weaknesses and evaluate their impact for complaints brought in relation to post-financial crisis UK austerity measures.

The essay identified three major problems for people affected by austerity measures: (1) locus standi, (2) the distinction between claims brought by a collectivity and individuals, and (3) remedies. Under Article 1 of the Protocol, standing is granted to employer's organisations, trade unions and NGOs, but no such provision is made for individuals complaining about their social rights. Equally, claims are inadmissible if they touch and concern an individual's situation only rather than that of a collectivity. This requirement sets a high hurdle for individuals affected by austerity measures and poses a significant contrast to the ambition of the revised European Social Charter as emphasised in Article 30, which guarantees protection from poverty and social exclusion. Even if individuals form a collectivity to file a claim, the Committee of Ministers' recommendation, given the application was successful, further only aims to modify and alter a member state's domestic law rather than compensate the complainants' for a past wrong.

The analysis of the Protocol then proceeds with a theoretical evaluation as to why collective rights should take precedence over the rights of an individual. An interest theory of rights, unlike one based on will and choice theories, essentially yields three types of collective rights: (1) rights concerning collective interests, (2) rights concerning the imposition of collective duties and (3) rights that are held by a collectivity.

The essay concludes that irrespective of which type of collective right is engaged, the Council of Europe's protection of social rights is significantly weaker than its protection of human rights. Whilst the latter allows claims to be brought by individuals, the former does not. This bar in conjunction with the lack of remedial powers and the secondary treatment of social rights in comparison to civil and political rights, makes it difficult for those affected by austerity measures, who are likely to need monetary compensation more than others, to be persuaded to attempt to file a claim.

9. TABLES OF CASE LAW AND LEGISLATION

9.1. EU Directives and International Legislation

- Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, Strasbourg 9.XI.1995, ETS. No.158.
- European Social Charter, Turin 18.X.1961, ETS no.35.
- European Works Council Directive 94/45, transposed into UK law by the Transnational Information and Consultation of Employees Regulation, SI 1999/3323.
- Information and Consultation Directive 2002/14/EC, which was transposed in the Information and Consultation of Employees Regulation, SI 2004/3426.
- Resolution CM/ResCSS(2013)20, on the application of the European Code of Social Security by the United Kingdom,
<https://wcd.coe.int/ViewDoc.jsp?id=2101131&Site=CM> Accessed 10 March 2015.
- Vienna Declaration, World Conference on Human Rights, Vienna, June 14-25, 1993, U.N. DOC. A/CONF. 157/24 (Part I) (1993).

9.2. UK Legislation

- Children Act 2004 (2007).
- Disability Discrimination Act 1995 in Northern Ireland.
- Education Act 1996.
- Education and Inspections Act 2006.
- Legal Aid, Sentencing and Punishment of Offenders Act [2012].
- Public Contract Regulations (2006).
- The Pupil Registration Regulations, Keeping Pupil Registers (Guidance on applying the Regulations) and Guidance on the use of the Attendance and Absence Codes, available at <http://www.dcsf.gov.uk/schoolattendance/legislation/>.
- Trade Union and Labour Relations (Consolidation) Act 1992.

9.3. Case Law

- A v The United Kingdom (1998) 27 EHRR 611.
- Burton Group Ltd v Smith [1977] IRLR 351.
- Campbell and Cosans v The United Kingdom (1982) 4 EHRR 293.
- Case of Associated Society of Locomotive Engineers & Firemen (ASLEF) v The United Kingdom (Application no. 11002/05). (2007) 45 EHHR 34.
- Case of Wilson, National Union of Journalists and Others v The United Kingdom (Application nos. 30668/96, 30671/96 and 30678/96). (2002) 35 EHRR 523.
- Complaint no. 14/2003, International Federation of Human Rights Leagues v France, 8 September 2004.
- Complaint No.16/2003, Confédération française de l'Encadrement CFE-CGC v France, 30 November 2004.
- Complaint No. 17/2003 World Organisation against Torture (OMCT) v Greece, 7 December 2004.
- Complaint No. 18/2003 World Organisation against Torture (OMCT) v Ireland, 7 December 2004.
- Complaint No. 19/2003 World Organisation against Torture (OMCT) v Italy, 1 August 2003.
- Complaint No. 20/2003 World Organisation against Torture (OMCT) v Portugal, 26 January 2005.
- Complaint No. 21/2003 World Organisation against Torture (OMCT) v Belgium, 7 December 2004.
- Complaint No. 34/2006 World Organisation against Torture (OMCT) v Portugal, 5 December 2006.
- Complaint No.38/2006, European Council of Police Trade Unions (CESP) v France, Merits, 3 December 2007.
- Edwards v Skyways Ltd [1964] 1 All ER 494.

- Gorry v Wiltshire Council [2012] EWCA Civ 629.
- Holland v London Society of Compositors (1924) 40 TLR 440.
- Tyrer v The United Kingdom (1979-80) 2 EHRR 1.
- Young, James and Webster v The United Kingdom (1982) 4 EHRR 38.

10. BIBLIOGRAPHY AND ONLINE RESOURCES

10.1. Reports and Case Studies

- 32nd national report of the UK 2013 Cycle XX-2.
- ADASS Budget Survey 2011, report produced by Directors of Adult Social Services .
- Citizens Advice Bureau, The impact of welfare benefits advice
<www.citizensadvice.org.uk/the_impact_of_welfare_benefits_advice.pdf>
<<http://www.bbc.co.uk/news/uk-politics-22936684>>
- Centre for Local Economic Strategies, 'Austerity Uncovered' (Presented by TUC, 2014)
<https://www.tuc.org.uk/sites/default/files/TUC%20Final%20Report%20Dec'14_1.pdf>, accessed 14 March 2015.
- Conclusions 2013 and XX-2 (2013) of the European Committee of Social Rights on the
- Implementation of the European Social Charter.
<http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/UKXX2_en.pdf> accessed 15 March 2015.
- 'Complete National Overview - United Kingdom (England)' (European Agency for Special Needs and Inclusive Education, 1 December 2013) <https://www.european-agency.org/country-information/united-kingdom-england/national-overview/complete-national-overview>, Accessed 20 February 2015.
- Credit Suisse, Global Wealth Report 2014 <<https://publications.credit-suisse.com/tasks/render/file/?fileID=60931FDE-A2D2-F568-B041B58C5EA591A4>> accessed 15 March 2015.

- Department for Business Innovation & Skills and the Office for National Statistics, 'Trade Union Membership 2013: Statistical Bulletin' (HM Government, 2014) <<https://www.gov.uk/government/statistics/trade-union-statistics-2013>> accessed 14 March 2015.
- Her Majesty's Government 'Working Together to Safeguard Children', March 2013.
- Her Majesty's Government The Framework for the Assessment of Children in Need and their Families (2000).
- 'The Impact Of Funding Reductions On Local Authorities' (National Audit Office, 2014) <http://www.nao.org.uk/wp-content/uploads/2014/11/Impact-of-funding-reductions-on-local-authorities.pdf>, Accessed 23 February 2015.
- 'Living Precariously: Families In An Age Of Austerity' (Family and Childcare Trust, 2013) 17.
- National Audit Office, 'The impact of funding reductions on local authorities' (Local Government Report, 2014) <<http://www.nao.org.uk/report/the-impact-funding-reductions-local-authorities>> accessed 14 March 2015.
- The National Service Framework For Children, Young People And Maternity Services' (Department for Education and Skills, Department for Health, 2004) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/199952/National_Service_Framework_for_Children_Young_People_and_Maternity_Services_-_Core_Standards.pdf Accessed 20 February 2015.
- Oxfam, 'The true cost of austerity and inequality: UK Case study (2013) <<http://www.oxfam.org/sites/www.oxfam.org/files/cs-true-cost-austerity-inequality-uk-120913-en.pdf>> accessed 15 March 2015
- The Prime Minister's Office, 'The Coalition: Our Programme for Government' (HM Government, 2010).
- 'The Red Book 2012: The Annual Review Of The Impact Of Spending Decisions On Vulnerable Children And Families.' (Action for Children, 2012).

- Report by the Department of Work and Pensions: Proposed benefit and pension rates 2014 to 2015
<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275291/Benefit_and_Pension_rates_2014-15.pdf> accessed 15 March 2015.
- S Royston and others, 'A Policy Report On 'The Future Of Free School Meals' (The Children's Society)
http://www.childrensociety.org.uk/sites/default/files/tcs/fair_and_square_policy_report_final.pdf, Accessed 20 February 2015.
- Shaw Trust Interim Report and Consultation, 2013 Making Work A Real Choice'.
- The report of the PLEAS Task Force, 'Developing capable citizens: the role of public legal education' (2007)
<<http://www.pleas.org.uk/uploads/PLEAS%20Task%20Force%20Report.pdf>>.
- Unison, Counting the cost: How cuts are shrinking women's lives
<www.unison.org.uk/catalogue/22422>
- Universal Credit at Work – Spring 2015 (Report from the Department of Work and Pensions February 2015)
<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/405921/uc-at-work-spring-2015.pdf> accessed 15 March 2015.
- Women's Budget Group, Budget 2014—giveaways to men paid by women: A briefing from the UK Women's Budget Group on the gender impact of measures announced in the 2014 Budget <www.wbg.org.uk/wp-content/uploads/2014/03/Budget-Briefing-2014.pdf>.
- Women's resource centre, 'The impact of austerity measures upon women: A case study of the North East of England (2013) <<http://thewomensresourcecentre.org.uk/wp-content/uploads/NEWN-impact-of-austerity-measures-case-study-June-2013-.pdf>>.

10.2. Books and Journals

- A Purvis and others, 'Evaluation Of The Work Choice Specialist Disability Employment Programme' (Department for Work and Pensions Research Report No 846, 2013) 135–36.
- H Chowdry and L Sibieta, 'Trends In Education And Schools Spending' (ESRC, 2011).
- R Churchill. and U Khaliq "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) (2004). pp.417-456.
- M Cominetti, 'With Nearly 1 Million Unemployed Youths In The UK, New Policy Proposals Aimed At Tackling The Issue Are Necessary' (British Politics and Policy at LSE, 12 March 2014) <http://blogs.lse.ac.uk/politicsandpolicy/youth-unemployment-policy-take-two/>, Accessed 24 February 2015.
- N Coleman and others, 'Evaluation Of The Youth Contract Wage Incentive' (Department for Work and Pensions, 2014) 15.
- H. Cullen, "The Collective Complaints System of the European Social Charter: Interpretative Methods of the European Committee of Social Rights". *Human Rights Law Review* 9(1) (2009), pp.61-93
- H. Cullen (2005). "Is the European Social Charter a Charter for Children?" *50 Irish Jurist* 60.
- C, Denvir , N, Balmer & Pascoe Pleasence (2013) When legal rights are not a reality: do individuals know their rights and how can we tell?, 35(1) *Journal of Social Welfare and Family Law* 156
- S, Dufy, 'A Fair Society? How The Cuts Target Disabled People' (The Centre for Welfare Reform, 2013) 22.
- S.Duffy Counting the Cuts: What the government doesn't want the public to know (The Centre for Welfare Reform 2014)

- S, Duffy on behalf of the Campaign for a Fair Society, A fair society? How the cuts target disabled people (2013) The Centre for Welfare Reform 7
- R. Dworkin, (1977). Taking Rights Seriously, Harvard University Press
- D, Finn & J, Goodship on behalf of the Centre for Economic and Social Inclusion, 'Take-up of benefits and poverty: an evidence and policy review' (2014) <http://www.cesi.org.uk/sites/default/files/publications/Benefit%20Take%20Up%20Final%20Report%20Inclusion%20proofed%20June%202014%20pdf.pdf>
- D, Gordon, J, Mack, S, Lansley, G, Main, S, Nandy, D, Patsios, M, Pomati and the PSE team from the University of Bristol, Heriot-Waatt University, National Centre for Social Research, Northern Ireland Statistics & Research Agency, The Open University, Queen's University Belfast, University of Glasgow and the University of York, PSE UK first results: The impoverishment of the UK: Living Standards (2013).
- H, Hauben and others, 'Assessing The Impact Of European Governments' Austerity Plans On The Rights Of People With Disabilities' (Bernard Brunches International BPI Group, 2012)
- T. Novitz, (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, pp.50-66.
- McCormick. (1982). Legal Right and Social Democracy: Essays in Legal and Political Philosophy, Oxford University Press.
- T, Mladenov, 'Disability And Austerity' (Cost Of Living, 1 August 2014) <http://www.cost-of-living.net/disability-and-austerity/>, Accessed 20 February 2015.
- E Potton, 'Key Issues For The New Parliament 2010: Young People In The Labour Market' (House of Commons, 2010).
- C Pritchard and R Williams 2009, Does social work make a difference?: A controlled study of former "looked-after-children" and "excluded from school" adolescents now men aged 16-24 subsequent offences, being victims of crime and suicide, Journal of Social Work 9.

- J. Raz. (1986). *The Morality of Freedom*, Clarendon Press.
- R Vaitilingam, 'RECESSION BRITAIN: Findings From Economic And Social Research' (ESRC) 18.
- C Wood, 'Destination Unknown: Summer 2012' (Demos, 2012).
- J. Waldron, ed. (1987). *Nonsense on Stilts: Bentham, Burke and Marx on the Rights of Man*, Lobdon Mehune Publishing.
- J. Waldron, (1984). *Theories of Rights*, Oxford University Press.

10.3. Newspaper Articles and Periodicals

- Age UK factsheet 19 April 2014 <http://www.ageuk.org.uk/Documents/EN-GB/Factsheets/FS19_State_Pension_fcs.pdf?dtrk=true> accessed 15 March 2015.
- P Bolton, 'Education Spending In The UK' (House of Commons, December 2014).
- Chris Giles, 'Britain and the cuts: Non-protected departments in line of fire.' *The Financial Times* (London, November 9, 2014 7:00 pm)
<<http://www.ft.com/cms/s/0/9002303a-6346-11e4-8a63-00144feabdc0.html#slide0>>
accessed 14 March 2015.
- Citizens Advice Briefing on legal aid reforms
<http://webcache.googleusercontent.com/search?q=cache:Z6z9Tvkgs_gJ:www.citizensadvice.org.uk/citizens_advice_briefing_on_legal_aid_reforms.pdf+&cd=1&hl=en&ct=clnk&gl=gr>.
- Conservative Spending Cuts <http://www.theguardian.com/business/2015/feb/04/ifs-50bn-pounds-spending-cuts-conservatives-election>.
- Dan Milmo and Matthew Taylor, 'Unions warn councils against copycat tactics after Unison banned from talks' *The Guardian* (London, 2 September 2011)
<<http://www.theguardian.com/politics/2011/sep/02/unions-warn-councils-after-unison-banned>> accessed 14 March 2015.
- Dan Milmo, 'Unite clashes with Honda over "union derecognition" documents' *The Guardian*, (London, 16 October 2011)

- <<http://www.theguardian.com/business/2011/oct/16/unite-union-honda-carmaker-derecognition-row>> accessed 14 March 2015.
- Digest of the case law of the European committee of social rights
<http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf
 - 'Every Child Matters: Change For Children'
<http://www.hertsdirect.org/infobase/docs/pdfstore/ECMCFCsummary.pdf>, Accessed 23 February 2015.
 - Inequality in the UK
<<http://www.theguardian.com/commentisfree/2014/oct/15/wealth-inequality-uk-ticking-timebomb-credit-suisse-crash>>accessed 15 March 2015.
 - Labour Legal Aid Cuts <http://www.theguardian.com/law/2012/may/02/labour-peer-legal-aid-cuts><http://www.theguardian.com/law/2012/may/02/labour-peer-legal-aid-cuts>.
 - Poverty Hitting Britain. The Guardian 19 June 2014
<http://www.theguardian.com/society/2014/jun/19/poverty-hits-twice-as-many-british-households>.
 - S Coughlan, 'School Cuts "No Harm To Standards"', BBC (21 May 2013)
<http://www.bbc.co.uk/news/education-22596030>, Accessed 26 February 2015.
 - Tom Brooks, 'Fairer fees: fixing the employment tribunal system' (The National Association of Citizens Advice Bureaux, 2014)
<http://www.citizensadvice.org.uk/index/policy/policy_publications/er_employment/fairer-fees.htm> accessed 14 March 2015.

10.4. Miscellaneous Websites

- Access To Work' <https://www.gov.uk/access-to-work/eligibility>, Accessed 17 February 2015.
- Education System In The UK' (Department of Education)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/219167/v01-2012ukes.pdf, Accessed 20 February 2015.

- Employment And Support Allowance (ESA)' <https://www.gov.uk/employment-support-allowance/overview>, Accessed 17 February 2015.
- <<http://educationendowmentfoundation.org.uk/toolkit/toolkit-a-z/about-the-toolkit/>> accessed 15 March 2015
- <http://england.shelter.org.uk/get_advice/housing_benefit_and_local_housing_allowance/changes_to_housing_benefit/bedroom_tax> accessed 15 March 2015
- <http://www.equalityhumanrights.com/your-rights/employment/work-place-adjustments>, Accessed 17 February 2015,
- <<https://www.gov.uk/government/policies/raising-the-achievement-of-disadvantaged-children/supporting-pages/pupil-premium>> accessed 15 March 2015.
- <<https://www.gov.uk/government/policies/raising-the-achievement-of-disadvantaged-children>> accessed 15 March 2015.
- <<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.
- 'Reasonable Adjustments For Disabled Workers' <https://www.gov.uk/reasonable-adjustments-for-disabled-workers>, Accessed 17 February 2015.
- 'Types Of School' <https://www.gov.uk/types-of-school/overview>
- <http://www.poverty.ac.uk/sites/default/files/attachments/The_Impoverishment_of_the_UK_PSE_UK_first_results_summary_report_March_28.pdf> accessed 15 March 2015.

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1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

Ukraine has ratified the Revised 1996 European Social Charter in 21 December 2006 and accepted 74 out of 94 paragraphs of the Charter.

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

Ukraine's economy was badly hit by the 2008 financial crisis and the ensuing global recession. Ukrainian industrial exports plummeted as global demand fell, while the country's financial system faced default. The state was saved from bankruptcy by an emergency loan from the International Monetary Fund (IMF) of USD 16.5 billion, which has come with demands from the fund that Kyiv restructures its economy to cut public spending and further enforces the demands of global capital.

The Law 'On Budget' prescribes full implementation of the Law 'On Increasing Social Standards' passed in October 2009, i.e. a 32 per cent average increase of the subsistence level for all the strata of population and increase of the lowest pensions. The social standards were increased in January 2010, ushering in new risks for financial stability of Ukraine and for further cooperation with the International Monetary Fund.

The Law 'On Budget' provides for the minimum pensions to be raised from UAH 695 in January 2010 to UAH 734 in December 2010. As a result of this increase, the Pension Fund deficit remained quite high, about 2.7 per cent of Ukraine's GDP, with the aggregate transfer to the Pension Fund was planned to reach 20 per cent of the State Budget expenditures. As a result, the pension system remained unstable and created risks for Ukraine's fiscal stability in general.¹

¹ '100 Days of the New Government: Which Model of Governing is Being Formed', *Mirror Weekly* (no 22, June 12 2010) 67.

Despite the difficult economic situation in the country, the Governmental social policy was oriented on the high social standards.

Austerity measures were intensified by the Government of Ukraine in response to the political and economic crisis in Ukraine that happened at the end of the 2013. Yanukovich's decision of November 2013 to postpone signing of the Free Trade & Association Agreement with the EU – and increase cooperation with Russia – sparked massive protests in Kyiv and West Ukraine. Starting as pro-European demonstrations, the protesters later demanded an overhaul of a seriously corrupt and authoritarian political system. These protests resulted in the ouster of Yanukovich in February 2014, the return of the 2004 Constitution (under which the President shares power with the Parliament and Prime Minister), and early presidential elections. Eventually the unrest localized in two regions – Donetsk and Luhansk, where pro-Russian and anti-Ukrainian sentiments were particularly strong. As protests in these two regions quickly evolved into armed insurgency supported by Russia, Ukraine started military operation to restore order. Consequently, the annexation of Crimea and military actions in Donbass region (Anti-Terrorist Operation) just deteriorated the situation in the budgeting field. In late February 2014, Ukrainian Prime Minister Arseniy Yatsenyuk announced the implementation of severe austerity measures in the country. To receive a loan from the IMF, Ukraine agreed to an austerity program that included shedding 24,000 government jobs, raising taxes, selling off state assets and withdrawing subsidies on natural gas.² The quid pro quo of austerity-for-aid is at the heart of Ukraine's bailout program, and it promises to devastate Ukrainian living standards, according to the taken by analyst Vlad Signorelli of Bretton Woods Research in Mt. Tabor, New Jersey. Among some of the details coming to light are a 47% to 66% increase in personal income tax rates; a 50% increase in monthly gas bills; a 40% increase on gas tariffs for heating companies; and an increase in taxes on agribusiness.³

² Ukraine – Economy (*GlobalSecurity.org*, 19 May 2015) <<http://www.globalsecurity.org/military/world/ukraine/economy.htm>> accessed 7 July 2015.

³ Kenneth Rapoza, 'Ukraine Welcomes IMF Austerity Regime' (*Forbes*, 28 March 2014) <<http://www.forbes.com/sites/kenrapoza/2014/03/28/ukraine-welcomes-imf-austerity-regime/2/>> accessed 7 July 2015.

Consequently, the Cabinet of Ministers on 1 March 2014 adopted resolution n.65 'On saving of state funds and preventing of budget's loss'.⁴ According to this regulation the following measures were taken:

- to introduce the bans on the purchasing of the vehicles, phones, laptops for the official authorities;
- to limit expenditure on the organization of work of social funds, including organizational and administrative costs, capital investments, spending on information technology etc.;
- to stop off payment for charter flights and optimization of other flights for the officials.

Local budgets were also considered to be readopted in obedience to that austerity measures.

According to the Law 'On Amendments to Certain Legislative Acts of Ukraine on pensions'⁵ adopted on 2 March 2015 and coming in force since 1 April 2015, pension for employed pensioners are rejected for MPs, prosecutors, judges and public officials until the 31 December 2015. These provisions are not applied for disabled people of 1st and 2nd categories and those who are protected under the Law of Ukraine 'On the Status of War Veterans and guarantees of their social protection'. Pensions for other categories of employed pensioners are cut down to 150 per cent of the living wage.

Since 1 January 2015 the possibility of retirement one year and a half ahead of the retirement age is abolished if a person is released due to staff reductions or for health reasons. The rule requiring additional pension payments for living in contaminated areas is cancelled.

Rate for mandatory pension insurance fee when buying foreign currency is increased from 0.5% to 2%, and is paid only by individuals who buy cash currency (except citizens who have foreign currency loans and buy foreign currency for their redemption).⁶

⁴ Res no 65 of The Cabinet of Ministers (On saving of state funds and preventing of budget's loss) 2014 [Про економію державних коштів та недопущення втрат бюджету].

⁵ Law no 213–VIII (On Amendments to Certain Legislative Acts of Ukraine on pensions) 2015 [Про внесення змін до деяких законодавчих актів України щодо пенсійного забезпечення].

⁶ The Ministry of Social Policy of Ukraine, 'The Concept of Improving Legislation Providing Benefits' <http://www.mlsp.gov.ua/control/uk/publish/printable_article?art_id=36154> accessed 2 April 2015 [Ukrainian].

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

Ukraine signed the European Social Charter (revised 1996) on 7 May 1999 and ratified it on 21 December 2006.

In accordance with Articles 5 and 6 of this document, with a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations. With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

- to promote joint consultation between workers and employers;
- to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
- to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;
- to recognize the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

In Ukraine, these issues are governed mainly by the Labour Code of Ukraine⁷ and some other legislative acts. In particular, the Labour Code of Ukraine notes that:

The collective agreement is concluded on the basis of current legislation adopted by the parties to regulate production, labour and socio-economic relations and for coordination of the interests of workers, owners and authorized bodies.⁸

Article 11⁹ of the Labour Code of Ukraine (further the LCU) notes the following:

The collective agreement is concluded in enterprises, institutions and organizations regardless of ownership and management, using hired labour and have legal personality. A collective agreement may be negotiated in subdivisions of enterprises, institutions and organizations within the competence of these units.

Also, Article 12 of the LCU¹⁰ specifies that the collective agreement is concluded between the owner or authorized body (person) on the one hand, and the primary trade union acting in accordance with their charters, and in their absence - representatives freely elected at a general meeting of employees or their authorized agencies, on the other hand. If the company, institution or organization created several primary trade union organizations, they should on the basis of proportional representation (according to the number of members of each primary trade union organizations) create a unified representative body for collective bargaining. In this case, each primary trade union organization must decide on their specific obligations under the collective agreement and responsibility for their failure. The primary trade union organization that refused to participate in the joint representative body shall forfeit its right to represent workers while signing the collective agreement.

It is obvious that the Ukrainian legislation is changing in accordance with obligations undertaken by Ukraine on the harmonization of national legislation with the European legislation, as it is mandatory in accordance to the Association Agreement between Ukraine and the European

⁷ Law no 322–VIII (Labour Code of Ukraine) 1971 [Кодекс законів про працю України].

⁸ Art 10, amended in accordance with the decree of the Parliament no 4617–10 from 24.01.83, no 8474–10 from 27.02.83, no 5938–11 from 27.05.88; Law no 3693–12 from 12.15.9.

⁹ Art 11 as amended in accordance with the decree of the Parliament no 4617¹⁰ from 24.01.83, no 8474–10 from 27.02.83, no 5938–11 from 05.27.88, Law no 3693–12 from 15.12.9.

¹⁰ Art 12 as amended in accordance with the Law no 3693–12 from 12.15.93, the Law no 2343–III dated 5 April 2001, as amended by the Law no 1096–IV of 10.07.2003.

Union. Therefore, norms of the LCU in the sphere of rights of the establishment and operation of trade unions are fully consistent with the provisions of the European Social Charter.

It is necessary to consider the issue of collective bargaining and social rights in labour issues in accordance with the current Ukrainian legislation.

Article 14 of the Labour Code provides for the following:

Collective bargaining is taking place before the conclusion of the collective agreement. Timing, order negotiation, settlement of any disputes arising during their management, procedure development, and making amendments and additions to the collective agreement, the responsibility for its implementation are governed by the Law of Ukraine 'On Collective Agreements'.¹¹

Article 4 of the aforementioned Act states the following:

The right to negotiate and conclude a collective agreement, provided to the parties of the social dialogue, the composition of which is determined according to the laws of social dialogue. If the company has several trade unions or associations or other bodies, authorized by labour collective to represent them, they should form a joint representative body to negotiate and conclude a collective agreement. (...) The joint representative body of trade unions, employers can negotiate and conclude collective agreements of appropriate level on behalf of its members who are representative in accordance with the laws of Ukraine on social dialogue.

In order to make the best disclosure of these issues, it is necessary to pay attention to the fact that the current legislation of Ukraine also notes considerable amount of regulation of social dialogue. Law of Ukraine 'On Social Dialogue in Ukraine'¹² in article 1 provides us with the following definition:

Social dialogue – the process of identifying and convergence, called to reach common understandings and consistent decisions by the parties of social dialogue representing the interests of workers, employers and governmental agencies and bodies of local governments, for to formulate and implement governmental social and economic policies, regulation of employment, social and economic relations.

¹¹ Law no 3356–XII (On Collective Agreements) 1993 [Про колективні договори і угоди].

¹² Law no 2862–VI (On Social Dialogue in Ukraine) 2011 [Про соціальний діалог в Україні].

Article 2 of the Law states that:

Ukraine's legislation on social dialogue is based on the Constitution of Ukraine (254k / 96-VR) and consists of the laws of Ukraine 'On Trade Unions, Their Rights and Guarantees' (1045-14), 'On the employers' organizations' (2436-14), 'On collective Agreements' (3356-12), 'On settlement of collective labour disputes (conflicts)' (137/98-VR), 'On Social Dialogue in Ukraine' (2862-17), labour laws and other legal acts. If an international agreement, ratified by *the Verkhovna Rada* (the Supreme Council) of Ukraine establishes rules other than those were provided by the legislation of Ukraine on social dialogue, the norms of the international agreement are applicable.

