



EU INCLUSION STRATEGIES GROUP

TASK FORCE ON POVERTY AS A VIOLATION OF HUMAN RIGHTS

Change, Hope, and Justice

A Rights-Based Approach to Poverty

Handbook for EAPN members

Online Annex

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I. International, Regional, National Human Rights Systems

1. United Nations

1.1. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights consists of a Preamble and thirty articles, which have been elaborated in subsequent international treaties, regional Human Rights instruments, national constitutions, and other laws.

The Preamble recognizes “the inherent dignity” and “the equal and inalienable rights of all members of the human family” as the “foundation of freedom, justice and peace in the world.” Human beings “shall enjoy freedom of speech and belief and freedom from fear and want”. Human Rights shall be protected by the rule of law.

The Declaration states: “All human beings are born free and equal in dignity and rights.” “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” “Everyone has the right to life, liberty and security of person.” “Everyone has the right to freedom of opinion and expression” and has “the right to freedom of peaceful assembly and association.”

Article 22:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23:

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection...

Article 24:

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25:

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”

Article 26:

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for Human Rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

The Universal Declaration of Human Rights:

<http://www.un.org/en/universal-declaration-human-rights/>

1.2. The International Covenant of Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is adopted by the United Nations General Assembly on 16 December 1966, and in force from 3 January 1976. It commits its parties to work toward the granting of economic, social, and cultural rights, including labour rights and the right to health, the right to education, and the right to an adequate standard of living.

The Preamble recognizes the inherent dignity and the equal and inalienable rights of all members of the human family but admit that the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.

PART II, Article 2 states:

1. Each State Party to the present Covenant undertakes to take steps...to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status....

Article 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

PART III, Article 6 states:

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

Article 9:

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10:

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children...

Article 11:

1. 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....

Article 12:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health....

Article 13:

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for Human Rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace....

International Covenant on Economic, Social and Cultural Rights:

<http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>

Economic, Social and Cultural Rights. Handbook for Human Rights Institutions:

<http://www.ohchr.org/Documents/Publications/training12en.pdf>

1.3. International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and in force from 23 March 1976. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial.

The Covenant follows the structure of the UDHR and ICESCR, with a preamble and fifty-three articles, divided into six parts.

Part 1 (Article 1) recognizes the right of all peoples to self-determination, including the right to "freely determine their political status", pursue their economic, social and cultural goals, and manage and dispose of their own resources. It recognises a negative right of a people not to be deprived of its means of subsistence, and imposes an obligation on those parties still responsible for non-self governing and trust territories (colonies) to encourage and respect their self-determination.

Part 2 (Articles 2 – 5) obliges parties to legislate where necessary to give effect to the rights recognised in the Covenant, and to provide an effective legal remedy for any violation of those rights. It also requires the rights be recognised "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status," and to ensure that they are enjoyed equally by women.

Part 3 (Articles 6 – 27) lists the rights themselves. These include rights to:

- physical integrity, in the form of the right to life and freedom from torture and slavery (Articles 6, 7, and 8);
- liberty and security of the person, in the form of freedom from arbitrary arrest and detention and the right to habeas corpus (Articles 9 – 11);
- procedural fairness in law, in the form of rights to due process, a fair and impartial trial, the presumption of innocence, and recognition as a person before the law (Articles 14, 15, and 16);
- individual liberty, in the form of the freedoms of movement, thought, conscience and religion, speech, association and assembly, family rights, the right to a nationality, and the right to privacy (Articles 12, 13, 17 – 24);
- prohibition of any propaganda for war as well as any advocacy of national or religious hatred that constitutes incitement to discrimination, hostility or violence by law (Article 20);
- political participation, including the right to the right to vote (Article 25);
- Non-discrimination, minority rights and equality before the law (Articles 26 and 27).

Part 4 (Articles 28 – 45) governs the establishment and operation of the Human Rights Committee and the reporting and monitoring of the Covenant. It also allows parties to recognise the competence of the Committee to resolve disputes between parties on the implementation of the Covenant (Articles 41 and 42).

Part 5 (Articles 46 – 47) clarifies that the Covenant shall not be interpreted as interfering with the operation of the United Nations or "the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources".[17]

Part 6 (Articles 48 – 53) governs ratification, entry into force, and amendment of the Covenant.

Optional protocols

There are two Optional Protocols to the Covenant. The First Optional Protocol establishes an individual complaints mechanism, allowing individuals to complain to the Human Rights Committee about violations of the Covenant.

The Second Optional Protocol abolishes the death penalty; however, countries were permitted to make a reservation allowing for use of death penalty for the most serious crimes of a military nature, committed during wartime.

International Covenant on Civil and Political Rights:

<https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

1.4. Declaration on the Right to Development

The Declaration on the Right to Development was adopted by The UN General Assembly 4 December 1986. It broke new ground in the universal struggle for greater human dignity, freedom, equality and justice.

It called for every member of society to be empowered to participate fully and freely in vital decisions. It demanded equal opportunities, and the equitable distribution of economic resources - including for people traditionally marginalized, disempowered and excluded from development, such as women, minorities, indigenous peoples, migrants, older persons, persons with disabilities and the poor; and for countries at all levels of development, including those most lagging behind. It demanded better governance of the international economic framework. And it re-defined development as far deeper, broader and more complex than the narrow, growth-and-profit focus of previous decades.

The Declaration stated that "development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom...". "Everyone is entitled to a social and international order in which the rights and freedoms set forth in that Declaration can be fully realized...". Efforts to promote and protect Human Rights "should be accompanied by efforts to establish a new international economic order..."

The Declaration consists of 10 articles. Edited:

Article 1: The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all Human Rights and

fundamental freedoms can be fully realized.

Article 2: States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

Article 3: States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.

States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of Human Rights.

Article 8: States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.

Article 10: Steps should be taken to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures at the national and international levels.

Declaration on the Right to Development:

<http://www.un.org/documents/ga/res/41/a41r128.htm>

1.5. Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights (CESCR) is the body of independent experts that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties.

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially within two years of accepting the Covenant and thereafter every five years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations”.

In addition to the reporting procedure, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which entered into force on 5th May 2013, provides the Committee competence to receive and consider communications from individuals claiming that their rights under the Covenant have been violated. The Committee may also under certain circumstances undertake inquiries on grave or systematic violations of any of the economic, social and cultural rights set forth in the Covenant, and consider inter-state complaints.

The Committee meets in Geneva and normally holds two sessions per year, consisting of a three-week plenary and a one-week pre-sessional working group.

The Committee also publishes its interpretation of the provisions of the Covenant, known as general comments. The general comments specify and detail the provisions. It is worthwhile to be continually aware of these general comments and to insert the comments in the strategy for fight against poverty. See for instance the general comments on the Right to Social Security and the Right to food.

General Comments:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11

1.6. The Core International Human Rights Instruments

Consult the links below for the core international Human Rights instruments and their monitoring bodies, all conventions, Human Right bodies, publications, country reports, status of ratification for each country, committee reports etc. These are highly recommended resources when working with United Nations Human Rights framework.

The United Nations Human Rights Treaty System:

<http://www.ohchr.org/Documents/Publications/FactSheet30Rev1.pdf>

United Nations Protect Human Rights:

<http://www.un.org/en/sections/what-we-do/protect-human-rights/index.html>

The Core International Human Rights Instruments and their monitoring bodies:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

2. The Council of Europe

2.1. The European Convention on Human Rights

The European Convention on Human Rights (ECHR) (formally the Convention for the Protection of Human Rights and Fundamental Freedoms) is an international treaty to protect Human Rights and fundamental freedoms in Europe. It is the Council of Europe's first convention aiming at protection of Human Rights. Drafted in 1950 by the then newly formed Council of Europe, the convention entered into force on 3 September 1953. All Council of Europe member states are party to the Convention and new members are expected to ratify the convention at the earliest opportunity. The Convention contains civil and political rights. ECHR does not embody economic, social or cultural rights. These are guaranteed instead by the Council of Europe's European Social Charter of 1961.

