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# Council of Europe overall strategy to fight against poverty\*

## *Introduction*

The Council of Europe is combating poverty by strengthening social cohesion, and preventing and combating social exclusion. The European Convention on Human Rights, which guarantees civil and political human rights, is complemented by the European Social Charter (ESC), adopted in 1961 and revised in 1996, which guarantees social and economic human rights. According to Article 30, “Everyone has the right to protection against poverty and social exclusion”. The actual economic and social situation in the EU is illustrated by the statistics presented in the footnote no. 1 to this article, coming from many different sources. The statistical data on the Member States of the European Union are at the same time more reliable and less painful than the poverty statistics that could be established in European countries that do not belong to the Union. Therefore, they constitute an incentive, serve as an example and at the same time create an opportunity for better development for other European countries that are not yet part of the more developed and wealthier European community. Therefore, they were chosen to present the present-day situation of poverty, which deserves special attention of specialists from the broadly understood European social policy conducted by the Council of Europe<sup>1</sup>. The goal

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<sup>1</sup> “The at-risk-of-poverty rate (after social transfers) in the EU-27 was 16.8% in 2018, almost unchanged compared with 2017 (16.9%). In 2018, social transfers lifted 8.2% of the EU-27’s population above the poverty threshold. The 20% of the population with the highest disposable income in the EU-27 in 2018 received 5.1 times as much income as the 20% with the lowest disposable income. The economies of EU countries are recovering, with improvements also

of Article 30 of the Charter is to obligate Member States to organise cohesive social policy concepts to fight poverty and social marginalization.<sup>2</sup> The provision in question obligates authorities of Member States to take measures, which will grant access to poverty stricken persons and those deemed to be “socially marginalized” to employment, housing education, culture, social assistance and medical care. The goal of Article 30 of the Charter is not to obligate authorities of Member States to double up on measures taken with regards to other provisions of the Charter, namely Articles: 1<sup>3</sup>, 11<sup>4</sup>, 16, 12<sup>5</sup>, 13<sup>6</sup>, 14<sup>7</sup>, 15<sup>8</sup>, 16<sup>9</sup>, 17<sup>10</sup>, 20<sup>11</sup>, 23<sup>12</sup> and 31<sup>13</sup>. Obligating authorities of Member States to take measures within the framework of an overall and coordinated approach to fight against

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benefiting the most vulnerable. In 2017, there were 4.4 million fewer people living at risk of poverty or social exclusion in the EU, compared to pre-crisis levels in 2008. This represents a decline of more than 10 million since this number peaked in 2012. This is still above the target set out in the Europe 2020 strategy for smart, sustainable and inclusive growth, but several indicators have improved, as shown by 2017 statistics: 1) 22.4% of the EU population are at risk of poverty or social exclusion – this includes 24.9% of all children in Europe, 23.3% of women, 18.2% of those over 65; 2) 6.7% of all Europeans still live in severe material deprivation, though their number has significantly decreased; 3) 17% of Europeans live on less than 60% of their country’s median household income; 4) 9.3% of Europeans live in households where no one has a job. However, EU citizens have not benefitted from the economic recovery equally: 1) on average, the richest 20% EU households earn five times more than the poorest 20% households; 2) Fewer people live in jobless households, but their poverty level remains high or is increasing, reaching around 60% in the EU; 3) The share of working poor is increasing in a number of Member States, reaching 9.6% in the EU; 4) 30.1% of people with disabilities in the EU were at risk of poverty or social exclusion, compared to 20.9% of people without disabilities; 5) Welfare systems in different EU countries are not equally effective. The best system reduced the risk of poverty by 57%, the least effective by 16%. The EU average is 34%. With more than 120 million people in 2008 at risk of poverty or social exclusion EU leaders have pledged to bring at list 20 million people out of poverty and social exclusion by 2020<sup>14</sup>; Eurostat Statistics Explained. At-risk-of-poverty rate 2018. Source: Eurostat. Archive: Income poverty statistics – Statistics Explained (europa.eu) oraz Poverty and social exclusion – Employment, Social Affairs & Inclusion – European Commission (europa.eu)

<sup>2</sup> Explanatory report to the 1988 Additional Protocol, [in:] European Social Charter, *Collected texts* (7<sup>th</sup> edition, updated to 1<sup>st</sup> January 2015), Council of Europe Publishing, Strasbourg 2015, pp. 165–166.