According to the Article 3 of the Law of Ukraine 'On Social Dialogue in Ukraine', social dialogue in Ukraine is based on the following principles: legality and the rule of law; representativeness and legal capacity of parties and their representatives; independence and equality; constructiveness and interaction; voluntariness and adoption of actual liabilities; mutual respect and finding compromise solutions; mandatory consideration of the proposals of the parties; priority of matching procedures; openness and transparency; mandatory compliance with the agreements reached; responsibility for the implementation of the commitments.

Also, Article 4 claims the following:

Social dialogue is carried out at the national, sectoral, territorial and local (company, institution, organization) levels in trilateral or bilateral basis.

It should be admitted that in the area of social rights, namely in the field of labour law and its protection, the current Ukrainian legislation is fully consistent to what it is said in the Article 6 of ESC. For instance, the Law of Ukraine 'On the settlement of collective labour disputes'¹³ defines the legal and institutional framework for the system of measures as collective labour disputes resolution. It also aims to implement the interaction between the parties of industrial relations in the settlement of collective labour conflicts that have arisen between them.

The practice of the European Court of Human Rights (ECHR) in this area is sufficiently important, especially, in cases related to Ukrainian applicants. Analysis of the European Court of Human Rights functioning on issues related to the problems of consideration of individual

¹³ Law no 137/98-ВР (On the settlement of collective labour disputes) 1998 [Про порядок вирішення колективних трудових спорів (конфліктів)].

labour disputes shows that a significant number of Ukrainian citizens are seeking protection of their human rights in the ECHR. However, a significant amount of their claims were deemed inadmissible. The Court practice, including the European Court of Human Rights, shows that, as in any area of law, the protection of human rights has a number of problems that attracts attention and requires legal resolution.

Thus, on 11 March 2014 the European Court of Human Rights, sitting as a Committee, took action on application¹⁴ filed by Zinoviy Antonovich Semenko against Ukraine. The applicant complained about the length of proceedings for the payment of compensation to him in connection with the termination of his employment relationship. He relied on Article 6 par. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms. After unsuccessful attempts to reach a friendly settlement, the Government of Ukraine filed the letter of 21 October 2013, in which it informed the Court of its unilateral declaration to resolve the issue that violated this part of the application. The Government also invited the Court to strike the application out of its list of cases under Article 37 of the Convention. The declaration included the following: Government of Ukraine offers to pay Mr. Zinovy Antonovych Semenko EUR 1,080. In this regard, the Government requested the Court to strike the application from the list. The Government noted that this declaration with a provision 'on any other grounds' on which the Court may strike the case out of the list under paragraph 'c' of paragraph 1 of Article 37 of the Convention. This amount is compensation for any non-pecuniary damage and costs and expenses, exempt from any taxes that may be assessed, and will be converted into the national currency of the respondent State at the date of payment. The funds will be paid within three months from the date of notification of approval by the Court in accordance with paragraph 1 of Article 37 of the European Convention on Human Rights. In the event of non-payment of this amount within three months the Government shall pay from the end of the period to the time of calculating a simple interest in the marginal lending rate of the European Central Bank during the default period, to which three percentage points should be added. The payment will be the final resolution of the case. In a letter dated 5 December 2013 the applicant expressed his disagreement with the terms of a unilateral declaration. Instead, the decision the ECHR took into account the circumstances of the Declaration of the Government of the

¹⁴ Zinoviy Antonovich Semenko v Ukraine [2014] European Court of Human Rights sect V [2014].

respondent State on Article 6 par. 1 of the Convention (length of proceedings concerning compensation in connection with termination of employment) and the means of enforcing these obligations, decided to strike the application out of the list of cases regarding the above complaint in accordance with subparagraph 'c' Article 37 par. 1 of the Convention and declared the remainder of the application to be inadmissible.

Based on the above-mentioned causes, it is possible to reach the following conclusion: with all due respect to international judicial bodies' consideration it is better to protect labour rights at the national level, rather than to take an individual labour dispute to the European Court of Human Rights.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

In March 2014 an 'Anti-terrorist operation' has started in Ukraine. The war has negatively influenced many spheres of social relations, particularly labour relations. While the legislation on social dialogue is not actually subjected to amendments, labour legislation has been supplemented by a variety of changes and additions. A number of legislative acts, including the Labour Code of Ukraine and the Law of Ukraine 'On State Budget of Ukraine for 2015'¹⁵ were amended by several Laws changing the regulation of the relationship between an employer and an employee, as well as in the field of leave for employees who have children or adult child – disabled since childhood belonging to subgroup A group I.¹⁶

Because there have been several waves of mobilization in the country in recent months, it is necessary to regulate more clearly the status of the military and their rights during the military service. By the Law of Ukraine 'On Amendments to Certain Legislative Acts of Ukraine regarding the improvement of military service and of social protection in Ukraine, performing

¹⁵ Law no 80-VIII (On State Budget of Ukraine for 2015) 2015 [Про Державний бюджет України на 2015 рік].

¹⁶ Law no 120-VIII (On Amendments to Certain Legislative Acts of Ukraine regarding the improvement of certain provisions of the Social Policy) 2015 [Про внесення змін до деяких законодавчих актів України щодо удосконалення окремих положень соціальної політики].

military service during the special period¹⁷ the provisions of the second and third parts of the Article 39 of the Law of Ukraine 'On Military Duty and Military Service'¹⁸ were amended. It was described as follows:

...For citizens of Ukraine, who called up for military service, military service during mobilization, for the special period, or enlisted for military service under the contract in the event of a crisis that threatens the national security, the judgment of mobilization and (or) martial law for a special period before the end of a period or an announcement to the decision to demobilize, but not more than one year, there is the job (position) , the average salary in the enterprise, institution, organization, regardless of subordination and ownership, place of study regardless of subordination and ownership and regardless of learning mandatory saved (...). For citizens of Ukraine, who called up for military service, military service during mobilization for the special period, or enlisted for military service under the contract in the event of a crisis that threatens the national security, the judgment of mobilization and (or) martial law up to the expiration of a special period or an announcement to the decision to demobilize, does not stop the state registration of entrepreneurial activities of individuals – entrepreneurs. In the case of non-proceeding in their business during the mobilization, charging taxes and fees such for individuals – entrepreneurs cannot be done.

According to the Law of Ukraine 'On the status of war veterans, guarantees of their social protection'¹⁹ in paragraph 19 Article 6 the following categories were recognized as combatants with the appropriate package of social and employment benefits: soldiers (reservists, military service) and employees of the Armed Forces of Ukraine, National Guard of Ukraine, Security Service of Ukraine, Foreign Intelligence Service of Ukraine, the State Border Guard Service of Ukraine, ordinary soldiers, management staff, military personnel, employees of the Ministry of the Internal Affairs of Ukraine, Department of the State guard of Ukraine, State Service of special Communication and Information Protection of Ukraine, other military forces established

¹⁷ Law no 116-VIII (On Amendments to Certain Legislative Acts of Ukraine regarding the improvement of military service and of social protection in Ukraine, performing military service during the special period) 2015 [Про внесення змін до деяких законодавчих актів України щодо удосконалення порядку проходження військової служби та питань соціального захисту громадян України, які проходять військову службу під час особливого періоду].

¹⁸ Law no 2232-XII (On Military Duty and Military Service) 1992 [Про військовий обов'язок і військову службу].

¹⁹ Law no 3551-XII (On the status of war veterans, guarantees of their social protection) 1993 [Про статус ветеранів війни, гарантії їх соціального захисту].

under the laws of Ukraine, who were defending the independence, sovereignty and territorial integrity of Ukraine and took part in Anti-terrorist operation, ensuring its implementation, being directly in the areas of Anti-terrorist operation and employees of enterprises, institutions and organizations who were involved and took part in Anti-terrorist operation in the areas of its implementation in the manner, prescribed by the law.²⁰

From the above we can conclude that there have been no significant changes in rights concerning collective bargaining, and social dialogues that would powerfully affect the use and implementation of these rights in society. However, it should be noted that there are significant changes in the status and rights of certain groups of the population, especially with regard to the military.

The impact of austerity measures on the labour rights of certain groups of the population in Ukraine since the beginning of 2014 and nowadays is examined in the next part of the report.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

In 2014-2015, austerity has become one of the main directions of the state policy of Ukraine. Caused by the extremely tense situation in the country in general, and the fighting on the eastern border, in particular, society and the government got a number of pressing issues.

Article 1 of the Law of Ukraine 'On State Budget of Ukraine for 2015'²¹ defined threshold amount of the budget deficit of Ukraine in the amount of UAH 63,669,600 including limiting budget deficit of the State Budget of Ukraine - in amount of UAH 49,802,604.4, and the budget deficit limit of the State income of Ukraine - amounting UAH 13,866,995.6 according to Annex № 2 to this Act.

Article 7 of the Law establishes the subsistence minimum per person per month at a rate of 1 January 2015 – UAH 1,176, from 1 December – UAH 1,330. The minimum wage in 2015 established in a monthly amount: from 1 January – UAH 1,218, from 1 December – UAH 1,378.

²⁰ Law no 1233-VII (On Amendments to Article 6 of the Law of Ukraine" On the status of war veterans, guarantees of their social protection) 2014 [Про внесення зміни до статті 6 Закону України "Про статус ветеранів війни, гарантії їх соціального захисту"].

²¹ Law no 80-VIII (On State Budget of Ukraine for 2015) 2015 [Про Державний бюджет України на 2015 рік].

One of the most resonant legislation adopted in 2015 by the Parliament of Ukraine was the Law of Ukraine ‘On cleaning power’²². This law defines legal and organizational principles of cleaning the governmental power (lustration), and is designed to protect democratic values and the rule of law and human rights in Ukraine. Cleaning power (lustration) aims to prevent the participation in public affairs of people whose actions aimed (and/or contributed to) at usurpation of power by the former government, undermining the foundations of national security and defence of Ukraine or unlawful violation of rights and freedoms. It is based on the following principles: the rule of law; transparency and openness; presumption of innocence; individual responsibility; guaranteeing the right of defence. For ten years from the date of enactment of this Act, positions on which the cleaning power (lustration) is introduced cannot hold a person mentioned in the first, second, fourth and eighth paragraphs of the article 3 of this Law. The prohibitions of the third paragraph of Article 1 of this Law shall apply to persons who occupied the power positions not less than one year from 25 February 2010 to 22 February 2014. The list of such positions included the posts from the President of Ukraine, Prime Minister of Ukraine, First Vice-Prime Minister of Ukraine, judges of the district courts and local government officials that their actions contributed to illegal reduce of the volume of integral rights of the Ukrainian people during the Revolution of Honour. Persons, guilty of unlawful actions, specified in this Act shall be turned adrift by the conclusion of the relevant state body or local governments, and cannot held the appropriate office for five years from the date of the decision on their release.

At the same time, the Law of Ukraine ‘On Amendments to the Law of Ukraine “On clean power” for additional measures to ensure the defence of the State’²³ provided that the prohibitions in part three and four of this Article shall not be applied to persons of higher officers who occupied or hold positions in the Ministry of Defence of Ukraine, the Armed Forces of Ukraine, the State Border Guard Service of Ukraine, the National Guard of Ukraine and other established under the laws military units, if this is due to the need to ensure the defence of the state and there is a subject to satisfaction of the corresponding application in the manner, prescribed by this Law. The Minister of Defence of Ukraine, the Chairman of the State

²² Law no 1682-VII (On cleaning power) 2014 [Про очищення влади].

²³ Law no 132-VIII (On Amendments to the Law of Ukraine “On clean power” for additional measures to ensure the defence of the State) 2015 [Про внесення зміни до Закону України "Про очищення влади" щодо додаткових заходів із забезпечення обороноздатності держави].

Border Guard Service of Ukraine, National Guard of Ukraine, heads of other military units have the right to make, in consultation with the Committee of the *Verkhovna Rada* (the Supreme Council) of Ukraine on National Security and Defence, a reasoned request to the President of Ukraine on not to apply to persons referred to the first paragraph of this part the prohibition to hold positions for which measures to clean power (lustration) are taken. The motion, provided by the second part of this paragraph may also be included with persons who are senior officers who were dismissed from their positions in the Ministry of Defence of Ukraine, the Armed Forces of Ukraine, the State Border Guard Service of Ukraine, the National Guard of Ukraine and other established under the laws military units, for which the ban was imposed, by parts three and four of this article. After reviewing the relevant petition, the President of Ukraine makes a decision. If the corresponding application is satisfied, the person shall be deemed on whom no applicable prohibition, specified by the third or fourth this article, was applied.

By the Law of Ukraine 'On Amendments to Certain Legislative Acts of Ukraine on the reform of compulsory state social insurance and legalization of payroll'²⁴ the Law of Ukraine 'On compulsory state social insurance' was enacted. The law contains a number of positive norms in the area of safety for employees, introducing some new measures that have not been previously characterized by the Ukrainian legislation in this area. In particular, the transitional provisions of the Act approved amendments to the Law of Ukraine 'On the rights and freedoms of internally displaced persons'.²⁵ Article 7 of the Act was supplemented by rule that says that:

internally displaced persons from temporarily occupied territory are eligible for financial support, insurance benefits and social services of compulsory state social insurance due to temporary disability and an accident at work and occupational diseases that caused disability, directly in the working bodies of the Board of Social Insurance Fund of Ukraine at the actual place of residence, or temporary stay. Financial support, insurance payments are appointed by the necessary documents confirming the right to these payments, and in a case of their absence - according to the State Register of Mandatory Social Insurance, in the manner prescribed by the Board of Social Insurance Fund of Ukraine.

²⁴ Law no 77-VIII (On Amendments to Certain Legislative Acts of Ukraine on the reform of compulsory state social insurance and legalization of payroll) 2014 [Про внесення змін до деяких законодавчих актів України щодо реформування загальнообов'язкового державного соціального страхування та легалізації фонду оплати праці].

²⁵ Law no 1706-VII (On the rights and freedoms of internally displaced persons) 2014 [Про забезпечення прав і свобод внутрішньо переміщених осіб].

The aforementioned Law of Ukraine ‘On the rights and freedoms of internally displaced persons’ should be overviewed in details. This law under the Constitution and laws of Ukraine, international treaties of Ukraine ratified by *the Verkhovna Rada* (the Supreme Council) of Ukraine, establishes guarantees of the rights, freedoms and legitimate interests of internally displaced persons. In accordance with the definition in the law, internally displaced person is a citizen of Ukraine residing in Ukraine, which forced or who left his own residence as a result of or in order to avoid the negative effects of armed conflict, the temporary occupation, widespread violence, massive violations of human rights and emergency situations of natural or man-made. These circumstances are known and those that do not require any proof if information about them is contained in the official records (messages) of the High Commissioner of the United Nations Commission on Human Rights, the Organization for Security and Cooperation in Europe, the International Committee of the Red Cross and Red Crescent Societies, the Ombudsmen of *the Verkhovna Rada* (the Supreme Council) of Ukraine on Human Rights, hosted on websites of these organizations or if as to such circumstances appropriate actions of authorized state bodies are taken. The link of abandoned residence of internally displaced persons within the meaning of this Act is recognized as the address of residence at the time of the circumstances mentioned in the first paragraph of this article. Under the law (Article 2), Ukraine is taking all possible measures envisaged by the Constitution and laws of Ukraine, international treaties, ratified by *the Verkhovna Rada* (the Supreme Council) of Ukraine on prevention of prerequisites of forced internal displacement of persons and the protection of the rights and freedoms of internally displaced persons, the return of persons to their abandoned residences in Ukraine and their reintegration.

By the Article 7 of the Law, Ukraine takes all possible measures to solve problems related to social protection, including social benefits and restoration of all internally displaced persons. There are many provisions on employment of displaced persons with relevant documents (and those without them), which also regulate a number of questions of further activities of displaced legal persons and the issue of employment of persons with disabilities and other disadvantaged groups of population.

Finally, we should mention the positive rate that has been enacted by the Law of Ukraine ‘On Amendments to Certain Legislative Acts of Ukraine regarding the improvement of certain

provisions of the Social Policy'.²⁶ It introduces an amendment to Article 182 of the Labour Code, and notes that a woman, who works and has two or more children under 15 or a disabled child, or who has adopted a child, the mother of a disabled child with subgroup A group I, a single mother, father of a child or a person, disabled from childhood with subgroups A group I, who brings them motherless (including the case of mother's long stay in a hospital) and the person who has custody of a child or person, disabled from childhood with subgroups A group I, has a right to annual additional paid vacation of 10 days, excluding holidays.

Hard times came for all enterprises in Ukraine, when they have to underpay their workers. In confirmation the latest case-court decisions should be presented.

In July 2012 the Plaintiff went to court with a claim on the ground that the long period he worked in various positions in the public joint-stock company (JSC) 'Evraz Sukha Balka' during his work at the company repeatedly raised tariff rates and salaries, but charging the defendant average salary for vacation conducted in violation of the law. The Plaintiff asked the court to recover from the JSC 'Evraz Sukha Balka' in his favour during his unpaid leave for the period of work in the enterprise UAH 1,639.90, and recover the compensation for loss of wages due to violation of terms of payment under growth index of consumer prices and rates on the date of release at a rate of UAH 5,226.80. Court of Appeal of Dnipropetrovsk region on 19 November 2013 the trial court regarding the recovery of unpaid salary amount for the holidays cancelled in this part, adopted a new decision which the claim is denied the Plaintiff, in other lower court decision upheld. By the decision of the Supreme Court of Ukraine for Civil and Criminal Cases on 3 September 2014 cassation of the Plaintiff was rejected, the decision of the Appeal Court of Dnipropetrovsk region on 19 November 2013 remained unchanged. In lodged with the Supreme Court of Ukraine statement asks the Plaintiff to cancel the decision of the High Specialized Court of Ukraine for Civil and Criminal Cases of 3 September 2014, and the case to extend to the court of cassation, citing the unequal application by the court of cassation of same rules of substantive law, namely: item 10 of the calculation of the average wage, approved by the Cabinet of Ministers of Ukraine dated 8 February 1995 № 100, article 60 of the Law of Ukraine 'On Joint Stock Companies'. The Plaintiff's application for review of the decision of the High Specialized

²⁶ Law no120-VIII 'On Amendments to Certain Legislative Acts of Ukraine regarding the improvement of certain provisions of the Social Policy' (Parliament of Ukraine, the Law of 15.01.2015).

Court of Ukraine for Civil and Criminal Cases on 3 September 2014 was denied. In order dated 18 February 2015 the Supreme Court of Ukraine, in particular, noted the following:

- 1) In accordance with the first paragraph of Article 60 of the Law of Ukraine 'On leave' the decision-making person who exercises powers is the sole executive body established by the charter company;
- 2) In accordance with paragraph 10 in the cases on increase of tariff rates and salaries, the enterprise, institution or organization acts in accordance with the law, as well as the decisions provided for in the collective agreement (contract), as in the accounting period and in the period during which the employee stores the average salary, wages, including bonuses and benefits taken into account when calculating the average salary for the period of time before the increase is adjusted on rate of increase; on self-supporting enterprises and organizations an adjustment of wages and other payments is made on the basis of their financial capabilities.
- 3) Analysis of the rules of law leads to the conclusion that for self-supporting enterprises and organizations the adjustment of wages and other payments is made on the basis of financial need, and reduction in the increase of tariff rates and salaries at the enterprise is conducted in accordance with legislative acts and by decisions provided for in the collective agreement (contract). This decision shall be taken by the by the governing body of the enterprise, according to the authority established by the charter of the company.

It should be admitted that the rights of workers and their single categories were considerably expanded and improved in accordance with the European vector of development of the Ukrainian legislation, and were limited only in cases that are directly related to those, who had a relation to the usurpation of the power by the previous government officials in 2014.

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by his/her own efforts or from other sources?

Ukraine did not accept Article 13 of the Charter.

The right to social protection is constitutionally guaranteed in Ukraine. According to the Article 46 of the Constitution:

Citizens have the right to social protection that includes the right to provision in cases of complete, partial or temporary disability, the loss of the principal wage-earner, unemployment due to circumstances beyond their control and also in old age, and in other cases established by law.

Social assistance system provides support to persons unable to secure adequate resources by his/her own efforts.

The system of social assistance in Ukraine is financed by the state budget in the form of subventions (transfers) to local budgets. Regulatory and supervisory functions in the area of social assistance are performed by the Ministry of Social Policy and its local departments.²⁷

The expenditures on social protection and social assistance comprise the biggest share in the state budget. During 2002-2008 the average annual expenditures on social protection and assistance amounted to 22% of total state budget.²⁸ As of 2013, it was 28.7% of all expenditures and 10% of GDP.²⁹ At the same time, the amount of expenditures calculated for one person amounted only to USD 1,677 in 2005 and was one of the lowest among OECD countries.³⁰

The system of social assistance in Ukraine consists of benefits in cash and in kind. The social assistance in cash includes: assistance for families with children; assistance for low-income families; assistance for persons, disabled since childhood and disabled children. The social assistance in kind consists of social privileges, housing subsidies and social services.³¹

3.1.1.1. Social Assistance in Cash

i. Social assistance for families with children

²⁷ International Labour Office, *Assessment of the Social Security System in Ukraine 2008-09: Crisis Response and Future Reforms* (Geneva, ILO 2010) 29.

²⁸ Center for Public Expertise, *Система соціального захисту та соціального забезпечення в Україні: реальний стан та перспективи реформування* (Kyiv, Center for Public Expertise 2009) 78 [Ukrainian].

²⁹ State Statistics Service of Ukraine, *Соціальний захист населення України* (Statistical Bulletin, State Statistics Service of Ukraine 2014) 11 [Ukrainian].

³⁰ Center for Public Expertise, *Система соціального захисту та соціального забезпечення в Україні: реальний стан та перспективи реформування* 82.

³¹ European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities, *Social Protection and Social Inclusion in Ukraine* (European Communities 2009) 57.

Pursuant to the Law 'On State Assistance for Families with Children' the following types of state aid exist:

- Maternity benefit (for women uninsured against temporal disability).³² The amount is equal to 100% of women's average monthly income, but cannot be less than 25% of the subsistence minimum for an-able bodied person (Article 9 of the Law 'On State Assistance for Families with Children'). The duration of maternity benefit is established as follows: 1) for normal deliveries – 126 days, 2) for deliveries with complications or birth of two or more children – 140 days, 3) for women falling within category of victims of Chernobyl accident – 180 days (Article 8 of the Law 'On State Assistance for Families with Children').
- Child birth benefit. It is granted to the one of the parents who is on maternity leave. The amount is UAH 41,280 (UAH 10,320 is paid as a lump sum, the rest is paid during 36 month) (Article 12 of the Law 'On State Assistance for Families with Children');
- Child adoption benefit. It is payable to a citizen of Ukraine, who permanently resides within the territory of Ukraine and adopted a child (Article 12-1 of the Law 'On State Assistance for Families with Children'). The amount is the same as child birth benefit;
- Benefit for children under guardianship or custodianship. This benefit is assigned to persons who were appointed as guardians or custodians of children, deprived of parental care. Such benefit is deemed to be the property of a child (Article 16 of the Law 'On State Assistance for Families with Children'). The amount is twice the subsistence minimum for a child (depending on age). For children up to 6 years this benefit equals UAH 2,064 per month and for those from 6 till 18 years – UAH 2,572 per month (Article 18 of the Law 'On State Assistance for Families with Children');
- Child benefit for single mothers. It is assigned to single mothers (not married), single adoptive persons, widows and widowers with children (if they are not entitled to survivor's pension or social pension), who have children up to 18 years. In case children are studying, the benefit is payable until the end of the studies, but not longer than till the

³² The Law of Ukraine no. 2811-XII (On State Assistance for Families with Children) 1992, Art 7 [Про державну допомогу сім'ям з дітьми].

age of 23 (Article 18-1 of the Law 'On State Assistance for Families with Children'). The amount of the benefit is calculated as the difference between 50% of the subsistence minimum for a child of particular age and the average total family income over the previous six months, but it cannot be less than 30% of the subsistence minimum for a child (Article 16 of the Law 'On State Assistance for Families with Children'). The minimum amount of this benefit for children up to 6 years – UAH 309, from 6 till 18 years – UAH 385, from 18 till 23 years – UAH 364.

ii. Social assistance for low-income families

The granting of state aid to low-income families is regulated by the Law 'On State Social Assistance for Low-Income Families'. The low-income family is defined as a family which, due to serious reasons or reasons beyond its control, has an average monthly aggregate income lower than the minimum living standard for family.³³ The benefit is assigned for half a year (Article 6 of the Law 'On State Social Assistance for Low-Income Families'). The amount is determined as a difference between family minimum living standard and monthly aggregate income of the low-income family, but it cannot be more than 75% of the minimum living standard for family (Article 5 of the Law 'On State Social Assistance for Low-Income Families').

iii. State assistance for persons disabled since childhood and disabled children

According to Article 1 of the Law 'On State Assistance for Persons Disabled since Childhood and Disabled Children' this benefit may be assigned to persons disabled from childhood and disabled children up to 18 years. The amount of monetary assistance depends on a disability group and is determined as a percentage of a minimum subsistence level for persons incapable of working (UAH 949). For persons disabled since childhood (I group – 100%, II group – 80%, III group – 60%), for disabled children below 18 years – 70%.³⁴ This benefit is payable during the whole period of disability for persons disabled since childhood, and for disabled children – no longer than until the age of 18 (Article 4 of the Law 'On State Social Assistance for Persons Disabled since Childhood and Disabled Children').

³³ The Law of Ukraine no. 1768-III (On State Social Assistance for Low-Income Families) 2000, Art 1 [Про державну соціальну допомогу малозабезпеченим сім'ям].

³⁴ The Law of Ukraine no. 2109-III (On State Social Assistance for Persons Disabled since Childhood and Disabled Children) 2000, Art 2 [Про державну соціальну допомогу інвалідам з дитинства та дітям-інвалідам].

Also, one of the parents of disabled child is entitled to additional benefit for taking care of a disabled child, provided that he/she is not working or studying and actually takes care of a child. The amount is equal to 50% or 100% of minimum subsistence level for children of a particular age. Persons disabled since childhood of I group, single disabled since childhood of II and III group, who are in need of permanent care, are entitled to an additional benefit for taking care of them. The amount of this benefit is from 15% to 75% of subsistence minimum for persons incapable of working (Article 3 of the Law 'On State Social Assistance for Persons Disabled since Childhood and Disabled Children').

3.1.1.2. *Social assistance in kind*

i. Social privileges

More than 1/3 of Ukrainian population is eligible for privileges.³⁵ There are three types of privileges according to the common feature of their beneficiaries: privileges for special contributions to the country (for example, granted to individuals entitled Hero of Ukraine), service based privileges (police officers, personnel in the court system, civil servants, etc.) and social privileges.³⁶

There is no single definition of social privileges in existing legislation. They may be defined as full or partial exemptions of certain categories of citizens from obligations or granting them additional rights in order to ensure adequate standard of living.³⁷ Today, the granting of privileges is regulated by 46 normative acts, 24 of which establish social privileges.³⁸ There are nearly 45 categories of beneficiaries eligible for more than 50 different kinds of social privileges and their numbers are constantly increasing.³⁹

³⁵ The Ministry of Social Policy of Ukraine, 'Концепція вдосконалення законодавства у сфері надання пільг' <http://www.mlsp.gov.ua/control/uk/publish/printable_article?art_id=36154> accessed 02 April 2015 [Ukrainian].

³⁶ Yevhenia Akhtyrko and Liudmyla Kotusenko, *Reforming the System of Privileges* (International Centre for Policy Studies 2004) 5.

³⁷ S Sinchuk, 'Соціальні пільги як вид соціального забезпечення в Україні' (2004) *Jurisprudentia* <<http://www.lawyer.org.ua/?w=r&i=&d=311>> accessed 02 April 2015 [Ukrainian].

³⁸ L Skoropada, *Огляд системи соціального забезпечення в Україні* (Human Dynamics Consortium 2009) 29.

³⁹ *Supra*.