The European Convention on Human Rights consists of three parts. The first focuses on the fundamental civil and political rights including: freedom of speech, freedom of assembly and association, freedom of religion, the right to free and fair elections and the right to fair trial.

The second part deals with limitations on Human Rights that may be imposed by the signatories under special circumstances. For example, a state may restrict Human Rights on

grounds of national security, to prevent unrest and crime or to protect the rights and freedoms of others.

The third and last part reviews the complaints system linked to ECHR. The ECHR has 16 protocols, which amend the convention framework.

The European Convention on Human Rights:

http://www.echr.coe.int/Documents/Convention_ENG.pdf

2.2. The European Social Charter

The European Social Charter of 1961 is the counterpart of the European Convention on Human Rights in the sphere of economic and social rights. The Charter is therefore seen as the Social Constitution of Europe and represents an essential component of Europe's Human Rights architecture.

The Charter of 1961 guarantees the enjoyment, without discrimination, of fundamental social and economic rights defined in the framework of a social policy that Parties undertake to pursue, by all appropriate means.

Of the rights guaranteed by the Charter is the right to work, the right to organise, the right to bargain collectively, the right to social security, the right to social and medical assistance, the right to the social, legal and economic protection of the family, and the right to protection and assistance for migrant workers and their families are regarded as particularly significant (Part II).

2.3. The European Social Charter (revised)

The European Social Charter was revised in 1996 and the revised charter embodies in one instrument all rights guaranteed by the Charter of 1961, its additional Protocol of 1988 and adds new rights and amendments adopted by the Parties. It came into force in 1999 and is gradually replacing the initial 1961 treaty.

The European Social Charter (revised) guarantees fundamental social and economic rights of all individuals in their daily lives. It takes account of the evolution which has occurred in Europe since the Charter was adopted in 1961, and includes the following:

New rights: right to protection against poverty and social exclusion; right to housing; right to protection in cases of termination of employment; right to protection against sexual harassment in the workplace and other forms of harassment; rights of workers with family responsibilities to equal opportunities and equal treatment; rights of workers' representatives in undertakings.

Amendments: reinforcement of principle of non-discrimination; improvement of gender equality in all fields covered by the treaty; better protection of maternity and social protection of mothers; better social, legal and economic protection of children and young persons; better protection of handicapped people.

All EU member countries have ratified the Charter, however Croatia, The Czech Republic, Denmark, Germany, Luxembourg, Poland, Spain and UK have ratified the 1961 Charter only. The preamble states that the aim of The Council of Europe is “the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of Human Rights and fundamental freedoms” and to secure to their populations “the social rights specified therein in order to improve their standard of living and their social well-being”.

The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

1. Everyone shall have the opportunity to earn his living in an occupation freely entered upon.
2. All workers have the right to just conditions of work.
3. All workers have the right to safe and healthy working conditions.
4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.
5. All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.
6. All workers and employers have the right to bargain collectively.
7. Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.
8. Employed women, in case of maternity, have the right to a special protection.
9. Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.
10. Everyone has the right to appropriate facilities for vocational training.
11. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.
12. All workers and their dependents have the right to social security.
13. Anyone without adequate resources has the right to social and medical assistance.
14. Everyone has the right to benefit from social welfare services.
15. Disabled persons have the right to independence, social integration and participation in the life of the community.
16. The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.
17. Children and young persons have the right to appropriate social, legal and economic protection.
18. The nationals of any one of the Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.
19. Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.
20. All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.
21. Workers have the right to be informed and to be consulted within the undertaking.

22. Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking.
23. Every elderly person has the right to social protection.
24. All workers have the right to protection in cases of termination of employment.
25. All workers have the right to protection of their claims in the event of the insolvency of their employer.
26. All workers have the right to dignity at work.
27. All persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities.
28. Workers' representatives in undertakings have the right to protection against acts prejudicial to them and should be afforded appropriate facilities to carry out their functions.
29. All workers have the right to be informed and consulted in collective redundancy procedures.
30. Everyone has the right to protection against poverty and social exclusion.
31. Everyone has the right to housing.

Article 12 – The right to social security

With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

- 1** to establish or maintain a system of social security;
- 2** to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;
- 3** to endeavour to raise progressively the system of social security to a higher level;
- 4** to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:
 - a** equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;
 - b** the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.

Article 13 – The right to social and medical assistance

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;
- 2** to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
- 3** 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;

4 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 Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

Article 14 – The right to benefit from social welfare services

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:

1 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;

2 to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

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:

1 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;

2 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 sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialized placement and support services;

3 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.

Article 16 – The right of the family to social, legal and economic protection

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

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:

- 1 a** 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;
- b** to protect children and young persons against negligence, violence or exploitation;
- c** to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;
- 2** to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Article 30 – The right to protection against poverty and social exclusion

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a** 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.

Article 31 – The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

- 1** to promote access to housing of an adequate standard;
- 2** to prevent and reduce homelessness with a view to its gradual elimination;
- 3** to make the price of housing accessible to those without adequate resources.

The European Social Charter (Revised):

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007cf93>

2.4. About Article 30 of The European Social Charter (revised), how to understand *The right to protection against poverty and social exclusion*

The European Committee of Social Rights makes interpretations of the different provisions of the Revised Charter. In an interpretation of Article 30 (Everyone has the right to protection against poverty and social exclusion) , the Committee states:

“Living in a situation of poverty and social exclusion violates the dignity of human beings. Poverty means deprivation due to a lack of resources. With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, Article 30 requires States Parties to adopt 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. There should also exist monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. This approach must link and integrate policies in a consistent way, moving beyond a purely sectoral or target group approach.

The measures taken for such a purpose must promote and remove obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance. It should be noted that this is not an exhaustive list of the areas in which measures must be taken to address the multidimensional phenomena of poverty and social exclusion.

The measures should strengthen access to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions. Access to fundamental social rights is assessed by taking into consideration the effectiveness of policies, measures and actions undertaken.

As long as poverty and social exclusion persist, alongside the measures there should also be an increase in the resources deployed to make social rights possible. Adequate resources are one of the main elements of the overall strategy to fight social exclusion and poverty, and should consequently be allocated to attain the objectives of the strategy. Moreover, adequate resources are an essential element to enable people to become self-sufficient.

Finally, the measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned. In this respect the definitions and measuring methodologies applied at the national level and the main data made available are systematically reviewed. The at risk-of-poverty rate before and after social transfers (Eurostat), is used as a comparative value to assess national situations.”

The Council of Europe. Digest of the Case Law of The European Committee of Social Rights:
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168049159f>

In more countries, the efforts to promote and protect Human Rights is unsystematic and inadequate, despite a high Human Rights protection level. There might be plans on Human Rights areas, but there is a need for an overview of the Human Rights challenges and systematic gathering of information on the implementation of Human Rights.

The European Committee of Social Rights (the Council of Europe) has stated in a conclusion that “By introducing into the Charter a new Article 30, the Council of Europe member states considered that living in a situation of poverty and social exclusion violates the dignity of human beings”.

“With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion Article 30 requires States parties to adopt an overall and coordinated approach, which shall consist of an analytical framework, a set of priorities and corresponding measures to prevent and remove obstacles to access to social rights as well as monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. It must link and integrate policies in a consistent way moving beyond a purely sectoral or target group approach”.

“The measures taken in pursuance of the approach must promote access to social rights, in particular employment, housing, training, education, culture and social and medical assistance.

“The measures should strengthen entitlement to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions”.

“The Committee recalls that, in order to comply with Article 30 of the Charter, adequate resources are one of the main elements of the overall strategy to fight social exclusion and, therefore, requires the necessary resources to be allocated to attain the objectives of the strategy.

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168049159f>

2.5. The European Committee of Social Rights

The mission of the European Committee of Social Rights (ECSR) is to oversee that State Parties are in conformity in law and in practice with the provisions of the European Social Charter. In respect of national reports, the Committee adopts conclusions, in respect of collective complaints, it adopts decisions.

