



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS**

**COMITÉ EUROPÉEN DES DROITS SOCIAUX**

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**PRESS BRIEFING ELEMENTS**

**CONCLUSIONS 2013/XX-2**

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## ***Press briefing elements: Conclusions 2013 by the European Committee of Social Rights (Brussels, 29 January 2014)***

*Below follows a brief presentation of the latest conclusions of the European Committee of Social Rights on state compliance with the European Social Charter, the Council of Europe's main social rights instrument and one that is usually described as a counterpart to the European Convention of Human Rights. 43 of the Council of Europe's 47 member states are currently bound by the Charter.*

*The European Committee of Social Rights is a body composed of 15 independent and impartial members. It rules on the conformity of the law and practice of the States Parties with the European Social Charter. In the framework of the reporting procedure it adopts "conclusions" and in respect of the collective complaints procedure it adopts "decisions".*

*The conclusions will be made public on the Council of Europe website on 29 January 2014.*

*Responsibility for the follow-up to ensure that States Parties remedy the violations identified is vested with the Council of Europe's Committee of Ministers. Work in this respect will begin in the first half of 2014.*

### ***I. Introductory remarks: general overview of Conclusions 2013***

In 2013, the European Committee of Social Rights examined reports submitted by 38 States Parties on the articles of the Charter relating to health, social security and social protection: the right to health and safety at work (Article 3), the right to health (Article 11), the right to social security (Article 12), the right to social and medical assistance (Article 13), the right to social services (Article 14), the rights of the elderly to social protection (Article 23, Article 4 of the 1988 Additional Protocol) and the right to protection against poverty and social exclusion (Article 30). The reports covered the reference period 2008-2011.

Five States Parties (Azerbaijan, Croatia, Iceland, Luxembourg and Portugal) did not submit a report in time and conclusions have therefore not yet been adopted. It is expected that the conclusions for these five States will be adopted in March 2014.

At its session in December 2013, the Committee adopted some 570 conclusions in respect of the 38 countries including some 180 findings of violations of the Charter. There were 277 conclusions of conformity whereas the number of "deferrals" (cases where the Committee was unable to assess the situation due to lack of information) went down very significantly compared to previous years accounting for only about 13% of all cases examined (down from 27% in 2012).

While the Committee adopted conclusions of non-conformity for all the countries

examined, the number of violations identified was exceptionally high in countries such as Albania and Georgia (each having 6 conclusions of non-conformity out of a total 7 conclusions), the Republic of Moldova (10 out of 13), Ukraine (8 out of 11), Romania (8 out of 13), Greece (9 out of 17) and Poland (7 out of 13).

The Committee also adopted a *General Introduction*, which contains, *inter alia*, a series of statements of interpretation developing and clarifying the case law on certain of the articles considered in the conclusions.

The economic crisis in Europe and the austerity measures adopted in response have had a negative impact on effective respect for human rights and especially for social and economic rights. Rights relating to health, social security and social protection with the obligations of significant budgetary effort that they entail are particularly vulnerable in this situation.

Already in its Conclusions 2009 when it last examined state reports on these Charter rights, the Committee issued an ambitious statement emphasising that the rights must be fully protected, also under conditions of budgetary austerity. The Committee stated that “the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the 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.”

The conclusions now being published are testimony that the intended effect of the Committee's statement has not been fully realised. On the contrary, the proportion of violations is higher than in 2009, the violations are increasingly linked to either inadequate levels of social security benefits and social assistance benefits which disproportionately affect those who are most vulnerable – the poor, the unemployed, the elderly, the sick – or to unequal treatment of migrants under the guise of combating “social benefit tourism”. Public policies during the reference period have clearly been unable to stem a generalised increase in poverty in Europe. The conclusions also reflect that health care systems are under growing pressure from austerity measures and there are signs, at least in some countries, that protection of health and safety at work is being downgraded, notably in small and medium-sized enterprises.

What follows is by necessity a very selective overview of Conclusions 2013 concentrating on certain typical violations identified by the Committee under the articles examined and illustrated with some concrete examples. Although the focus will be on the violations, it should not be forgotten that the Committee has also taken note of many positive developments where States have changed their legislation or practice to bring

the situation into conformity with the Charter.