<sup>3</sup> The right to work.

<sup>4</sup> The right to protection of health.

<sup>5</sup> The right to social security.

<sup>6</sup> The right to social and medical assistance.

<sup>7</sup> The right to benefit from social welfare services.

<sup>8</sup> The right of persons with disabilities to independence, social integration and participation in the life of community.

<sup>9</sup> The right of the family to social, legal and economic protection.

<sup>10</sup> The right of children and young persons to social, legal and economic protection.

<sup>11</sup> The right of equal opportunities and equal treatment in matters of employment and occupation without discrimination on the ground of sex.

<sup>12</sup> The right of elderly persons to social protection.

<sup>13</sup> The right to housing.

the onset of poverty and social exclusion is the primary concern for those who drafted Article 30 of the Charter. This provision contains various undertakings of the social policy scope. The Committee *Charte-Rel*<sup>14</sup> views that the complex, multi-faceted approach to poverty and social exclusion will strengthen the legal protection of social rights guaranteed by other provisions of the Charter.<sup>15</sup>

### *Situation of the Member States that have ratified the Revised European Social Charter*

Article 30 of the Charter obligates authorities of Member States the following: to coordinate, promote and execute social programs fighting against poverty and social exclusion as well as to supervise over the measures taken to execute such programs and when necessary to adapt them to changing situations. Introducing this new provision into the Charter, the Council of Europe and its Member States tried to deduce whether life in poverty or in social exclusion is in conflict with human dignity. The Committee is of the opinion that the provision in question obligates Member States to the following: to priorities social policies, which deal with fighting against poverty and social exclusion; to take measures, which will enable all or make it easier for all, regardless of their social status to take advantage of the available social rights; to monitor the actions taken in order to encourage authoritative bodies, state and local administration, non-governmental institutions, stakeholders, charity organizations, representatives of social interest groups the execution of programs fighting poverty and social exclusion. Amongst the range of obligations placed on Member States by Article 30 of the Charter, authorities of these states must integrate their actions in eradicating poverty and social exclusion.<sup>16</sup> Measures initiated by Member States should promote the effective access to social rights, especially the right to employment, housing, education, training, cultural benefits and social and medical assistance. Measures are taken by authorities of Member States to promote information about social rights, to fight socio-cultural barriers by making use of such rights, as well as to improve the procedures, which would make

<sup>14</sup> See: Council of Europe/Conseil de L'Europe, Committee of Ministers/Comité des Ministres CMD006891 Strasbourg, 30 October 1991, Restricted CM(91)188F or consideration at the 465<sup>th</sup> and 467<sup>th</sup> meetings of the Ministers' Deputies (November and December 1991), Council of Europe Ministerial Conference on The European Social Charter (Turin, 21 and 22 October 1991), Secretary General's SUMMARY REPORT prepared by the Directorate of Human Rights.

<sup>15</sup> F. Vandamme, *The Revision of the European Social Charter*, "International Labour Review" 1994, no. 133, Issue 5–6, p. 635 and following.

<sup>16</sup> Conclusions 2003, vol. 1, p. 214 (France); p. 335 (Italy); Conclusions 2003, vol. 2, p. 548 (Slovenia); p. 644 (Sweden).

such undertakings more efficient.<sup>17</sup> The provision in question does not mention about the obligation of providing financial assistance to those in need. Provisions Article 12 and 13 of the Charter, mentioned earlier, already fulfill such necessary obligations. Actions, which should be undertaken by the authorities of Member States, may, although should not have to, cause financial burdens for a particular Member State.