Every year the State Parties submit a report indicating how they implement the Charter in law and in practice. Each report concerns some of the accepted provisions of the Charter. The Committee examines the reports and decides whether or not the situations in the countries concerned are in conformity with the Charter. Its conclusions are published every year.

If a state takes no action on a Committee decision to the effect that it does not comply with the Charter, the Committee of Ministers addresses a recommendation to that state, asking it to change the situation in law and/or in practice.

Under a protocol opened for signature in 1995, which came into force in 1998, complaints of violations of the Charter may be lodged with the European Committee of Social Rights.

The Council of Europe: State of Democracy, Human Rights and the Rule of Law. 2016:

http://at.gov.lv/files/uploads/files/9_Tieslietu_padome/ENCJ/SG_REPORT_ANG_09042014.pdf

The Council of Europe Human Rights:

<http://www.coe.int/en/web/portal/human-rights>

Conclusions 2015 concerning States having ratified the Revised European Social Charter:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680593904>

Conclusions 2015 concerning States having ratified the European Social Charter:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805939f3>

Findings 2015 relating to the follow-up to decisions on the merits of collective complaints:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805939f5>

2.6. The European Code of Social Security

The European Code of Social Security, its Protocol and the European Code of Social Security (Revised) are the basic standard-setting instruments of the Council of Europe in the field of social security.

The European Code of Social Security aims at encouraging the development of social security in all member States of the Council of Europe in order that they may gradually reach the highest level possible. The Code fixes a series of standards which Parties undertake to include in their social security systems. It defines norms for social security coverage and establishes minimum levels of protection which Parties must provide in such areas as medical care, sickness benefits, unemployment benefit, old-age benefits, employment injury benefits, family benefits, maternity benefits, invalidity benefits, survivors' benefits, etc.

The European Code of Social Security, its Protocol and the European Code of Social Security (Revised) are the basic standard-setting instruments of the Council of Europe in the field of social security.

The underlying idea of these instruments is to promote a social security model based on social justice. The state is deemed to be responsible for establishing and maintaining a stable and financially sound social security system. Those who cannot earn their own living because of sickness, unemployment, old age, employment injury, occupational disease, maternity, invalidity, or death of the breadwinner should be guaranteed a decent standard of living; those who have to look after children should be supported by the society.

These specialised social security instruments form an essential component of the protection of Human Rights through the Council of Europe. *The right to social security* is enshrined in one of the basic Human Rights instruments of the Council of Europe, namely in the European Social Charter. States having ratified the revised European Social Charter and having accepted Article 12, paragraph 2, are obliged to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security. Therefore, the promotion of the European Code of Social Security is seen as one of the core tasks of the Council of Europe in order to secure common values in the field of social cohesion in its member countries.

It is worth noting that the standards of the Council of Europe in the field of social security are closely linked to the conventions of the International Labour Organisation (ILO). Convention No. 102 (Social Security Minimum Standards) from 1952 served as a model for the elaboration of the European Code of Social Security. Moreover, the higher standards enshrined in the Protocol to the European Code of Social Security and in the later social security conventions of the ILO also largely coincide. The control of the implementation of the social security standards of the Council of Europe is based on institutional co-operation between the Council of Europe and the ILO.

The European Code of Social Security:

http://www.coe.int/t/dg3/socialpolicies/source/socialsecurity/shortguide_en.pdf

2.7. Other treaties

The Council of Europe also has other Human Rights treaties that deal with specific Human Rights issues or vulnerable groups, such as European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and Framework Convention for the Protection of National Minorities.

In addition to treaty based mechanisms, the Council of Europe's work in promotion and protection of Human Rights is supported by two independent institutions within the Council of Europe, namely: the independent monitoring mechanism of the European Commission against Racism and Intolerance and the non-judicial institution of the Commissioner for Human Rights.

3. The European Union

3.1. Fundamental Rights in EU

Human dignity, freedom, democracy, equality, the rule of law and respect for Human Rights – these values are embedded in the EU treaties.

The commitment to Human Rights protection was reinforced by the adoption of the Charter of Fundamental Rights, which contains civil, political, economic and social rights of European citizens and all persons resident in the European Union.

Since the end of 2009, the EU has its own legally binding bill of rights: the Charter of Fundamental Rights of the European Union, which complements national Human Rights and the European Convention on Human Rights (ECHR). The EU Charter of Fundamental Rights became legally binding with the Lisbon Treaty. This means that the European Parliament, the Commission and the Council must respect the rights laid down in the Charter, like the Member States, when they implement EU law.

The European Union Agency for Fundamental Rights (FRA) identifies and analyses major trends in this field. The European Union Agency for Fundamental Rights was established in 2007 as an independent body and is effectively the EU's own Human Rights institution. FRA has the same tasks as the national Human Rights institutions in the individual EU Member States, but covering the whole of the EU. This means that FRA advises the EU and its Member States on fundamental Human Rights and their implementation in national legislation. FRA performs this task by collecting data in the EU and cooperating with EU institutions, Member States and organisations.

3.2. The EU Charter of Fundamental Rights of the European Union

The Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights.

The Charter of Fundamental Rights of the European Union enshrines certain political, social, and economic rights for European Union citizens and residents into EU law. In the preamble, it states that the Union “is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law.”

The Charter contains 54 articles divided into seven titles. The first six titles deal with substantive rights under the headings: dignity, freedoms, equality, solidarity, citizens' rights and justice, while the last title deals with the interpretation and application of the Charter. Much of the Charter is based on the European Convention on Human Rights (ECHR), European Social Charter, the case-law of the European Court of Justice and pre-existing provisions of European Union law.

The first title (Dignity) guarantees the right to life and prohibits torture, slavery, the death penalty, eugenic practices and human cloning. Its provisions are mostly based on the ECHR. The second title (Freedoms) covers liberty, personal integrity, privacy, protection of personal data, marriage, thought, religion, expression, assembly, education, work, property and asylum.

The third title (Equality) covers equality before the law, prohibition of all discrimination including on basis of disability, age and sexual orientation, cultural, religious and linguistic diversity, the rights of children and the elderly.

The fourth title (Solidarity) covers social and workers' rights including the right to fair working conditions, protection against unjustified dismissal, and access to health care, social and housing assistance.

The fifth title (Citizen's Rights) covers the rights of the EU citizens such as the right to vote in election to the European Parliament and to move freely within the EU. It also includes several administrative rights such as a right to good administration, to access documents and to petition the European Parliament.

The sixth title (Justice) covers justice issues such as the right to an effective remedy, a fair trial, to the presumption of innocence, the principle of legality, non-retrospectivity and double jeopardy.

The seventh title (General Provisions) concerns the interpretation and application of the Charter.

The EU Charter of Fundamental Rights is binding for EU institutions when enacting new measures and it is binding for Member States when they act within the scope of EU law. The Charter has steadily gained legal importance being quoted by the EU Court in more and more cases.

Under the control of the Court of Justice of the European Union, the Commission oversees respect of the Charter by Member States, when they implement EU law. The Commission can open infringement proceedings, if it becomes aware of a breach.

National judges are aware of the Charter as an instrument to ensure compliance with fundamental rights by Member States. Provisions of EU law and national law based on EU law must be interpreted in coherence with Charter obligations. Where a national court has doubts as to the applicability of the Charter or the correct interpretation of its provisions, it can – and must in the case of a national court of last instance – refer to the Court of Justice of the European Union for a preliminary ruling.

In Article 34 the Charter deals with social security and social assistance.

“1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.”

Article 35 deals with health care.

“Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.”