The system of social privileges is based on a categorical principle which implies that person is eligible for a benefit if he/she belongs to a certain group of people provided for in legislation.⁴⁰ The necessity of assistance from the state may be caused by such factors as state of health, family situation, age, etc. The examples of categories include, in particular: war veterans and their equivalent, families of soldiers who were killed or missing in action, combatants, service personnel, partisans; individuals suffering from the after-effects of the Chernobyl AES disaster; labour veterans, military and police veterans, disabled servicemen, rehabilitated prisoners of conscience who were crippled due to their treatment under the soviet prison system or are of pensionable age; pensioners and the disabled.⁴¹

Most privileges are granted in a form of reduction or total exemption from payment for particular goods and services.⁴² For example, discounts on payments for medicine purchase, housing services, telephone use, transportation, privileges regarding taxes and customs, provision of food products and compensation of their costs, free public transportation. There are also privileges putting their beneficiaries in more advantageous position in comparison with others: priority allocation of land and interest-free loans for construction of house for individual use, priority service in medical institutions, and admission to public institutions of higher education without competition.

The most widespread kinds of privileges are discounts on payment or total exemption from payment for city and regional public transport (30% of population) and discounts on payment for housing services (21% of population).⁴³

It is commonly accepted that system of privileges in Ukraine is not capable of securing adequate assistance to the poor and requires reforming. In general, only 43% of population eligible for privileges actually exercises its rights and only 30% of them are poor.⁴⁴ Such situation makes it necessary to replace current system based on categorical principle with the target based one,

⁴⁰ М. Kravchenko, 'Основні підходи до реформування системи пільг в Україні' [2010] Державне управління та місцеве самоврядування 155 [Ukrainian].

⁴¹ Yevhenia Akhtyrko and Liudmyla Kotusenko, *Reforming the System of Privileges* 5.

⁴² The Ministry of Social Policy of Ukraine, 'Концепція вдосконалення законодавства у сфері надання пільг' <http://www.mlsp.gov.ua/control/uk/publish/printable_article?art_id=36154> accessed 02 April 2015 [Ukrainian].

⁴³ Supra.

⁴⁴ Т. Kutsenko and М. Vodnar 'Соціальні пільги в Україні: аналітичний огляд' [2014] Соціально-трудова відносини: теорія та практика 96 [Ukrainian].

where benefits are granted to a specific individual who applied for it and satisfies particular criteria set out in the legislation. These perspectives have been widely discussed since the beginning of the present century, but there are only a few examples of target based assistance so far. Housing subsidy program is one of them.

ii. Housing subsidies

Housing subsidies may be assigned to a family upon the application from one of family members provided that its income is not sufficient to pay for housing services and gas.⁴⁵ In February 2014 more than 1 million families were receiving subsidies, the average amount was UAH 335 during heating period and UAH 73 during non-heating period.⁴⁶ There are about UAH 24 billion allocated for housing subsidies program in the state budget of 2015.⁴⁷

Also, due to the increase in prices for gas and heat in 2014, there was introduced the system of compensation of additional expenses on housing services for families whose aggregate income is less than minimum subsistence level for families. The amount of compensation equals to the difference between the amount of payment for housing services that a family made before the increase in prices and the amount it has to pay after.⁴⁸ In February 2014, only 11,914 families were receiving such compensation and its average amount was UAH 154 during non-heating period and UAH 2,614 during heating period.⁴⁹

On 28 February 2015, the Cabinet of Ministers of Ukraine approved the Resolution 'On Improving the Procedure of Granting Housing Subsidies' that introduces much easier and less time consuming procedure. Assignment of the subsidies and supervision over their usage is performed by the departments of social security of local state administrations and executive bodies of city councils (Point 3 of the Resolution). The subsidies are assigned during 10 days for

⁴⁵ European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities, *Social Protection and Social Inclusion in Ukraine* (European Communities 2009) 57.

⁴⁶ The Ministry of Social Policy of Ukraine, 'Основні заходи Уряду щодо соціальної підтримки сімей при оплаті житлово-комунальних послуг' <<http://mlsp.kmu.gov.ua/document/171646/pr.ppt>> accessed 02 April 2014 [Ukrainian].

⁴⁷ Press Release, 'Уряд забезпечив усе необхідне для впровадження реформи субсидій' (The Ministry of Social Policy of Ukraine, 31 March 2014) <http://www.mlsp.gov.ua/labour/control/uk/publish/article?art_id=174692&cat_id=169493> accessed 02 April 2015 [Ukrainian].

⁴⁸ Resolution of the Cabinet of Ministers of Ukraine no. 83 (On strengthening social protection of the population in an environment of rising public utilities prices and tariffs) 2014 [Про посилення соціального захисту населення в умовах підвищення цін і тарифів на комунальні послуги].

⁴⁹ Press Release, 'Уряд забезпечив усе необхідне для впровадження реформи субсидій'.

the period of 12 month with automatic prolongation on the basis of two documents: application and declaration of income⁵⁰. All restrictions on the property status of persons applying for subsidies are abolished, except one-time purchase over UAH 50,000. It is expected that after price increase for housing services in April 2015, the reformed housing subsidies program will cover 4 million households till the end of the year.⁵¹

iii. Social services

Social services are relatively new component of social welfare in Ukraine that is not sufficiently developed.

The main normative act in this area is the Law of Ukraine “On social services”. Article 1 of the Law defines social services as a set of measures designated to provide support for individuals who suffer adverse life circumstances and are not able to over them by own efforts with the aim to resolve their life problems. Social services can be paid and free of charge.⁵² Persons eligible for free services include: individuals incapable of sustaining themselves due to maturity, disease, disability and have no relatives to provide them with care and support; individuals undergoing adverse life circumstances due to unemployment (if such individuals are registered in state unemployment centre as those seeking job), due to calamities, catastrophes, war and ethnic refugees, if the average income of such individuals is below the stipulated subsistence level; children and youth undergoing adverse life circumstances due to disability, disease, orphanage, destitution, indigence, conflicts and family cruelty (Article 7 of the Law “On social services”).

Since social welfare services are in general dealt with in the Article 14 of the Charter, for the purposes of the present report this type of social assistance will be further covered in section 3.3 insofar it falls within Article 13(3) of the Charter.

3.1.2. Persons who are unable to secure adequate resources either by his/her own efforts or from other sources due to illness?

⁵⁰ Resolution of the Cabinet of Ministers of Ukraine no. 106 (On Improving the Procedure of Granting Housing Subsidies) 2015), point 9 and 13 [Про удосконалення порядку надання житлових субсидій).

⁵¹ Ukrayinska Pravda, ‘Субсидії: як є і як буде’ (Ukrayinska Pravda, 31 March 2015) <http://www.pravda.com.ua/_cdn/cd1/2015year/tarify/ind.html?attempt=1> accessed 03 April 2015 [Ukrainian].

⁵² The Law of Ukraine no. 966-IV (On Social Services) 2003, Art 7 [Про соціальні послуги].

Ukraine provides health care for free. Article 49 of the Constitution of Ukraine stipulates that “The State creates conditions for effective medical service accessible to all citizens. State and communal health protection institutions provide medical care free of charge”.

Ukraine possesses developed system of medical institutions. It has 5.46 healthcare establishments per 100,000 persons, while the EU average value of this index is about 3.1 per 100,000 persons. As for health care workers, there are 493 doctors, 1,010 nursing staff per 100,000 persons in Ukraine, while in EU there are 292 doctors and 750 nursing staff.⁵³ However, financing of medical care system is not sufficient. State expenditures on health care comprised 3.7% of GDP in 2008, 2.9% in 2009, 3.6% in 2010, 3.4% in 2011 and 3.7% in 2012,⁵⁴ whereas according to WHO recommendations for ensuring effective and qualified medical assistance these expenditures should comprise 7-10% of GDP.⁵⁵ As a result, the system of health care is highly inefficient, what causes constant violations of the right to accessible free medical assistance.

In order to obtain additional finances, a large number of medical institutions make patients pay ‘charity donations’ and the unwillingness to do so may lead to refusal of medical assistance. It is very common when patients cover the costs of all the medication they need. Hospitals usually cannot offer necessary treatment requiring state-of-the-art equipment. The attempts to establish quotas in the use of such equipment for vulnerable categories of citizens only cause corruption.⁵⁶ Moreover, most of the doctors expect patients to pay for the consultations and services they provide.

Therefore, the free health care has become a mere declaration and the state is not capable of providing adequate medical assistance for its citizens, including those without adequate resources. It follows that the situation in Ukraine is not in conformity with Article 13(1) of the Charter.

⁵³ М. Мalyovanyu, *‘Стан і проблеми державного фінансування охорони здоров’я в Україні’* [2013] *Проблеми економіки* 116 [Ukrainian].

⁵⁴ State Statistics Service of Ukraine, *Національні рахунки здоров’я України у 2012 році* (Statistical Bulletin, State Statistics Service of Ukraine 2014) 8 [Ukrainian].

⁵⁵ V Zagorski Z Lobodina G Lopushnyak, *Управління фінансовими ресурсами закладів охорони здоров’я* (LRIDU NADU 2010) 89 [Ukrainian].

⁵⁶ Y. Zakharov, *Human Rights in Ukraine — 2009–2010. Report by Human Rights Organisations* (Ukrainian Helsinki Human Rights Union, Kharkiv Human Rights Protection Group 2011) 291.

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

3.2.1. Response to the Global Economic Crisis of 2008

Ukraine has been severely heat by the economic crisis. However, instead of implementing severe austerity measures in the area of social assistance, the authorities increased expenditures on social protection to alleviate the negative effects of the crisis and help stabilize economy.⁵⁷

Despite government's commitment to reform the system of social assistance towards more target-based as a response to financial crisis⁵⁸, Ukraine continued to allocate a great amount of social benefit spending (65 per cent in 2008) to non-means-tested categorical programs and failed to use opportunities to increase the effectiveness of safety nets by rationalizing expenditures and consolidating benefits.⁵⁹

Therefore, Ukrainian government chose the way of quantitative increase in benefits, rather than the qualitative transformation of social assistance system to increase its effectiveness. As a result, in the circumstances of limited financial resources, measures implemented by the state appeared to be insufficient and incapable of securing adequate level of support for those in need.

3.2.2. Austerity Measures under Economic Crisis of 2014

In the situation of external aggression and its severe effects on the national economy, the government of Ukraine implements austerity measures, which also affect the sphere of social rights.

It is important to note that the basic social standard, minimum subsistence level, did not change in comparison with 2014, despite significant rise in prices. Article 7 of the Law of Ukraine 'On State Budget 2015' establishes that from 1 January 2015 the minimum subsistence level for employed persons equals UAH 1,218 and for disabled – UAH 949. At the same time, according

⁵⁷ International Labour Office, *Assessment of the Social Security System in Ukraine 2008-09: Crisis Response and Future Reforms* (Geneva, ILO 2010) 37.

⁵⁸ Resolution of the Cabinet of Ministers of Ukraine no. 1107 (Program of The Cabinet of Ministers of Ukraine 'Overcoming the Impact of the Global Financial Crisis and Sustainable Development') 2008 [Програма діяльності Кабінету Міністрів України 'Подолання впливу світової фінансово-економічної кризи та поступальний розвиток'.

⁵⁹ The World Bank and The International Monetary Fund, *Global Monitoring Report 2014/2015: Ending Poverty and Sharing Prosperity* (The World Bank 2015) 122.

to the Ministry of Social Policy of Ukraine the actual minimum subsistence level is UAH 1,611 for employed persons and UAH 1,224 for disabled persons.⁶⁰ Moreover, the National Bank of Ukraine expects inflation of 30% at the end of 2015.⁶¹ Thus, the approach to determining basic social standard does not take into account current economic situation: devaluation of national currency and incomes of citizens as well as high level of inflation, and is manifestly inadequate. Since the amounts of all of the benefits are calculated according to the subsistence minimum, they are also insufficient.

The number of categories of individuals eligible for particular social benefits and privileges was decreased, access to some benefits was restricted by tightening eligibility conditions, several types of social benefits and privileges were completely abolished.

In particular, it has become harder for pedagogical employees and pensioners living in rural areas to get privileges for free use of housing with heating and lightning⁶², for many categories of individuals the necessary eligibility condition for privileges is that the average total family income, per capita over the last six months should not exceed UAH 1,710, the privileges for 4th category of Chernobyl disaster victims were abolished and for other categories they were significantly reduced, free public transportation for most categories of citizens as well as cash benefits for children up to 3 years were abolished.⁶³ Also, since July 2014 progressive increase in child birth benefit depending on the number of children was substituted with fixed amount of UAH 41,280.⁶⁴

⁶⁰ Ministry of Social Policy of Ukraine, 'Інформація щодо фактичного розміру прожиткового мінімуму' (Official Web Page of the Ministry of Social Policy of Ukraine, 20 February 2015) <http://www.mlsp.gov.ua/labour/control/uk/publish/article?art_id=172951&cat_id=141688> accessed 03 April 2015 [Ukrainian].

⁶¹ Press Release, 'Concerning Decisions of the Committee of Monetary Policy' (National Bank of Ukraine, 30 March 2015) <http://www.bank.gov.ua/control/uk/publish/article?art_id=15945834&cat_id=55838> accessed 03 April 2015 [Ukrainian].

⁶² The Law of Ukraine no. 76-19 (On Amending and Termination of Certain Legislative Acts of Ukraine) 2014, Point 25 [Про внесення змін та визнання такими, що втратили чинність, деяких законодавчих актів України]

⁶³ 'Оплата праці та соціальна сфера: що приготував 2015 рік' (Byhgalter, 27 January 2015) <<https://buhgalter.com.ua/articles/soctsalniy-zahist/oplata-pratsi-ta-sotsialna-sfera-shcho-prigotuvav-2015-rik/>> accessed 03 April 2015 [Ukrainian].

⁶⁴ Previously: 1st child – UAH 30960, 2nd – 61920, 3rd and next – 123405.

The Law of Ukraine ‘On State Budget 2015’ restricts the application of 43 social laws⁶⁵, since it stipulates that their provisions ‘shall be applied in the manner and amounts, established by the Cabinet of Ministers of Ukraine, within available financial resources of national and local budgets, and compulsory state social insurance funds’.⁶⁶ Such provisions are not only contrary to the Constitution of Ukraine, what was reiterated by the Constitutional Court of Ukraine in a number of cases.⁶⁷ It is also not in the conformity with the requirement of “universality” underpinning Article 13(1) of the Charter. The Committee notes that ‘the system of assistance must be universal in the sense that benefits must be payable to “any person” on the sole ground that he/she is in need’.⁶⁸ It follows from such considerations that the only reason for refusal may be the non-conformity of the person with the eligibility conditions for specific benefit. Indeed, according to the Committee ‘the right to social assistance must be conditional only on the criterion of necessity’⁶⁹. However, the provision of the Ukrainian legislation makes the granting of social benefits conditional on the availability of financial resources in the state budget and makes it possible to refuse assistance on the ground of their absence. Therefore, it is not guaranteed that any person in need will be provided with the necessary assistance.

Thus, in the circumstances of severe economic crisis and devaluation of national currency, the government of Ukraine is not capable of securing adequate social assistance for those in need and austerity measures applied are not in the conformity with Article 13(1) of the Charter.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

⁶⁵ A Pavlovsky, ‘Соціальні аспекти бюджету виживання’ (Gazeta.UA, 15 January 2015) <<http://gazeta.ua/blog/46737/socialni-aspekti-byudzhetu-vizhivannya>> accessed 02 April 2015 [Ukrainian].

⁶⁶ The Law of Ukraine no. 76-19 (On Amending and Termination of Certain Legislative Acts of Ukraine) 2014, Point 9 of Final Provisions.

⁶⁷ N Shptala, ‘Гарантії забезпечення соціального захисту прав людини: практика Конституційного Суду України’ (Official Web Page of Constitutional Court of Ukraine, 2011) <<http://www.ccu.gov.ua/doccatalog/document?id=164647>> accessed 01 April 2015 [Ukrainian].

⁶⁸ Digest of the Case Law of the European Committee of Social Rights 2008 97.

⁶⁹ *ibid* 100.

In general, bodies competent to decide on social benefits are also obliged to provide citizens with the information falling within the scope of their activities.

The administration of social assistance is mostly conducted by the departments of social protection in rural districts and executive bodies of councils in urban districts and cities. They also inform citizens on matters within their competence, explain the provisions of legal acts in person and through the media.⁷⁰

In addition to this, according to the Article 7 of the Law of Ukraine 'On social Services' one of the types of social services is informational service, which encompasses communicating information essential for the overcoming adverse life circumstances (inquiry services); dissemination of educational information (enlightenment activity); spreading correct information about qualities and types of social services, shaping certain perception and attitude of society towards social problems.

However, in practice the public is not sufficiently informed about their social rights. For example, the study conducted by UNDP in Ukraine showed that 40% of households that actually need subsidies do not apply for them.⁷¹ The main reasons for this are: 1) people think they are not eligible for subsidies because of too high income (29.7% respondents), 2) lack of information about the assistance (13.6%), 3) long and complicated application procedure (9.2%), etc.⁷² Therefore, such figures reveal problems in the effectiveness of state measures as regards ensuring public awareness about the available social benefits.

In order to improve the situation in public awareness on social services the Ministry of Social Policy of Ukraine approved on 28 October 2014 'Methodological Recommendations on Informing the Public about Social Services' that were developed as part of the UNDP project

⁷⁰ Decree no 741 of the Ministry of Social Policy of Ukraine (Methodological Recommendations on Development of Regulations on Structural Units of Social Protection in Local State Administrations) 2012 [Методичні рекомендації з розроблення положень про структурні підрозділи соціального захисту населення місцевих державних адміністрацій].

⁷¹ Press Release, 'Why Poor Households in Ukraine do not Apply for Housing Subsidies' (United Nations Development Programme in Ukraine, 24 December 2014) <<http://www.ua.undp.org/content/ukraine/en/home/presscenter/articles/2014/12/24/why-poor-households-in-ukraine-do-not-apply-for-housing-subsidies.html>> accessed 02 March 2015.

⁷² Press Release, 'Research Results Summary of Household Survey on the Availability of Housing Subsidies in Ukraine' (United Nations Development Programme in Ukraine) <<http://www.ua.undp.org/content/dam/ukraine/docs/Subsidies%20Survey%20Resume%20UNDP%20correct.pdf>> accessed 02 March 2015.

‘Support to the Social Sector Reform in Ukraine’.⁷³ Point 2 of the Recommendations stipulates that informing public about social services presupposes hierarchical structure and the dissemination of information takes place on the following levels:

- Central level (Ministry of Social Policy);
- Regional level (departments of social protection of state administrations in oblasts⁷⁴);
- Local level (departments of social protection of state administrations in rural districts and executive bodies of local councils);
- Entities providing social services.

The Recommendations also contain information regarding principles that should be adhered to by the authorities when informing the public and the most effective ways to disseminate the information; prescribe universal format of information cards; explain how to arrange media relations, online counselling and create a yearly communication plan.⁷⁵

‘The effectiveness of the social welfare services provided for in paragraph 3 of Article 13 also depends on their accessibility to users’.⁷⁶ This presupposes the existence of proper network of institutions providing social services.

Since 2012, the Law of Ukraine ‘On Social Services’ allows both public and private sector to provide social services for the population. The system of bodies entitled to render social assistance in the form of social services consists of several types of entities with different accountability to the state:

- Public entities accountable to the central executive authorities (the government);
- Organizations accountable to local communities (local governments);
- Organizations, accountable to both central executive authorities and local governments (joint management);

⁷³ Press Release, ‘Ukraine’s Citizens Better Informed on Social Services’ (United Nations Development Programme in Ukraine, 23 December 2014) <<http://www.ua.undp.org/content/ukraine/en/home/presscenter/articles/2014/12/23/ukraine-s-citizens-better-informed-on-social-services.html>> accessed 02 March 2015.

⁷⁴ The territory of Ukraine is divided into 24 administrative units (oblasts).

⁷⁵ Decree no 828 of the Ministry of Social Policy of Ukraine (Methodological Recommendations on Informing the Public about Social Services) 2014 [Методичні рекомендації щодо інформування населення про соціальні послуги].

⁷⁶ Digest of the Case Law of the European Committee of Social Rights 2008 285.

- Non-government sector (NGOs): associations, charity organizations and funds, religious organizations, etc.;
- Commercial enterprises;
- Private individuals.⁷⁷

Nevertheless, social services are primarily provided by governmental sector. The role of non-governmental organizations is very small. It is caused by the fact that the budgetary resources are planned and dedicated to the large public institutions rather than to needs of recipients of social services.⁷⁸

State institutions that provide social services include:

- more than 80 day care centres for adults with disabilities and children with disabilities;
- 734 Territorial Centres of Social Services for retired and single disabled persons with 2915 units (as of 2013), where about 1.6 million people are serviced;
- about 750 social centres for families, children and youth;
- 137 rehabilitation centres for children with disabilities;
- rehabilitation centres for adults with disabilities, for persons who suffered from trafficking;
- re-socialization centres for drug-addicted youth, for homeless persons and people released from prison;
- AIDS centre of the Ministry of Health of Ukraine, located in each region and two centres in Kyiv.⁷⁹

Despite the fact that, in general, the institutions of social services cover the whole territory of Ukraine, the population does not have adequate access to the social services.

⁷⁷ Association of Economic Development of Ivano-Frankivsk, 'Social Enterprises in Ukraine' <www.southeast-europe.net/document.cmt?id=197> accessed 02 March 2015.

⁷⁸ European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities, *Social Protection and Social Inclusion in Ukraine* (European Communities 2009) 64.

⁷⁹ Press Release, 'Ukraine's Citizens Better Informed on Social Services' (United Nations Development Programme in Ukraine, 23 December 2014) <<http://www.ua.undp.org/content/ukraine/en/home/presscenter/articles/2014/12/23/ukraine-s-citizens-better-informed-on-social-services.html>> accessed 02 March 2015.

The Committee takes the position that 'in order to comply with the Charter, ...social welfare services ...must ensure their users an equal and effective access, through the way they operate and are organised, including their geographical distribution; the number, qualifications and duties of the staff employed, including voluntary staff; funding provided for those services and the adequacy of the material and staff resources on the one hand and the number of users on the other hand'.⁸⁰

The social work in Ukraine is organized ineffectively. Social assistance is provided only on the basis of application for social service, but there are no preventive measures and no efforts aimed at identification of individuals who are really in need of assistance.⁸¹ Also, there is no effective mechanism of assessment the need of a territorial community as regards necessary numbers of social workers and required types of social services.⁸² Thus, sufficient financial resources are not allocated. Another problem concerns social personnel: the shortage of social workers and low level of their qualifications, etc.⁸³ As a result, the effective access for many individuals to social services, especially in rural areas, is precluded. This conclusion is confirmed by statistical data. In 2013 there were 1,601,707 persons receiving social services.⁸⁴ At the same time, there were 1,861,274 individuals officially indicated as being in need of such assistance, as of 01 January 2014.⁸⁵

In addition, there is no exhaustive list of basic social services guaranteed by the state free of charge, regardless of the economic situation in the country and the territory of residence of persons who need them.⁸⁶ Thus, in each instance the granting of social services depends on the

⁸⁰ European Committee of Social Rights Conclusions 2013 (Portugal) 2014 36.

⁸¹ European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities, *Social Protection and Social Inclusion in Ukraine* (European Communities 2009) 13.

⁸² О Пыаш, 'Щодо перспективних напрямів підвищення якості соціальних послуг в Україні. Аналітична записка' (The National Institute for Strategic Studies) <<http://www.niss.gov.ua/articles/763/>> accessed 03 March 2015 [Ukrainian].

⁸³ К Dubych, 'Сучасний стан, проблеми та шляхи удосконалення кадрового забезпечення надання соціальних послуг в Україні' [2014] Державне Управління: Удосконалення та Розвиток 53 [Ukrainian].

⁸⁴ State Statistics Service of Ukraine, *Соціальний захист населення України* (Statistical Bulletin, State Statistics Service of Ukraine 2014) 123 [Ukrainian].

⁸⁵ Supra.

⁸⁶ О Пыаш, 'Щодо перспективних напрямів підвищення якості соціальних послуг в Україні. Аналітична записка'.

discretion of social worker,⁸⁷ whereas according to the case law of the Committee 'social assistance should be granted "as of right" and not depend solely on a decision at the administration's discretion'.⁸⁸

On August 2012 the Cabinet of Ministers of Ukraine approved the 'Strategy of Reforming the System of Social Services'. The Strategy states, inter alia, that in order to establish a mechanism of prevention the occurrence of adverse life circumstances it is necessary to:

- conduct a comprehensive review of the legislation in the field of social services;
- introduce the procedure for determining the needs of the population of a territorial unit for social services;
- plan and organize the provision of social services taking into account the specific needs of territorial units and individuals;
- expand the list of social services aimed at enhancing the ability of parents to ensure the development and education of the child.⁸⁹

On 13 March 2013 the Cabinet of Ministers of Ukraine approved the 'Action Plan for 2013-2016 Concerning the Implementation of the Strategy of Reforming the System of Social Services Providence'.

Pursuant to point 7 of the Action Plan the Ministry of Social Protection of Ukraine approved on 20th January 2014 the 'Procedure for Determining the Needs of the Population of a Territorial Unit for Social Services'. However, the Procedure does not properly establish obligations of the departments of social protection. As a result, the Ministry of Social Policy received analytical report only from one region (out of 24), in which it is merely stated that there is a need for certain types of social services, but such conclusion was not substantiated by proper data.⁹⁰ Thus,

⁸⁷ L Ilchuk and Y Kryvobok, *Фінансування сфери соціальних послуг: сучасний стан та напрями удосконалення* (Center for Advanced Social Research of the Ministry of Social Policy of Ukraine and NAS of Ukraine 5 April 2014 <http://cpsr.org.ua/index.php?option=com_content&view=article&id=273:2013-04-05-05-26-32&catid=46:2013-04-04-06-31-05&Itemid=53> accessed 03 March 2015 [Ukrainian]).

⁸⁸ Digest of the Case Law of the European Committee of Social Rights 2008 283.

⁸⁹ Ordinance no 556-p of the Cabinet of Ministers of Ukraine (Strategy of Reforming the System of Social Services) 2012 [Стратегія реформування системи надання соціальних послуг].

⁹⁰ Coalition of AIDS Service Organizations, *Альтернативний аналіз результатів оцінки потреб в соціальних послугах в 2014 році: основні висновки та пропозиції* (Center for Advanced Social Research of the Ministry of Social Policy of Ukraine and NAS of Ukraine 11 December 2014)

the Procedure is not capable of achieving the envisaged result. Moreover, the government hasn't taken proper measures to achieve other aims of the Strategy set out above.

Therefore, the government in Ukraine does not sufficiently promote public awareness on available social benefits. Also, social services do not play preventative role and effective access to them is not fully ensured. Despite of the existence of strategies and action plans aimed at improving the situation, they are not properly implemented. It leads to the conclusion that the situation in Ukraine is not in conformity with Article 13(3) of the Charter.

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

In a policy context, social exclusion is most commonly used to describe a state in which people or groups are assumed to be «excluded» from social systems and relationships. In most definitions this state is seen to be associated with extreme poverty and disadvantage. Many definitions include «indiscriminate» lists describing groups excluded or at risk of exclusion, what they are excluded from, the resultant problems and the «actors» responsible for excluding groups.⁹¹

Some notable features of social exclusion should be considered: low levels of consumption and income individuals or groups; limited access to social welfare mechanisms increase; mostly passive type of interaction with the public sector and society.

First and the most important feature of social exclusion closely related to poverty. As noted by Ukrainian sociologist Natalia Kharchenko, we can roughly distinguish at least four ways of

<http://www.cpsr.org.ua/index.php?option=com_content&view=article&id=416:-2014-&catid=42:2013-01-08-19-58-04&Itemid=45> accessed 03 March 2015 [Ukrainian].

⁹¹ Final Report to the WHO Commission on Social Determinants of Health From the Social Exclusion Knowledge Network, (February 2008) <http://www.who.int/social_determinants/knowledge_networks/final_reports/sekn_final%20report_042008.pdf> accessed 10 March 2015.

reasoning about poverty - the official, political, scientific and casual.⁹² The official vocabulary which to be used in this study includes the three concepts: low income, impoverished, and the least socially protected groups.