*The legal relationship between Article 30 of the Charter and other provisions of the revised Charter protecting social rights*

Article 30(b) of the Charter has a general, complicated, dynamic legal nature. It obligates Member States to review, as far as it is possible, the anti social exclusion measures and to adopt them to the current situation<sup>18</sup>. The introduction of this clause, which obligates the authorities of Member States to react to the changes in the social and economic situations, also obligates to create institutions, which would monitor such social processes on a national, regional and city scale.<sup>19</sup> Authorities of Member States organise and finance such observations of social change and processes. Such observations are made by administrative bodies, by non-governmental institutions, by stakeholders, by research institutions as well as by representatives of social groups who are marginally excluded. Member States have elected similar monitoring measures to control anti social exclusion programmes, despite the fact that the reasons for the regulation contained within Article 30 of the Charter decide on the type of institutional organisation monitoring the social processes. Member States called upon observers of social change and processes. Analysing the reports about the functioning of such observers, the Committee demanded information concerning the following: the tendencies evolving into poverty and social exclusion, the professional qualifications of persons fighting poverty and social exclusion, the social groups and categories most affected by poverty and social exclusion and practices and coordination of anti social exclusion social programmes. The Committee wants to deduce what specialist branches of society may be used best to work out a general, coordinated and effective social policy to fight poverty and social exclusion.<sup>20</sup> Examining the reports presented by the authorities of

<sup>17</sup> *Ibidem*.

<sup>18</sup> D. Harris, J. Darcy, *The European Social Charter* (Procedural Aspects of International Law Monograph Series, Vol. 25), Transnational Publishers, Ardsley, NY 2002, p. 280 and following.

<sup>19</sup> J. Niessen, *Diversity and Cohesion: New Challenges for Integration of Immigrants and Minorities*, Council of Europe. Directorate of Social Affairs and Health, Council of Europe Publishing, Strasbourg 2000

<sup>20</sup> A.M. Świątkowski, *Charter of Social Rights of the Council of Europe* (*Studies in Employment and Social Policy*), Kluwer Law International, AH Alphen aan den Rijn 2007, p. 321 and following.

Member States, which have ratified the provision in questions, the Committee has concentrated on measuring social pathology (poverty and social exclusion). It examines whether social programmes utilised are appropriate to the current social conditions. It monitors whether Member States are abiding by their obligations under Article 30 of the Charter and pays close attention to whether member state actions are indeed “adequate”.<sup>21</sup> Article 30 of the Charter obligates authorities of Member States to ensure the effective exercise of the right to protection against poverty and social exclusion. The basic principles of the understanding of “poverty” and “social exclusion” in the provision in question are defined within a document explaining the legal regulations introduced to the RESC.<sup>22</sup> Poverty is a state, which affects people within a generation cycle of welfare benefits as well as individuals who are temporarily placed in a difficult financial situation.<sup>23</sup> Member states usually measure poverty by the income had by an individual, whose financial situation is compared to the monthly remuneration average. The poverty boundary is met when the monthly income is less than 50%<sup>24</sup> or 60%<sup>25</sup> of the average. In support of the above indicator some Member States take into consideration unconditional factors to establish the state of poverty. In France people who are earning less than or equal to 560 Euros per month are included into the “poverty” category. Each additional dependent adult residing with the person of the said earnings is taken into consideration when analysing the poverty level, with a deduction of half of the above earning. Children under the age of 14 are taken into consideration with a measuring of 0.3 of the 560 Euros earnings. A family comprised of two adults and two children with a monthly income of less than 1184 Euros is considered to be living in poverty.<sup>26</sup> “Social exclusion” or “marginalization” are interchangeable terms when describing marginal poverty for those who have found themselves in such a situation due to unfortunate circumstances unable to access social security entitlements. Such terms are also used to describe persons who do not find themselves in poverty, however have somehow become devoid of certain social rights and services due to long term illness, family break-up, violence, imprisonment and/or addictions (alcohol, drugs).<sup>27</sup> Authorities of Member States are examining whether various indicators of individual situations exasperated by financial difficulties, consumption restrictions, delayed payments and

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<sup>21</sup> *Ibidem*.

<sup>22</sup> Explanatory report to the 1988 Additional Protocol..., *op. cit.*, p. 174.

<sup>23</sup> *Ibidem*.

<sup>24</sup> Conclusions 2003, vol. 1, pp. 214–215 (France).

<sup>25</sup> *Ibidem*, p. 336 (Italy).

<sup>26</sup> *Ibidem*, p. 215 (France).