The EU Charter of Fundamental Rights of the European Union:

http://www.europarl.europa.eu/charter/pdf/text_en.pdf

3.3. The Europe 2020 Strategy and the Platform against Poverty and Social Exclusion

The Europe 2020 strategy is the EU's agenda for growth and jobs for the current decade. It emphasises smart, sustainable and inclusive growth as a way to overcome the structural weaknesses in Europe's economy, improve its competitiveness and productivity and underpin a sustainable social market economy. With more than 120 million people in the EU at risk of poverty or social exclusion, EU leaders have pledged to bring at least 20 million people out of poverty and social exclusion by 2020. This is one of the 5 overarching, headline targets of the Europe 2020 Strategy.

The headline targets provide an overall view of where the EU should be on key parameters by 2020. They are translated into national targets, so that each Member State can check its own progress towards each goal. There is no burden-sharing – they are common goals for all EU countries, to be met through a mix of national and EU action. This action is coordinated through a process called the European Semester.

The European Platform against Poverty and Social Exclusion, launched in 2010, is one of seven flagship initiatives of the Europe 2020 Strategy. It is designed to help EU countries reach the headline target of lifting 20 million people out of poverty and social exclusion. While it was meant to run the entire course of the Strategy, till 2020, it was largely abandoned in 2014. Its previous key forum, the Annual Convention on Poverty and Social Exclusion, has been repurposed and renamed the Annual Convention for Inclusive Growth, as of 2015.

Together with the 31 National Networks and 18 European Organisations in membership of EAPN, we engage closely with the Europe 2020 Strategy, in the framework of the European Semester, by both lobbying national and EU policy members to achieve impact, as well as by actively monitoring the processes and policies put forward in this framework, from a poverty perspective. All information about EAPN's active involvement with these processes can be found here: <http://www.eapn.eu/what-we-do/policy-areas-we-focus-on/europe-2020-strategy/>. You can also consult a detailed, practical Toolkit for EAPN members about engaging with this framework here: <http://www.eapn.eu/news-and-publications/publications/eapn-policy-toolkits-and-briefings/>

The Europe 2020 Strategy

https://ec.europa.eu/info/strategy/european-semester/framework/europe-2020-strategy_en

The European Semester

https://ec.europa.eu/info/strategy/european-semester_en

The European Platform against Poverty and Social Exclusion

<http://ec.europa.eu/social/main.jsp?catId=961>

3.4. The European Pillar of Social Rights

The European Pillar of Social Rights (EPSR) is the flagship social initiative of the European Commission, first announced by President Jean-Claude Juncker in September 2015 in his State of the Union address, as part of a larger effort to guarantee a “Social Triple A” for Europe. It sets out key principles and rights to support fair and well-functioning labour markets and welfare systems, also essential for a resilient economy, and to build better convergence towards better working and living conditions. Primarily conceived for the Eurozone, the initiative is open to all EU Member States.

Following the public consultation in 2016 on a draft proposal, the European Commission on the 26th April 2017 adopted and launched its comprehensive package of initiatives on the European Pillar of Social Rights. The Pillar is a framework of rights and principles, aimed at getting fuller ownership from EU institutions and Member States, and detailed across 20 policy domains, in 3 categories: equal opportunities and access to the labour market, fair working conditions, and social protection and inclusion.

The 20 principles are laid out in a Communication which will make the object an interinstitutional Proclamation between European Parliament, European Council and European Commission, to be adopted by the end of the year. There are four legislative initiatives accompanying the Proclamation, on work-life balance, access to social protection, access to information on employment rights, and changes to the working-time directive. A Staff Working Document outlines detailed explanations on each of the principles put forward in the context of the Pillar, as well as a social Scoreboard to monitor progress on the ground and to inform policy guidance in the context of the European Semester.

Member States have primary or exclusive competence on labour law, minimum wage, education, healthcare, and social protection systems – so it is up to them to implement the principles in the Pillar, and also bear the bulk of financing the initiatives. However, the implementation of the Pillar will be supported by the European Social Fund, the European Structural and Investment Fund, the Youth Employment Initiative, Erasmus +, European Globalisation Adjustment Fund and the Fund for European Aid to the Most Deprived – basically, what this means is that no new sources of funding will be made available. However, it mentions that the Pillar will help shape the post-2020 financial perspectives.

The Pillar features an explicit rights-based approach, where the Pillar aims at delivering new and more effective rights for citizens, as well as reinforcing and improving take-up of existing rights. There is a strong message that ‘every citizen has a right to access to adequate education and effective social protection, including a ‘social protection floor. Civil society is clearly identified as an actor for implementation, alongside local, regional and local authorities, authorities, and trade unions. The European Semester (see above) is explicitly mentioned as the framework for assessing, monitoring, and comparing progress made towards the implementation of the Pillar, through the social Scoreboard proposed, with benchmarking and exchanges of best practices in a number of areas (employment protection, unemployment benefits, minimum wage, minimum income, skills).

At the same time, a Reflection Paper on the social dimension of Europe, proposing 3

scenarios, was launched, as part of the Future of Europe initiative. The Gothenburg Summit for Fair Jobs and Growth on the 17 November is a key moment to build consensus and progress agreement on the interinstitutional Proclamation, as well as to take stock of reactions to the Reflection Paper.

EAPN has been keenly engaging with these processes. See more details for: EAPN's pro-active position paper on what the European Pillar of Social Rights should include: <http://www.eapn.eu/15644-2/> ; EAPN's response to the public consultation on the shaping of the European Pillar of Social Rights: <http://www.eapn.eu/wp-content/uploads/2016/09/EAPN-Response-EPSR-Questionnaire-submitted-EAPN-596.pdf> ; EAPN's position paper reaction to the publishing of the European Pillar of Social Rights: <http://www.eapn.eu/18092-2/>

European Pillar of Social Rights

https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en

<http://ec.europa.eu/social/main.jsp?catId=1226&langId=en>

Reflection Paper on the Social Dimension of Europe

https://ec.europa.eu/commission/publications/reflection-paper-social-dimension-europe_en

II. Magdalena Sepúlveda and Carly Nyst: The Human Rights Approach to Social Protection

The UN Human Rights Council's Special Rapporteur on Extreme Poverty, Dr. Magdalena Sepúlveda, together with her assistant, Ms. Carly Nyst, have drawn the attention to the key role of social protection in reduction of extreme poverty and to the critical role of Human Rights in the implementation of social protection.

They have proposed the following 30 recommendations:

1. States must ensure, at the very least, minimum essential levels of non-contributory social protection – not as a policy option, but rather as a legal obligation under international Human Rights law.
2. The right to social security should be incorporated in domestic laws and, where possible, enshrined in the Constitution.
3. Social protection systems must be established and defined by law, supported by a long-term strategy, and reinforced by an appropriate and adequately-funded long-term institutional framework.
4. States must adopt legislation to ensure equity and access to services without discrimination of any kind. States must take positive actions to enable access by those who suffer from structural discrimination such as women, persons with disabilities, indigenous peoples, minorities and older persons.
5. Social protection programmes should be viewed as one essential part of a broader development strategy which adopts a comprehensive and holistic approach to poverty reduction aimed at the realisation of all economic, social, cultural, civil and political rights.
6. States must design an integrated and coordinated social protection strategy that reduces fragmentation and ensures capacity building of all stakeholders implementing social protection programmes.
7. States must ensure that social protection programmes are sustainably and reliably financed in annual budgets and receive progressively greater resource allocation.
8. States must acknowledge that the impacts of social protection programmes are not gender neutral, and accordingly should design and implement social protection strategies which recognise the multiple forms of discrimination that women experience, and ensure that programmes address women's specific needs throughout their life cycle (childhood, adolescence, adulthood and old age).

9. Social protection programmes must respect and acknowledge the role of women as providers of care without reinforcing patterns of discrimination and negative stereotyping. Measures must be taken to promote the value of care, and to combine society and State responsibility for care work, encouraging men to participate more actively in the support and care of family members.

10. Policy makers should invest in capacity-building to ensure that those designing and implementing social programmes at both the national and local levels are aware of gender issues, and should adopt measures to ensure greater participation of women in the administration of social protection programmes.