The official attitude to the problem of poverty hardly changed in Ukraine's independence period. One of the main characteristics of socialism is to ensure minimum subsistence level to all members of society. Ukraine has inherited Soviet system of social security. An echo of this is that even until 2001 the term «poverty» was not used in theory or in legislative practice and term «low income» was commonly used as working term. Terminology, which is used officially, emphasizes fragmentation of poverty problem and suggests that the whole people of Ukraine socially protected, with a few exceptions. The Ministry of Social Policy and Labour calculated the minimum consumer budget, which is the level of per capita income. However, this index is not used for several years officially, and we can learn about its specific value only by reports of international organizations such as the UN or the World Bank. The government defines the low income threshold, which entitled to cash assistance to citizens, the average aggregate income families of which do not exceed this figure. The Law n. 190/94-VR 'On threshold of low income', 1994, indicates that this figure is based on normative statistical method that considers social norms of consumption of food and non-food expenses actual low-income households.⁹³ Despite this solid scientific ground, the specific value of this indicator, as well as minimum wages and pensions, is the subject to political struggle within and between the government, the parliament, trade unions and the society.

Ukraine has no official poverty line until 2001. Problem of poverty in Ukraine gained official recognition after the approval of the Decree of the President of Ukraine n. 637 'On Poverty Reduction Strategy', 2001. The Strategy established the term «poverty», the only relative criterion for identification of different segments of the population classified as poor, defined the main directions and stages of poverty reduction for the period until 2010.⁹⁴ This strategy also used the

⁹² Харченко Наталія, *'Різноманітність аспектів бідності: спроба соціологічного аналізу'* <<http://www.kiis.com.ua/materials/articles/poverty.pdf>> accessed 26 February 2015 [Ukrainian].

⁹³ Закон України про межу малозабезпеченості <<http://zakon2.rada.gov.ua/laws/show/190/94-%D0%B2%D1%80>> accessed 1 April 2015 [Ukrainian].

⁹⁴ Указ Президента України про Стратегію подолання бідності <<http://zakon4.rada.gov.ua/laws/show/637/2001>> accessed 1 April 2015 [Ukrainian].

term «poverty line» as the level of income, below which it is not possible to meet basic needs. Poverty line was set as a proportion of the subsistence minimum per person per month.

On 31 August 2011 the Cabinet of Ministers approved the National Programme of overcoming poverty and poverty reduction for the period until 2015. 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.⁹⁵ To implement the Programme, the government approved the method of complex estimation of poverty. To evaluate the poverty, government proposed the following criteria: the poverty line, defined by the relative criterion of 75% of average total costs per person; the extreme poverty line, defined by the relative criterion of 60% of average total costs per person and adapted to the criteria of the European Union; the absolute poverty line defined by the criterion of the subsistence minimum; the absolute poverty line defined by the criterion value of daily consumption of USD 5 according to purchasing power parity (UAH equivalent of USD 5 by purchasing power parity calculated by the World Bank) to compare it with international indicators.⁹⁶

There are different approaches to defining poverty and indigence. But it is hardly possible to compare poverty in different countries with the same approach and the same criteria. Even the level of poverty in Ukraine differs depending on which of mentioned above four indicators is used.

⁹⁵ 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>> accessed 1 April 2015 [Ukrainian].

⁹⁶ Наказ про затвердження Методики комплексної оцінки бідності <<http://zakon4.rada.gov.ua/laws/show/z1785-12#n17>> accessed 1 April 2015 [Ukrainian].

The main characteristics of poverty in Ukraine according to various criteria of definition for the first half of 2011-2013⁹⁷:

Poverty measure		6 months, 2011	6 months, 2012	6 months, 2013
75% of average total costs per person	Poverty line, UAH	1,033	1,090	1,164
	Poverty line, %	24.5	26.1	25.4
60% of average total costs per person	Poverty line, UAH	826	872	931
	Poverty line, %	11.1	12.6	11.9
Costs below subsistence minimum	Poverty line, UAH	903	1,027	1,108
	Poverty line, %	16.2	21.7	21.7
Daily consumption of USD 5 according to purchasing power parity	Poverty line, UAH	570	605	610
	Poverty line, %	1.9	2.7	2.2

The introduction of official methods of calculate on the poverty line is definitely a positive factor. 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.⁹⁸

The main mechanism of increasing prosperity and reducing the risk of social exclusion is participation in social production. Unemployment rate in Ukraine is estimated about 7.2%, which is quite normal rate in modern European countries. But in a situation of widespread hidden unemployment the only way to gain the livelihoods is informal employment, which only deepens the level of social exclusion. Informally employed workers do not fall within the scope of legal and social security in the workplace. For this reason temporary employment abroad

⁹⁷ Аналітична записка «Комплексна оцінка бідності в Україні та регіонах за перше півріччя 2011-2013 рр.» (Institute of Demography and Social Studies of National Academy of Sciences of Ukraine, 2013) <<http://www.idss.org.ua>> accessed 5 March 2015 [Ukrainian].

⁹⁸ За межею бідності перебуває кожен десятий українець (18 November 2013) <http://dt.ua/UKRAINE/za-mezheyu-bidnosti-perebuvaeye-kozhhen-desyatiy-ukrayinec-132069_.html> accessed 1 April 2015 [Ukrainian].

cannot be considered as effective way to combat unemployment. Labour migrants are «excluded twice»: in countries where they work illegally they can neither really nor even formally enjoy the rights of citizens.

The unemployment benefits were approved by the order of Ministry of Social Policy on 20 November 2000. Unemployment benefit is determined as a percentage of the average wage (income) or average financial support depending on the insurance period: 2 years – 50%; from 2 to 6 years – 55%; from 6 to 10 years – 60%; more than 10 years – 70%. Depending on the duration of unemployment assistance reduces and paid a percentage of a certain size: the first 90 calendar days – 100%; over the next 90 days – 80%; future – 70%.⁹⁹

Unemployment rate by sex, age and place of residence in 2013¹⁰⁰ (average for the period in % of the economically active population in the corresponding age group)

	Total	Among age groups, years						Working age ¹⁰¹
		15–24	25–29	30–39	40–49	50–59	60–70	
Total population	7.2	17.4	8.7	6.4	6.2	5.1	-	7.7
Female	6.2	16.3	7.4	6.0	5.3	4.4	-	6.9
Male	8.0	18.2	9.6	6.7	7.2	5.7	-	8.4
Urban population	7.1	19.2	8.6	6.2	5.7	5.0	-	7.5
Rural population	7.3	14.6	8.9	6.9	7.3	5.2	-	8.1

Among all low-income groups, the poorest are families with children under age 18. Although the risk of poverty depending on the number of children in the family is true for most countries in the world, even those with relatively high levels of income, this risk is particularly high in

⁹⁹ Наказ про затвердження Порядку надання допомоги по безробіттю, у тому числі одноразової її виплати для організації безробітними підприємницької діяльності <<http://zakon2.rada.gov.ua/laws/show/z0915-00>> accessed 1 April 2015 [Ukrainian].

¹⁰⁰ Unemployment rate (ILO) by sex, age and place of residence in 2013 <<http://www.ukrstat.gov.ua>> accessed 25 January 2015 [Ukrainian].

¹⁰¹ Women aged 15–56 years, men 15–59 years.

Ukraine. If, among single-child families remained in 2005 58% had average per-capita consumption below the set subsistence minimum, the figure was significantly higher for the households with 2, 3, and 4 children – 75.8%, 93.2% and 100% accordingly. At the same time, only 47.1 % of childless households are below the subsistence minimum level.¹⁰²

That is why government policy for a long time was aimed at ensuring adequate standards of living for young families. The Law n. 1768-14 ‘On state social assistance to low income families’, 2000, provides cash payments, the amount of which is determined on the basis of the subsistence minimum. As stated in this law, ‘the level of the subsistence minimum level set based on the real possibilities of the expenditure of the State Budget of Ukraine and approved simultaneously with the adoption of the law on State Budget of Ukraine for the year’.¹⁰³

The Law n. 2811-12 ‘On state assistance to families with children’, 1993, (important amendments were made in 2005) provides assistance due to maternity leave, assistance due to child adoption, assistance for children under guardianship, assistance to single mothers.¹⁰⁴ This refers to cash payments, the amount of which is usually determined by the average income of women and the minimum subsistence level. The law also provides a variety of social security privileges.

Another source that should be considered is the Law n. 2623-15 ‘On the essentials of social protection of homeless people and homeless children’, 2005. 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.¹⁰⁵

As for the health care, according to Article 49 of the Constitution of Ukraine medical care is free of charge in state and communal health protection institutions; existing network of such institutions shall not be reduced. Specific laws on this question were not adopted yet and now

¹⁰² National Report ‘Promoting productive capacity and decent work to eradicate poverty in the context of inclusive, sustainable and equitable economic growth at all levels for achieving Millennium Development Goals’ <http://www.un.org/en/ecosoc/newfunct/pdf/unecosoc-nvp_ukraine_2012.pdf> accessed 1 April 2015 [Ukrainian].

¹⁰³ Закон України про державну соціальну допомогу малозабезпеченим сім'ям <<http://zakon4.rada.gov.ua/laws/show/1768-14>> accessed 1 April 2015 [Ukrainian].

¹⁰⁴ Закон України про державну допомогу сім'ям з дітьми <<http://zakon2.rada.gov.ua/laws/show/2811-12>> accessed 1 April 2015 [Ukrainian].

¹⁰⁵ 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].

the process of introducing universal health insurance begins. Specific laws that would provide educational and cultural activities for overcoming social exclusion were not adopted too. Therefore the organization of projects for the poor is a task NGOs such as Youth for Peace.

To conclude, factors that separate the poor from the wealthy are: access to healthy living, quality of food, health care, and education, normal living conditions and access to jobs that meets the educational qualifications of the person. The problem of poverty in Ukraine has gained particular importance in the period socio-economic crisis. In times of economic and political crises extremely aggravated poverty is able to achieve the scale of social disaster, as world experience shows. It should be noted that out of all types of social transfers (privileges, subsidies, and social aid) only the system of social aid is actually aimed at poor population groups and helps to reduce income inequality. At the same time, the existing system of privileges not only does not reduce income inequality of population, but on the contrary further increases the gap.

Ukraine should take into consideration the experience of other countries and international organizations such as the UN, the organization for which poverty alleviation is one of the key tasks.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

Persons with disabilities¹⁰⁶ are granted with a full range of human rights¹⁰⁷ in Ukraine. Considering the fact that Ukraine develops in its Constitution Soviet model of legal

¹⁰⁶ Art 2 of the Law No 875-XII on the Basics of Social Protection of Disabled Persons in Ukraine [Про основи соціальної захищеності інвалідів в Україні], March 23, 1991.

¹⁰⁷ *ibid*, art 1.

paternalism¹⁰⁸ with wide range of social rights, persons with disabilities are entitled to the great scope of rights in education and vocational training¹⁰⁹ according to the national legislation.

Thus, the state guarantees to the persons with disabilities an opportunity to obtain an education, which would correlate with their abilities¹¹⁰ and maturity level. In this regard, there is no discriminative distinction on the ground of disability, except that education might be provided in a specialized training centre¹¹¹ for persons in need (i.e. for blind, deaf, voiceless persons, etc.).

Moreover, since the state is obliged to educate disabled children free of charge,¹¹² they have an opportunity to take part in extra curriculum activities or/and in art education.

As for higher education, disabled children are entitled to have 'entrance prerogative' with a full scholarship paid by the state in the case of positive results of the exams and if their health conditions do not prevent a possibility to obtain certain education on the chosen program.¹¹³

Vocational training or retaken vocational training must be performed in accordance with health conditions of disabled person and after conclusion of specialized medical commission.¹¹⁴ That does not constitute discrimination on the ground of disability, but designed to protect health conditions and to improve health care, because there is a particular provision, which prescribes the level of education of all persons regardless of disabilities being the same.¹¹⁵

The requirements for the vocational training¹¹⁶ of the disabled persons as stated in national legislation are strict enough and designed to combat discrimination and to entitle persons with disabilities with the same scope of human rights. Principles and methods of vocational training must be applicable to all disabled persons considering their health issues,¹¹⁷ whereas vocational

¹⁰⁸ V Strepko, overview, <http://law.lnu.edu.ua/fileadmin/user_upload/visnyk/48/vsn48_27.pdf>.

¹⁰⁹ Vocational training means any type of training, which gives an opportunity to gain or to improve the knowledge and professional skills of technical or professional character as well as skills needed to perform functions of young leading personnel regardless of the fact whether such training takes place within the working place or not, and includes retaken professional training. See: Recommendation on Professional education of adults, including disabled persons No 88.

¹¹⁰ *Supra*, note 1, art. 21.

¹¹¹ *ibid*, art 21.2.

¹¹² *ibid*, art 21.5.

¹¹³ *ibid*, art 22.

¹¹⁴ *ibid*, art 21.3 and 4.

¹¹⁵ *Supra*, note 1, art 21.6.

¹¹⁶ Recommendation on Professional education of adults, including disabled persons, art 26.

¹¹⁷ *Supra*, note 1, art 27.

training itself supposed to be equally available for all persons regardless of the type or reason for their disability or the person's age.¹¹⁸

Vocational training of disabled persons has a purpose to allow them 'to participate in economic life of the state', contributing professional knowledge or skills.¹¹⁹ To fulfil the aim the state undertakes certain measures, such as coordination of the vocational training taken with following employment in the same profession, desirably which disabled person performed earlier. Vocational training supposed to be continued to enable a disabled person to perform the same function as other people of the same profession in case if it is allowed according to medical conditions.¹²⁰

There are also national and regional centres of professional rehabilitation in Ukraine,¹²¹ which are located not in every region, therefore, not available for everyone.

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

In regards to employment of the persons with disabilities, Ukraine has specific chapter in the Law 'On the basics of social politics'. Thus, after the graduation persons with disabilities are entitled to choose the place of their employment from the options offered or find a place of their choice.¹²² All persons with disabilities has an opportunity to perform the same job as all other people, or to be an entrepreneur, work in business sector etc. if it is not prohibited by law.¹²³

¹¹⁸ *ibid*, art 27.2

¹¹⁹ *ibid*, art 28.1

¹²⁰ *ibid*, art 28.2 (a)–(c).

¹²¹ Vocational training of persons with disabilities, <http://sotszahist.mk.ua/index.php?option=com_content&view=article&id=131&Itemid=24>.

¹²² *Supra*, note 1, art 24.

¹²³ *ibid*, art 17.

Ukrainian legislation provides quotas of persons with disabilities that every employer has to hire.¹²⁴ Hence, companies, organizations and other types of employers are obliged to hire persons with disabilities who must comprise at least 4% of employees. However, in smaller companies with 8 to 25 employees only 1 person must be a disabled person.

The employers regardless of their status as private or governmental organization (with some exceptions though) are obliged to adapt the working place for the needs of a person, whereas such person might be fired on the ground of his or her disability only in case if medical commission issues a proper conclusion on the absence of opportunity to perform certain functions for the person.¹²⁵ All kinds of discrimination at work on the ground of disability are prohibited by the law according to the Article 17 of the Law 'On Basics of Protection of Person with Disabilities in Ukraine'.

According to the Article 18 of the same Law, disabled persons have the right to perform remote job or to be registered in state employment service as jobless persons, although neither sheltered employment nor similar measures are developed on the significant level in Ukrainian labour market.

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

Due to the fact, that Ukraine does not comprise a part of the European Union yet, the austerity measures are not exact term here. Also paternalism model of social politics prevent the government from cutting social expenses even in current times of armed conflict, therefore in the context of Ukraine it is more appropriate to consider economic crisis in general, that austerity measures particularly.

5.2. Children and Young Persons (Article 17 ESC)

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

¹²⁴ Supra, note 108, art 19.

¹²⁵ *ibid*, art 17.2.

Educational system of Ukraine comprises comprehensive system of different levels i.e. preschool education (3 years),¹²⁶ school (7 years),¹²⁷ vocational (2-3 years)¹²⁸ and higher education (4 years)¹²⁹ governed by the respective laws.

Youth in Ukraine is treated as an important part of the society, which plays a significant role in socio-economic development.¹³⁰ Since general education is free of charge and mandatory for everyone¹³¹ it can be said that much attention is paid to the youth education. Apart from the obligation of parents to control the education of their children,¹³² the state also controls this process during different types of activity in schools.¹³³

However, NGOs claim a low level of financial contributions to the education system along with difficult situation in countryside area.¹³⁴ Moreover, human rights organizations find numerous violations of the rights of children who are brought up into public schools. Despite the explicit prohibition law in most regions of Ukraine to this day names of such schools indicate the category of children who are brought up based on social origin or health condition. These institutions specification names like 'for orphans', 'children requiring correction of physical and mental development', and others is discrimination against children, a flagrant violation of the Constitution of Ukraine, Laws of Ukraine 'On Protection of Childhood', 'On Education', 'On ensuring organizational and legal conditions for social protection of children -orphans and children deprived of parental care.' Certificate of Education graduates of these institutions should only contain information about education, not the child's health or social situation of her family. Type of institution and its specialization are indicated only in the founding documents. In this regard, the Ministry of Education, Youth and Sports of Ukraine and the President of

¹²⁶ The Law No 2628–III on Preschool Education [Закон України про дошкільну освіту], July 11 2001.

¹²⁷ The Law No 651–XIV on General Secondary Education [Закон України про загальну середню освіту], May 13 1999.

¹²⁸ The Law No 103/98–BP on Vocational Education [Закон України про професійно-технічну освіту], February 10 1998.

¹²⁹ The Law No 1556–VII on Higher Education [Закон України про вищу освіту], July 01 2014.

¹³⁰ Ministry of Justice of Ukraine, Explanation of September 13, 2012, Youth, their rights and social status in modern Ukraine [Міністерство Юстиції України. Роз'яснення. Молодь: її права та соціальне становлення в сучасній Україні].

¹³¹ Art 53 of Constitution of Ukraine.

¹³² *ibid*, art 10.

¹³³ *ibid*, art 17.1.

¹³⁴ Ukrainian Helsinki Group, 'Human Rights in Ukraine 2007: Right to Education' <<http://helsinki.org.ua/index.php?id=1217068144>>.

Ukraine asked the Commissioner for Children's Rights, together with the regional state administration and the regional councils immediately eliminate discrimination of children living in such institutions. In December 2011 according to the media in the Kharkiv region should be renamed 28 boarding schools for children.¹³⁵

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

Children deprived of the family support are granted with social care, which includes financial support and certain socio-economic measures¹³⁶ at the same time, children who are raised within the state care system have full financial support from the state.¹³⁷ The state supports also children in detention facilities by giving them an opportunity to continue the education or to get basic professional experience in schools within the detention system established in accordance with needs of children who have to complete secondary education or want to continue vocational training.¹³⁸ Asylum seeking children, refugees and children who have been granted with temporary protection in Ukraine have the rights to medical help, education, and temporal employment on non-discriminatory basis.¹³⁹

To ensure decent living conditions for orphans and children without parents is a task that should be set by the state, but in spite of the increase in the number of children a significant portion of orphanages and boarding schools has lack of material resources, needs repair residential and office space. Boarding schools provided clothing and footwear by 60-70%. Material needs of children forced administration of children's institutions decide by additional resources, which are very difficult to get.¹⁴⁰

¹³⁵ Ukrainian Helsinki Group, 'Human Rights in Ukraine 2011: Children Rights' <<http://helsinki.org.ua/index.php?id=1332334755>>.

¹³⁶ *ibid*, art 21.1.

¹³⁷ *ibid*, art 21.3.

¹³⁸ The Order No 691/897/5 of the Ministry of Education and Science of Ukraine, the Ministry of Justice of Ukraine [Про затвердження Порядку організації навчання у загальноосвітніх навчальних закладах при виправних колоніях та слідчих ізоляторах, що належать до сфери управління Державної пенітенціарної служби України], June 10 2014.

¹³⁹ Arts 13 and 15 of the Law No 3671-VI on the Refugees and Persons in Need of Subsidiary or Temporal Protection [Закон України Про біженців та осіб, які потребують додаткового або тимчасового захисту], July 08 2011.

¹⁴⁰ Ivleva, 'State Support of Children-Orphans and Children Deprived of Parental Care' <<http://www.kbuapa.kharkov.ua/e-book/conf/2012-2/doc/1/02.pdf>>.

There are also problems with the placement of children after training. A very difficult question that arises in regards to placement is social housing. The problem is partly solved during the vocational training in technical and higher education institutions, as they have an opportunity to get a place in a hostel, financial support in the form of scholarships and other privileges established by the state. The situation is even harder for those who has to start working immediately after graduation. Provision of housing and workplace legally defined, but in reality these almost guarantee not realized.

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

According to the Constitution of Ukraine, secondary education is free of charge, whereas tertiary education is easy to enter for free having the good grades in secondary school and post-school exams. The question of attendance is not the one of high importance when it comes to secondary education, because it is up to parents to control how often their children go to school, and if parents do not comply with this obligation, it is up to social service workers.

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures has your MS taken to address this issue

Considering current situation in Ukraine, it is not surprising that general unemployment rate is around 9%¹⁴¹ officially and more than 30% in reality. Meanwhile among youth this number is around 10% officially.¹⁴²

According to the State Statistics Service, the number of officially registered unemployed university graduates is only 7% of the total unemployed in 2012. This could be explained with the reason that young professionals in search of first job turning to the closest and then, in the absence proposals to the State Employment Service.¹⁴³

¹⁴¹ State Statistics Service, 'Unemployment Rate' <http://www.dcz.gov.ua/control/uk/publish/article?showHidden=1&art_id=230309&cat_id=173564&ctime=1333367142883>.

¹⁴² How to Combat Unemployment, <<http://pedpresa.com.ua/blog/97953-yak-zmenshyty-riven-bezrobittya-sered-molodi.html>>.

¹⁴³ O Natoloka, 'Main Problems of the Youth Employment in Ukraine' <<http://www.kbuapa.kharkov.ua/e-book/conf/2013-2/doc/2/22.pdf>>.

There are about 823 universities, 300 universities and academies and 523 technical schools and colleges according to statistics in Ukraine as of 2013. There were registered 24.8 thousand of graduates and only 15% received an assignment to work through training institutions in 2012. Thus, 4 persons from 5 were forced to seek employment on their own.¹⁴⁴

The vast majority of young people, who enter the labour market, are recent graduates of the universities with various levels of accreditation. Each year, schools produce young professionals, most of whom are facing the employment problem closely. Therefore, an important issue today is the lack of state forecasting of the economy for specialists with higher education. Therefore, there are disparities in the labour market supply and demand graduates.

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

See paragraph 5.1.3. Due to the fact, that Ukraine does not comprise a part of the European Union yet, the austerity measures are not exact term here. Also paternalism model of social politics prevent the government from cutting social expenses even in current times of armed conflict, therefore in the context of Ukraine it is more appropriate to consider economic crisis in general, that austerity measures particularly.

6. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

Ukraine neither signed nor ratified the Collective Complaints Protocol, which came into force in 1998, so complaint system is not used as a control mechanism for national law to be in compliance with the European Social Charter regarding Ukraine.

¹⁴⁴ <www.career.ua>.

7. CONCLUSION

In the current circumstances of political and economic crisis that aroused at the end of 2013, Ukraine is undergoing extensive austerity measures aimed at restoring macroeconomic stability. Unfortunately, the amount of social rights of Ukrainian was narrowed in the first place.

As regards social and collective bargaining rights it was found that the Ukrainian legislation, in particular, Labour Code of Ukraine, the Law of Ukraine 'On Collective Agreements', 'On Social Dialogue in Ukraine', 'On the settlement of collective labour disputes (conflicts)', is in conformity with Article 5 of the Charter. There were no significant legislative changes in the area of rights to collective bargaining and respect of social dialogue that would affect the exercise of these freedoms. However, there were changes in the sphere of social rights and freedoms of certain groups of the population, especially regarding the rights of military men. The rights of workers were considerably expanded and improved in accordance with the European vector of development of the Ukrainian legislation.

Although the Constitution defines Ukraine as a welfare state, the real situation is far from that. The minimum subsistence level established by law is lower, than the actual one. Consequently, all social benefits, which are calculated on the basis of subsistence level, are inadequate. As a part of austerity measures, the number of categories of individuals eligible for particular social benefits and privileges was decreased, access to some benefits was restricted, several types of social benefits and privileges were completely abolished. The Law of Ukraine 'On State Budget 2015' restricts the application of 43 social laws, since it stipulates that the provisions shall be applied within available financial resources of national and local budgets. The government of Ukraine does not sufficiently promote public awareness on available social benefits. Social services do not play preventative role and effective access to them is not fully provided ensured. Despite of the existence of strategies and action plans aimed at improving the situation, they are not properly implemented. Thus, it was found that the situation in Ukraine is not in the conformity with Articles 13(1) and 13(3) of the Charter.

Out of all types of social transfers only the system of social aid is actually aimed at poor population groups and helps to reduce income inequality. At the same time, the existing system

of privileges does not reduce the inequality in the sphere of the population income, but promotes its further increase.

Ukrainian legislation provides people with disabilities a wide range of rights in the area of education and vocational training. Children who are raised within the state care system are entitled to financial support from the state. However, a lot of orphanages and boarding schools do not have sufficient financial resources resulting in their inability to ensure adequate care for children.

In general, social rights in Ukraine are not fully guaranteed. It must be admitted that the level of their ensuring is not in the conformity with the European Social Charter.

1. INTRODUCTION

1.1. Has your Member-State (MS) ratified the 1961 or the revised 1996 European Social Charter (ESC)?

Ukraine has ratified the Revised 1996 European Social Charter in 21 December 2006 and accepted 74 out of 94 paragraphs of the Charter.

1.2. Please provide a brief overview of austerity measures that have been taken or announced in your MS, as a response to the 2008 financial crisis or to address a budget deficit need, if any

Ukraine's economy was badly hit by the 2008 financial crisis and the ensuing global recession. Ukrainian industrial exports plummeted as global demand fell, while the country's financial system faced default. The state was saved from bankruptcy by an emergency loan from the International Monetary Fund (IMF) of USD 16.5 billion, which has come with demands from the fund that Kyiv restructures its economy to cut public spending and further enforces the demands of global capital.

The Law 'On Budget' prescribes full implementation of the Law 'On Increasing Social Standards' passed in October 2009, i.e. a 32 per cent average increase of the subsistence level for all the strata of population and increase of the lowest pensions. The social standards were

increased in January 2010, ushering in new risks for financial stability of Ukraine and for further cooperation with the International Monetary Fund.

The Law 'On Budget' provides for the minimum pensions to be raised from UAH 695 in January 2010 to UAH 734 in December 2010. As a result of this increase, the Pension Fund deficit remained quite high, about 2.7 per cent of Ukraine's GDP, with the aggregate transfer to the Pension Fund was planned to reach 20 per cent of the State Budget expenditures. As a result, the pension system remained unstable and created risks for Ukraine's fiscal stability in general.¹⁴⁵ Despite the difficult economic situation in the country, the Governmental social policy was oriented on the high social standards.

Austerity measures were intensified by the Government of Ukraine in response to the political and economic crisis in Ukraine that happened at the end of the 2013. Yanukovich's decision of November 2013 to postpone signing of the Free Trade & Association Agreement with the EU – and increase cooperation with Russia – sparked massive protests in Kyiv and West Ukraine. Starting as pro-European demonstrations, the protesters later demanded an overhaul of a seriously corrupt and authoritarian political system. These protests resulted in the ouster of Yanukovich in February 2014, the return of the 2004 Constitution (under which the President shares power with the Parliament and Prime Minister), and early presidential elections. Eventually the unrest localized in two regions – Donetsk and Luhansk, where pro-Russian and anti-Ukrainian sentiments were particularly strong. As protests in these two regions quickly evolved into armed insurgency supported by Russia, Ukraine started military operation to restore order. Consequently, the annexation of Crimea and military actions in Donbass region (Anti-Terrorist Operation) just deteriorated the situation in the budgeting field. In late February 2014, Ukrainian Prime Minister Arseniy Yatsenyuk announced the implementation of severe austerity measures in the country. To receive a loan from the IMF, Ukraine agreed to an austerity program that included shedding 24,000 government jobs, raising taxes, selling off state assets and withdrawing subsidies on natural gas.¹⁴⁶ The quid pro quo of austerity-for-aid is at the heart of Ukraine's bailout program, and it promises to devastate Ukrainian living standards, according to

¹⁴⁵ '100 Days of the New Government: Which Model of Governing is Being Formed', *Mirror Weekly* (no 22, June 12 2010) 67.