<sup>27</sup> A.M. Świątkowski, *Charter of Social Rights...*, *op. cit.*, p. 323.

problems with housing, should be included into the social exclusion category.<sup>28</sup> During the first supervisory cycle of Member States abiding by the obligations set under Article 30 of the Charter, the Committee examined the reports of four states.<sup>29</sup> In all cases the Committee adjourned its decision and demanded further information from the authorities of member states, dealing with the coordination of various social programs introduced in order to fight poverty and social exclusion. The Committee is of the opinion that the primary goal of Article 30 of the Charter is not to introduce separate social programs to ensure those who are socially excluded or in poverty social rights, but to adapt such social programs to the needs of those living in poverty. The obligation of the authorities of Member States is to identify the deprived social groups as well as the geographical regions where there is a concentration of poverty and a high level of social exclusion. The authorities of Member States that ratified Article 30 of the Charter should present in their reports to the Committee that they are able to coordinate various social programs addressed to various categories of persons regarded as socially excluded and show such programs can eradicate poverty. As was mentioned earlier, no Member State (not even Sweden where there is only 9% of the population living under the poverty line, the lowest in Europe – much lower than the 15% existing within the initial 15 EU members<sup>30</sup>) has been able to achieve a positive ruling about the compliance of the international standards under Article 30 of the Charter. In the reports, Member States present a variety of incentives to improve the situation of particular social groups. These include the elderly, the disabled, the ill, women, young persons and ethnic minorities. Separate provisions of the Charter protect social rights of these groups and the social categories. As was already mentioned, the Committee does not demand a doubling up effect of measures taken by the authorities of Member States to enable the said social groups gain rights ensured by the Charter. It demands the provision of information detailing the methods incorporated to organize, by the authorities of Member States, various social policy sectors to achieve the effects mentioned in Article 30 of the Charter and gain an “overall and coordinated approach” to poverty and social exclusion, the most severe aspects of social pathology<sup>31</sup>. France and its many, well prepared, appropriately

<sup>28</sup> Conclusions 2003, vol. 1, p. 215 (France).

<sup>29</sup> France, Italy, Slovenia and Sweden. Two other states in this cycle (Bulgaria and Romania) did not file reports, as they did not ratify Article 30 of the Charter.

<sup>30</sup> Conclusions 2003, vol. 2, p. 645.

<sup>31</sup> A.M. Świątkowski, *Europejskie standardy ochrony przed ubóstwem, marginalizacją społeczną i bezdomnością (art.30 i 31 Zrewidowanej Europejskiej Karty Społecznej)*, [in:] *Polska bieda w świetle Europejskiego Roku Walki z Ubóstwem i Wykluczeniem Społecznym*, ed. H. Kubiak, Oficyna Wydawnicza KAAFM, Kraków 2012, p. 173 and following.

funded<sup>32</sup> and positively regarded social programs, was close to receiving a positive ruling. Despite the reduction in unemployment levels, the state institution called upon to monitor the level of poverty and the scale of social exclusion, concluded, that the above programs in a small way limited the scale of poverty. The positive outcomes were noted in the case of social groups affected by the lowest level of social exclusion.<sup>33</sup> The Committee came to the conclusion that the small effects of the large-scale social programs indicate France's inability to undertake measures as an "overall and coordinated approach" with regards to the impeding social issues of poverty and social exclusion.

Article 30 adds a new dimension to the Charter by enabling the Committee to monitor the whole machinery set in place by Member States to combat poverty and social exclusion, a combat to which many other rights contribute. Unfortunately only 16 of the 43 States Parties have accepted Article 30 and of these 14 were examined in 2013. Under Article 30 the Committee noted that poverty rates generally increased during the reference period in the 14 Member States examined; a development which is no doubt attributable to growing income inequality in recent decades and particularly after the onset of the economic crisis in 2007–2008. In some countries the levels of poverty and social exclusion are extremely high. In respect of Ukraine and Italy, for example, the Committee did not find it demonstrated that the Government had implemented an overall and coordinated approach to combating providing for measures which were adequate to the extent of the poverty problem. In respect of Belgium, France and Italy the Committee examined the follow-up to decisions in collective complaints in which these two countries had been found to be in violation of Article 30, either alone or in conjunction with Article E, the non-discrimination clause of the Charter. For France the Committee concluded that the housing policy for the poorest categories of the population remained insufficient and that there were still restrictions on the right to vote for certain citizens in violation of Article 30.<sup>34</sup> As regards Italy the Committee upheld its finding that there was discriminatory treatment with regard to the right to vote or other forms of citizen participation for Roma and Sinti (this being a cause of marginalization and social exclusion) concluding that the problem had not been remedied during the reference period. Emphasizing that living in poverty and social exclusion violates the dignity of human beings and hence the urgency of reducing and ending poverty, the Committee adopted a statement

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<sup>32</sup> During a period of 3 years expenses for programmes dealing with social exclusion reached 7.8 million Euros. Conclusions 2003, vol. 1, p. 216.

