**DIRECTORATE OF SOCIAL RIGHTS, HEALTH AND ENVIRONMENT**

DEPARTMENT OF SOCIAL RIGHTS

**Re: Input to the study on care and support, pursuant to HRC resolution 54/6**

We refer to the call for inputs for a comprehensive thematic study on the human rights dimension of care and support, pursuant to HRC resolution 54/6.

We would like to emphasise that the European Social Charter (“ESC” or the “Charter”), the Council of Europe treaty that guarantees social and economic rights, contains extensive protection of the rights of children, older persons and persons with disabilities, women’ rights and gender equality. It also sets out standards that provide for just conditions of work and gender equality for all workers, including maternity and parental leave, equal pay for work of equal value, safe and healthy working conditions, fair remuneration, protection against harassment in the world of work, including sexual harassment, the right to organise and the right to organise and bargain collectively.

More specifically, the European Committee of Social Rights (“ECSR” or the “Committee”), the expert body who is monitoring the implementation of the European Social Charter, has interpreted and established through its jurisprudence[[1]](#footnote-1) (“decisions” in collective complaints and “conclusions” on the basis of national reports) the content of Charter rights and States’ obligations in relation to the following:

1. **Older persons**

In its decisionin *Association of Care Giving Relatives and Friends v. Finland*, the ECSR found that there was a violation of Article 23 of the Charter (the rights of older persons to social protection) on the ground that the legislation allowed practices that led to a part of the older population being denied access to informal care allowances or other alternative support (Association of Care Giving Relatives and Friends v. Finland, Complaint No. 70/2011, decision on the merits of 4 December 2012). The Committee recalled that the lack of uniformity in the services provided for older persons throughout Finland resulting from differences in the funding of such services by municipalities does not as such violate Article 23 of the Charter. However, the fact that the legislation allows practices leading to a part of the older population being denied access to informal care allowance or other alternative support constitutes a violation of this article (Association of Care Giving Relatives and Friends v. Finland, *op*. *cit*., §60).

In another decision in *The Central Association of Carers in Finland v. Finland*, the ECSR found that that there was a violation of Article 23 of the Charter on the ground that insufficient regulation of fees for service housing and service housing with 24-hour assistance combined with the fact that the demand for these services exceeded supply:

* created legal uncertainties to older persons in need of care due to diverse and complex fee policies. While municipalities may adjust the fees, there are no effective safeguards to assure that effective access to services is guaranteed to every older person in need of services required by their condition;
* constituted an obstacle to the right to “the provision of information about services and facilities available for olde persons and their opportunities to make use of them” as guaranteed by Article 23b of the Charter (The Central Association of Carers in Finland v. Finland, Complaint No. 71/2011, decision on the merits of 4 December 2012).

1. **Persons with disabilities**

In its decision in *International Federation of Human Rights (FIDH) v.**Belgium*, the Committee considered that the shortage of care solutions and of social services adapted to the needs of persons with severe disabilities caused many families to live in precarious circumstances, undermining their cohesion. According to the Committee, this amounted to a lack of protection of the family as a unit of society, in breach of Article 16 of the Charter (the right of the family to social, legal and economic protection) (International Federation of Human Rights (FIDH) v. Belgium, Complaint No. 75/2011, decision on the merits of 18 March 2013, §§182-187).

In its decision in *European Disability Forum (EDF) and Inclusion Europe v. France*, held that the shortage of support services and the lack of accessibility of buildings and facilities and public transport, cause many families to live in precarious circumstances, and thus amount to a lack of protection of the family, in violation of Article 16 of the Charter (European Disability Forum (EDF) and Inclusion Europe v. France, Complaint No. 168/2018, decision on the merits of 19 October 2022, §§304-310).

The Committee considered, in its assessment under Article 15§3 of the Charter, that the right of persons with disabilities to social integration and participation in the life of the community was violated because of the failure of the authorities to adopt effective measures within a reasonable timeframe to remedy the long-standing problems related to inadequate access to support services, including financial support, and access to buildings and facilities for the general public, to housing and to public transport. For the Committee, the lack or inadequacy of the measures taken so far obliges highly dependent persons, including persons with disabilities, to live with their families, with potentially far-reaching negative implications for the family’s living circumstances. For many family members, their devotion to a family member with disabilities and their efforts to provide care needed by that family member affect their professional activities. Amongst other things, there is evidence of caregivers having to give up their jobs or to reduce their working hours in order to be able to provide the support needed (European Disability Forum (EDF) and Inclusion Europe v. France, *op*. *cit*., § 309).