¹⁴⁶ Ukraine – Economy (*GlobalSecurity.org*, 19 May 2015) <<http://www.globalsecurity.org/military/world/ukraine/economy.htm>> accessed 7 July 2015.

the taken by analyst Vlad Signorelli of Bretton Woods Research in Mt. Tabor, New Jersey. Among some of the details coming to light are a 47% to 66% increase in personal income tax rates; a 50% increase in monthly gas bills; a 40% increase on gas tariffs for heating companies; and an increase in taxes on agribusiness.¹⁴⁷

Consequently, the Cabinet of Ministers on 1 March 2014 adopted resolution n.65 'On saving of state funds and preventing of budget's loss'.¹⁴⁸ According to this regulation the following measures were taken:

- to introduce the bans on the purchasing of the vehicles, phones, laptops for the official authorities;
- to limit expenditure on the organization of work of social funds, including organizational and administrative costs, capital investments, spending on information technology etc.;
- to stop off payment for charter flights and optimization of other flights for the officials.

Local budgets were also considered to be readopted in obedience to that austerity measures.

According to the Law 'On Amendments to Certain Legislative Acts of Ukraine on pensions'¹⁴⁹ adopted on 2 March 2015 and coming in force since 1 April 2015, pension for employed pensioners are rejected for MPs, prosecutors, judges and public officials until the 31 December 2015. These provisions are not applied for disabled people of 1st and 2nd categories and those who are protected under the Law of Ukraine 'On the Status of War Veterans and guarantees of their social protection'. Pensions for other categories of employed pensioners are cut down to 150 per cent of the living wage.

Since 1 January 2015 the possibility of retirement one year and a half ahead of the retirement age is abolished if a person is released due to staff reductions or for health reasons. The rule requiring additional pension payments for living in contaminated areas is cancelled.

¹⁴⁷ Kenneth Rapoza, 'Ukraine Welcomes IMF Austerity Regime' (*Forbes*, 28 March 2014) <<http://www.forbes.com/sites/kenrapoza/2014/03/28/ukraine-welcomes-imf-austerity-regime/2/>> accessed 7 July 2015.

¹⁴⁸ Res no 65 of The Cabinet of Ministers (On saving of state funds and preventing of budget's loss) 2014 [Про економію державних коштів та недопущення втрат бюджету].

¹⁴⁹ Law no 213-VIII (On Amendments to Certain Legislative Acts of Ukraine on pensions) 2015 [Про внесення змін до деяких законодавчих актів України щодо пенсійного забезпечення].

Rate for mandatory pension insurance fee when buying foreign currency is increased from 0.5% to 2%, and is paid only by individuals who buy cash currency (except citizens who have foreign currency loans and buy foreign currency for their redemption).¹⁵⁰

2. LABOUR RIGHTS

2.1. Please describe how the social and collective bargaining rights are exercised in your MS (Article 5 and 6 ESC)

Ukraine signed the European Social Charter (revised 1996) on 7 May 1999 and ratified it on 21 December 2006.

In accordance with Articles 5 and 6 of this document, with a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations. With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

- to promote joint consultation between workers and employers;
- to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

¹⁵⁰ The Ministry of Social Policy of Ukraine, 'The Concept of Improving Legislation Providing Benefits' <http://www.mlsp.gov.ua/control/uk/publish/printable_article?art_id=36154> accessed 2 April 2015 [Ukrainian].

- to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;
- to recognize the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

In Ukraine, these issues are governed mainly by the Labour Code of Ukraine¹⁵¹ and some other legislative acts. In particular, the Labour Code of Ukraine notes that:

The collective agreement is concluded on the basis of current legislation adopted by the parties to regulate production, labour and socio-economic relations and for coordination of the interests of workers, owners and authorized bodies.¹⁵²

Article 11¹⁵³ of the Labour Code of Ukraine (further the LCU) notes the following:

The collective agreement is concluded in enterprises, institutions and organizations regardless of ownership and management, using hired labour and have legal personality. A collective agreement may be negotiated in subdivisions of enterprises, institutions and organizations within the competence of these units.

Also, Article 12 of the LCU¹⁵⁴ specifies that the collective agreement is concluded between the owner or authorized body (person) on the one hand, and the primary trade union acting in accordance with their charters, and in their absence - representatives freely elected at a general meeting of employees or their authorized agencies, on the other hand. If the company, institution or organization created several primary trade union organizations, they should on the basis of proportional representation (according to the number of members of each primary trade union organizations) create a unified representative body for collective bargaining. In this case, each primary trade union organization must decide on their specific obligations under the collective agreement and responsibility for their failure. The primary trade union organization

¹⁵¹ Law no 322–VIII (Labour Code of Ukraine) 1971 [Кодекс законів про працю України].

¹⁵² Art 10, amended in accordance with the decree of the Parliament no 4617–10 from 24.01.83, no 8474–10 from 27.02.83, no 5938–11 from 27.05.88; Law no 3693–12 from 12.15.9.

¹⁵³ Art 11 as amended in accordance with the decree of the Parliament no 4617^o10 from 24.01.83, no 8474–10 from 27.02.83, no 5938–11 from 05.27.88, Law no 3693–12 from 15.12.9.

¹⁵⁴ Art 12 as amended in accordance with the Law no 3693–12 from 12.15.93, the Law no 2343–III dated 5 April 2001, as amended by the Law no 1096–IV of 10.07.2003.

that refused to participate in the joint representative body shall forfeit its right to represent workers while signing the collective agreement.

It is obvious that the Ukrainian legislation is changing in accordance with obligations undertaken by Ukraine on the harmonization of national legislation with the European legislation, as it is mandatory in accordance to the Association Agreement between Ukraine and the European Union. Therefore, norms of the LCU in the sphere of rights of the establishment and operation of trade unions are fully consistent with the provisions of the European Social Charter.

It is necessary to consider the issue of collective bargaining and social rights in labour issues in accordance with the current Ukrainian legislation.

Article 14 of the Labour Code provides for the following:

Collective bargaining is taking place before the conclusion of the collective agreement. Timing, order negotiation, settlement of any disputes arising during their management, procedure development, and making amendments and additions to the collective agreement, the responsibility for its implementation are governed by the Law of Ukraine 'On Collective Agreements'.¹⁵⁵

Article 4 of the aforementioned Act states the following:

The right to negotiate and conclude a collective agreement, provided to the parties of the social dialogue, the composition of which is determined according to the laws of social dialogue. If the company has several trade unions or associations or other bodies, authorized by labour collective to represent them, they should form a joint representative body to negotiate and conclude a collective agreement. (...) The joint representative body of trade unions, employers can negotiate and conclude collective agreements of appropriate level on behalf of its members who are representative in accordance with the laws of Ukraine on social dialogue.

In order to make the best disclosure of these issues, it is necessary to pay attention to the fact that the current legislation of Ukraine also notes considerable amount of regulation of social dialogue. Law of Ukraine 'On Social Dialogue in Ukraine'¹⁵⁶ in article 1 provides us with the following definition:

¹⁵⁵ Law no 3356–XII (On Collective Agreements) 1993 [Про колективні договори і угоди].

¹⁵⁶ Law no 2862–VI (On Social Dialogue in Ukraine) 2011 [Про соціальний діалог в Україні].

Social dialogue – the process of identifying and convergence, called to reach common understandings and consistent decisions by the parties of social dialogue representing the interests of workers, employers and governmental agencies and bodies of local governments, for to formulate and implement governmental social and economic policies, regulation of employment, social and economic relations.

Article 2 of the Law states that:

Ukraine's legislation on social dialogue is based on the Constitution of Ukraine (254k / 96-VR) and consists of the laws of Ukraine 'On Trade Unions, Their Rights and Guarantees' (1045-14), 'On the employers' organizations' (2436-14), 'On collective Agreements' (3356-12), 'On settlement of collective labour disputes (conflicts)' (137/98-VR), 'On Social Dialogue in Ukraine' (2862-17), labour laws and other legal acts. If an international agreement, ratified by *the Verkhovna Rada* (the Supreme Council) of Ukraine establishes rules other than those were provided by the legislation of Ukraine on social dialogue, the norms of the international agreement are applicable.

According to the Article 3 of the Law of Ukraine 'On Social Dialogue in Ukraine', social dialogue in Ukraine is based on the following principles: legality and the rule of law; representativeness and legal capacity of parties and their representatives; independence and equality; constructiveness and interaction; voluntariness and adoption of actual liabilities; mutual respect and finding compromise solutions; mandatory consideration of the proposals of the parties; priority of matching procedures; openness and transparency; mandatory compliance with the agreements reached; responsibility for the implementation of the commitments.

Also, Article 4 claims the following:

Social dialogue is carried out at the national, sectoral, territorial and local (company, institution, organization) levels in trilateral or bilateral basis.

It should be admitted that in the area of social rights, namely in the field of labour law and its protection, the current Ukrainian legislation is fully consistent to what it is said in the Article 6 of ESC. For instance, the Law of Ukraine 'On the settlement of collective labour disputes'¹⁵⁷

¹⁵⁷ Law no 137/98–BP (On the settlement of collective labour disputes) 1998 [Про порядок вирішення колективних трудових спорів (конфліктів)].

defines the legal and institutional framework for the system of measures as collective labour disputes resolution. It also aims to implement the interaction between the parties of industrial relations in the settlement of collective labour conflicts that have arisen between them.

The practice of the European Court of Human Rights (ECHR) in this area is sufficiently important, especially, in cases related to Ukrainian applicants. Analysis of the European Court of Human Rights functioning on issues related to the problems of consideration of individual labour disputes shows that a significant number of Ukrainian citizens are seeking protection of their human rights in the ECHR. However, a significant amount of their claims were deemed inadmissible. The Court practice, including the European Court of Human Rights, shows that, as in any area of law, the protection of human rights has a number of problems that attracts attention and requires legal resolution.

Thus, on 11 March 2014 the European Court of Human Rights, sitting as a Committee, took action on application¹⁵⁸ filed by Zinoviï Antonovich Semenko against Ukraine. The applicant complained about the length of proceedings for the payment of compensation to him in connection with the termination of his employment relationship. He relied on Article 6 par. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms. After unsuccessful attempts to reach a friendly settlement, the Government of Ukraine filed the letter of 21 October 2013, in which it informed the Court of its unilateral declaration to resolve the issue that violated this part of the application. The Government also invited the Court to strike the application out of its list of cases under Article 37 of the Convention. The declaration included the following: Government of Ukraine offers to pay Mr. Zinovy Antonovych Semenko EUR 1,080. In this regard, the Government requested the Court to strike the application from the list. The Government noted that this declaration with a provision 'on any other grounds' on which the Court may strike the case out of the list under paragraph 'c' of paragraph 1 of Article 37 of the Convention. This amount is compensation for any non-pecuniary damage and costs and expenses, exempt from any taxes that may be assessed, and will be converted into the national currency of the respondent State at the date of payment. The funds will be paid within three months from the date of notification of approval by the Court in accordance with paragraph 1 of Article 37 of the European Convention on Human Rights. In the event of non-

¹⁵⁸ Zinoviï Antonovich Semenko v Ukraine [2014] European Court of Human Rights sect V [2014].

payment of this amount within three months the Government shall pay from the end of the period to the time of calculating a simple interest in the marginal lending rate of the European Central Bank during the default period, to which three percentage points should be added. The payment will be the final resolution of the case. In a letter dated 5 December 2013 the applicant expressed his disagreement with the terms of a unilateral declaration. Instead, the decision the ECHR took into account the circumstances of the Declaration of the Government of the respondent State on Article 6 par. 1 of the Convention (length of proceedings concerning compensation in connection with termination of employment) and the means of enforcing these obligations, decided to strike the application out of the list of cases regarding the above complaint in accordance with subparagraph 'c' Article 37 par. 1 of the Convention and declared the remainder of the application to be inadmissible.

Based on the above-mentioned causes, it is possible to reach the following conclusion: with all due respect to international judicial bodies' consideration it is better to protect labour rights at the national level, rather than to take an individual labour dispute to the European Court of Human Rights.

2.2. Has the right to collective bargaining and respect of social dialogue been affected by the austerity measures? If so, please specify the legal consequences of the austerity measures on these rights (Article 5 and 6 ESC)

In March 2014 an 'Anti-terrorist operation' has started in Ukraine. The war has negatively influenced many spheres of social relations, particularly labour relations. While the legislation on social dialogue is not actually subjected to amendments, labour legislation has been supplemented by a variety of changes and additions. A number of legislative acts, including the Labour Code of Ukraine and the Law of Ukraine 'On State Budget of Ukraine for 2015'¹⁵⁹ were amended by several Laws changing the regulation of the relationship between an employer and an employee, as well as in the field of leave for employees who have children or adult child – disabled since childhood belonging to subgroup A group I.¹⁶⁰

¹⁵⁹ Law no 80-VIII (On State Budget of Ukraine for 2015) 2015 [Про Державний бюджет України на 2015 рік].

¹⁶⁰ Law no 120-VIII (On Amendments to Certain Legislative Acts of Ukraine regarding the improvement of certain provisions of the Social Policy) 2015 [Про внесення змін до деяких законодавчих актів України щодо удосконалення окремих положень соціальної політики].

Because there have been several waves of mobilization in the country in recent months, it is necessary to regulate more clearly the status of the military and their rights during the military service. By the Law of Ukraine ‘On Amendments to Certain Legislative Acts of Ukraine regarding the improvement of military service and of social protection in Ukraine, performing military service during the special period’¹⁶¹ the provisions of the second and third parts of the Article 39 of the Law of Ukraine ‘On Military Duty and Military Service’¹⁶² were amended. It was described as follows:

...For citizens of Ukraine, who called up for military service, military service during mobilization, for the special period, or enlisted for military service under the contract in the event of a crisis that threatens the national security, the judgment of mobilization and (or) martial law for a special period before the end of a period or an announcement to the decision to demobilize, but not more than one year, there is the job (position), the average salary in the enterprise, institution, organization, regardless of subordination and ownership, place of study regardless of subordination and ownership and regardless of learning mandatory saved (...). For citizens of Ukraine, who called up for military service, military service during mobilization for the special period, or enlisted for military service under the contract in the event of a crisis that threatens the national security, the judgment of mobilization and (or) martial law up to the expiration of a special period or an announcement to the decision to demobilize, does not stop the state registration of entrepreneurial activities of individuals – entrepreneurs. In the case of non-proceeding in their business during the mobilization, charging taxes and fees such for individuals – entrepreneurs cannot be done.

According to the Law of Ukraine ‘On the status of war veterans, guarantees of their social protection’¹⁶³ in paragraph 19 Article 6 the following categories were recognized as combatants with the appropriate package of social and employment benefits: soldiers (reservists, military service) and employees of the Armed Forces of Ukraine, National Guard of Ukraine, Security

¹⁶¹ Law no 116-VIII (On Amendments to Certain Legislative Acts of Ukraine regarding the improvement of military service and of social protection in Ukraine, performing military service during the special period) 2015 [Про внесення змін до деяких законодавчих актів України щодо удосконалення порядку проходження військової служби та питань соціального захисту громадян України, які проходять військову службу під час особливого періоду].

¹⁶² Law no 2232-XII (On Military Duty and Military Service) 1992 [Про військовий обов'язок і військову службу].

¹⁶³ Law no 3551-XII (On the status of war veterans, guarantees of their social protection) 1993 [Про статус ветеранів війни, гарантії їх соціального захисту].

Service of Ukraine, Foreign Intelligence Service of Ukraine, the State Border Guard Service of Ukraine, ordinary soldiers, management staff, military personnel, employees of the Ministry of the Internal Affairs of Ukraine, Department of the State guard of Ukraine, State Service of special Communication and Information Protection of Ukraine, other military forces established under the laws of Ukraine, who were defending the independence, sovereignty and territorial integrity of Ukraine and took part in Anti-terrorist operation, ensuring its implementation, being directly in the areas of Anti-terrorist operation and employees of enterprises, institutions and organizations who were involved and took part in Anti-terrorist operation in the areas of its implementation in the manner, prescribed by the law.¹⁶⁴

From the above we can conclude that there have been no significant changes in rights concerning collective bargaining, and social dialogues that would powerfully affect the use and implementation of these rights in society. However, it should be noted that there are significant changes in the status and rights of certain groups of the population, especially with regard to the military.

The impact of austerity measures on the labour rights of certain groups of the population in Ukraine since the beginning of 2014 and nowadays is examined in the next part of the report.

2.3. Have labour rights (Article 4 ESC) been affected by austerity measures in your country? If so, please specify the legal consequences of the austerity measures on these rights

In 2014-2015, austerity has become one of the main directions of the state policy of Ukraine. Caused by the extremely tense situation in the country in general, and the fighting on the eastern border, in particular, society and the government got a number of pressing issues.

Article 1 of the Law of Ukraine 'On State Budget of Ukraine for 2015'¹⁶⁵ defined threshold amount of the budget deficit of Ukraine in the amount of UAH 63,669,600 including limiting budget deficit of the State Budget of Ukraine - in amount of UAH 49,802,604.4, and the budget

¹⁶⁴ Law no 1233-VII (On Amendments to Article 6 of the Law of Ukraine" On the status of war veterans, guarantees of their social protection) 2014 [Про внесення зміни до статті 6 Закону України "Про статус ветеранів війни, гарантії їх соціального захисту"].

¹⁶⁵ Law no 80-VIII (On State Budget of Ukraine for 2015) 2015 [Про Державний бюджет України на 2015 рік].

deficit limit of the State income of Ukraine - amounting UAH 13,866,995.6 according to Annex № 2 to this Act.

Article 7 of the Law establishes the subsistence minimum per person per month at a rate of 1 January 2015 – UAH 1,176, from 1 December – UAH 1,330. The minimum wage in 2015 established in a monthly amount: from 1 January – UAH 1,218, from 1 December – UAH 1,378.

One of the most resonant legislation adopted in 2015 by the Parliament of Ukraine was the Law of Ukraine ‘On cleaning power’¹⁶⁶. This law defines legal and organizational principles of cleaning the governmental power (lustration), and is designed to protect democratic values and the rule of law and human rights in Ukraine. Cleaning power (lustration) aims to prevent the participation in public affairs of people whose actions aimed (and/or contributed to) at usurpation of power by the former government, undermining the foundations of national security and defence of Ukraine or unlawful violation of rights and freedoms. It is based on the following principles: the rule of law; transparency and openness; presumption of innocence; individual responsibility; guaranteeing the right of defence. For ten years from the date of enactment of this Act, positions on which the cleaning power (lustration) is introduced cannot hold a person mentioned in the first, second, fourth and eighth paragraphs of the article 3 of this Law. The prohibitions of the third paragraph of Article 1 of this Law shall apply to persons who occupied the power positions not less than one year from 25 February 2010 to 22 February 2014. The list of such positions included the posts from the President of Ukraine, Prime Minister of Ukraine, First Vice-Prime Minister of Ukraine, judges of the district courts and local government officials that their actions contributed to illegal reduce of the volume of integral rights of the Ukrainian people during the Revolution of Honour. Persons, guilty of unlawful actions, specified in this Act shall be turned adrift by the conclusion of the relevant state body or local governments, and cannot held the appropriate office for five years from the date of the decision on their release.

¹⁶⁶ Law no 1682-VII (On cleaning power) 2014 [Про очищення влади].

At the same time, the Law of Ukraine ‘On Amendments to the Law of Ukraine “On clean power” for additional measures to ensure the defence of the State’¹⁶⁷ provided that the prohibitions in part three and four of this Article shall not be applied to persons of higher officers who occupied or hold positions in the Ministry of Defence of Ukraine, the Armed Forces of Ukraine, the State Border Guard Service of Ukraine, the National Guard of Ukraine and other established under the laws military units, if this is due to the need to ensure the defence of the state and there is a subject to satisfaction of the corresponding application in the manner, prescribed by this Law. The Minister of Defence of Ukraine, the Chairman of the State Border Guard Service of Ukraine, National Guard of Ukraine, heads of other military units have the right to make, in consultation with the Committee of the *Verkhovna Rada* (the Supreme Council) of Ukraine on National Security and Defence, a reasoned request to the President of Ukraine on not to apply to persons referred to the first paragraph of this part the prohibition to hold positions for which measures to clean power (lustration) are taken. The motion, provided by the second part of this paragraph may also be included with persons who are senior officers who were dismissed from their positions in the Ministry of Defence of Ukraine, the Armed Forces of Ukraine, the State Border Guard Service of Ukraine, the National Guard of Ukraine and other established under the laws military units, for which the ban was imposed, by parts three and four of this article. After reviewing the relevant petition, the President of Ukraine makes a decision. If the corresponding application is satisfied, the person shall be deemed on whom no applicable prohibition, specified by the third or fourth this article, was applied.

By the Law of Ukraine ‘On Amendments to Certain Legislative Acts of Ukraine on the reform of compulsory state social insurance and legalization of payroll’¹⁶⁸ the Law of Ukraine ‘On compulsory state social insurance’ was enacted. The law contains a number of positive norms in the area of safety for employees, introducing some new measures that have not been previously characterized by the Ukrainian legislation in this area. In particular, the transitional provisions of

¹⁶⁷ Law no 132-VIII (On Amendments to the Law of Ukraine “On clean power” for additional measures to ensure the defence of the State) 2015 [Про внесення зміни до Закону України "Про очищення влади" щодо додаткових заходів із забезпечення обороноздатності держави].

¹⁶⁸ Law no 77-VIII (On Amendments to Certain Legislative Acts of Ukraine on the reform of compulsory state social insurance and legalization of payroll) 2014 [Про внесення змін до деяких законодавчих актів України щодо реформування загальнообов’язкового державного соціального страхування та легалізації фонду оплати праці].

the Act approved amendments to the Law of Ukraine ‘On the rights and freedoms of internally displaced persons’.¹⁶⁹ Article 7 of the Act was supplemented by rule that says that:

internally displaced persons from temporarily occupied territory are eligible for financial support, insurance benefits and social services of compulsory state social insurance due to temporary disability and an accident at work and occupational diseases that caused disability, directly in the working bodies of the Board of Social Insurance Fund of Ukraine at the actual place of residence, or temporary stay. Financial support, insurance payments are appointed by the necessary documents confirming the right to these payments, and in a case of their absence - according to the State Register of Mandatory Social Insurance, in the manner prescribed by the Board of Social Insurance Fund of Ukraine.

The aforementioned Law of Ukraine ‘On the rights and freedoms of internally displaced persons’ should be overviewed in details. This law under the Constitution and laws of Ukraine, international treaties of Ukraine ratified by *the Verkhovna Rada* (the Supreme Council) of Ukraine, establishes guarantees of the rights, freedoms and legitimate interests of internally displaced persons. In accordance with the definition in the law, internally displaced person is a citizen of Ukraine residing in Ukraine, which forced or who left his own residence as a result of or in order to avoid the negative effects of armed conflict, the temporary occupation, widespread violence, massive violations of human rights and emergency situations of natural or man-made. These circumstances are known and those that do not require any proof if information about them is contained in the official records (messages) of the High Commissioner of the United Nations Commission on Human Rights, the Organization for Security and Cooperation in Europe, the International Committee of the Red Cross and Red Crescent Societies, the Ombudsmen of *the Verkhovna Rada* (the Supreme Council) of Ukraine on Human Rights, hosted on websites of these organizations or if as to such circumstances appropriate actions of authorized state bodies are taken. The link of abandoned residence of internally displaced persons within the meaning of this Act is recognized as the address of residence at the time of the circumstances mentioned in the first paragraph of this article. Under the law (Article 2), Ukraine is taking all possible measures envisaged by the Constitution and laws of Ukraine, international treaties, ratified by *the Verkhovna Rada* (the Supreme Council) of Ukraine on prevention of prerequisites of forced

¹⁶⁹ Law no 1706-VII (On the rights and freedoms of internally displaced persons) 2014 [Про забезпечення прав і свобод внутрішньо переміщених осіб].

internal displacement of persons and the protection of the rights and freedoms of internally displaced persons, the return of persons to their abandoned residences in Ukraine and their reintegration.

By the Article 7 of the Law, Ukraine takes all possible measures to solve problems related to social protection, including social benefits and restoration of all internally displaced persons. There are many provisions on employment of displaced persons with relevant documents (and those without them), which also regulate a number of questions of further activities of displaced legal persons and the issue of employment of persons with disabilities and other disadvantaged groups of population.

Finally, we should mention the positive rate that has been enacted by the Law of Ukraine 'On Amendments to Certain Legislative Acts of Ukraine regarding the improvement of certain provisions of the Social Policy'.¹⁷⁰ It introduces an amendment to Article 182 of the Labour Code, and notes that a woman, who works and has two or more children under 15 or a disabled child, or who has adopted a child, the mother of a disabled child with subgroup A group I, a single mother, father of a child or a person, disabled from childhood with subgroups A group I, who brings them motherless (including the case of mother's long stay in a hospital) and the person who has custody of a child or person, disabled from childhood with subgroups A group I, has a right to annual additional paid vacation of 10 days, excluding holidays.

Hard times came for all enterprises in Ukraine, when they have to underpay their workers. In confirmation the latest case-court decisions should be presented.

In July 2012 the Plaintiff went to court with a claim on the ground that the long period he worked in various positions in the public joint-stock company (JSC) 'Evraz Sukha Balka' during his work at the company repeatedly raised tariff rates and salaries, but charging the defendant average salary for vacation conducted in violation of the law. The Plaintiff asked the court to recover from the JSC 'Evraz Sukha Balka' in his favour during his unpaid leave for the period of work in the enterprise UAH 1,639.90, and recover the compensation for loss of wages due to violation of terms of payment under growth index of consumer prices and rates on the date of release at a rate of UAH 5,226.80. Court of Appeal of Dnipropetrovsk region on 19 November

¹⁷⁰ Law no120-VIII 'On Amendments to Certain Legislative Acts of Ukraine regarding the improvement of certain provisions of the Social Policy' (Parliament of Ukraine, the Law of 15.01.2015).

2013 the trial court regarding the recovery of unpaid salary amount for the holidays cancelled in this part, adopted a new decision which the claim is denied the Plaintiff, in other lower court decision upheld. By the decision of the Supreme Court of Ukraine for Civil and Criminal Cases on 3 September 2014 cassation of the Plaintiff was rejected, the decision of the Appeal Court of Dnipropetrovsk region on 19 November 2013 remained unchanged. In lodged with the Supreme Court of Ukraine statement asks the Plaintiff to cancel the decision of the High Specialized Court of Ukraine for Civil and Criminal Cases of 3 September 2014, and the case to extend to the court of cassation, citing the unequal application by the court of cassation of same rules of substantive law, namely: item 10 of the calculation of the average wage, approved by the Cabinet of Ministers of Ukraine dated 8 February 1995 № 100, article 60 of the Law of Ukraine 'On Joint Stock Companies'. The Plaintiff's application for review of the decision of the High Specialized Court of Ukraine for Civil and Criminal Cases on 3 September 2014 was denied. In order dated 18 February 2015 the Supreme Court of Ukraine, in particular, noted the following:

- 4) In accordance with the first paragraph of Article 60 of the Law of Ukraine 'On leave' the decision-making person who exercises powers is the sole executive body established by the charter company;
- 5) In accordance with paragraph 10 in the cases on increase of tariff rates and salaries, the enterprise, institution or organization acts in accordance with the law, as well as the decisions provided for in the collective agreement (contract), as in the accounting period and in the period during which the employee stores the average salary, wages, including bonuses and benefits taken into account when calculating the average salary for the period of time before the increase is adjusted on rate of increase; on self-supporting enterprises and organizations an adjustment of wages and other payments is made on the basis of their financial capabilities.
- 6) Analysis of the rules of law leads to the conclusion that for self-supporting enterprises and organizations the adjustment of wages and other payments is made on the basis of financial need, and reduction in the increase of tariff rates and salaries at the enterprise is conducted in accordance with legislative acts and by decisions provided for in the collective agreement (contract). This decision shall be taken by the by the governing body of the enterprise, according to the authority established by the charter of the company.