## ***II. Illustrations of Conclusions 2013***

### **◆ the right to health and safety at work**

The Committee regards this right as “*stemming directly from the right to personal integrity, one of the fundamental principles of human rights*”. The purpose of Article 3 is thus directly related to that of Article 2 of the European Convention on Human Rights, which recognises the right to life.

In this respect, the Committee’s findings concerning fatal accidents at work are noteworthy. The Committee holds that a fatal accident rate which is more than twice as high as the European average constitutes evidence that measures taken to reduce such accidents are inadequate. On this basis the Committee found the situation in Bulgaria, Lithuania, Republic of Moldova, Romania, the Russian Federation, Turkey and Ukraine to be in breach of the Charter (Article 3§3).

The Committee also found fault with the systems for reporting accidents and occupational injuries in certain countries (Albania, Republic of Moldova) with indications of widespread under-reporting and even concealment of workplace accidents and injuries. In some countries (Albania, Republic of Moldova, Ukraine) the Committee found the entire labour inspection system to be inefficient, including due to insufficient resources, low numbers of inspection visits or ineffective fines and sanctions.

With respect to safety and health regulations (Article 3§2) the Committee proceeds from the presumption that the requirements of the Charter are met if the *Community acquis* in this field is implemented, which means that the record of compliance with the Charter of the EU member states is high. However, residual problems remain: in some countries, for example, self-employed workers are excluded from the scope of otherwise satisfactory regulations (Andorra, Austria, France, the United Kingdom). In other countries domestic workers are not covered (Hungary, Romania).

In respect of Italy the Committee concluded that there was no functioning overall policy for occupational health and safety taking into account, *inter alia*, that the Court of Justice of the EU had condemned Italy for not transposing Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work.

### ◆ the right to health

Article 11 of the Charter complements Articles 2 and 3 of the European Convention on Human Rights by imposing a range of positive obligations designed to secure the effective exercise of the right to health. These include in particular measures to promote health through prevention and education and awareness-raising and health care provision in case of sickness.

Under Article 11§1 several countries are in breach of the Charter because of persisting high infant and maternal mortality rates and insufficient measures taken to improve the situation. The Committee holds that where these mortality rates remain considerably worse than the European average this points to weaknesses in the health system and to the inadequacy of measures taken to reduce mortality. The countries concerned were Republic of Moldova, Georgia, Azerbaijan, Ukraine, Romania, Hungary and the Russian Federation.

Georgia is in breach of Article 11 on several other counts. First of all, there is no public health system providing for universal coverage. The Committee held that health regulation is weak and that out-of-pocket payments are the main source of funding for the health system, which reduce access to health care services and medicines for much of the population. The Committee also found measures taken to ensure access to safe drinking water in rural areas in Georgia to be inadequate (Article 11§3) thus underlining that a healthy environment is a key element of the protection provided by Article 11.

It may also be mentioned here that the situation in Andorra is not in conformity with Article 11§3 on the grounds that it has not been established that appropriate measures have been taken to prevent smoking.

Long waiting lists for health care pose a problem for several countries and is a central concern in the Committee's examination of national situations. The situation in Poland was found to be in breach of the Charter because there had been no progress in the situation since the last examination in 2009. This is the first time that the Committee has reached a conclusion of non-conformity on this ground.

### ◆ the right to social security

Social security is generally recognised as one of the cornerstones of the European social "model". It is not only a key factor in achieving social cohesion and a safeguard against poverty, but it is also essential for well-functioning labour markets and thus for economic prosperity. The necessity of protecting members of society against social risks

has become acute in the current economic crisis and therefore, collective funding and solidarity have become increasingly important.

The first three paragraphs of Article 12 concern the scope and coverage of the social security system and the adequacy of the benefits provided within the different branches, whereas Article 12§4 regulates the coordination of social security for persons who move between the States Parties.

As regards the former the Committee found numerous violations of the Charter (Article 12§1) due to inadequate levels of various income-substituting benefits (pension, unemployment, sickness), for example in the Czech Republic, Bulgaria, Finland, Georgia, Italy and the Slovak Republic. It also found violations on grounds of the social security system not providing protection against a sufficient number of risks or not covering a sufficiently large part of the population (Georgia and Armenia). In respect of the Slovak Republic the Committee held that reductions in sickness benefits for beneficiaries who were deemed to have engaged in “risky behaviour” (e.g. alcohol or drug abuse) were discriminatory (health status).