1. **Children**

In its decision in *European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic*, the ECSR has stressed that it had already had occasion to emphasise that the long-term care of children outside their home should take place primarily in foster families suitable for their upbringing, and only if necessary, in institutions (Conclusions XV-2, Statement of Interpretation on Article 17§1). It has also stressed that placement must be an exceptional measure, and is only justified when it is based on the needs of the child, namely if remaining in the family environment represents a danger for the child. In all circumstances, appropriate alternatives to placement should first be explored, taking into account also the views and wishes expressed by the parents of the child and other members of the family (Conclusions 2011 (XIX-4) Statement of Interpretation on Articles 16 and 17) (European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic, Complaint No. 157/2017, decision on the merits of 17 June 2020, §141).

In this case, the Committee found a violation of Article violation of Article 17 of the 1961 Charter (the right of children to social and economic protection) on the ground that the Government had failed to take significant and targeted steps to deinstitutionalise the existing system of early childhood care, and to provide young children with services in family-based and community-based family-type settings; the ECSR also found that the Government had also failed to take measures to ensure the appropriate protection and care services needed by Roma children and children with disabilities under the age of 3 (European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic, *op*. *cit*., §§165 and 175).

1. **Women and gender equality**

The European Social Charter guarantees the right of men and women to equal opportunities and equal treatment in matters of employment and occupation without discrimination (Articles 4§3 and Article 20 of the Charter).

The European Committee of Social Rights (ECSR) adopted [15 decisions](https://www.coe.int/en/web/european-social-charter/-/the-decisions-on-the-merits-in-university-women-of-europe-uwe-v-belgium-bulgaria-croatia-cyprus-czech-republic-finland-france-greece-ireland-italy-the)on state compliance with the right to equal pay, as well as the right to equal opportunities in the workplace, following complaints which were lodged within the framework of the collective complaints procedure by the international NGO University Women Europe (UWE). The decisions concerned 15 States which have accepted the collective complaints procedure (Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden). The decisions were adopted by the ECSR on 5 and 6 December 2019 and became public on 29 June 2020. 14 out of the 15 States were found to be in violation of one or more of the below-mentioned aspects of the obligation to guarantee the right to equal pay and the right to equal opportunities in the workplace.

The decisions identify clear and strong standards in the field of equal pay and, more precisely, they require that the right to equal pay has to be guaranteed in law ([UWE Decisions Factsheet](https://rm.coe.int/uwe-decisions-factsheet-en/16809ede22)). The ECSR has identified the following obligations for States:

* To recognise the right to equal pay for equal work or work of equal value in their legislation;
* To ensure access to effective remedies for victims of pay discrimination;
* To ensure and guarantee pay transparency and enable pay comparisons;
* To maintain effective equality bodies and relevant institutions in order to ensure equal pay in practice.

Moreover, Article 8 of the Charter guarantees the right of employed women to protection of maternity. For example, Article 8§1 of the Charter recognises the rights of employed women to maternity leave and to employment benefits. Article 8 Charter provides also protection against dismissal (Article 8§2), sufficient time off for employed mothers who are nursing their infants (8§3), protection in the case of night work (8§4) and work of dangerous, unhealthy, or arduous nature (8§5) for pregnant women, women who have recently given birth or who are nursing their infant.

The European Social Charter also guarantees in Article 27 the right of workers with family responsibilities to equal opportunities and treatment. Under this provision, 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. Article 27§2 requires States Parties to provide the possibility for either parent to obtain parental leave, as an important element for the reconciliation of professional, private and family life. The duration and conditions of parental leave should be determined by States Parties.

1. The DIGEST of the case law of European Committee of Social Rights contains a detailed presentation of the case law in relation to all provisions of the European Social Charter: [Updated Digest of the case law of the European Committee of Social Rights - Social Rights (coe.int)](https://www.coe.int/en/web/european-social-charter/-/updated-digest-of-the-case-law-of-the-european-committee-of-social-rights) [↑](#footnote-ref-1)