<sup>33</sup> *Ibidem*, p. 218.

<sup>34</sup> Activity Report 2013, p. 24.

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

In its examination of state reports for Conclusions 2013/XX-2, the European Committee of Social Rights noted a number of positive developments in the application of the Charter, either through the adoption of new legislation or changes to practice in the States Parties or in some cases on the basis of new information clarifying the situation as regards issues raised in previous examinations. Below follows a selection of examples<sup>35</sup>:

- Finland: A guarantee pension was introduced in March 2011 which as a result increased the income level of poor elderly people, especially women and immigrants.
- Norway: In 2008, the Government appointed the Allocations Committee to examine the development in income inequalities over time, what factors affect allocations and what measures can contribute to a more even distribution. The recommendations of the Committee are currently being followed up by Parliament. In 2011 a grant scheme was established to promote the development of social entrepreneurship and social entrepreneurs combating poverty and social exclusion.
- Slovak Republic: based on the objectives of the Europe 2020 strategy, the Slovak Republic has set a national objective including support for social inclusion through a reduction in the risk of poverty and social exclusion to lift at least 170 000 people out of the risk of poverty and exclusion by 2020.

The Committee has reiterated<sup>36</sup> that living in a situation of poverty and social exclusion violates the dignity of human beings and that Article 30 of the Revised Charter requires States Parties to give effect to the right to protection against poverty and social exclusion by adopting measures aimed at preventing and removing obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical

<sup>35</sup> Activity Report 2013, p. 28.

<sup>36</sup> Statement of interpretation on Article 30, Conclusions 2013, p. 33.

assistance.<sup>37</sup> Furthermore, the Committee has emphasized that these measures should not only strengthen entitlement to social rights but also improve “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”.<sup>38</sup> In this respect, in its decision on the merits of 19 October 2009 in *ERRC v. France*<sup>39</sup>, the Committee also emphasized the importance of dialogue with representatives of the civil society as well as persons affected by poverty and exclusion.<sup>40</sup> Based on these premises, the Committee in interpreting Article 30 has taken into account a set of indicators in order to assess in a more precise way the effectiveness of policies, measures and actions undertaken by States Parties within the framework of this overall and coordinated approach.<sup>41</sup> One of the key indicators in this respect is the level of resources that have been allocated to attain the objectives of the strategy, in so far as “adequate resources are an essential element to enable people to become self-sufficient”.<sup>42</sup> In addition, the main indicator used to measure poverty is the relative poverty rate, which is set at 60% of the equivalised median income. The at-risk-of-poverty rate before and after social transfers is also used as a comparative value to assess national situations, without prejudice to the use of other suitable parameters that are taken into account by national anti-poverty strategies or plans, e.g. indicators relating to the fight against the ‘feminization’ of poverty, the multidimensional phenomena of poverty and social exclusion, the extent of ‘inherited’ poverty. This interpretation plays a very important role in a context of economic crises. From this perspective, the Committee has stated in the General Introduction to Conclusions XIX-2 (2009) on the repercussions of the economic crisis on social rights, that, while the “increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increase while tax and social security contribution revenues decline”, by acceding to the Charter, the State Parties have accepted to pursue by all appropriate means, the attainment of conditions in which inter alia the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realized.

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<sup>37</sup> Statement of interpretation on Article 30, Conclusions 2003.

<sup>38</sup> Statement of interpretation on Article 30, Conclusions 2005.

<sup>39</sup> Complaint No. 51/2008.

<sup>40</sup> *Digest of the case law of the European Committee of Social Rights. Appendix*, Council of Europe Publishing, 31 August 2015, p. 274.

<sup>41</sup> Activity Report 2013, p. 32–33.

<sup>42</sup> Statement of interpretation on Article 30, Conclusions 2003.