Examining compliance with Article 12§3, which requires States Parties to progressively increase the level of security, the Committee reiterated its finding in a series of collective complaints against Greece that certain austerity measures which reduced significantly pension benefits for a large number of beneficiaries by their cumulative effect were such as to constitute a breach of the Charter.

The Committee also held that insufficient efforts to raise the system of social security to a higher level had been made in Republic of Moldova and Georgia.

With respect to coordination of social security for persons who move between the States Parties (Article 12§4) a very large number of States Parties do not comply with the requirements of the Charter (21 out of 26 countries examined). While the situation between EU member states concerning equal treatment as well as maintenance of accrued rights (for example the export of old-age pensions) and accruing rights (for example the taking into account of employment periods completed in other countries for the calculation of benefits) is satisfactory on the basis of EU law, the necessary multi- or bilateral agreements to ensure these principles have not been concluded between EU member states on the one hand and the non-EU states on the other hand nor among the non-EU states which are bound by the Charter.

#### ◆ the right to social and medical assistance

The guarantee of a genuine individual right to assistance together with a right to legal remedy is a major contribution made by Article 13 and in particular Article 13§1. Social and medical assistance for persons in need and with no resources is a crucial safeguard against poverty which makes it all the more striking and a cause for concern that no fewer than 25 out of 31 countries examined were found to be in breach of this provision. Only two countries, Sweden and the United Kingdom, were found to comply with Article 13§1.

The large majority of the violations concerns inadequate levels of social assistance and discrimination of foreigners as regards access to social assistance. On the first point, the Committee holds that public assistance should not condemn beneficiaries to (income) poverty and that cash benefits, including any supplements, therefore must not fall below 50% of median equivalised income (the poverty threshold as applied by the Committee). An increasing number of States Parties, both EU and non-EU, fail to meet this threshold, although in some cases the Committee had to conclude for non-conformity due to repeated lack of information on the relevant figures.

Discriminatory treatment of foreigners in violation of the Charter usually arises from excessive length of residence requirements before being eligible for assistance, but in some cases it is also due to automatic withdrawal of residence status for foreigners in need of social assistance. It may be mentioned in this respect that Article 13§1 at the outset applies exclusively to those foreigners who are nationals of other States Parties. The countries being condemned for this type of violation include Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Finland, France, Lithuania, Latvia, Spain and “the former Yugoslav Republic of Macedonia”.

Other violations include limits on the duration of social assistance (Bulgaria), which is contrary to the Charter: the Committee holds that assistance must continue for as long as the state of need persists. Age requirements, such as those applied in France and in Spain where social assistance is guaranteed only to persons aged 25 or over, are also not permitted.

In some countries the Committee did not find it established that there was a properly functioning system for providing social and/or medical assistance to persons in need in the meaning of the Charter. This concerned Greece, Hungary, Italy, Republic of Moldova, Romania and Turkey.

### ◆ the right to social services

This right covers both general social welfare services in the broadest sense, potentially aimed at the whole population, whatever the risk people are facing, as well as more specialised social services, such as services for people in need, assistance to families, services and institutions for the elderly, etc.

Article 14 has a very general character and most countries comply with its requirements. In the present examination 10 out of 33 countries were found to be in violation of the Article 14§1, but several of these conclusions were due to a repeated lack of information. However, the following findings deserve mention:

In respect of Spain the Committee did not find it established that effective access to social services is guaranteed; the conditions to be met by providers of social services are not clearly defined; it has not been established that supervisory arrangements for ensuring that providers of social services comply with the conditions ensuring the quality of services exist.

In Latvia and Poland access to social services by nationals of other States Parties is subject to an excessive length of residence requirement.

In Austria clients of social services do not have a right of appeal to an independent body in urgent cases of discrimination in all the *Länder*.

In Bulgaria the Committee did not find it not been established that the number of social services staff is adequate to users' needs.