11. Social protection mechanisms must be accompanied by culturally and gender-sensitive good quality social services which take into account the obstacles faced by women in accessing such services.

12. States should ensure that all social protection programmes are subject to gender-sensitive eligibility criteria which take into account intra-household dynamics to ensure that women are reached by and able to benefit from social protection.

13. Participatory and accountability mechanisms must be designed and implemented taking into account gendered power relations, in order to facilitate the meaningful participation of women in all stages of the programme.

14. States must develop and collect disaggregated data in regard to gender, age, ethnicity and disability to monitor and evaluate social protection programmes

15. Targeting methods should only be employed with the aim of progressively achieving universal coverage. Measures should be put in place to build the capacity of the State and to ensure sustainable resources for progressively increased coverage.

16. Targeting methods must be reasonable, objective, transparent, and gender-sensitive, and must, to the maximum extent possible, avoid exclusion errors.

17. Where poverty targeting methods are employed, policy makers must ensure that the poorest of the poor are not going to be excluded as a result of inaccurate targeting. In the case of proxy means testing, active measures must be taken to ensure a broad understanding of the methodology and the proxies used. In the case of community targeting, policy makers must provide adequate training to community members to ensure that eligibility criteria are applied equally, and without discrimination and/or stigmatisation. Where geographical targeting is employed, the criteria for selecting localities must be transparent and objective; the selection must be based on the local needs and not on the basis of political/electoral interests.

18. Targeting processes must be supported by appropriate outreach programmes and accessible mechanisms for redress in case of exclusion errors.

19. The design and implementation of social protection programmes should take into account the economic, legal, administrative and physical obstacles that individuals face in accessing social protection, giving particular consideration to the needs of those groups which face added obstacles, including women, persons with disabilities, the elderly, indigenous peoples, minorities or people living with HIV/AIDS.
20. All stages of social protection programmes, from the delivery of benefits to outreach efforts, must be specifically designed to overcome cultural barriers and to reach groups that are particularly vulnerable or excluded.
21. Benefit levels must be adequate to improve the standard of living of the beneficiaries, and benefits must be complemented by free or affordable quality public services.
22. To the greatest extent possible, States should refrain from imposing co-responsibilities or conditionalities on receipt of social protection, and instead should channel financial and human resources into improving the level of benefits provided and the quality and accessibility of social services available. Where conditionalities are imposed, they must be accompanied by measures to protect against abuses by those monitoring compliance with conditionalities, and by measures to ensure the capacity of the health and education services to meet increased demand.
23. Failure to satisfy imposed conditions should never result in the automatic exclusion of an individual or household from social protection programmes, but rather should be used as a facilitative tool to assist the State in identifying the most vulnerable families, providing supportive social work and/or community development, and addressing failures in public services.
24. Protections must be put in place to ensure that conditionalities do not create an unnecessary burden on women, expose them to abuse, or perpetuate traditional gender stereotypes within recipient households.
25. Laws should be put in place to ensure that individuals and organisations have the right to seek, receive and impart information about social protection programmes in a simple, accessible and rapid manner.
26. When collecting and processing information belonging to beneficiaries, States must ensure that they observe internationally accepted standards of privacy and confidentiality, and do not disseminate such information to other authorities or use it for other purposes without the consent of the beneficiary.
27. States must put in place adequate mechanisms for beneficiaries to participate in the design, implementation, monitoring and evaluation of social protection programmes.
28. Participatory mechanisms must ensure that participation is authentic, takes into account the existing asymmetries of power within the community, and is tailored to ensure the broadest participation possible by vulnerable and disadvantage groups.

29. Social protection programmes must incorporate accessible and effective complaints mechanisms which guarantee anonymity, allow for individual and collective complaints, and are sufficiently resourced and culturally appropriate. Complaints procedures should include an appeal process that is independent, accessible, simple, fair and effective.

30. Social protection programmes must periodically review decisions taken on at least three key elements: (a) the procedures utilised to register beneficiaries (in particular to identify the possible wrongful exclusion of beneficiaries), (b) the implementation of the programme (to monitor all sorts of possible abuses occurring when assistance is provided at the local level, e.g. sexual harassment) and (c) the overall payment procedures (to monitor misappropriation of financial resources throughout the different stages of implementation).

Magdalena Sepúlveda and Carly Nyst. The Human Rights Approach to Social Protection:

<http://www.ohchr.org/Documents/Issues/EPoverty/HumanRightsApproachToSocialProtection.pdf>

III. United Nations – Committees on the nine core international Human Rights Treaties

- The Human Rights Committee (CCPR) on the rights set forth in the International Covenant on Civil and Political Rights by States parties to the First Optional Protocol to the International Covenant on Civil and Political Rights;
- The Committee on Elimination of Discrimination against Women (CEDAW) on the Convention on the Elimination of All Forms of Discrimination against Women by States parties to the Optional Protocol to the Convention on the Elimination of Discrimination against Women;
- The Committee against Torture (CAT) on the rights set out in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by States parties who have made the necessary declaration under article 22 of the Convention;
- The Committee on the Elimination of Racial Discrimination (CERD) on the International Convention on the Elimination of All Forms of Racial Discrimination by States parties who have made the necessary declaration under article 14 of the Convention;
- The Committee on the Rights of Persons with Disabilities (CRPD) on the Convention on the Rights of Persons with Disabilities by States parties to the Optional Protocol to the Convention;
- The Committee on Enforced Disappearances (CED) on the International Convention for the Protection of All Persons from Enforced Disappearance by States parties who have made the necessary declaration under article 31 of the Convention.
- The Committee on Economic, Social and Cultural Rights (CESCR) on the International Covenant on Economic, Social and Cultural Rights by States parties to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
- The Committee on the Rights of the Child (CRC) on the Convention on the Rights of the Child or its two first Optional Protocols on the sale of children, child prostitution and child pornography (OPSC), and on the involvement of children in armed conflict (OPAC) by State Parties to the Third Optional Protocol on a communications procedure (OPIC).

For the Committee on Migrant Workers (CMW), the individual complaint mechanism has not yet entered into force. Article 77 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families gives the Committee on Migrant Workers (CMW) competence to receive and consider individual communications alleging violations of the Convention by States parties who made the necessary declaration under article 77. This individual complaint mechanism will become operative when 10 states parties have made the necessary declaration under article 77.

VI. Participatory Status & Collective Complaints: EAPN in the Council of Europe

This section was written by Matteo Mandelli, EAPN Policy Intern, in April 2017, and it brings together the most relevant information from the Council of Europe website.

1. What is the Council of Europe?

Founded in 1949, the Council of Europe (CoE) is an international organization based in Strasbourg which comprises 47 European countries. It was set up to promote democracy and protect human rights and the rule of law in Europe. The Council of Europe is a separate organization from the 28-member EU. No country has joined the EU without first joining the Council of Europe. The Council of Europe has produced over 200 treaties and conventions in many areas.

The Council's two statutory bodies are the Committee of Ministers, comprising the foreign ministers of each member state, and the Parliamentary Assembly, composed of members of the national parliaments of each member state. The Commissioner for Human Rights is an independent institution within the Council of Europe, mandated to promote awareness of and respect for human rights in the member states. The Secretary General heads the secretariat of the organization.



2. The protection of individuals' rights within the Council of Europe

Unlike the EU, the Council of Europe cannot make binding laws, but it does have the power to enforce select international agreements reached by European states on various topics. As stated in the United Nations' Vienna Declaration of 1993, *"All human rights are universal, indivisible and interdependent and interrelated"*.

When it came to giving binding legal force to the rights in the Universal Declaration, the Council of Europe adopted two separate treaties, at an interval of about 10 years:

- The European Convention on Human Rights ("the Convention"), guaranteeing civil and political rights, that was adopted in 1950;
- The European Social Charter (designed in its revised version as "the Charter"), guaranteeing social and economic rights, in 1961.

As a result, the development of the normative systems relating to these rights has followed a different tempo and brought to some substantial differences in the relevant monitoring mechanisms.