Accordingly, it has concluded that the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most. Moreover, the Committee has concluded that “what applies to the right to health and social protection should apply equally to labour law and that while it may be reasonable for the crisis to prompt changes in current legislation and practices in one or other of these areas to restrict certain items of public spending or relieve constraints on businesses, these changes should not excessively destabilise the situation of those who enjoy the rights enshrined in the Charter”.<sup>43</sup> The Committee also considers necessary to recall that “the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact”.<sup>44</sup> In light of this approach, it considers that assessments of the Committee concerning Article 30, like those concerning the other substantial provisions of the Charter, must be based on this human rights approach, which has been recently reaffirmed by the Guiding Principles on extreme poverty and human rights<sup>45</sup> and which has consistently been applied by the Committee.<sup>46</sup> In particular, the Committee has interpreted the scope of Article 30 as relating both to protection against poverty (understood as involving situations of social precarity) and protection against social exclusion (understood as involving obstacles to inclusion and citizen participation), in an autonomous manner or in combination with other connecting provisions of the Charter.<sup>47</sup> Concerning the first dimension, the Committee has focused on poverty as involving “deprivation due to a lack of resources”<sup>48</sup>, which can arise *inter alia* from the failure of States Parties to fulfill the obligation “to ensure that all individuals have the right of access to health care and that the health system must be accessible to the entire

<sup>43</sup> *GENOP-DEI and ADEDY v. Grèce*, Complaint No. 65/2011, decision on the merits of 23 May 2012, § 17.

<sup>44</sup> *International Commission of Jurists v. Portugal*, Complaint No. 1/1999, decision on the merits of 9 September 1999, § 32.

<sup>45</sup> Submitted by the United Nations Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, and adopted by the United Nations Human Rights Council on 27 September 2012, Activity Report 2013, p. 33.

<sup>46</sup> *COHRE v. Italy*, Complaint No. 58/2009, decision on the merits of 25 June 2010, § 107, Defense for Children; *International v. The Netherlands*, Complaint No. 69/2011, decision on the merits of 23 October 2013, § 81. Digest of the case law of the European Committee of Social Rights. Appendix, 31 August 2015, p. 274.

<sup>47</sup> Activity Report 2013, p. 34.

<sup>48</sup> Statement of interpretation on Article 30, Conclusions 2005.

population”<sup>49</sup>; to provide a minimum income to persons in need<sup>50</sup>, or to adopt a coordinated approach to promoting effective access to housing for persons who live or risk living in a situation of social exclusion.<sup>51</sup> Concerning the second dimension, the Committee has held that “Under Article 30, States have the positive obligation to encourage citizen participation in order to overcome obstacles deriving from the lack of representation of Roma and Sinti in the general culture, media or the different levels of government, so that these groups perceive that there are real incentives or opportunities for engagement to counter the lack of representation”.<sup>52</sup> The Committee had also already considered that “[...] the reference to the social rights enshrined in Article 30 should not be understood too narrowly. In fact, the fight against social exclusion is one area where the notion of the indivisibility of fundamental rights takes a special importance. In this regard, the right to vote, as with other rights relating to civic and citizen participation, constitutes a necessary dimension in social integration and inclusion and is thus covered by Article 30”.<sup>53</sup> These two dimensions of Article 30, poverty and social exclusion, constitute an expression of the principle of indivisibility which is also contained in other provisions of the Charter (for example, enjoyment of social assistance without suffering from a diminution of “political or social rights”, Article 13). In this context, by reaffirming this human rights approach, the Committee emphasizes the very close link between the effectiveness of the right recognized by Article 30 of the Charter and the enjoyment of the rights recognized by other provisions, such as the right to work (Article 1), access to health care (Article 11), social security allowances (Article 12), social and medical assistance (Article 13), the benefit from social welfare services (Article 14), the rights of persons with disabilities (Article 15), the social, legal and economic protection of the family (Article 16) as well as of children and young persons (Article 17), right to equal opportunities and equal treatment in employment and occupation without sex discrimination (Article 20), the rights of the elderly (Article 23) or the right to housing (Article 31),

<sup>49</sup> *DCI v. Belgium*, Complaint No. 69/2011, decision on the merits of 23 October 2012, § 100; violation of Article 11.

<sup>50</sup> *ERRC v. Bulgaria*, Complaint No. 48/2008, decision on the merits of 18 February 2009; violation of Article 13.