Finally, in the case of Belgium the Committee referred to its decision on the merits of 18 March 2013 in International Federation for Human Rights (FIDH) v. Belgium, Complaint No 75/2011, in which it found that there had been a violation of Article 14§1 arising from the significant obstacles to equal and effective access for highly dependent adults with disabilities to social welfare services appropriate to their needs. Since the situation, in law and in practice, that gave rise to this violation already existed during the reference period, the Committee also concluded, as part of the reporting procedure, that there was a violation of Article 14§1 on this ground.

### ◆ the rights of the elderly to social protection

Certain societal and demographic developments, such as the ageing of the population and the changing structure of the family, for example, have increased the risks to which

elderly people are exposed. Elderly people are particularly vulnerable to human rights violations, including to abuse and neglect. Article 23 is an innovation in international law being the first legal instrument to offer specific protection to the, elderly.

In its conclusions the Committee examined Article 23 in respect of 20 states and it found 14 states to be in breach of the provision. Findings of non-conformity concerned primarily two issues:

- 1) inadequate resources for elderly persons; and
- 2) lack of non-discrimination legislation.

5 countries were found not to guarantee adequate resources to elderly persons (the Czech Republic, Montenegro, Serbia, the Slovak Republic and Ukraine). When assessing adequate resources the Committee takes into account all social protection measures guaranteed to elderly persons and aimed at maintaining income level allowing them to lead a decent life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources are then compared with median equivalised income.

In light of the existence of pervasive age discrimination in many areas of society throughout Europe (health care, education, services such as insurance and banking products, participation in policy making/civil dialogue, allocation of resources and facilities) the Committee has held that Article 23 requires States Parties to combat age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services.

10 countries were found not to have adequate legislation protecting elderly person against discrimination on grounds of age (the Czech Republic, Denmark, Finland Greece, Italy, the Netherlands, Norway, Spain, Sweden, Turkey).

It may be noted that the EU is discussing the possible adoption of a Directive on implementing the principle of equal treatment between persons irrespective of age (amongst other discrimination grounds).

The conclusions on Article 23 also raise, *inter alia*, the issues of elder abuse and assisted decision making procedures.

As regards elder abuse the Committee highlighted that this is a serious and hidden problem and has asked all states to report on what measures they have taken to evaluate and tackle such abuse.

The Committee adopted an interpretative statement concerning assisted decision making procedures. The Committee considers that there should be a national legal framework related to assisted decision making for the elderly guaranteeing their right to make decisions for themselves unless it is shown that they are unable to make them. This means that elderly persons cannot be assumed to be incapable of making their own decision just because they have a particular medical condition or disability, or lack legal capacity.

#### ◆ **the right to protection against poverty and social exclusion**

Article 30 Charter adds a new dimension to the Charter by enabling the Committee to monitor the whole machinery set in place by States Parties to combat poverty and social exclusion, a combat to which many other rights contribute. Unfortunately only 16 of the 43 States Parties have accepted Article 30 and of these 14 were examined in 2013.

Under Article 30 the Committee noted that poverty rates generally increased during the reference period in the 14 States Parties examined; a development which is no doubt attributable to growing income inequality in recent decades and particularly after the onset of the current economic crisis in 2007-2008.

In some countries the levels of poverty and social exclusion are extremely high. In respect of Ukraine and Italy, for example, the Committee did not find it demonstrated that the Government had implemented an overall and coordinated approach to combating providing for measures which were adequate to the extent of the poverty problem.

In respect of Belgium, France and Italy the Committee examined the follow-up to decisions in collective complaints in which these two countries had been found to be in violation of Article 30, either alone or in conjunction with Article E, the non-discrimination clause of the Charter. For France the Committee concluded that the housing policy for the poorest categories of the population and for Travellers remained insufficient and that there were still restrictions on the right to vote for Travellers in violation of Article 30. As regards Italy the Committee upheld its finding that there was discriminatory treatment with regard to the right to vote or other forms of citizen participation for Roma and Sinti (this being a cause of marginalization and social exclusion) concluding that the problem had not been remedied during the reference period.

