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Eleveld, Anja; Katrougalos, George

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3. The right to social security and social assistance in the 'case law' and conclusions of the Social Rights Committee

Anja Eleveld and George Katrougalos

I. INTRODUCTION

The European Social Charter is, arguably, one of the most comprehensive and extensive international instruments of protection of social rights.[1] It explicitly protects the right to social security in Article 12, in association with the right to social assistance in Article 13. The 43 ratifying states are obliged to maintain an adequate social security system and to provide assistance to people who are is unable to secure such minimum resources of subsistence either by their own efforts or from other sources, such as benefits under a social security scheme.

The right to social assistance has not been enshrined in many other international treaties. Article 34 of the Charter of the Fundamental right of the European Union can be seen as an exception in this respect. It should be noted, however, that Article 34 only applies when Member States implement EU law (e.g. in situations where EU citizens have moved between EU Member States). Furthermore, while Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) refers to the right to a decent standard of living, it does not provide a right to social assistance benefits. Lastly, while the European Convention of Human Rights (ECHR) does not explicitly include a right to social assistance or a minimum means of substance, the case law of the ECtHR has shown that under conditions of extreme poverty and/or vulnerability, ratifying states may be obliged to offer protection in order to safeguard a life with human dignity.

In this chapter we will consider the right to social security and social assistance enshrined in the ESC as a fundamental human right, through the lens of human dignity, As such, we will focus on two situations where people are particularly at risk of being deprived of living a life with human dignity. In the first place the situation where people lose their minimum benefits or are being denied access to a social benefit because they do not comply with conditions

[1] For an overview of the Charter see K Lukas, *The Revised European Social Charter, An Article by Article Commentary* (Elgar Commentaries Series 2021); M D'Amico, G Guiglia (eds), *European Social Charter and the Challenges of the XXI century* (Edizioni Scientifiche Italiane 2014); O De Schutter, M Sant'Ana, 'The European Committee of Social Rights', in Gauthier de Beco (ed), *Human Rights Monitoring Mechanisms of the Council of Europe* (Routledge 2012); M Mikkola, *Social Human Rights of Europe* (Legisactio 2010); M Swiatkowski, *Charter of Social Rights of the Council of Europe* (Kluwer Law International 2007); R Brillat, 'The European Social Charter and Monitoring its Implementation', in N Aliprantis (ed), *Les droits sociaux dans les instruments européens et internationaux* (Bruylant 2008); JF Akandji-Kombe and S Leclerc (eds), *La Charte sociale européenne* (Bruylant 2001); D.J Harris and J Darcy, *The European Social Charter* (Trans-national Publishers 2001).

related to the acceptance of a job or training offer. In the second place, the situation where people lack (the right) residence status.

This chapter is organised as follows. Section II explains the supervisory system of the ESC. Section III examines the right to social security and social assistance stipulated in Articles 12 and 13 of the ESC and specifically focuses on the adequacy of the social security and social assistance system and the conditions related to the acceptance of a job and training offered in these systems under the ESC. Section IV analyses the rights of migrants under the ESC. Section V examines the reduction of the levels of protection by adverse legislative interventions by e.g. restricting the access of migrants or by imposing work conditions. The final section examines challenges regarding the effectiveness of the ESC in ensuring the right to social security and social assistance in the ratifying state, thereby taking account of the content of other international treaties that imposes obligations with regard to minimum subsistence rights on ratifying states.

II. THE SUPERVISORY SYSTEM

The supervisory system of the ESC does not provide for immediate sanctions in cases of violation. Its main supervisory mechanism entails the assessment of national reports and a procedure of collective complaints. Both mechanisms are explained briefly in this section.

The European Social Charter stipulates the obligation of the states to submit reports to the European Committee of Social Rights (ECSR) (hereafter also: 'the Committee'), a supervisory organ composed of 15 experts elected by the Committee of Ministers for six years and assisted by an observer from the International Labour Organisation. Another body of supervision with overlapping competence is the Governmental Committee, which is composed of representatives of the governments of all Member States and has to present a report to the Committee of Ministers. The ESCR examines the reports submitted by the states party to the Charter and makes a legal assessment of states' observance of their obligations. Subsequently, the Governmental Committee prepares the decisions of the Committee of Ministers and in particular selects, on the basis of social, economic and other policy considerations, those situations which should be the subject of individual recommendations addressed to the Contracting Parties concerned. Finally, the Committee of Ministers, the supreme organ of the Charter, adopts a resolution for the supervision cycle as a whole and issues non-binding recommendations to states, inviting them to change their legislation or practice.[2]

Currently, states have to present a report annually on a part of the provisions of the Charter, which is related to one of the four thematic groups: employment, social protection, labour rights, family protection and immigrants. In this way, each provision of the Charter will be reported on once every four years.