Despite these differences, the abovementioned systems are complementary and interdependent and many of the rights protected under the Convention and its Protocols are also regulated, sometimes with greater detail, under the 1961 Charter, its Additional Protocol of 1988 and the Revised Charter, adopted in 1996.

The connections between the Convention and Charter normative systems are taken into account by the European Court of Human Rights and the European Committee of Social Rights in their assessment of the cases submitted to them and the criteria applied are very similar: both the Court and the Committee assess the implementation in practice of the protected rights and check that the restrictions are provided by law and necessary in a democratic society.

Through their ever-developing case-law, the European Court of Human Rights and the European Committee of Social Rights ensure that all human rights – be them civil and political rights or social and economic rights – are effectively protected in a complementary and progressive way.

3. The European Convention on Human Rights and the European Court of Human Rights

The Council of Europe's most famous achievement is the European Convention on Human Rights, which was adopted in 1950 following on from the United Nations 'Universal Declaration of Human Rights' (UDHR). The Convention created the European Court of Human Rights (ECHR) in Strasbourg.

The European Convention on Human Rights is an international treaty under which the member States of the Council of Europe promise to secure fundamental civil and political rights, not only to their own citizens but also to everyone within their jurisdiction. The Convention, which was signed on 4 November 1950 in Rome, entered into force in 1953.

The Convention secures in particular: the right to life, the right to a fair hearing, the right to respect for private and family life, freedom of expression, freedom of thought, conscience and religion and the protection of property. The Convention prohibits in particular: torture and inhuman or degrading treatment or punishment, slavery and forced labour, death penalty, arbitrary and unlawful detention, and discrimination in the enjoyment of the rights and freedoms set out in the Convention.

The European Court of Human Rights is an international court set up in 1959. It rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights. Since 1998 it has sat as a full-time court and individuals can apply to it directly. In almost fifty years the Court has delivered more than 10,000 judgments. These are binding on the countries concerned and have led governments to alter their legislation and administrative practice in a wide range of areas. The Court's case-law makes the Convention a powerful living instrument for meeting new challenges and consolidating the rule of law and democracy in Europe. The Court is based in Strasbourg and it monitors respect for the human rights of 800 million Europeans in the 47 Council of Europe member States that have ratified the Convention.

4. The European Social Charter and the European Committee of Social Rights

The **European Social Charter** is a Council of Europe treaty that guarantees fundamental social and economic rights as a counterpart to the European Convention on Human Rights, which refers to civil and political rights. It guarantees a broad range of everyday human rights related to employment, housing, health, education, social protection and welfare.

The Charter lays specific emphasis on the protection of vulnerable persons such as elderly people, children, people with disabilities and migrants. It requires that the enjoyment of the abovementioned rights be guaranteed without discrimination.

No other legal instrument at pan-European level can provide such an extensive and complete protection of social rights as that provided by the Charter, which also serves as a point of reference in European Union law: most of the social rights in the EU Charter of Fundamental Rights are based on the relevant articles of the Charter.

The Charter is therefore seen as the **Social Constitution of Europe** and represents an essential component of the continent's human rights architecture. The Charter was amended in 1996 and is now ratified by 43 of the 47 Council of Europe member States

The rights established by the Charter are guaranteed in a more or less explicit and detailed manner by EU law. The 98 paragraphs of the Revised Charter can be matched to binding provisions of primary or secondary EU law, albeit with some differences of both form and

substance. Without being exhaustive, it can be said that in the case of secondary legislation (directives and regulations), the EU lays down requirements in a significant number of fields of specific relevance to social rights.

There is a clear lack of uniformity in the acceptance of Charter provisions by the EU member states. This is the result of the choices made by each State Party when expressing its sovereign will on the basis of the Charter. In this context, it should be noted that while applying the EU's binding standards in an area covered by the Charter, some member States of the European Union have not accepted the Charter provisions establishing legally equivalent guarantees.

The honoring of commitments entered into under the Charter by the States Parties is subject to the supervision of the **European Committee of Social Rights (ECSR)**. The ECSR is composed of 15 independent and impartial members who are elected by the Council of Europe's Committee of Ministers for a period of six years, renewable once.

The European Committee of Social Rights monitors compliance with the Charter under two complementary mechanisms: through **collective complaints** lodged by the social partners and other non-governmental organizations, and through **national reports** drawn up by Contracting Parties. Insofar as they refer to binding legal provisions and are adopted by a monitoring body established by the Charter and the relevant protocols, **Decisions and Conclusions of the European Committee of Social Rights must be respected by the States concerned**; even if they are not directly enforceable in the domestic legal systems, they set out the law and can provide the basis for positive developments in social rights through legislation and case-law at national level.

5. Overview – The Conference of INGOs

The Council of Europe's work benefits extensively from contacts and co-operation with the dynamic elements of society, as represented by non-governmental organizations (NGOs).

The Council of Europe's relations with NGOs focus on the following:

I. Relations with international NGOs (INGOs): this can be seen as the Council of Europe's statutory relations with NGOs. INGOs holding participatory status, known collectively as the **Conference of INGOs** of the Council of Europe, actively contribute to the decision-making process at the Council of Europe and to the implementation of its programmes, thus ensuring their relevance to the expectations of Europeans.

II. Civil society programmes with partner NGOs: civil society co-operation programmes aim at strengthening the role of civil society in a pluralist democracy, in particular promoting public participation in decision making.

The **INGO Conference** is the consultative body representing civil society in the Council of Europe. It unites more than 300 internationally operating non-governmental organizations from all areas of civil society. These organizations have *participatory status* at the Council of Europe. The INGO Conference meets for a plenary session in Strasbourg twice a year. In

between sessions, the Conference remains in constant contact with the political bodies of the Council of Europe and the *Secretariat* through its Standing Committee and organizes events connected to the priorities of the CoE. The INGO Conference of the Council of Europe is a space for free and innovative participation of committed citizens, offering the possibility to contribute directly to the construction of Europe. It is the only assembly of NGOs playing an institutional role in an international intergovernmental organization.

6. The Participatory Status – Meaning

Recognizing independent non-governmental organizations influence, the Council of Europe provides international NGOs (INGOs) with the opportunity to acquire participatory status.

The Council of Europe has had working relations with non-governmental organizations since 1952 when it introduced a consultative status for INGOs. In 2003, in recognition of the increasingly active role played by the INGOS, the Council of Europe decided to change the consultative status to one of participatory status.

In his 2015 report on the “State of Democracy, Human Rights and the Rule of Law in Europe” the Secretary General recommended to revise, in consultation with the Conference of INGOs, the guidelines on participatory status. The main objective of the revision of the resolution was to better define the criteria for granting or refusing participatory status and to increase the relevance and quality of INGOs enjoying participatory status.

In July 2016, the Committee of Ministers adopted a new resolution on participatory status. The INGOs enjoying participatory status form the Conference of INGOs. Currently some 320 INGOs hold participatory status. The Conference represents civil society at the Council of Europe and works to promote participatory democracy.

7. The Participatory Status – Requirements to access

Participatory status may be granted by the Council of Europe to INGOs:

- which respect and defend the values and principles of the Council of Europe;
- which are able, through their work, to support the achievement of that closer unity mentioned in Article 1 of the Council of Europe’s Statute;
- which are created on the basis of a constitutive act adopted according to democratic principles;
- which have a democratic structure and governance;
- which are particularly representative in the field(s) of their competence, fields of action shared by the Council of Europe;
- which are represented at European level, that is to say which have members in at least five member States of the Council of Europe;
- which were created and have implemented activities at least two years before the moment of applying for participatory status;
- which already have working relations with the Council of Europe;
- which are capable of contributing to and participating actively in Council of Europe deliberations and activities;

- which are able to make known the work of the Council of Europe to society.

Applications for participatory status must be submitted on the official form and must be accompanied by the following documents in French or English, and preferably in both of these official languages of the Council of Europe: the INGO's statute, a list of its member organizations, an activity and financial report covering the previous two years, and a declaration to the effect that it accepts the principles set out in the preamble and in Article 1 of the Statute of the Council of Europe.