<sup>51</sup> *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, § 169–170; violation of Articles 30 and 31 (the right to housing).

<sup>52</sup> *COHRE v. Italy*, Complaint No. 58/2009, decision on the merits of 25 June 2010, § 107; violation of Article E in conjunction with Article 30.

<sup>53</sup> *ERRC v. France*, Complaint No. 51/2008, decision on the merits of 19 October 2009, § 99. Digest of the case law of the European Committee of Social Rights, Appendix, 31 August 2015, p. 274.

without forgetting the important impact of the non-discrimination clause (Article E), which obviously includes non-discrimination on grounds of poverty.<sup>54</sup> Consequently, together with the indicators mentioned above, when assessing the respect of Article 30, the Committee also takes into consideration the national measures or practices which fall within the scope of other substantive provisions of the Charter in the framework of both monitoring systems (the reporting procedure and the collective complaint procedure). This approach does not mean that a conclusion of nonconformity or a decision of violation of one or several of these provisions automatically or necessarily lead to a violation of Article 30<sup>55</sup>; but such a conclusion or decision may, depending on the circumstances, be relevant in assessing conformity with Article 30. Indeed, the conclusion reached by the Committee on the existence of one or several violations of these provisions should not be conceived as an exception which confirms the existence of a generally satisfactory overall and coordinated approach, but rather as a substantial weakness affecting an essential pillar of the fundamental obligations of States Parties contained in Article 30 in relation to protection against poverty and social exclusion. As the adequacy of housing, reduction of homeless and affordable housing is concerned Andorra and Finland were in conformity with this provision of the Charter<sup>56</sup>. In the reporting cycle of 2017, the system of supervision over compliance by the European Committee of Social Rights with European standards guaranteeing the right to protection against poverty and social margin, three European Union countries (Belgium<sup>57</sup>, Ireland<sup>58</sup> and Italy<sup>59</sup>) and one non-EU country (Ukraine<sup>60</sup>) were recognized as non-compliance with the above standards on the same grounds justifying the issuance of a negative conclusion. This basis is the lack of an adequate overall and coordinated approach to combating poverty and social exclusion. In Irish case the secretariat of the ECSR explained that in reaching its conclusion of non-conformity the ECSR had taken into account not only that poverty rates had remained more or less unchanged during the reference period despite a context of economic growth, but also the severe criticism of the second National Action Plan for Social Inclusion expressed by certain national institutions such as the Irish Human Rights Commission and by civil society organizations such as the European Anti-Poverty Network as well as the

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<sup>54</sup> Activity Report 2013, p.35.

<sup>55</sup> *EUROCEF v. France*, Complaint No. 82/2012, decision on the merits of 19 March 2013, § 59.

<sup>56</sup> Activity Report 2019, p. 36.

<sup>57</sup> Activity Report, Governmental Committee, p. 115, 118.

<sup>58</sup> *Ibidem*.

<sup>59</sup> *Ibidem*, p. 118, 121.

<sup>60</sup> *Ibidem*, pp. 121–122.

ECSR's findings of non-conformity for Ireland in respect of other provisions of the Charter, which are crucially linked to the combat against poverty, such as Articles 12 and 13. The Irish representative reiterated that the ECSR's conclusion was unfounded and based on unclear criteria and excessive interpretative zeal on the part of the ECSR. She was of the view that the ECSR's interpretation of Article 30 went way beyond a strict reading of the terms of this provision and in particular she considered it inadmissible that the ECSR relied on conclusions under other provisions of the Charter when it was clear that the provisions of the Charter set out discrete obligations in separate articles.

The Secretariat recalled that the ECSR's approach was dynamic and teleological, having regard to the object and purpose of the Charter and to contemporary conditions, as was the case for other human rights treaty bodies. The Governmental Committee took note of the information provided and decided to await the next assessment of the ECSR. It also proposed that the scope of the obligations following from Article 30, and notably with respect to links with other provisions of the Charter be the subject of discussion/clarification with the ECSR at the next joint meeting of the two Committees, Governmental and European.