It should be admitted that the rights of workers and their single categories were considerably expanded and improved in accordance with the European vector of development of the Ukrainian legislation, and were limited only in cases that are directly related to those, who had a relation to the usurpation of the power by the previous government officials in 2014.

3. SOCIAL PROTECTION

3.1. Has the social security scheme in your MS provided assistance and/or care for:

3.1.1. Persons who are unable to secure adequate resources either by his/her own efforts or from other sources?

Ukraine did not accept Article 13 of the Charter.

The right to social protection is constitutionally guaranteed in Ukraine. According to the Article 46 of the Constitution:

Citizens have the right to social protection that includes the right to provision in cases of complete, partial or temporary disability, the loss of the principal wage-earner, unemployment due to circumstances beyond their control and also in old age, and in other cases established by law.

Social assistance system provides support to persons unable to secure adequate resources by his/her own efforts.

The system of social assistance in Ukraine is financed by the state budget in the form of subventions (transfers) to local budgets. Regulatory and supervisory functions in the area of social assistance are performed by the Ministry of Social Policy and its local departments.¹⁷¹

The expenditures on social protection and social assistance comprise the biggest share in the state budget. During 2002-2008 the average annual expenditures on social protection and assistance amounted to 22% of total state budget.¹⁷² As of 2013, it was 28.7% of all expenditures

¹⁷¹ International Labour Office, *Assessment of the Social Security System in Ukraine 2008-09: Crisis Response and Future Reforms* (Geneva, ILO 2010) 29.

¹⁷² Center for Public Expertise, *Система соціального захисту та соціального забезпечення в Україні: реальний стан та перспективи реформування* (Kyiv, Center for Public Expertise 2009) 78 [Ukrainian].

and 10% of GDP.¹⁷³ At the same time, the amount of expenditures calculated for one person amounted only to USD 1,677 in 2005 and was one of the lowest among OECD countries.¹⁷⁴

The system of social assistance in Ukraine consists of benefits in cash and in kind. The social assistance in cash includes: assistance for families with children; assistance for low-income families; assistance for persons, disabled since childhood and disabled children. The social assistance in kind consists of social privileges, housing subsidies and social services.¹⁷⁵

3.1.1.1. Social Assistance in Cash

i. Social assistance for families with children

Pursuant to the Law 'On State Assistance for Families with Children' the following types of state aid exist:

- Maternity benefit (for women uninsured against temporal disability).¹⁷⁶ The amount is equal to 100% of women's average monthly income, but cannot be less than 25% of the subsistence minimum for an-able bodied person (Article 9 of the Law 'On State Assistance for Families with Children'). The duration of maternity benefit is established as follows: 1) for normal deliveries – 126 days, 2) for deliveries with complications or birth of two or more children – 140 days, 3) for women falling within category of victims of Chernobyl accident – 180 days (Article 8 of the Law 'On State Assistance for Families with Children').
- Child birth benefit. It is granted to the one of the parents who is on maternity leave. The amount is UAH 41,280 (UAH 10,320 is paid as a lump sum, the rest is paid during 36 month) (Article 12 of the Law 'On State Assistance for Families with Children');

¹⁷³ State Statistics Service of Ukraine, *Соціальний захист населення України* (Statistical Bulletin, State Statistics Service of Ukraine 2014) 11 [Ukrainian].

¹⁷⁴ Center for Public Expertise, *Система соціального захисту та соціального забезпечення в Україні: реальний стан та перспективи реформування* 82.

¹⁷⁵ European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities, *Social Protection and Social Inclusion in Ukraine* (European Communities 2009) 57.

¹⁷⁶ The Law of Ukraine no. 2811-XII (On State Assistance for Families with Children) 1992, Art 7 [Про державну допомогу сім'ям з дітьми].

- Child adoption benefit. It is payable to a citizen of Ukraine, who permanently resides within the territory of Ukraine and adopted a child (Article 12-1 of the Law ‘On State Assistance for Families with Children’). The amount is the same as child birth benefit;
- Benefit for children under guardianship or custodianship. This benefit is assigned to persons who were appointed as guardians or custodians of children, deprived of parental care. Such benefit is deemed to be the property of a child (Article 16 of the Law ‘On State Assistance for Families with Children’). The amount is twice the subsistence minimum for a child (depending on age). For children up to 6 years this benefit equals UAH 2,064 per month and for those from 6 till 18 years – UAH 2,572 per month (Article 18 of the Law ‘On State Assistance for Families with Children’);
- Child benefit for single mothers. It is assigned to single mothers (not married), single adoptive persons, widows and widowers with children (if they are not entitled to survivor’s pension or social pension), who have children up to 18 years. In case children are studying, the benefit is payable until the end of the studies, but not longer than till the age of 23 (Article 18-1 of the Law ‘On State Assistance for Families with Children’). The amount of the benefit is calculated as the difference between 50% of the subsistence minimum for a child of particular age and the average total family income over the previous six months, but it cannot be less than 30% of the subsistence minimum for a child (Article 16 of the Law ‘On State Assistance for Families with Children’). The minimum amount of this benefit for children up to 6 years – UAH 309, from 6 till 18 years – UAH 385, from 18 till 23 years – UAH 364.

ii. Social assistance for low-income families

The granting of state aid to low-income families is regulated by the Law ‘On State Social Assistance for Low-Income Families’. The low-income family is defined as a family which, due to serious reasons or reasons beyond its control, has an average monthly aggregate income lower than the minimum living standard for family.¹⁷⁷ The benefit is assigned for half a year (Article 6 of the Law ‘On State Social Assistance for Low-Income Families’). The amount is determined as a difference between family minimum living standard and monthly aggregate income of the low-

¹⁷⁷ The Law of Ukraine no. 1768-III (On State Social Assistance for Low-Income Families) 2000, Art 1 [Про державну соціальну допомогу малозабезпеченим сім’ям].

income family, but it cannot be more than 75% of the minimum living standard for family (Article 5 of the Law ‘On State Social Assistance for Low-Income Families’).

iii. State assistance for persons disabled since childhood and disabled children

According to Article 1 of the Law ‘On State Assistance for Persons Disabled since Childhood and Disabled Children’ this benefit may be assigned to persons disabled from childhood and disabled children up to 18 years. The amount of monetary assistance depends on a disability group and is determined as a percentage of a minimum subsistence level for persons incapable of working (UAH 949). For persons disabled since childhood (I group – 100%, II group – 80%, III group – 60%), for disabled children below 18 years – 70%.¹⁷⁸ This benefit is payable during the whole period of disability for persons disabled since childhood, and for disabled children – no longer than until the age of 18 (Article 4 of the Law ‘On State Social Assistance for Persons Disabled since Childhood and Disabled Children’).

Also, one of the parents of disabled child is entitled to additional benefit for taking care of a disabled child, provided that he/she is not working or studying and actually takes care of a child. The amount is equal to 50% or 100% of minimum subsistence level for children of a particular age. Persons disabled since childhood of I group, single disabled since childhood of II and III group, who are in need of permanent care, are entitled to an additional benefit for taking care of them. The amount of this benefit is from 15% to 75% of subsistence minimum for persons incapable of working (Article 3 of the Law ‘On State Social Assistance for Persons Disabled since Childhood and Disabled Children’).

3.1.1.2. Social assistance in kind

i. Social privileges

More than 1/3 of Ukrainian population is eligible for privileges.¹⁷⁹ There are three types of privileges according to the common feature of their beneficiaries: privileges for special contributions to the country (for example, granted to individuals entitled Hero of Ukraine),

¹⁷⁸ The Law of Ukraine no. 2109-III (On State Social Assistance for Persons Disabled since Childhood and Disabled Children) 2000, Art 2 [Про державну соціальну допомогу інвалідам з дитинства та дітям-інвалідам].

¹⁷⁹ The Ministry of Social Policy of Ukraine, ‘Концепція вдосконалення законодавства у сфері надання пільг’ <http://www.mlsp.gov.ua/control/uk/publish/printable_article?art_id=36154> accessed 02 April 2015 [Ukrainian].

service based privileges (police officers, personnel in the court system, civil servants, etc.) and social privileges.¹⁸⁰

There is no single definition of social privileges in existing legislation. They may be defined as full or partial exemptions of certain categories of citizens from obligations or granting them additional rights in order to ensure adequate standard of living.¹⁸¹ Today, the granting of privileges is regulated by 46 normative acts, 24 of which establish social privileges.¹⁸² There are nearly 45 categories of beneficiaries eligible for more than 50 different kinds of social privileges and their numbers are constantly increasing.¹⁸³

The system of social privileges is based on a categorical principle which implies that person is eligible for a benefit if he/she belongs to a certain group of people provided for in legislation.¹⁸⁴

The necessity of assistance from the state may be caused by such factors as state of health, family situation, age, etc. The examples of categories include, in particular: war veterans and their equivalent, families of soldiers who were killed or missing in action, combatants, service personnel, partisans; individuals suffering from the after-effects of the Chernobyl AES disaster; labour veterans, military and police veterans, disabled servicemen, rehabilitated prisoners of conscience who were crippled due to their treatment under the soviet prison system or are of pensionable age; pensioners and the disabled.¹⁸⁵

Most privileges are granted in a form of reduction or total exemption from payment for particular goods and services.¹⁸⁶ For example, discounts on payments for medicine purchase, housing services, telephone use, transportation, privileges regarding taxes and customs, provision of food products and compensation of their costs, free public transportation. There are also privileges putting their beneficiaries in more advantageous position in comparison with others:

¹⁸⁰ Yevhenia Akhtyrko and Liudmyla Kotusenko, *Reforming the System of Privileges* (International Centre for Policy Studies 2004) 5.

¹⁸¹ S Sinchuk, 'Соціальні пільги як вид соціального забезпечення в Україні' (2004) *Jurisprudentia* <<http://www.lawyer.org.ua/?w=r&i=&d=311>> accessed 02 April 2015 [Ukrainian].

¹⁸² L Skoropada, *Огляд системи соціального забезпечення в Україні* (Human Dynamics Consortium 2009) 29.

¹⁸³ *Supra*.

¹⁸⁴ M Kravchenko, 'Основні підходи до реформування системи пільг в Україні' [2010] *Державне управління та місцеве самоврядування* 155 [Ukrainian].

¹⁸⁵ Yevhenia Akhtyrko and Liudmyla Kotusenko, *Reforming the System of Privileges* 5.

¹⁸⁶ The Ministry of Social Policy of Ukraine, 'Концепція вдосконалення законодавства у сфері надання пільг' <http://www.mlsp.gov.ua/control/uk/publish/printable_article?art_id=36154> accessed 02 April 2015 [Ukrainian].

priority allocation of land and interest-free loans for construction of house for individual use, priority service in medical institutions, and admission to public institutions of higher education without competition.

The most widespread kinds of privileges are discounts on payment or total exemption from payment for city and regional public transport (30% of population) and discounts on payment for housing services (21% of population).¹⁸⁷

It is commonly accepted that system of privileges in Ukraine is not capable of securing adequate assistance to the poor and requires reforming. In general, only 43% of population eligible for privileges actually exercises its rights and only 30% of them are poor.¹⁸⁸ Such situation makes it necessary to replace current system based on categorical principle with the target based one, where benefits are granted to a specific individual who applied for it and satisfies particular criteria set out in the legislation. These perspectives have been widely discussed since the beginning of the present century, but there are only a few examples of target based assistance so far. Housing subsidy program is one of them.

ii. Housing subsidies

Housing subsidies may be assigned to a family upon the application from one of family members provided that its income is not sufficient to pay for housing services and gas.¹⁸⁹ In February 2014 more than 1 million families were receiving subsidies, the average amount was UAH 335 during heating period and UAH 73 during non-heating period.¹⁹⁰ There are about UAH 24 billion allocated for housing subsidies program in the state budget of 2015.¹⁹¹

Also, due to the increase in prices for gas and heat in 2014, there was introduced the system of compensation of additional expenses on housing services for families whose aggregate income is

¹⁸⁷ Supra.

¹⁸⁸ T Kutsenko and M Bodnar 'Соціальні пільги в Україні: аналітичний огляд' [2014] Соціально-трудові відносини: теорія та практика 96 [Ukrainian].

¹⁸⁹ European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities, *Social Protection and Social Inclusion in Ukraine* (European Communities 2009) 57.

¹⁹⁰ The Ministry of Social Policy of Ukraine, 'Основні заходи Уряду щодо соціальної підтримки сімей при оплаті житлово-комунальних послуг' <<http://mlsp.kmu.gov.ua/document/171646/pr.ppt>> accessed 02 April 2014 [Ukrainian].

¹⁹¹ Press Release, *Уряд забезпечив усе необхідне для впровадження реформи субсидій* (The Ministry of Social Policy of Ukraine, 31 March 2014) <http://www.mlsp.gov.ua/labour/control/uk/publish/article?art_id=174692&cat_id=169493> accessed 02 April 2015 [Ukrainian].

less than minimum subsistence level for families. The amount of compensation equals to the difference between the amount of payment for housing services that a family made before the increase in prices and the amount it has to pay after.¹⁹² In February 2014, only 11,914 families were receiving such compensation and its average amount was UAH 154 during non-heating period and UAH 2,614 during heating period.¹⁹³

On 28 February 2015, the Cabinet of Ministers of Ukraine approved the Resolution ‘On Improving the Procedure of Granting Housing Subsidies’ that introduces much easier and less time consuming procedure. Assignment of the subsidies and supervision over their usage is performed by the departments of social security of local state administrations and executive bodies of city councils (Point 3 of the Resolution). The subsidies are assigned during 10 days for the period of 12 month with automatic prolongation on the basis of two documents: application and declaration of income¹⁹⁴. All restrictions on the property status of persons applying for subsidies are abolished, except one-time purchase over UAH 50,000. It is expected that after price increase for housing services in April 2015, the reformed housing subsidies program will cover 4 million households till the end of the year.¹⁹⁵

iii. Social services

Social services are relatively new component of social welfare in Ukraine that is not sufficiently developed.

The main normative act in this area is the Law of Ukraine “On social services”. Article 1 of the Law defines social services as a set of measures designated to provide support for individuals who suffer adverse life circumstances and are not able to over them by own efforts with the aim to resolve their life problems. Social services can be paid and free of charge.¹⁹⁶ Persons eligible for free services include: individuals incapable of sustaining themselves due to maturity, disease,

¹⁹² Resolution of the Cabinet of Ministers of Ukraine no. 83 (On strengthening social protection of the population in an environment of rising public utilities prices and tariffs) 2014 [Про посилення соціального захисту населення в умовах підвищення цін і тарифів на комунальні послуги].

¹⁹³ Press Release, *Уряд забезпечив усе необхідне для впровадження реформи субсидій*.

¹⁹⁴ Resolution of the Cabinet of Ministers of Ukraine no. 106 (On Improving the Procedure of Granting Housing Subsidies) 2015), point 9 and 13 [Про удосконалення порядку надання житлових субсидій].

¹⁹⁵ Ukrayinska Pravda, ‘Субсидії: як є і як буде’ (Ukrayinska Pravda, 31 March 2015) <<http://www.pravda.com.ua/cdn/cd1/2015year/tarify/ind.html?attempt=1>> accessed 03 April 2015 [Ukrainian].

¹⁹⁶ The Law of Ukraine no. 966-IV (On Social Services) 2003, Art 7 [Про соціальні послуги].

disability and have no relatives to provide them with care and support; individuals undergoing adverse life circumstances due to unemployment (if such individuals are registered in state unemployment centre as those seeking job), due to calamities, catastrophes, war and ethnic refugees, if the average income of such individuals is below the stipulated subsistence level; children and youth undergoing adverse life circumstances due to disability, disease, orphanage, destitution, indigence, conflicts and family cruelty (Article 7 of the Law “On social services”).

Since social welfare services are in general dealt with in the Article 14 of the Charter, for the purposes of the present report this type of social assistance will be further covered in section 3.3 insofar it falls within Article 13(3) of the Charter.

3.1.2. Persons who are unable to secure adequate resources either by his/her own efforts or from other sources due to illness?

Ukraine provides health care for free. Article 49 of the Constitution of Ukraine stipulates that “The State creates conditions for effective medical service accessible to all citizens. State and communal health protection institutions provide medical care free of charge”.

Ukraine possesses developed system of medical institutions. It has 5.46 healthcare establishments per 100,000 persons, while the EU average value of this index is about 3.1 per 100,000 persons. As for health care workers, there are 493 doctors, 1,010 nursing staff per 100,000 persons in Ukraine, while in EU there are 292 doctors and 750 nursing staff.¹⁹⁷ However, financing of medical care system is not sufficient. State expenditures on health care comprised 3.7% of GDP in 2008, 2.9% in 2009, 3.6% in 2010, 3.4% in 2011 and 3.7% in 2012,¹⁹⁸ whereas according to WHO recommendations for ensuring effective and qualified medical assistance these expenditures should comprise 7-10% of GDP.¹⁹⁹ As a result, the system of health care is highly inefficient, what causes constant violations of the right to accessible free medical assistance.

¹⁹⁷ М Мalyovanyu, *‘Стан і проблеми державного фінансування охорони здоров’я в Україні’* [2013] *Проблеми економіки* 116 [Ukrainian].

¹⁹⁸ State Statistics Service of Ukraine, *Національні рахунки здоров’я України у 2012 році* (Statistical Bulletin, State Statistics Service of Ukraine 2014) 8 [Ukrainian].

¹⁹⁹ V Zagorski Z Lobodina G Lopushnyak, *Управління фінансовими ресурсами закладів охорони здоров’я* (LRIDU NADU 2010) 89 [Ukrainian].

In order to obtain additional finances, a large number of medical institutions make patients pay 'charity donations' and the unwillingness to do so may lead to refusal of medical assistance. It is very common when patients cover the costs of all the medication they need. Hospitals usually cannot offer necessary treatment requiring state-of-the-art equipment. The attempts to establish quotas in the use of such equipment for vulnerable categories of citizens only cause corruption.²⁰⁰ Moreover, most of the doctors expect patients to pay for the consultations and services they provide.

Therefore, the free health care has become a mere declaration and the state is not capable of providing adequate medical assistance for its citizens, including those without adequate resources. It follows that the situation in Ukraine is not in conformity with Article 13(1) of the Charter.

3.2. If applicable, what impact have the austerity measures had on the social security scheme described under 3.1.1. and 3.1.2. (Article 13(1) ESC)?

3.2.1. Response to the Global Economic Crisis of 2008

Ukraine has been severely hit by the economic crisis. However, instead of implementing severe austerity measures in the area of social assistance, the authorities increased expenditures on social protection to alleviate the negative effects of the crisis and help stabilize economy.²⁰¹

Despite government's commitment to reform the system of social assistance towards more target-based as a response to financial crisis²⁰², Ukraine continued to allocate a great amount of social benefit spending (65 per cent in 2008) to non-means-tested categorical programs and failed to use opportunities to increase the effectiveness of safety nets by rationalizing expenditures and consolidating benefits.²⁰³

²⁰⁰ Y. Zakharov, *Human Rights in Ukraine — 2009–2010. Report by Human Rights Organisations* (Ukrainian Helsinki Human Rights Union, Kharkiv Human Rights Protection Group 2011) 291.

²⁰¹ International Labour Office, *Assessment of the Social Security System in Ukraine 2008-09: Crisis Response and Future Reforms* (Geneva, ILO 2010) 37.

²⁰² Resolution of the Cabinet of Ministers of Ukraine no. 1107 (Program of The Cabinet of Ministers of Ukraine 'Overcoming the Impact of the Global Financial Crisis and Sustainable Development') 2008 [Програма діяльності Кабінету Міністрів України 'Подолання впливу світової фінансово-економічної кризи та поступальний розвиток'].

²⁰³ The World Bank and The International Monetary Fund, *Global Monitoring Report 2014/2015: Ending Poverty and Sharing Prosperity* (The World Bank 2015) 122.

Therefore, Ukrainian government chose the way of quantitative increase in benefits, rather than the qualitative transformation of social assistance system to increase its effectiveness. As a result, in the circumstances of limited financial resources, measures implemented by the state appeared to be insufficient and incapable of securing adequate level of support for those in need.

3.2.2. Austerity Measures under Economic Crisis of 2014

In the situation of external aggression and its severe effects on the national economy, the government of Ukraine implements austerity measures, which also affect the sphere of social rights.

It is important to note that the basic social standard, minimum subsistence level, did not change in comparison with 2014, despite significant rise in prices. Article 7 of the Law of Ukraine 'On State Budget 2015' establishes that from 1 January 2015 the minimum subsistence level for employed persons equals UAH 1,218 and for disabled – UAH 949. At the same time, according to the Ministry of Social Policy of Ukraine the actual minimum subsistence level is UAH 1,611 for employed persons and UAH 1,224 for disabled persons.²⁰⁴ Moreover, the National Bank of Ukraine expects inflation of 30% at the end of 2015.²⁰⁵ Thus, the approach to determining basic social standard does not take into account current economic situation: devaluation of national currency and incomes of citizens as well as high level of inflation, and is manifestly inadequate. Since the amounts of all of the benefits are calculated according to the subsistence minimum, they are also insufficient.

The number of categories of individuals eligible for particular social benefits and privileges was decreased, access to some benefits was restricted by tightening eligibility conditions, several types of social benefits and privileges were completely abolished.

²⁰⁴ Ministry of Social Policy of Ukraine, 'Інформація щодо фактичного розміру прожиткового мінімуму' (Official Web Page of the Ministry of Social Policy of Ukraine, 20 February 2015) <http://www.mlsp.gov.ua/labour/control/uk/publish/article?art_id=172951&cat_id=141688> accessed 03 April 2015 [Ukrainian].

²⁰⁵ Press Release, 'Concerning Decisions of the Committee of Monetary Policy' (National Bank of Ukraine, 30 March 2015) <http://www.bank.gov.ua/control/uk/publish/article?art_id=15945834&cat_id=55838> accessed 03 April 2015 [Ukrainian].

In particular, it has become harder for pedagogical employees and pensioners living in rural areas to get privileges for free use of housing with heating and lightning²⁰⁶, for many categories of individuals the necessary eligibility condition for privileges is that the average total family income, per capita over the last six months should not exceed UAH 1,710, the privileges for 4th category of Chernobyl disaster victims were abolished and for other categories they were significantly reduced, free public transportation for most categories of citizens as well as cash benefits for children up to 3 years were abolished.²⁰⁷ Also, since July 2014 progressive increase in child birth benefit depending on the number of children was substituted with fixed amount of UAH 41,280.²⁰⁸

The Law of Ukraine 'On State Budget 2015' restricts the application of 43 social laws²⁰⁹, since it stipulates that their provisions 'shall be applied in the manner and amounts, established by the Cabinet of Ministers of Ukraine, within available financial resources of national and local budgets, and compulsory state social insurance funds'.²¹⁰ Such provisions are not only contrary to the Constitution of Ukraine, what was reiterated by the Constitutional Court of Ukraine in a number of cases.²¹¹ It is also not in the conformity with the requirement of "universality" underpinning Article 13(1) of the Charter. The Committee notes that 'the system of assistance must be universal in the sense that benefits must be payable to "any person" on the sole ground that he/she is in need'.²¹² It follows from such considerations that the only reason for refusal may be the non-conformity of the person with the eligibility conditions for specific benefit. Indeed, according to the Committee 'the right to social assistance must be conditional only on

²⁰⁶ The Law of Ukraine no. 76-19 (On Amending and Termination of Certain Legislative Acts of Ukraine) 2014, Point 25 [Про внесення змін та визнання такими, що втратили чинність, деяких законодавчих актів України]

²⁰⁷ 'Оплата праці та соціальна сфера: що приготував 2015 рік' (Byhgalter, 27 January 2015) <<https://buhgalter.com.ua/articles/soctialniy-zahist/oplata-pratsi-ta-sotsialna-sfera-shcho-prigotuvav-2015-rik/>> accessed 03 April 2015 [Ukrainian].

²⁰⁸ Previously: 1st child – UAH 30960, 2nd – 61920, 3rd and next – 123405.

²⁰⁹ A Pavlovsky, 'Соціальні аспекти бюджету виживання' (Gazeta.UA, 15 January 2015) <<http://gazeta.ua/blog/46737/socialni-aspekti-byudzhetu-vizhivannya>> accessed 02 April 2015 [Ukrainian].

²¹⁰ The Law of Ukraine no. 76-19 (On Amending and Termination of Certain Legislative Acts of Ukraine) 2014, Point 9 of Final Provisions.

²¹¹ N Shptala, 'Гарантії забезпечення соціального захисту прав людини: практика Конституційного Суду України' (Official Web Page of Constitutional Court of Ukraine, 2011) <<http://www.ccu.gov.ua/doccatalog/document?id=164647>> accessed 01 April 2015 [Ukrainian].

²¹² Digest of the Case Law of the European Committee of Social Rights 2008 97.

the criterion of necessity²¹³. However, the provision of the Ukrainian legislation makes the granting of social benefits conditional on the availability of financial resources in the state budget and makes it possible to refuse assistance on the ground of their absence. Therefore, it is not guaranteed that any person in need will be provided with the necessary assistance.

Thus, in the circumstances of severe economic crisis and devaluation of national currency, the government of Ukraine is not capable of securing adequate social assistance for those in need and austerity measures applied are not in the conformity with Article 13(1) of the Charter.

3.3. Are there any appropriate public or private services which provide advice and personal help, as may be required, to prevent, to remove, or to alleviate personal or family want (Article 13(3) ESC)? Have the austerity measures taken had any impact on these services?

In general, bodies competent to decide on social benefits are also obliged to provide citizens with the information falling within the scope of their activities.

The administration of social assistance is mostly conducted by the departments of social protection in rural districts and executive bodies of councils in urban districts and cities. They also inform citizens on matters within their competence, explain the provisions of legal acts in person and through the media.²¹⁴

In addition to this, according to the Article 7 of the Law of Ukraine 'On social Services' one of the types of social services is informational service, which encompasses communicating information essential for the overcoming adverse life circumstances (inquiry services); dissemination of educational information (enlightenment activity); spreading correct information about qualities and types of social services, shaping certain perception and attitude of society towards social problems.

However, in practice the public is not sufficiently informed about their social rights. For example, the study conducted by UNDP in Ukraine showed that 40% of households that

²¹³ *ibid* 100.

²¹⁴ Decree no 741 of the Ministry of Social Policy of Ukraine (Methodological Recommendations on Development of Regulations on Structural Units of Social Protection in Local State Administrations) 2012 [Методичні рекомендації з розроблення положень про структурні підрозділи соціального захисту населення місцевих державних адміністрацій].

actually need subsidies do not apply for them.²¹⁵ The main reasons for this are: 1) people think they are not eligible for subsidies because of too high income (29.7% respondents), 2) lack of information about the assistance (13.6%), 3) long and complicated application procedure (9.2%), etc.²¹⁶ Therefore, such figures reveal problems in the effectiveness of state measures as regards ensuring public awareness about the available social benefits.

In order to improve the situation in public awareness on social services the Ministry of Social Policy of Ukraine approved on 28 October 2014 'Methodological Recommendations on Informing the Public about Social Services' that were developed as part of the UNDP project 'Support to the Social Sector Reform in Ukraine'.²¹⁷ Point 2 of the Recommendations stipulates that informing public about social services presupposes hierarchical structure and the dissemination of information takes place on the following levels:

- Central level (Ministry of Social Policy);
- Regional level (departments of social protection of state administrations in oblasts²¹⁸);
- Local level (departments of social protection of state administrations in rural districts and executive bodies of local councils);
- Entities providing social services.