Participatory status is granted once a year. The decision to grant participatory status to an INGO shall be taken by the Secretary General of the Council of Europe after consulting the Standing Committee of the Conference of INGOs. Applications should be submitted by March in order to obtain the status in December of the same year.

8. The Participatory Status – Modality of participation

The INGOs enjoying participatory status:

- may address memoranda to the Secretary General;
- shall have access to the agenda and public documents of the Parliamentary Assembly in order to facilitate their attendance at public sittings of the Parliamentary Assembly;
- are invited to the public sittings of the Congress of Local and Regional Authorities and to contribute to its work according to its rules;
- are invited to attend seminars, conferences, colloquies of interest to their work according to the applicable Council of Europe rules;
- may be invited to contribute individually or through the Conference of INGOs to the work of intergovernmental committees;
- may be invited to provide, through their specific activity or experience, expert advice on Council of Europe policies, programmes and actions;
- **may request to be registered on the list of INGOs entitled to lodge collective complaints in the framework of the Additional Protocol to the European Social Charter which foresees a system of collective complaints (Article 1b)**;
- are invited to co-operate closely with the Commissioner for Human Rights, notably by communicating to him any information that they deem to be useful for his mission of promoting respect for human rights;
- may be consulted by the Secretary General, in writing or by means of a hearing, on questions of mutual interest.

The INGOs enjoying participatory status shall undertake to:

- promote the respect of the Council of Europe's conventions and legal instruments in the member States;
- contribute to the implementation of Council of Europe standards and policies in collaboration with local, regional and national NGOs;
- participate actively in the sessions and the work of the Conference of INGOs;

- keep themselves regularly informed of Council of Europe activities and developments in standards;
- furnish, either spontaneously or at the request of the Council of Europe's different bodies, information, documents or opinions relating to their own field(s) of competence on matters which are under consideration or which could be addressed by the Council of Europe;
- give maximum publicity to the initiatives and achievements of the Council of Europe in their own field(s) of competence;
- disseminate information on Council of Europe standards, instruments and activities, to their members, on a regular basis, and ensure that they too work actively to fulfil the requirements of the participatory status;
- submit every four years a **report** to the Secretary General which should specify:
 - their participation in the work of the various Council of Europe bodies, the capacity in which they attended and their contribution;
 - their attendance at events organised by the Council of Europe, the capacity in which they attended, the contribution they made and any follow-up action;
 - their participation at and contributions to the sessions and the work of the Conference of INGOs;
 - any events which they themselves have organised, in particular those dealing with the promotion of the Council of Europe's aims, values and legal instruments;
 - any action they have undertaken with a view to ensuring respect of Council of Europe standards and to publicising its work.

9. EAPN Status in the INGOs Database

The European Anti-Poverty Network is present in the Database of International NGOs that enjoy Participatory Status in the Council of Europe system. EAPN is part of a Thematic Committee in the Conference of INGOs, specifically the one called "democracy, social cohesion and global challenges". After fulfilling its obligations and having submitted the four-yearly report on cooperation between the INGO and the Council of Europe, EAPN participatory status has been renewed in 2017.

10. Overview - Collective Complaints

The European Committee of Social Rights **monitors** compliance with the Charter under **two separate procedures**:

- through collective complaints lodged by the social partners and non-governmental organisations (Collective Complaints procedure)
- and through reports drawn up by States parties (Reporting system).

The **Collective Complaints procedure** was introduced in 1995. The Collective Complaints procedure established under the Charter is a **parallel protection system which complements the judicial protection provided under the European Convention on Human Rights**. Unlike the situation with applications lodged before the European Court of Human Rights, the European Committee of Social Rights cannot consider individual applications. Only certain

non-governmental organizations are entitled to lodge collective complaints concerning the Charter; individuals are not entitled to do so.

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**. In the light of this, complaints may be lodged **without domestic remedies having been exhausted and without the claimant organization necessarily being a victim of the relevant violation**.

The **organizations entitled to lodge collective complaints** are as follows:

- the European social partners:
 - European Trade Union Confederation (ETUC), for employees;
 - Business Europe and International Organisation of Employers (OIE), for employers;
- certain international non-governmental organisations (INGOs) holding participatory status with the Council of Europe; social partners at national level;
- Employers' organisations and trade unions in the country concerned.

Furthermore, any State may grant representative national non-governmental organizations (NGOs) within its jurisdiction the right to lodge complaints against it. So far only Finland has done so.

If a complaint is considered admissible by the European Committee of Social Rights, it adopts a decision on the merit of complaint. This decision establishes whether a State's law and/or practice is or is not in compliance with one or more provisions of the Charter. The decision is forwarded by the Committee to the parties and, in view of its follow-up, to the Committee of Ministers of the Council of Europe. The decisions adopted by the European Committee of Social Rights in the framework of this monitoring mechanism are published and can be consulted in the HUDOC Charter database.

Insofar as they refer to binding legal provisions and are adopted by a monitoring body established by the Charter and the Protocol providing for the system of complaints, **the decisions of the European Committee of Social Rights must be respected by the States concerned; however, they are not enforceable in the domestic legal system**. In practice, this means that when the European Committee of Social Rights rules that the situation in a country is not in compliance with the Charter, **the complainant organization cannot require the Committee's decision to be enforced in domestic law as would be the case with a ruling by a court in the State concerned**. **The decisions are declaratory; in other words, they set out the law. On this basis, national authorities are required to take measures to give them effect under domestic law**. In this connection, domestic courts can declare invalid or set aside domestic legislation if the Committee has ruled that it is not in compliance with the Charter.

11. NGOs entitled to lodge Collective Complaints

INGOs holding participatory status with the Council of Europe must **submit an application letter** duly signed by the person entitled to represent the INGO, stating his or her title and functions, by post to the following address:

Department of the European Social Charter
Directorate General Human Rights and Rule of Law Council of Europe
F-67075 Strasbourg Cedex
E-mail: social.charter@coe.int

including the following **information**: headquarters of the INGO; telephone; fax; e-mail; web site; the date the INGO was granted participatory status with the Council of Europe, and indicating that the INGO fulfils the conditions stated in paragraph 20 of the Explanatory Report to the Additional Protocol providing for a system of collective complaints.

To this end, the INGO may refer to the following documents:

- Constitution/Statute of the INGO;
- rules of procedure;
- composition of its Administrative Council;
- composition of its Executive Board, if any;
- latest activity report;
- its participation in meetings of INGO bodies of the Council of Europe (meetings and dates);
- any other relevant document.

Upon receipt, applications by INGOs are submitted for **approval to the Governmental Committee of the European Social Charter and the European Code of Social Security** at its twice-yearly meetings, which draws up the **list of INGOs entitled to lodge collective complaints** for a four-year period. Each INGO is duly informed of the Governmental Committee's decision.

INGOs wishing to **renew** their entitlement should forward their request duly signed by the person entitled to represent the INGO, stating his or her title and functions, to the above-mentioned postal and e-mail addresses.

The Governmental Committee draws up the above-mentioned list, on the basis of the following principles:

- INGOs which hold participatory status with the Council of Europe and consider themselves particularly competent in any of the matters governed by the Charter are invited to express their wish to be included on a special list of INGOs entitled to submit complaints;
- each application must be supported by detailed and accurate documentation aiming to show in particular that the INGO has access to authoritative sources of information and is able to carry out the necessary verifications, to obtain appropriate legal opinions, etc., in order to draw up reliable and complete complaint files;

- all applications are transmitted to the Governmental Committee, accompanied by an opinion of the Secretary General which reflects the degree of interest and participation shown by the INGO in its normal dealings with the Council of Europe;
- an application is considered accepted by the Governmental Committee unless it is rejected in a ballot by a simple majority of votes cast;
- inclusion on the special list is valid for a period of four years, after which it lapses unless the organisation applies for renewal in the six-month period preceding the expiry date. The procedure described above applies to renewal applications.