### *Legal assessment of the position of the European Committee of Social Rights on the legal guarantee of protection against poverty in Europe*

The European Committee of Social Rights warned Member States that the poverty level in most EU Member States was far too high and that the measures taken to remedy this issue were insufficient. Under Article 30, States have the obligation to provide adequate protection against poverty and social exclusion to all persons in need, both their own nationals as well as nationals of Member States lawfully resident within their territory, on an equal footing. Despite the beautiful tradition of caring for the citizens of Council of Europe Member States, protection against poverty and social exclusion is not properly secured. There are several factors behind this. The first one has its origin in the legal structure of article 30 of the RESC. The above norm seems to duplicate the legal guarantees formulated in other provisions of RESC mentioned in this Article. For this reason, the ECSR and the authorities of the Member States of the Council of Europe try to formally establish the material content of the right to protection against poverty and social marginalisation. Article 30 of the RESC requires Member States to act within a general and coordinated approach. The authorities of these countries should do so in order to promote effective access by the poor, the exhausted or at risk of finding themselves in such a situation. This type of formulation and the resulting legal structure refer to each

case listed in other provisions of the Charter – Article 1 and following, and not only the powers listed and generally formulated in Article 30 of the RESC. The mentioned norm does not provide the poor and excluded people with specific subjective rights. The right to work regulated in Article 1 of the ZEKPS also does not have the status of a subjective right. So it cannot be effectively investigated. With what claim and against whom, the Member State has the right to effectively bring an excluded person? A poor person can petition for benefits, a sick person for admission to a hospital, a homeless person for a flat. These guarantees granted by the relevant provisions of the Charter are also not considered by some Member States as subjective rights that can be claimed in a court of law. The low level of legal protection of people excluded from society is largely due to the imprecise definition of who and what should be granted as support and the omission of legal measures that could be effectively used to demand supplementing by institutions designated by state authorities dealing with the protection of the rights of the poor and excluded. The social rights have to be also fully addressed by EU law as well as other global international organizations. There is a unique instrument that can help do that: the obligations contained in European case-law which set positive obligations on Member States to fulfill the right to protection against poverty and social exclusion. For many years, not only the European Court of Human Rights and the European Committee of Social Rights of the Council of Europe, but also the UN Committee on Economic, Social and Cultural Rights, and the Court of Justice of the European Union, have issued decisions on the exact meaning of social rights. These decisions can and should be used as a resource to uphold and promote social rights in Europe. The European Committee of Social Rights sets out that when the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State party must take measures which allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources.

*De lege lata*, European Member States must: 1) adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter; 2) maintain meaningful statistics on needs, resources and results; 3) undertake regular reviews of the impact of the strategies adopted; 4) establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage; 5) pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable. This model should be adopted in terms of the promotion of the Charter of Fundamental Rights in the context of combating

poverty and social exclusion within the European Pillar of Social Rights. *De lege ferenda*, the experience not only of some Member States of the Council of Europe but also of the United States of America should be used. Constructing a model of protection of people in need, construct the concept of an enabling state which helps citizens to help themselves make become the basis of a synthesis of American freedom and European security.<sup>61</sup>

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<sup>61</sup> J. Alber, *Recent Developments of the German Welfare State: Basic Continuity or a Paradigm Shift?*, [in:] *Changing Patterns of Social Protection* (International Social Security series, Vol. 9), eds. N. Gilbert, R.A. Van Voorhis, Transactions Publishers, New Brunswick (US) – London (U.K.) 2017, p. 9 and following.

**Abstract**  
**Council of Europe overall strategy to fight against poverty**

The poverty level in European Member States is far too high and the measures taken to remedy this issue were insufficient. The goal of Article 30 of the Revised European Social Charter (RESC) of 1996 is to obligate Member States to organise cohesive social policy concepts to fight poverty and social marginalisation. The European Committee of Social Rights (ECSR) concluded that the situation of some European countries is not in the conformity with the Article 30 of the Charter on the ground that there is no adequate overall and coordinated approach to combating poverty and social exclusion. The Parties which ratified the RESC must undertake measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance. European Member States and European international organisations (Council of Europe and European Union) must adopt the necessary legal, financial and administrative devices of ensuring steady progress towards achieving the goals laid down by the RESC. In his paper, the author presents the level of involvement of the authorities of some Member States of the Council of Europe in an ambitious, difficult and indispensable policy of achieving the above-mentioned task.

**Key words:** Council of Europe, European Committee of Social Right, monitoring, poverty, revised European Social Charter, social exclusion, social human rights