The Recommendations also contain information regarding principles that should be adhered to by the authorities when informing the public and the most effective ways to disseminate the information; prescribe universal format of information cards; explain how to arrange media relations, online counselling and create a yearly communication plan.²¹⁹

²¹⁵ Press Release, 'Why Poor Households in Ukraine do not Apply for Housing Subsidies' (United Nations Development Programme in Ukraine, 24 December 2014) <<http://www.ua.undp.org/content/ukraine/en/home/presscenter/articles/2014/12/24/why-poor-households-in-ukraine-do-not-apply-for-housing-subsidies.html>> accessed 02 March 2015.

²¹⁶ Press Release, 'Research Results Summary of Household Survey on the Availability of Housing Subsidies in Ukraine' (United Nations Development Programme in Ukraine) <<http://www.ua.undp.org/content/dam/ukraine/docs/Subsidies%20Survey%20Resume%20UNDP%20correct.pdf>> accessed 02 March 2015.

²¹⁷ Press Release, 'Ukraine's Citizens Better Informed on Social Services' (United Nations Development Programme in Ukraine, 23 December 2014) <<http://www.ua.undp.org/content/ukraine/en/home/presscenter/articles/2014/12/23/ukraine-s-citizens-better-informed-on-social-services.html>> accessed 02 March 2015.

²¹⁸ The territory of Ukraine is divided into 24 administrative units (oblasts).

²¹⁹ Decree no 828 of the Ministry of Social Policy of Ukraine (Methodological Recommendations on Informing the Public about Social Services) 2014 [Методичні рекомендації щодо інформування населення про соціальні послуги].

‘The effectiveness of the social welfare services provided for in paragraph 3 of Article 13 also depends on their accessibility to users’.²²⁰ This presupposes the existence of proper network of institutions providing social services.

Since 2012, the Law of Ukraine ‘On Social Services’ allows both public and private sector to provide social services for the population. The system of bodies entitled to render social assistance in the form of social services consists of several types of entities with different accountability to the state:

- Public entities accountable to the central executive authorities (the government);
- Organizations accountable to local communities (local governments);
- Organizations, accountable to both central executive authorities and local governments (joint management);
- Non-government sector (NGOs): associations, charity organizations and funds, religious organizations, etc.;
- Commercial enterprises;
- Private individuals.²²¹

Nevertheless, social services are primarily provided by governmental sector. The role of non-governmental organizations is very small. It is caused by the fact that the budgetary resources are planned and dedicated to the large public institutions rather than to needs of recipients of social services.²²²

State institutions that provide social services include:

- more than 80 day care centres for adults with disabilities and children with disabilities;
- 734 Territorial Centres of Social Services for retired and single disabled persons with 2915 units (as of 2013), where about 1.6 million people are serviced;
- about 750 social centres for families, children and youth;

²²⁰ Digest of the Case Law of the European Committee of Social Rights 2008 285.

²²¹ Association of Economic Development of Ivano-Frankivsk, ‘*Social Enterprises in Ukraine*’ <www.southeast-europe.net/document.cmt?id=197> accessed 02 March 2015.

²²² European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities, *Social Protection and Social Inclusion in Ukraine* (European Communities 2009) 64.

- 137 rehabilitation centres for children with disabilities;
- rehabilitation centres for adults with disabilities, for persons who suffered from trafficking;
- re-socialization centres for drug-addicted youth, for homeless persons and people released from prison;
- AIDS centre of the Ministry of Health of Ukraine, located in each region and two centres in Kyiv.²²³

Despite the fact that, in general, the institutions of social services cover the whole territory of Ukraine, the population does not have adequate access to the social services.

The Committee takes the position that ‘in order to comply with the Charter, ...social welfare services ...must ensure their users an equal and effective access, through the way they operate and are organised, including their geographical distribution; the number, qualifications and duties of the staff employed, including voluntary staff; funding provided for those services and the adequacy of the material and staff resources on the one hand and the number of users on the other hand’.²²⁴

The social work in Ukraine is organized ineffectively. Social assistance is provided only on the basis of application for social service, but there are no preventive measures and no efforts aimed at identification of individuals who are really in need of assistance.²²⁵ Also, there is no effective mechanism of assessment the need of a territorial community as regards necessary numbers of social workers and required types of social services.²²⁶ Thus, sufficient financial resources are not allocated. Another problem concerns social personnel: the shortage of social workers and low level of their qualifications, etc.²²⁷ As a result, the effective access for many individuals to social

²²³ Press Release, ‘Ukraine’s Citizens Better Informed on Social Services’ (United Nations Development Programme in Ukraine, 23 December 2014) <<http://www.ua.undp.org/content/ukraine/en/home/presscenter/articles/2014/12/23/ukraine-s-citizens-better-informed-on-social-services.html>> accessed 02 March 2015.

²²⁴ European Committee of Social Rights Conclusions 2013 (Portugal) 2014 36.

²²⁵ European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities, *Social Protection and Social Inclusion in Ukraine* (European Communities 2009) 13.

²²⁶ О Пыаш, ‘Щодо перспективних напрямів підвищення якості соціальних послуг в Україні. Аналітична записка’ (The National Institute for Strategic Studies) <<http://www.niss.gov.ua/articles/763/>> accessed 03 March 2015 [Ukrainian].

²²⁷ К Dubych, ‘Сучасний стан, проблеми та шляхи удосконалення кадрового забезпечення надання соціальних послуг в Україні’ [2014] Державне Управління: Удосконалення та Розвиток 53 [Ukrainian].

services, especially in rural areas, is precluded. This conclusion is confirmed by statistical data. In 2013 there were 1,601,707 persons receiving social services.²²⁸ At the same time, there were 1,861,274 individuals officially indicated as being in need of such assistance, as of 01 January 2014.²²⁹

In addition, there is no exhaustive list of basic social services guaranteed by the state free of charge, regardless of the economic situation in the country and the territory of residence of persons who need them.²³⁰ Thus, in each instance the granting of social services depends on the discretion of social worker,²³¹ whereas according to the case law of the Committee 'social assistance should be granted "as of right" and not depend solely on a decision at the administration's discretion'.²³²

On August 2012 the Cabinet of Ministers of Ukraine approved the 'Strategy of Reforming the System of Social Services'. The Strategy states, inter alia, that in order to establish a mechanism of prevention the occurrence of adverse life circumstances it is necessary to:

- conduct a comprehensive review of the legislation in the field of social services;
- introduce the procedure for determining the needs of the population of a territorial unit for social services;
- plan and organize the provision of social services taking into account the specific needs of territorial units and individuals;
- expand the list of social services aimed at enhancing the ability of parents to ensure the development and education of the child.²³³

²²⁸ State Statistics Service of Ukraine, *Соціальний захист населення України* (Statistical Bulletin, State Statistics Service of Ukraine 2014) 123 [Ukrainian].

²²⁹ Supra.

²³⁰ O Ilyash, *Щодо перспективних напрямів підвищення якості соціальних послуг в Україні. Аналітична записка*.

²³¹ L Ilchuk and Y Kryvobok, *Фінансування сфери соціальних послуг: сучасний стан та напрями удосконалення* (Center for Advanced Social Research of the Ministry of Social Policy of Ukraine and NAS of Ukraine 5 April 2014 <http://cpsr.org.ua/index.php?option=com_content&view=article&id=273:2013-04-05-05-26-32&catid=46:2013-04-04-06-31-05&Itemid=53> accessed 03 March 2015 [Ukrainian].

²³² Digest of the Case Law of the European Committee of Social Rights 2008 283.

²³³ Ordinance no 556-p of the Cabinet of Ministers of Ukraine (Strategy of Reforming the System of Social Services) 2012 [Стратегія реформування системи надання соціальних послуг].

On 13 March 2013 the Cabinet of Ministers of Ukraine approved the ‘Action Plan for 2013-2016 Concerning the Implementation of the Strategy of Reforming the System of Social Services Providence’.

Pursuant to point 7 of the Action Plan the Ministry of Social Protection of Ukraine approved on 20th January 2014 the ‘Procedure for Determining the Needs of the Population of a Territorial Unit for Social Services’. However, the Procedure does not properly establish obligations of the departments of social protection. As a result, the Ministry of Social Policy received analytical report only from one region (out of 24), in which it is merely stated that there is a need for certain types of social services, but such conclusion was not substantiated by proper data.²³⁴ Thus, the Procedure is not capable of achieving the envisaged result. Moreover, the government hasn’t taken proper measures to achieve other aims of the Strategy set out above.

Therefore, the government in Ukraine does not sufficiently promote public awareness on available social benefits. Also, social services do not play preventative role and effective access to them is not fully ensured. Despite of the existence of strategies and action plans aimed at improving the situation, they are not properly implemented. It leads to the conclusion that the situation in Ukraine is not in conformity with Article 13(3) of the Charter.

4. SOCIAL EXCLUSION

What measures has your MS taken to promote the effective access of persons who live or risk living in a situation of poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance (Article 30 (a) ESC)? Have austerity measures had an impact on the poverty level, deprivation or social exclusion in your country (Article 30 ESC)?

In a policy context, social exclusion is most commonly used to describe a state in which people or groups are assumed to be «excluded» from social systems and relationships. In most

²³⁴ Coalition of AIDS Service Organizations, *‘Альтернативний аналіз результатів оцінки потреб в соціальних послугах в 2014 році: основні висновки та пропозиції’* (Center for Advanced Social Research of the Ministry of Social Policy of Ukraine and NAS of Ukraine 11 December 2014) <http://www.cpsr.org.ua/index.php?option=com_content&view=article&id=416:2014-&catid=42:2013-01-08-19-58-04&Itemid=45> accessed 03 March 2015 [Ukrainian].

definitions this state is seen to be associated with extreme poverty and disadvantage. Many definitions include «indiscriminate» lists describing groups excluded or at risk of exclusion, what they are excluded from, the resultant problems and the «actors» responsible for excluding groups.²³⁵

Some notable features of social exclusion should be considered: low levels of consumption and income individuals or groups; limited access to social welfare mechanisms increase; mostly passive type of interaction with the public sector and society.

First and the most important feature of social exclusion closely related to poverty. As noted by Ukrainian sociologist Natalia Kharchenko, we can roughly distinguish at least four ways of reasoning about poverty - the official, political, scientific and casual.²³⁶ The official vocabulary which to be used in this study includes the three concepts: low income, impoverished, and the least socially protected groups.

The official attitude to the problem of poverty hardly changed in Ukraine's independence period. One of the main characteristics of socialism is to ensure minimum subsistence level to all members of society. Ukraine has inherited Soviet system of social security. An echo of this is that even until 2001 the term «poverty» was not used in theory or in legislative practice and term «low income» was commonly used as working term. Terminology, which is used officially, emphasizes fragmentation of poverty problem and suggests that the whole people of Ukraine socially protected, with a few exceptions. The Ministry of Social Policy and Labour calculated the minimum consumer budget, which is the level of per capita income. However, this index is not used for several years officially, and we can learn about its specific value only by reports of international organizations such as the UN or the World Bank. The government defines the low income threshold, which entitled to cash assistance to citizens, the average aggregate income families of which do not exceed this figure. The Law n. 190/94-VR 'On threshold of low income', 1994, indicates that this figure is based on normative statistical method that considers

²³⁵ Final Report to the WHO Commission on Social Determinants of Health From the Social Exclusion Knowledge Network, (February 2008) <http://www.who.int/social_determinants/knowledge_networks/final_reports/sekn_final%20report_042008.pdf> accessed 10 March 2015.

²³⁶ Харченко Наталія, 'Різноманітність аспектів бідності: спроба соціологічного аналізу' <<http://www.kiis.com.ua/materials/articles/poverty.pdf>> accessed 26 February 2015 [Ukrainian].

social norms of consumption of food and non-food expenses actual low-income households.²³⁷ Despite this solid scientific ground, the specific value of this indicator, as well as minimum wages and pensions, is the subject to political struggle within and between the government, the parliament, trade unions and the society.

Ukraine has no official poverty line until 2001. Problem of poverty in Ukraine gained official recognition after the approval of the Decree of the President of Ukraine n. 637 'On Poverty Reduction Strategy', 2001. The Strategy established the term «poverty», the only relative criterion for identification of different segments of the population classified as poor, defined the main directions and stages of poverty reduction for the period until 2010.²³⁸ This strategy also used the term «poverty line» as the level of income, below which it is not possible to meet basic needs. Poverty line was set as a proportion of the subsistence minimum per person per month.

On 31 August 2011 the Cabinet of Ministers approved the National Programme of overcoming poverty and poverty reduction for the period until 2015. 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.²³⁹ To implement the Programme, the government approved the method of complex estimation of poverty. To evaluate the poverty, government proposed the following criteria: the poverty line, defined by the relative criterion of 75% of average total costs per person; the extreme poverty line, defined by the relative criterion of 60% of average total costs per person and adapted to the criteria of the European Union; the absolute poverty line defined by the criterion of the subsistence minimum; the absolute poverty line defined by the criterion value of daily consumption of USD 5 according to purchasing power parity (UAH equivalent of USD 5 by purchasing power parity calculated by the World Bank) to compare it with international indicators.²⁴⁰

²³⁷ Закон України про межу малозабезпеченості <<http://zakon2.rada.gov.ua/laws/show/190/94-%D0%B2%D1%80>> accessed 1 April 2015 [Ukrainian].

²³⁸ Указ Президента України про Стратегію подолання бідності <<http://zakon4.rada.gov.ua/laws/show/637/2001>> accessed 1 April 2015 [Ukrainian].

²³⁹ 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>> accessed 1 April 2015 [Ukrainian].

²⁴⁰ Наказ про затвердження Методики комплексної оцінки бідності <<http://zakon4.rada.gov.ua/laws/show/z1785-12#n17>> accessed 1 April 2015 [Ukrainian].

There are different approaches to defining poverty and indigence. But it is hardly possible to compare poverty in different countries with the same approach and the same criteria. Even the level of poverty in Ukraine differs depending on which of mentioned above four indicators is used.

The main characteristics of poverty in Ukraine according to various criteria of definition for the first half of 2011-2013²⁴¹:

Poverty measure		6 months, 2011	6 months, 2012	6 months, 2013
75% of average total costs per person	Poverty line, UAH	1,033	1,090	1,164
	Poverty line, %	24.5	26.1	25.4
60% of average total costs per person	Poverty line, UAH	826	872	931
	Poverty line, %	11.1	12.6	11.9
Costs below subsistence minimum	Poverty line, UAH	903	1,027	1,108
	Poverty line, %	16.2	21.7	21.7
Daily consumption of USD 5 according to purchasing power parity	Poverty line, UAH	570	605	610
	Poverty line, %	1.9	2.7	2.2

The introduction of official methods of calculate on the poverty line is definitely a positive factor. 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.²⁴²

The main mechanism of increasing prosperity and reducing the risk of social exclusion is participation in social production. Unemployment rate in Ukraine is estimated about 7.2%, which is quite normal rate in modern European countries. But in a situation of widespread hidden unemployment the only way to gain the livelihoods is informal employment, which only deepens the level of social exclusion. Informally employed workers do not fall within the scope of legal and social security in the workplace. For this reason temporary employment abroad

²⁴¹ Аналітична записка «Комплексна оцінка бідності в Україні та регіонах за перше півріччя 2011-2013 рр.» (Institute of Demography and Social Studies of National Academy of Sciences of Ukraine, 2013) <<http://www.idss.org.ua>> accessed 5 March 2015 [Ukrainian].

²⁴² За межею бідності перебуває кожен десятий українець (18 November 2013) <http://dt.ua/UKRAINE/za-mezheyu-bidnosti-perebuvaeye-kozhhen-desyatiy-ukrayinec-132069_.html> accessed 1 April 2015 [Ukrainian].

cannot be considered as effective way to combat unemployment. Labour migrants are «excluded twice»: in countries where they work illegally they can neither really nor even formally enjoy the rights of citizens.

The unemployment benefits were approved by the order of Ministry of Social Policy on 20 November 2000. Unemployment benefit is determined as a percentage of the average wage (income) or average financial support depending on the insurance period: 2 years – 50%; from 2 to 6 years – 55%; from 6 to 10 years – 60%; more than 10 years – 70%. Depending on the duration of unemployment assistance reduces and paid a percentage of a certain size: the first 90 calendar days – 100%; over the next 90 days – 80%; future – 70%.²⁴³

Unemployment rate by sex, age and place of residence in 2013²⁴⁴ (average for the period in % of the economically active population in the corresponding age group)

	Total	Among age groups, years						Working age ²⁴⁵
		15–24	25–29	30–39	40–49	50–59	60–70	
Total population	7.2	17.4	8.7	6.4	6.2	5.1	-	7.7
Female	6.2	16.3	7.4	6.0	5.3	4.4	-	6.9
Male	8.0	18.2	9.6	6.7	7.2	5.7	-	8.4
Urban population	7.1	19.2	8.6	6.2	5.7	5.0	-	7.5
Rural population	7.3	14.6	8.9	6.9	7.3	5.2	-	8.1

Among all low-income groups, the poorest are families with children under age 18. Although the risk of poverty depending on the number of children in the family is true for most countries in the world, even those with relatively high levels of income, this risk is particularly high in

²⁴³ Наказ про затвердження Порядку надання допомоги по безробіттю, у тому числі одноразової її виплати для організації безробітними підприємницької діяльності <<http://zakon2.rada.gov.ua/laws/show/z0915-00>> accessed 1 April 2015 [Ukrainian].

²⁴⁴ Unemployment rate (ILO) by sex, age and place of residence in 2013 <<http://www.ukrstat.gov.ua>> accessed 25 January 2015 [Ukrainian].

²⁴⁵ Women aged 15–56 years, men 15–59 years.

Ukraine. If, among single-child families remained in 2005 58% had average per-capita consumption below the set subsistence minimum, the figure was significantly higher for the households with 2, 3, and 4 children – 75.8%, 93.2% and 100% accordingly. At the same time, only 47.1 % of childless households are below the subsistence minimum level.²⁴⁶

That is why government policy for a long time was aimed at ensuring adequate standards of living for young families. The Law n. 1768-14 ‘On state social assistance to low income families’, 2000, provides cash payments, the amount of which is determined on the basis of the subsistence minimum. As stated in this law, ‘the level of the subsistence minimum level set based on the real possibilities of the expenditure of the State Budget of Ukraine and approved simultaneously with the adoption of the law on State Budget of Ukraine for the year’.²⁴⁷

The Law n. 2811-12 ‘On state assistance to families with children’, 1993, (important amendments were made in 2005) provides assistance due to maternity leave, assistance due to child adoption, assistance for children under guardianship, assistance to single mothers.²⁴⁸ This refers to cash payments, the amount of which is usually determined by the average income of women and the minimum subsistence level. The law also provides a variety of social security privileges.

Another source that should be considered is the Law n. 2623-15 ‘On the essentials of social protection of homeless people and homeless children’, 2005. 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.²⁴⁹

As for the health care, according to Article 49 of the Constitution of Ukraine medical care is free of charge in state and communal health protection institutions; existing network of such institutions shall not be reduced. Specific laws on this question were not adopted yet and now

²⁴⁶ National Report ‘Promoting productive capacity and decent work to eradicate poverty in the context of inclusive, sustainable and equitable economic growth at all levels for achieving Millennium Development Goals’ <http://www.un.org/en/ecosoc/newfuncnt/pdf/unecosoc-nvp_ukraine_2012.pdf> accessed 1 April 2015 [Ukrainian].

²⁴⁷ Закон України про державну соціальну допомогу малозабезпеченим сім'ям <<http://zakon4.rada.gov.ua/laws/show/1768-14>> accessed 1 April 2015 [Ukrainian].

²⁴⁸ Закон України про державну допомогу сім'ям з дітьми <<http://zakon2.rada.gov.ua/laws/show/2811-12>> accessed 1 April 2015 [Ukrainian].

²⁴⁹ 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].

the process of introducing universal health insurance begins. Specific laws that would provide educational and cultural activities for overcoming social exclusion were not adopted too. Therefore the organization of projects for the poor is a task NGOs such as Youth for Peace.

To conclude, factors that separate the poor from the wealthy are: access to healthy living, quality of food, health care, and education, normal living conditions and access to jobs that meets the educational qualifications of the person. The problem of poverty in Ukraine has gained particular importance in the period socio-economic crisis. In times of economic and political crises extremely aggravated poverty is able to achieve the scale of social disaster, as world experience shows. It should be noted that out of all types of social transfers (privileges, subsidies, and social aid) only the system of social aid is actually aimed at poor population groups and helps to reduce income inequality. At the same time, the existing system of privileges not only does not reduce income inequality of population, but on the contrary further increases the gap.

Ukraine should take into consideration the experience of other countries and international organizations such as the UN, the organization for which poverty alleviation is one of the key tasks.

5. SOCIAL RIGHTS OF PERSONS WITH DISABILITIES, CHILDREN AND YOUNG PEOPLE

5.1. Persons with disabilities (Article 15 ESC)

5.1.1. What measures has your MS taken to provide persons with disabilities with guidance, education and/or vocational training in the framework of general schemes or, if not possible, through specialised bodies, public or private?

Persons with disabilities²⁵⁰ are granted with a full range of human rights²⁵¹ in Ukraine. Considering the fact that Ukraine develops in its Constitution Soviet model of legal

²⁵⁰ Art 2 of the Law No 875-XII on the Basics of Social Protection of Disabled Persons in Ukraine [Про основи соціальної захищеності інвалідів в Україні], March 23, 1991.

²⁵¹ *ibid*, art 1.

paternalism²⁵² with wide range of social rights, persons with disabilities are entitled to the great scope of rights in education and vocational training²⁵³ according to the national legislation.

Thus, the state guarantees to the persons with disabilities an opportunity to obtain an education, which would correlate with their abilities²⁵⁴ and maturity level. In this regard, there is no discriminative distinction on the ground of disability, except that education might be provided in a specialized training centre²⁵⁵ for persons in need (i.e. for blind, deaf, voiceless persons, etc.).

Moreover, since the state is obliged to educate disabled children free of charge,²⁵⁶ they have an opportunity to take part in extra curriculum activities or/and in art education.

As for higher education, disabled children are entitled to have 'entrance prerogative' with a full scholarship paid by the state in the case of positive results of the exams and if their health conditions do not prevent a possibility to obtain certain education on the chosen program.²⁵⁷

Vocational training or retaken vocational training must be performed in accordance with health conditions of disabled person and after conclusion of specialized medical commission.²⁵⁸ That does not constitute discrimination on the ground of disability, but designed to protect health conditions and to improve health care, because there is a particular provision, which prescribes the level of education of all persons regardless of disabilities being the same.²⁵⁹

The requirements for the vocational training²⁶⁰ of the disabled persons as stated in national legislation are strict enough and designed to combat discrimination and to entitle persons with disabilities with the same scope of human rights. Principles and methods of vocational training must be applicable to all disabled persons considering their health issues,²⁶¹ whereas vocational

²⁵² V Strepko, overview, <http://law.lnu.edu.ua/fileadmin/user_upload/visnyk/48/vsn48_27.pdf>.

²⁵³ Vocational training means any type of training, which gives an opportunity to gain or to improve the knowledge and professional skills of technical or professional character as well as skills needed to perform functions of young leading personnel regardless of the fact whether such training takes place within the working place or not, and includes retaken professional training. See: Recommendation on Professional education of adults, including disabled persons No 88.

²⁵⁴ Supra, note 1, art. 21.

²⁵⁵ *ibid*, art 21.2.

²⁵⁶ *ibid*, art 21.5.

²⁵⁷ *ibid*, art 22.

²⁵⁸ *ibid*, art 21.3 and 4.

²⁵⁹ Supra, note 1, art 21.6.

²⁶⁰ Recommendation on Professional education of adults, including disabled persons, art 26.

²⁶¹ Supra, note 1, art 27.

training itself supposed to be equally available for all persons regardless of the type or reason for their disability or the person's age.²⁶²

Vocational training of disabled persons has a purpose to allow them 'to participate in economic life of the state', contributing professional knowledge or skills.²⁶³ To fulfil the aim the state undertakes certain measures, such as coordination of the vocational training taken with following employment in the same profession, desirably which disabled person performed earlier. Vocational training supposed to be continued to enable a disabled person to perform the same function as other people of the same profession in case if it is allowed according to medical conditions.²⁶⁴

There are also national and regional centres of professional rehabilitation in Ukraine,²⁶⁵ which are located not in every region, therefore, not available for everyone.

5.1.2. What measures has your MS taken to promote the access of persons with disabilities to employment through measures to encourage employers to hire and maintain in employment persons with disabilities in the ordinary working environment, adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability?

In regards to employment of the persons with disabilities, Ukraine has specific chapter in the Law 'On the basics of social politics'. Thus, after the graduation persons with disabilities are entitled to choose the place of their employment from the options offered or find a place of their choice.²⁶⁶ All persons with disabilities has an opportunity to perform the same job as all other people, or to be an entrepreneur, work in business sector etc. if it is not prohibited by law.²⁶⁷

²⁶² *ibid*, art 27.2

²⁶³ *ibid*, art 28.1

²⁶⁴ *ibid*, art 28.2 (a)–(c).

²⁶⁵ Vocational training of persons with disabilities, <http://sotszahist.mk.ua/index.php?option=com_content&view=article&id=131&Itemid=24>.

²⁶⁶ *Supra*, note 1, art 24.

²⁶⁷ *ibid*, art 17.

Ukrainian legislation provides quotas of persons with disabilities that every employer has to hire.²⁶⁸ Hence, companies, organizations and other types of employers are obliged to hire persons with disabilities who must comprise at least 4% of employees. However, in smaller companies with 8 to 25 employees only 1 person must be a disabled person.

The employers regardless of their status as private or governmental organization (with some exceptions though) are obliged to adapt the working place for the needs of a person, whereas such person might be fired on the ground of his or her disability only in case if medical commission issues a proper conclusion on the absence of opportunity to perform certain functions for the person.²⁶⁹ All kinds of discrimination at work on the ground of disability are prohibited by the law according to the Article 17 of the Law 'On Basics of Protection of Person with Disabilities in Ukraine'.

According to the Article 18 of the same Law, disabled persons have the right to perform remote job or to be registered in state employment service as jobless persons, although neither sheltered employment nor similar measures are developed on the significant level in Ukrainian labour market.

5.1.3. What impact have the austerity measures had on the measures described under 5.1.1 and 5.1.2?

Due to the fact, that Ukraine does not comprise a part of the European Union yet, the austerity measures are not exact term here. Also paternalism model of social politics prevent the government from cutting social expenses even in current times of armed conflict, therefore in the context of Ukraine it is more appropriate to consider economic crisis in general, that austerity measures particularly.

5.2. Children and Young Persons (Article 17 ESC)

5.2.1. Has your MS taken any measures to ensure that children and young persons, taking into account the rights and duties of their parents, have the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose?

²⁶⁸ Supra, note 108, art 19.

²⁶⁹ *ibid*, art 17.2.

Educational system of Ukraine comprises comprehensive system of different levels i.e. preschool education (3 years),²⁷⁰ school (7 years),²⁷¹ vocational (2-3 years)²⁷² and higher education (4 years)²⁷³ governed by the respective laws.

Youth in Ukraine is treated as an important part of the society, which plays a significant role in socio-economic development.²⁷⁴ Since general education is free of charge and mandatory for everyone²⁷⁵ it can be said that much attention is paid to the youth education. Apart from the obligation of parents to control the education of their children,²⁷⁶ the state also controls this process during different types of activity in schools.²⁷⁷

However, NGOs claim a low level of financial contributions to the education system along with difficult situation in countryside area.²⁷⁸ Moreover, human rights organizations find numerous violations of the rights of children who are brought up into public schools. Despite the explicit prohibition law in most regions of Ukraine to this day names of such schools indicate the category of children who are brought up based on social origin or health condition. These institutions specification names like 'for orphans', 'children requiring correction of physical and mental development', and others is discrimination against children, a flagrant violation of the Constitution of Ukraine, Laws of Ukraine 'On Protection of Childhood', 'On Education', 'On ensuring organizational and legal conditions for social protection of children -orphans and children deprived of parental care.' Certificate of Education graduates of these institutions should only contain information about education, not the child's health or social situation of her family. Type of institution and its specialization are indicated only in the founding documents. In this regard, the Ministry of Education, Youth and Sports of Ukraine and the President of

²⁷⁰ The Law No 2628–III on Preschool Education [Закон України про дошкільну освіту], July 11 2001.