Emphasising that living in poverty and social exclusion violates the dignity of human beings and hence the urgency of reducing and ending poverty, the Committee adopted a

*statement of interpretation* outlining the requirements of Article 30 and detailing the assessment method it will apply in the future (next examination in 2017). Proceeding on the basis of a human rights approach the Committee will examine a wide range of indicators of poverty and social exclusion and will notably take into account the level of resources deployed by governments to attain the objectives of the “overall and coordinated approach” to combating poverty and social exclusion. In particular, the Committee will consider measures that fall within the scope of other provisions of the Charter such as Articles 1, 11, 12, 13, 14, 15, 16, 17, 20, 23 and 31. Without establishing automatic links to Article 30, findings under these provisions may be of relevance in assessing conformity with Article 30.

#### ◆ **Stateless persons**

In its General Introduction the Committee made a statement of interpretation on the rights of stateless persons under the Charter. The Committee observes that statelessness remains a serious and pressing human rights problem. Stateless persons tend to be vulnerable to abuse, poverty and marginalization and may at least in practice face discrimination in accessing housing, health care, education, employment, social protection and freedom of movement.

On the basis of the Appendix to the Charter which refers to stateless persons and the 1954 United Nations Convention on the Status of Stateless Persons, the Committee considers that equal treatment must be guaranteed to stateless persons (whether *de jure* or *de facto*) in matters covered by the Charter.

### ***III. Final remarks: the challenge of strengthening the social dimension in Europe by reducing asymmetries***

There are still 10 countries not having accepted the 1996 Revised Social Charter, in particular 9 EU Member States (Croatia, Czech Republic, Denmark, Germany, Greece, Luxembourg, Poland, Spain and United Kingdom) plus Iceland. In relation to these countries, the Committee has obviously not assessed the situation under Article 30, even if, on the one hand, some aspects concerning protection against poverty and social exclusion are also covered by other provisions (e.g. Article 13). On the other hand, for the above mentioned EU Member States this kind of asymmetry is somehow contradictory, insofar as the Revised Charter was taken into account in the elaboration of the Charter of Fundamental Rights of the EU, as explicitly stated in its Appendix (e.g. there is an explicit reference to Article 30 of the Revised Charter in the explanation - provided by the Praesidium of the Convention which drafted the EU Charter - on Article 34 of the EU Charter concerning social security and social assistance).

The reference period covered by Conclusions 2013 is 2008-2011, which means that the Committee has not adopted formal conclusions of conformity or non-conformity in relation to situations (in fact or in law) outside this period. However, when from the information contained in the report it follows that there is a clear violation of the Charter outside the reference period, the Committee states in its legal assessment that the situation is contrary to the Charter and its maintenance will lead to a formal conclusion of non-conformity (e.g. the Spanish legislation adopted in 2012 preventing aliens from access to health care under Article 11§1).

The latter also implies that the reporting system needs to be amended in order to produce conclusions more adapted to the current situation. From this point of view, the Collective Complaints procedure is more proactive and, therefore, it is important to extend its acceptance (currently, 15 Council of Europe Member States among the 43 States Parties to the Charter have accepted the procedure). In this regard, to overcome this new asymmetry, on the occasion of the 50<sup>th</sup> anniversary of the Social Charter, in October 2011, the Committee of Ministers of the Council of Europe invited all its Member States to accept both the Revised Charter and the Collective Complaints Procedure.

As illustrated, the Reporting System and the Collective Complaint Procedure are complementary. Furthermore, the Committee refers to the current social dimension of EU law. Some synergies have already been mentioned in relation to several conclusions. The relations between the Social Charter and EU law have also been present in the framework of the Collective Complaint Procedure: in particular, some decisions made public or adopted by the Committee in 2013 show the necessity of strengthening the collaboration and synergies between the EU and the Council of Europe in the field of social rights (e.g. five decisions concerning pension schemes in Greece in relation to austerity measures recommended by the “Troika” – Complaints No. 76 to 80 –, one decision concerning the compulsory retirement for seamen on reaching the age of 62 years in Norway – Complaint No. 74 – or one decision concerning disproportionate restrictions in Sweden on the right of trade unions to take collective action in order to regulate employment terms of posted workers – Complaint No. 85).

All these important asymmetries and potential synergies (including the future accession of the EU to the European Social Charter, as recommended by both the European Parliament and the Parliamentary Assembly of the Council of Europe) need a profound reflection in order to give more impetus to the social dimension of Europe. In this context, a high-level political meeting will take place in Turin in the second semester of 2014 coinciding with the Italian Presidency of the EU.