12. Admissibility conditions - Collective Complaints

In order to be declared admissible, a collective complaint must necessarily:

- be lodged in writing and clearly indicate the name and contact details of the complainant organisation;
- be signed by a person entitled to represent the complainant organisation and provide proof that the person submitting and signing the complaint is entitled to represent the organisation;
- if the complainant is a national trade union or a national employers' organisation, provide proof that these bodies are representative within the meaning of the collective complaints procedure
- **if the complainant is an international or national NGO, provide proof that the complainant organisation has particular competence in the field relating to the provision (or provisions) of the Charter covered by the complaint;**
- be lodged against a State in which the Charter is in force and which has accepted the system of collective complaints; as of 1 March 2013, the States having accepted the Additional Protocol providing for a system of collective complaints were as follows: Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden;
- concern one or more provisions of the Charter, possibly in combination, accepted by the State concerned; in principle, the Charter provisions in respect of which complaints may be lodged are:
 - a. Articles 1-19 of Part II of the 1961 European Social Charter, Articles 1-4 of Part II of the 1988 Additional Protocol to the 1961 European Social Charter;
 - b. Articles 1 to 31 of Part II and Article E of Part V of the Revised European Social Charter.
- indicate the extent to which the State has failed to implement the Charter. In particular, the complaint must indicate the point(s) in respect of which the State in question has allegedly failed to comply with the Charter or implemented it inadequately, along with evidence and the relevant arguments, with supporting documents. In this connection, the complaint could, for instance, allege that the State in question has failed to establish a legal framework for the implementation of the Charter or that the existing framework and/or its application do not comply with the Charter.

When lodged by international bodies, complaints must be drafted in one of the Council of Europe's official languages (English or French). Complaints lodged by national organizations

may be drafted in the official language, or one of the official languages, of the State concerned.

Complaints must be addressed to the Executive Secretary of the European Committee of Social Rights acting on behalf of the Secretary General of the Council of Europe.

Postal address:

Department of the European Social Charter
Directorate General Human Rights and Rule of Law Council of Europe
F-67075 Strasbourg Cedex
E-mail address: social.charter@coe.int

13. Following procedure - Collective Complaints

The European Committee of Social Rights examines the complaint and, if the formal requirements have been met, declares it admissible. For each complaint, a member of the Committee is appointed by the President to act as Rapporteur. The Rapporteur has the task of drafting, for adoption by the Committee a draft decision on admissibility of the complaint, followed, as the case may be, by a draft decision on the merits.

The **State Party may then respond** in writing. The timing for parties' interventions are all set by the parties themselves or by the President of the Committee when she wishes this way. The President may also ask the organization that lodged the complaint to respond, on the same conditions, to the observations made by the respondent State. The European Committee of Social Rights' **decision on the admissibility** of the complaint is made public through its written notification to the parties as well as the States party to the Protocol; in addition, the decision is published on the Council of Europe website.

If a complaint has been declared admissible, the European Committee of Social Rights, if it has not already done so, asks the respondent State (provided that it has already accepted the collective complaints procedure) to make written **submissions on the merits of the complaint** within a time limit which it sets. The President then invites the organization that lodged the complaint to submit, on the same conditions, a response to these submissions. The President may then invite the respondent State to submit a further response. International organizations of employers and trade unions are invited to make observations as well. When he considers this appropriate and after consultation with the Rapporteur, the President of the European Committee of Social Rights decides that the written procedure is closed. After this decision, the parties may only submit further documents with good reason.

In the course of the examination of the complaint, the European Committee of Social Rights may organize a **hearing**. The hearing may be held at the request of one of the parties or on the Committee's initiative. The European Committee of Social Rights decides whether or not to act upon a request made by one of the parties. The hearing is public unless the President decides otherwise.

Following deliberation, the European Committee of Social Rights adopts a **decision on the merits of the complaint**. It decides whether or not the Charter has been violated. The European Committee of Social Rights transmits a report containing its decision to the parties and the Committee of Ministers of the Council of Europe.

The Committee may, at the request of a party, or on its own initiative, indicate to the parties any **immediate measure** the adoption of which seems necessary with a view to avoiding the risk of serious damage and to ensuring effective respect for the rights recognized in the Charter. In the case of a request for immediate measures made by a complainant organization, the request must specify why it is being made, the possible consequences if it is not granted and the measures requested. The President of the European Committee of Social Rights sets a date for the respondent State to make written submissions on the request for immediate measures.

The Committee's decision on immediate measures gives reasons and is signed by the President, the Rapporteur and the Executive Secretary. It is notified to the parties. The European Committee of Social Rights may request information from the parties on the implementation of the indicated measures.

In the event of violation of the Charter, the State is asked to notify the Committee of Ministers of the Council of Europe of the measures taken or planned to bring the situation into conformity. The Committee of Ministers may adopt a resolution that takes account of the respondent State's declared intention to take appropriate measures to bring the situation into conformity. The **Committee of Ministers' decision** is based on social and economic policy considerations. If the State in question does not indicate its intention to bring the situation into conformity, the Committee of Ministers may also adopt a **recommendation** to the State.

The European Committee of Social Rights' decision on the merits of the complaint is made public at the latest four months after the report is transmitted to the Committee of Ministers. The Committee of Ministers' role is very important because, in the chain formed by the complaints procedure, it can contribute to making the European Committee of Social Rights' decisions operational, and thereby giving concrete effect to the rights guaranteed under the Charter.

The **respondent State** must provide information on the measures it has taken to **give effect** to the European Committee of Social Rights' decision, taking account of the recommendation or resolution adopted by the Committee of Ministers. Ultimately, it falls to the European Committee of Social Rights to determine whether the situation has been brought into compliance with the Charter. This is done by the Committee in the framework of the Collective Complaints procedure or the Reporting system.

14. Possible Alternatives – Applying before the European Court of Human Rights & Cooperate with the Commissioner for Human Rights

All residents in Council of Europe member states may bring cases before the European Court of Human Rights against states which have breached their commitments under the European Convention on Human Rights. Applications by individuals against contracting states, alleging that the state violates their rights under the European Convention on Human Rights, can be made by any person, non-governmental organization or group of individuals.

A **legal person** (which includes a company, **non-governmental organization** or association) that applies to the Court must do so through a representative of that legal person who is identified in the relevant section of the application form and who provides contact details and explains his or her capacity or relationship with the legal person. Proof must be supplied with the application form that the representative has authority to act on behalf of the legal person. The representative of the legal person is distinct from the lawyer authorized to act before the Court as legal representative.

The applicant must set out the **facts** of the case, his or her complaints and the explanations as to compliance with the admissibility criteria in the space provided in the application form

An application under Article 34 of the Convention must be **submitted in writing**. No application may be made by telephone. An application must be sent to the following address: The Registrar European Court of Human Rights Council of Europe F-67075 Strasbourg Cedex 3. Applicants must dispatch the signed original by post within the same six-month time-limit. Once registered with the Court, the case is assigned to a judge rapporteur, who can make a final decision that the case is inadmissible.

To be declared **admissible**, an application must meet the following **criteria**:

1. Exhaustion of domestic remedies ;
2. Six-month application deadline (from the final domestic judicial decision);
3. Complaint against a State party to the European Convention on Human Rights;
4. Applicant suffered a significant disadvantage.

If the rapporteur judge decides that the case can proceed, the case is referred to a Chamber of the Court which, unless it decides that the application is inadmissible, communicates the case to the government of the state against which the application is made, asking the government to present its observations on the case. The Chamber of the Court then deliberates and judges the case on its admissibility and its merits.

As explicitly stated in the Resolution on the Participatory Status of NGOs in the Council of Europe, **Non-governmental Organizations are invited to co-operate closely with the Commissioner for Human Rights, notably by communicating to him any information that they deem to be useful for his mission of promoting respect for human rights.**