²⁷¹ The Law No 651–XIV on General Secondary Education [Закон України про загальну середню освіту], May 13 1999.

²⁷² The Law No 103/98–BP on Vocational Education [Закон України про професійно-технічну освіту], February 10 1998.

²⁷³ The Law No 1556–VII on Higher Education [Закон України про вищу освіту], July 01 2014.

²⁷⁴ Ministry of Justice of Ukraine, Explanation of September 13, 2012, Youth, their rights and social status in modern Ukraine [Міністерство Юстиції України. Роз'яснення. Молодь: її права та соціальне становлення в сучасній Україні].

²⁷⁵ Art 53 of Constitution of Ukraine.

²⁷⁶ *ibid*, art 10.

²⁷⁷ *ibid*, art 17.1.

²⁷⁸ Ukrainian Helsinki Group, 'Human Rights in Ukraine 2007: Right to Education' <<http://helsinki.org.ua/index.php?id=1217068144>>.

Ukraine asked the Commissioner for Children's Rights, together with the regional state administration and the regional councils immediately eliminate discrimination of children living in such institutions. In December 2011 according to the media in the Kharkiv region should be renamed 28 boarding schools for children.²⁷⁹

5.2.2. Has your MS taken any measures to provide protection and special aid for children and young persons temporarily or definitively deprived of their family's support?

Children deprived of the family support are granted with social care, which includes financial support and certain socio-economic measures²⁸⁰ at the same time, children who are raised within the state care system have full financial support from the state.²⁸¹ The state supports also children in detention facilities by giving them an opportunity to continue the education or to get basic professional experience in schools within the detention system established in accordance with needs of children who have to complete secondary education or want to continue vocational training.²⁸² Asylum seeking children, refugees and children who have been granted with temporary protection in Ukraine have the rights to medical help, education, and temporal employment on non-discriminatory basis.²⁸³

To ensure decent living conditions for orphans and children without parents is a task that should be set by the state, but in spite of the increase in the number of children a significant portion of orphanages and boarding schools has lack of material resources, needs repair residential and office space. Boarding schools provided clothing and footwear by 60-70%. Material needs of children forced administration of children's institutions decide by additional resources, which are very difficult to get.²⁸⁴

²⁷⁹ Ukrainian Helsinki Group, 'Human Rights in Ukraine 2011: Children Rights' <<http://helsinki.org.ua/index.php?id=1332334755>>.

²⁸⁰ *ibid*, art 21.1.

²⁸¹ *ibid*, art 21.3.

²⁸² The Order No 691/897/5 of the Ministry of Education and Science of Ukraine, the Ministry of Justice of Ukraine [Про затвердження Порядку організації навчання у загальноосвітніх навчальних закладах при виправних колоніях та слідчих ізоляторах, що належать до сфери управління Державної пенітенціарної служби України], June 10 2014.

²⁸³ Arts 13 and 15 of the Law No 3671-VI on the Refugees and Persons in Need of Subsidiary or Temporal Protection [Закон України Про біженців та осіб, які потребують додаткового або тимчасового захисту], July 08 2011.

²⁸⁴ Ivleva, 'State Support of Children-Orphans and Children Deprived of Parental Care' <<http://www.kbuapa.kharkov.ua/e-book/conf/2012-2/doc/1/02.pdf>>.

There are also problems with the placement of children after training. A very difficult question that arises in regards to placement is social housing. The problem is partly solved during the vocational training in technical and higher education institutions, as they have an opportunity to get a place in a hostel, financial support in the form of scholarships and other privileges established by the state. The situation is even harder for those who has to start working immediately after graduation. Provision of housing and workplace legally defined, but in reality these almost guarantee not realized.

5.2.3. Has your MS taken any measures to provide children and young persons with a free primary and secondary education as well as to encourage regular school attendance? Has your MS taken any measures to provide free, or at least access to, tertiary education?

According to the Constitution of Ukraine, secondary education is free of charge, whereas tertiary education is easy to enter for free having the good grades in secondary school and post-school exams. The question of attendance is not the one of high importance when it comes to secondary education, because it is up to parents to control how often their children go to school, and if parents do not comply with this obligation, it is up to social service workers.

5.2.4. Is youth unemployment high when compared to the general unemployment rates in your MS? If so, please describe what measures has your MS taken to address this issue

Considering current situation in Ukraine, it is not surprising that general unemployment rate is around 9%²⁸⁵ officially and more than 30% in reality. Meanwhile among youth this number is around 10% officially.²⁸⁶

According to the State Statistics Service, the number of officially registered unemployed university graduates is only 7% of the total unemployed in 2012. This could be explained with the reason that young professionals in search of first job turning to the closest and then, in the absence proposals to the State Employment Service.²⁸⁷

²⁸⁵ State Statistics Service, 'Unemployment Rate' <http://www.dcz.gov.ua/control/uk/publish/article?showHidden=1&art_id=230309&cat_id=173564&ctime=1333367142883>.

²⁸⁶ How to Combat Unemployment, <<http://pedpresa.com.ua/blog/97953-yak-zmenshyty-riven-bezrobittya-sered-molodi.html>>.

²⁸⁷ O Natoloka, 'Main Problems of the Youth Employment in Ukraine' <<http://www.kbuapa.kharkov.ua/e-book/conf/2013-2/doc/2/22.pdf>>.

There are about 823 universities, 300 universities and academies and 523 technical schools and colleges according to statistics in Ukraine as of 2013. There were registered 24.8 thousand of graduates and only 15% received an assignment to work through training institutions in 2012. Thus, 4 persons from 5 were forced to seek employment on their own.²⁸⁸

The vast majority of young people, who enter the labour market, are recent graduates of the universities with various levels of accreditation. Each year, schools produce young professionals, most of whom are facing the employment problem closely. Therefore, an important issue today is the lack of state forecasting of the economy for specialists with higher education. Therefore, there are disparities in the labour market supply and demand graduates.

5.2.5. What impact have the austerity measures had on the measures described under 5.2.1, 5.2.2 and 5.2.3?

See paragraph 5.1.3. Due to the fact, that Ukraine does not comprise a part of the European Union yet, the austerity measures are not exact term here. Also paternalism model of social politics prevent the government from cutting social expenses even in current times of armed conflict, therefore in the context of Ukraine it is more appropriate to consider economic crisis in general, that austerity measures particularly.

6. COMPLAINT SYSTEM

How has the ESC's collective complaint system contributed to alleviating the impact of austerity measures in your MS?

Ukraine neither signed nor ratified the Collective Complaints Protocol, which came into force in 1998, so complaint system is not used as a control mechanism for national law to be in compliance with the European Social Charter regarding Ukraine.

²⁸⁸ <www.career.ua>.

7. CONCLUSION

In the current circumstances of political and economic crisis that aroused at the end of 2013, Ukraine is undergoing extensive austerity measures aimed at restoring macroeconomic stability. Unfortunately, the amount of social rights of Ukrainian was narrowed in the first place.

As regards social and collective bargaining rights it was found that the Ukrainian legislation, in particular, Labour Code of Ukraine, the Law of Ukraine 'On Collective Agreements', 'On Social Dialogue in Ukraine', 'On the settlement of collective labour disputes (conflicts)', is in conformity with Article 5 of the Charter. There were no significant legislative changes in the area of rights to collective bargaining and respect of social dialogue that would affect the exercise of these freedoms. However, there were changes in the sphere of social rights and freedoms of certain groups of the population, especially regarding the rights of military men. The rights of workers were considerably expanded and improved in accordance with the European vector of development of the Ukrainian legislation.

Although the Constitution defines Ukraine as a welfare state, the real situation is far from that. The minimum subsistence level established by law is lower, than the actual one. Consequently, all social benefits, which are calculated on the basis of subsistence level, are inadequate. As a part of austerity measures, the number of categories of individuals eligible for particular social benefits and privileges was decreased, access to some benefits was restricted, several types of social benefits and privileges were completely abolished. The Law of Ukraine 'On State Budget 2015' restricts the application of 43 social laws, since it stipulates that the provisions shall be applied within available financial resources of national and local budgets. The government of Ukraine does not sufficiently promote public awareness on available social benefits. Social services do not play preventative role and effective access to them is not fully provided ensured. Despite of the existence of strategies and action plans aimed at improving the situation, they are not properly implemented. Thus, it was found that the situation in Ukraine is not in the conformity with Articles 13(1) and 13(3) of the Charter.

Out of all types of social transfers only the system of social aid is actually aimed at poor population groups and helps to reduce income inequality. At the same time, the existing system

of privileges does not reduce the inequality in the sphere of the population income, but promotes its further increase.

Ukrainian legislation provides people with disabilities a wide range of rights in the area of education and vocational training. Children who are raised within the state care system are entitled to financial support from the state. However, a lot of orphanages and boarding schools do not have sufficient financial resources resulting in their inability to ensure adequate care for children.

In general, social rights in Ukraine are not fully guaranteed. It must be admitted that the level of their ensuring is not in the conformity with the European Social Charter.

8. TABLES OF LEGISLATION AND CASE LAW

- Law n. 254к/96-ВР (Constitution of Ukraine) 1996 [Конституція України].
- Law n. 651-XIV (On the General Secondary Education) 1999 [Закон України про загальну середню освіту].
- Law n 2628-III (On Preschool Education) 2001 [Закон України про дошкільну освіту], July 11, 2001.
- Law n 103/98-ВР (On Vocational Education) 1998 [Закон України про професійно-технічну освіту].
- Law n 1556-VII (On Higher Education) 2014 [Закон України про вищу освіту].
- Resolution n. 65 of The Cabinet of Ministers (On saving of state funds and preventing of budget's loss) 2014 [Про економію державних коштів та недопущення втрат бюджету].
- Law n. 213-VIII (On Amendments to Certain Legislative Acts of Ukraine on pensions) 2015 [Про внесення змін до деяких законодавчих актів України щодо пенсійного забезпечення].
- Law n. 322-VIII (Labour Code of Ukraine) 1971[Кодекс законів про працю України].
- Law n. 3356-XII (On Collective Agreements) 1993 [Про колективні договори і угоди].
- Law n. 2862-VI (On Social Dialogue in Ukraine) 2011 [Про соціальний діалог в Україні].
- Law n 3671-VI (On Refugees and Persons in Need of Subsidiary or Temporal Protection) [Про біженців та осіб, які потребують додаткового або тимчасового захисту].
- Law n. 137/98-ВР (On the settlement of collective labour disputes) 1998 [Про порядок вирішення колективних трудових спорів (конфліктів)].

- Zinoviy Antonovich Semenko v Ukraine [2014] European Court of Human Rights Section V [2014].
- Law n. 80-VIII (On State Budget of Ukraine for 2015) 2015 [Про Державний бюджет України на 2015 рік].
- Law n. 120-VIII (On Amendments to Certain Legislative Acts of Ukraine regarding the improvement of certain provisions of the Social Policy) 2015 [Про внесення змін до деяких законодавчих актів України щодо удосконалення окремих положень соціальної політики].
- Law n. 116-VIII (On Amendments to Certain Legislative Acts of Ukraine regarding the improvement of military service and of social protection in Ukraine, performing military service during the special period) 2015 [Про внесення змін до деяких законодавчих актів України щодо удосконалення порядку проходження військової служби та питань соціального захисту громадян України, які проходять військову службу під час особливого періоду].
- Law n. 2232-XII (On Military Duty and Military Service) 1992 [Про військовий обов'язок і військову службу].
- Law n. 3551-XII (On the status of war veterans, guarantees of their social protection) 1993 [Про статус ветеранів війни, гарантії їх соціального захисту].
- Law n. 1233-VII (On Amendments to Article 6 of the Law of Ukraine" On the status of war veterans, guarantees of their social protection) 2014 [Про внесення зміни до статті 6 Закону України "Про статус ветеранів війни, гарантії їх соціального захисту"].
- Law n. 1682-VII (On cleaning power) 2014 [Про очищення влади].
- Law n. 132-VIII (On Amendments to the Law of Ukraine "On clean power" for additional measures to ensure the defence of the State) 2015 [Про внесення зміни до Закону України "Про очищення влади" щодо додаткових заходів із забезпечення обороноздатності держави].

- Law n. 77-VIII (On Amendments to Certain Legislative Acts of Ukraine on the reform of compulsory state social insurance and legalization of payroll) 2014 [Про внесення змін до деяких законодавчих актів України щодо реформування загальнообов'язкового державного соціального страхування та легалізації фонду оплати праці].
- Law n. 1706-VII (On the rights and freedoms of internally displaced persons) 2014 [Про забезпечення прав і свобод внутрішньо переміщених осіб].
- Law n. 875-XII (On the Basics of Social Protection of Disabled Persons in Ukraine) 1991 [Про основи соціальної захищеності інвалідів в Україні].
- Law n. 2811-XII (On State Assistance for Families with Children) 1992, Art 7 [Про державну допомогу сім'ям з дітьми].
- Law n. 1768-III (On State Social Assistance for Low-Income Families) 2000, Art 1 [Про державну соціальну допомогу малозабезпеченим сім'ям].
- Law n. 2109-III (On State Social Assistance for Persons Disabled since Childhood and Disabled Children) 2000, Art 2 [Про державну соціальну допомогу інвалідам з дитинства та дітям-інвалідам].
- Resolution of the Cabinet of Ministers of Ukraine no. 83 (On strengthening social protection of the population in an environment of rising public utilities prices and tariffs) 2014 [Про посилення соціального захисту населення в умовах підвищення цін і тарифів на комунальні послуги].
- Resolution n. 106 of the Cabinet of Ministers of Ukraine (On Improving the Procedure of Granting Housing Subsidies) 2015 [Про удосконалення порядку надання житлових субсидій].
- Law n. 966-IV (On Social Services) 2003, Art 7 [Про соціальні послуги].
- Resolution n. 1107 of the Cabinet of Ministers of Ukraine (Program of The Cabinet of Ministers of Ukraine 'Overcoming the Impact of the Global Financial Crisis and Sustainable Development') 2008 [Програма діяльності Кабінету Міністрів України

‘Подолання впливу світової фінансово-економічної кризи та поступальний розвиток].

- Law n. 76-19 (On Amending and Termination of Certain Legislative Acts of Ukraine) 2014, Point 25 [Про внесення змін та визнання такими, що втратили чинність, деяких законодавчих актів України].
- Law n. 76-19 (On Amending and Termination of Certain Legislative Acts of Ukraine) 2014, Point 9 of Final Provisions [Про внесення змін та визнання такими, що втратили чинність, деяких законодавчих актів України].
- Decree n. 741 of the Ministry of Social Policy of Ukraine (Methodological Recommendations on Development of Regulations on Structural Units of Social Protection in Local State Administrations) 2012 [Методичні рекомендації з розроблення положень про структурні підрозділи соціального захисту населення місцевих державних адміністрацій].
- Ordinance n. 556-p of the Cabinet of Ministers of Ukraine (Strategy of Reforming the System of Social Services) 2012 [Стратегія реформування системи надання соціальних послуг].
- Law n. 190/94-ВР (On the brink of poverty) 1994[Про межу малозабезпеченості].
- Order n. 637/2001 of the President of Ukraine (About Poverty Reduction Strategy) 2001 [Про Стратегію подолання бідності].
- Resolution n. 1057 of the Cabinet of Ministers of Ukraine (On approval of the National Programme for Prevention and overcoming poverty in the period to 2015) 2011 [Постанова Кабінету Міністрів про затвердження Державної цільової соціальної програми подолання та запобігання бідності на період до 2015 року].
- Order n. 307 of the Ministry of Labour and Social Policy of Ukraine (On approval of unemployment benefits, including a lump sum payment to her of unemployed entrepreneurship) 2000 [Про затвердження Порядку надання допомоги по

безробіттю, у тому числі одноразової її виплати для організації безробітними підприємницької діяльності].

- The Order No 691/897/5 of the Ministry of Education and Science of Ukraine, the Ministry of Justice of Ukraine [Про затвердження Порядку організації навчання у загальноосвітніх навчальних закладах при виправних колоніях та слідчих ізоляторах, що належать до сфери управління Державної пенітенціарної служби України], June 10, 2014.
- Law n. 1768-III (On state social assistance to families in need) 2000 [Про державну соціальну допомогу малозабезпеченим сім'ям].
- Law n. 2811-XII (On state assistance to families with children) 1992 [Про державну допомогу сім'ям з дітьми].
- Law n. 2623-IV (On the basis of social protection homeless people and street children) [Про основи соціального захисту бездомних осіб і безпритульних дітей].
- Decree n. 828 of the Ministry of Social Policy of Ukraine (Methodological Recommendations on Informing the Public about Social Services) 2014 [Методичні рекомендації щодо інформування населення про соціальні послуги].

9. BIBLIOGRAPHY

9.1. English Titles

- Association of Economic Development of Ivano-Frankivsk, 'Social Enterprises in Ukraine'. <www.southeast-europe.net/document.cmt?id=197> accessed 02 March 2015.
- Digest of the Case Law of the European Committee of Social Rights 2008 97.
- Digest of the Case Law of the European Committee of Social Rights 2008 285.
- European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities, Social Protection and Social Inclusion in Ukraine (European Communities 2009) 13.

- European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities, Social Protection and Social Inclusion in Ukraine (European Communities 2009) 57.
- European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities, Social Protection and Social Inclusion in Ukraine (European Communities 2009) 64.
- European Committee of Social Rights Conclusions 2013 (Portugal) 2014 36.
- Final Report to the WHO Commission on Social Determinants of Health From the Social Exclusion Knowledge Network, (February 2008)
<http://www.who.int/social_determinants/knowledge_networks/final_reports/sekn_final%20report_042008.pdf> accessed 10 March 2015.
- International Labour Office, Assessment of the Social Security System in Ukraine 2008-09: Crisis Response and Future Reforms (Geneva, ILO 2010) 29.
- Kenneth Rapoza, Ukraine Welcomes IMF Austerity Regime
<<http://www.forbes.com/sites/kenrapoza/2014/03/28/ukraine-welcomes-imf-austerity-regime/2/>> accessed 29 March 2015.
- L Skoropada, Overview of the social security system in Ukraine (Human Dynamics Consortium 2009) 29.
- Mirror Weekly, 100 days of the new government: which model of governing is being formed (no 22 June 12, 2010) 67.
- Press Release, 'Research Results Summary of Household Survey on the Availability of Housing Subsidies in Ukraine' (United Nations Development Programme in Ukraine)
<<http://www.ua.undp.org/content/dam/ukraine/docs/Subsidies%20Survey%20Resum e%20UNDP%20correct.pdf>> accessed 02 March 2015.
- Press Release, 'Ukraine's Citizens Better Informed on Social Services' (United Nations Development Programme in Ukraine, 23 December 2014)
<<http://www.ua.undp.org/content/ukraine/en/home/presscenter/articles/2014/12/23/ukraine-s-citizens-better-informed-on-social-services.html>> accessed 02 March 2015.

- The World Bank and The International Monetary Fund, Global Monitoring Report 2014/2015: Ending Poverty and Sharing Prosperity (The World Bank 2015) 122.
- Ukraine – Economy
<<http://www.globalsecurity.org/military/world/ukraine/economy.htm>> accessed 15 March 2015.
- Yevhenia Akhtyrko and Liudmyla Kotusenko, Reforming the System of Privileges (International Centre for Policy Studies 2004) 5.

9.2. Ukrainian Titles

9.2.1. Books

- Ukrainian Helsinki Group, Children Rights (Human Rights in Ukraine 2011)
<<http://helsinki.org.ua/index.php?id=1332334755>> accessed 24 February 2015 [Ukrainian].
- Ukrainian Helsinki Group, Right to Education (Human Rights in Ukraine 2007)
<<http://helsinki.org.ua/index.php?id=1217068144>> accessed 24 February 2015 [Ukrainian].

9.2.2. Articles

- Below the poverty line is each 10th Ukrainian (18 November 2013)
<http://dt.ua/UKRAINE/za-mezheyu-bidnosti-perebuyaye-kozhen-desyatiy-ukrayinec-132069_.html> accessed 1 April 2015 [Ukrainian].
- Center for Public Expertise, The social protection and social security in Ukraine: the real situation and possible reforms (Kyiv, Center for Public Expertise 2009) 78 [Ukrainian].
- Coalition of AIDS Service Organizations, An alternative analysis of the needs assessment of social services in 2014: key findings and proposals (Center for Advanced Social Research of the Ministry of Social Policy of Ukraine and NAS of Ukraine 11 December 2014)
<http://www.cpsr.org.ua/index.php?option=com_content&view=article&id=416:-

- [2014-&catid=42:2013-01-08-19-58-04&Itemid=45](#)> accessed 03 March 2015 [Ukrainian].
- Institute of Demography and Social Studies of National Academy of Sciences of Ukraine, (2013) <<http://www.idss.org.ua>> accessed 5 March 2015 [Ukrainian].
 - K. Dubych, 'Сучасний стан, проблеми та шляхи удосконалення кадрового забезпечення надання соціальних послуг в Україні' [2014] Державне Управління: Удосконалення та Розвиток 53 [Ukrainian].
 - Labour and social affairs: what to wait for in 2015 (Byhgalter, 27 January 2015) <<https://buhgalter.com.ua/articles/soctialniy-zahist/oplata-pratsi-ta-sotsialna-sfera-shcho-prigotuvav-2015-rik/>> accessed 03 April 2015 [Ukrainian].
 - Legislative changes in the pension system from 1 January 2015 Ministry of Social Policy of Ukraine, Report.
 - L. Ilchuk and Y Kryvobok, Financing of social services: current state and trends of improvement (Center for Advanced Social Research of the Ministry of Social Policy of Ukraine and NAS of Ukraine 5 April 2014 <http://cpsr.org.ua/index.php?option=com_content&view=article&id=273:2013-04-05-05-26-32&catid=46:2013-04-04-06-31-05&Itemid=53> accessed 03 March 2015 [Ukrainian].
 - Ministry of Social Policy of Ukraine, Information on actual living wage (Official Web Page of the Ministry of Social Policy of Ukraine, 20 February 2015) <http://www.mlsp.gov.ua/labour/control/uk/publish/article?art_id=172951&cat_id=141688> accessed 03 April 2015 [Ukrainian].
 - M. Kravchenko, Basic approaches to reform the beneficial system in Ukraine [2010] Державне управління та місцеве самоврядування 155 [Ukrainian].
 - M. Malyovanyy, Condition and problems of public health financing in Ukraine [2013] (The problems of Economic 116) [Ukrainian].

- Natalia Kharchenko, A variety of aspects of poverty: an attempt sociological analysis <<http://www.kiis.com.ua/materials/articles/poverty.pdf>> accessed 26 February 2015 [Ukrainian]
- National Report «Promoting productive capacity and decent work to eradicate poverty in the context of inclusive, sustainable and equitable economic growth at all levels for achieving Millennium Development Goals» <http://www.un.org/en/ecosoc/newfunc/pd/unecosoc-nvp_ukraine_2012.pdf> accessed 1 April 2015 [Ukrainian].
- N Shptala, Guarantees of social protection of human rights: the practice of the Constitutional Court of Ukraine (Official Web Page of Constitutional Court of Ukraine, 2011) <<http://www.ccu.gov.ua/doccatalog/document?id=164647>> accessed 01 April 2015 [Ukrainian].
- Order of Approval Procedures comprehensive assessment of poverty <<http://zakon4.rada.gov.ua/laws/show/z1785-12#n17>> accessed 1 April 2015 [Ukrainian].
- O. Ilyash, About the promising areas of improving the quality of social services in Ukraine (The National Institute for Strategic Studies) <<http://www.niss.gov.ua/articles/763/>> accessed 03 March 2015 [Ukrainian].
- O. Natoloka, Main Problems of the Youth Employment in Ukraine, <<http://www.kbuapa.kharkov.ua/e-book/conf/2013-2/doc/2/22.pdf>> accessed 17 March 2015 [Ukrainian].
- Pavlovsky, Social Aspects of the Budget survival (Gazeta.UA, 15 January 2015) <<http://gazeta.ua/blog/46737/socialni-aspekti-byudzhetu-vizhivannya>> accessed 02 April 2015 [Ukrainian].
- Press Release, 'Concerning Decisions of the Committee of Monetary Policy' (National Bank of Ukraine, 30 March 2015) <http://www.bank.gov.ua/control/uk/publish/article?art_id=15945834&cat_id=55838> accessed 03 April 2015 [Ukrainian].

- Press Service of the Ministry of Youth and Sports of Ukraine, How to combat unemployment, <<http://pedpresa.com.ua/blog/97953-yak-zmenshyty-riven-bezrobittya-sered-molodi.html>> accessed 23 February 2015 [Ukrainian]
- Press Release, The government has provided everything necessary to implement the reform of subsidies (The Ministry of Social Policy of Ukraine, 31 March 2014) <http://www.mlsp.gov.ua/labour/control/uk/publish/article?art_id=174692&cat_id=169493> accessed 02 April 2015 [Ukrainian].
- Recommendation n. 88 of Ukrainian Center of Vocational Rehabilitation of Disabled Persons (On Professional education of adults, including disabled persons) 2012 [Про фахову освіту для дорослих, у тому числі інвалідів].
- Report n.14.04.2015of the State Statistics Service (On the Unemployment Rate) 2015 [Про рівень безробіття].
- State Statistics Service of Ukraine, Social protection in Ukraine 2014 [Ukrainian].
- State Statistics Service of Ukraine, National Accounts of Health of Ukraine in 2012 (Statistical Bulletin, State Statistics Service of Ukraine 2014) 8 [Ukrainian].
- State Statistics Service of Ukraine, Social protection in Ukraine (Statistical Bulletin, State Statistics Service of Ukraine 2014) 123 [Ukrainian].
- S. Sinchuk, Social benefits as a form of social security in Ukraine (Jurisprudentia, 2004) <<http://www.lawyer.org.ua/?w=r&i=&d=311>> accessed 02 April 2015 [Ukrainian].
- The Ministry of Social Policy of Ukraine, The concept of improving legislation providing benefits <http://www.mlsp.gov.ua/control/uk/publish/printable_article?art_id=36154> accessed 02 April 2015 [Ukrainian].
- The Ministry of Social Policy of Ukraine, The Main Government's measures to support families in social housing and communal services <<http://mlsp.kmu.gov.ua/document/171646/pr.ppt>> accessed 02 April 2014 [Ukrainian].

- T Kutsenko and M Bodnar, Social benefits in Ukraine: Analytical Review [2014] (Соціально-трудові відносини: теорія та практика) 96 [Ukrainian].
- T. M. Ivleva, State Support of children-orphan and children deprived of parental care, <<http://www.kbuapa.kharkov.ua/e-book/conf/2012-2/doc/1/02.pdf>> accessed 1 March 2015 [Ukrainian].
- Ukrayinska Pravda, Subsidy: how it is now and how it will be (Ukrayinska Pravda, 31 March 2015) <<http://www.pravda.com.ua/cdn/cd1/2015year/tarify/ind.html?attempt=1>> accessed 03 April 2015 [Ukrainian].
- Unemployment rate (ILO) by sex, age and place of residence in 2013 <<http://www.ukrstat.gov.ua>> accessed 25 January 2015 [Ukrainian].
- V.I. Savolaynen, Youth: their rights and social status in modern Ukraine (Official website of Ministry of Justice of Ukraine, 13 September 2012) <<http://old.minjust.gov.ua/41555>> accessed 28 March 2015 [Ukrainian].
- V. Strepko, On universality and specifics of benefits under social security law (Visnyk Lviv Univ., 1 June 2009) <http://law.lnu.edu.ua/fileadmin/user_upload/visnyk/48/vsn48_27.pdf> accessed 3 April 2015.
- V. Zagorski Z. Lobodina G. Lopushnyak, Financial Management of Health (LRIDU NADU 2010) 89 [Ukrainian].
- <www.career.ua> accessed 10 March 2015 [Ukrainian].

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