The most innovative mechanism, although failing short to ascertain a full jurisdictional procedure, is the establishment by a Protocol of 1995 of a procedure of collective complaints,

[2] Two thirds of the present Members States are needed to issue a recommendation. See K Fuchs, (Head of the European, Social Charter Section of the Council of Europe) 'The European Social Charter: Its Role in Present-Day Europe and Its Reform', in Krzysztof Drzewicki, Catarina Krause and Allan Rosas (eds), *Social Rights as Human Rights: A European Challenge* (Åbo Akademi 1994), 151.

which enables trade unions, employers' organisations and accredited NGOs to refer violations of the Charter.[3] The complaints are not related to individual cases, but aim to redress situations harmful to social rights, through an assessment of legislation, rules or general practices rather than the concrete way in which those rules are being applied to a specific case.[4] Due to this character of the remedy, a complaint is, by derogation of international standards, admissible even without prior exhaustion of all domestic remedies.[5]

The mechanism of collective complaints constitutes undeniable progress in the monitoring of social and economic rights. The ECSR is inspired by the procedures used by the European Court of Human Rights, so as to relatively make up for its non-jurisdictional status. It is true that the control mechanism of the Charter has not led, up till now, to a protection of social and economic rights equivalent to the European Convention of Human Rights. Still, the ECSR has a 'case law' to be taken seriously. The Committee of Social Rights is a quasi-judicial body whose interpretation of the Charter is authoritative, though, according to the prevailing opinion, not legally binding on the State Parties.[6] After a decision contesting a violation of the Charter by national laws or practice, the Committee of Ministers of the Council of Europe can adopt a resolution or recommendation for its further application.

The ECSR, unlike the UN Committee on Economic, Social and Cultural Rights, does not supervise the Charter through 'General Comments', separate from the monitoring procedure and aiming to define, in abstract, the content and the scope of a right. Its 'case law' is developed, instead, based on the examination of the state reports and the evaluation of collective complaints. Based on them, it summarises its basic jurisprudence in its 'Conclusions', where it provides, in its introductory part, general interpretations of the Charter's provisions.

The Committee does not only examine the national protection of social rights *in abstracto*, but also evaluates its factual implementation, having therefore often recourse to technical reports and statistical data.[7] Hence, the beginning point is the assessment, from a legal standpoint, of the compliance of national law and practice with the Charter. Further,

> the Committee … considers, as the European Court of Human Rights has done with respect to the European Convention on Human Rights, that a teleological approach should be adopted when interpreting the Revised Charter, i.e. it is necessary to seek the interpretation of the treaty that is most appropriate, in order to realize the aim and achieve the object of the treaty, not that which would restrict to the greatest possible degree the obligations undertaken by the Parties.[8]

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[3] See D Harris, 'The collective complaints procedure', in Council of Europe, *The Social Charter of the 21st Century, Council of Europe* (Council of Europe Publishing 1997) 100; JF Akandji-Kombe, 'L'application de la Charte sociale européenne; la mise en œuvre de la procédure des réclamations collectives' (2000) *Droit social* 888.

[4] *SAIGI – Syndicat des Hauts Fonctionnaires v France* Complaint 29/2005 (ECSR, 14 June 2005).

[5] *European Roma Rights Centre v Bulgaria* Complaint 31/2005 (ECSR, 10 October 2005).

[6] L. Borlini and L. Crema, 'The legal status of decisions by human rights treaty bodies', in G. Ziccardi Capaldo (ed.), The global community Yearbook of International Law and Jurisprudence 2019 (Oxford Academic 2020).

[7] Cf. *ICJ v Portugal* Complaint 1/1998 (ECSR, 10 September 1999); *Syndicat national des professions du tourisme v France* Complaint 6/1999 (ECSR, of 10 October 2000).

[8] *ERRC v Greece* (ECSR, 8 December 2004); *CEDR v Bulgaria* (ECSR, 18 October 2006); *CEDR vs Italy* (ECSR, 7 December 2005); *CEDR vs Bulgaria*, (ECSR, 18 October 2006).

After all, the Charter is a 'human rights protection instrument' whose 'aim and purpose … is to protect rights, not merely theoretically but also in reality'.[9]

III. THE RIGHTS TO SOCIAL SECURITY AND SOCIAL ASSISTANCE UNDER THE CHARTER

In this section, we examine the content and scope of the right to social security and the right to social assistance as stipulated in Articles 12 and 13 ESC. Keeping in mind our focus on the objective of safeguarding a life with human dignity we will specifically consider the 'adequacy' of these rights and the conditions related to the acceptance of a job and training offer. Migrants' rights to social security and social assistance benefits will be addressed in more detail in Section IV.

III.i The Right to Social Security (Article 12 of the Charter)

Article 12 ESC stipulating the right to social security reads as follows:

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

(a) to establish or maintain a system of social security;
(b) 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;
(c) to endeavour to raise progressively the system of social security to a higher level;
(d) 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 12 ESC covers all aspects of social security, universal, occupational schemes, contributory, non-contributory and general schemes as well as special schemes. The first paragraph is the basic European social security provision on the right to social security.[10] It provides the material scope of the social security system, which should cover all traditional risks (health care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors' branches). The second paragraph obliges the states to maintain a social

[9] *International Commission of Jurists v Portugal* Complaint 1/1998 (ECSR, 10 September 1999).
[10] Lukas (2021) 173–184.

security system at a satisfactory level at least equal to that necessary for the ratification of ILO Convention No. 102, as a starting point for the content of social security or its standards. This means that the national social security system should cover at least three social risks. The third paragraph requires the states to ensure the progressive development of their social security systems. This implies, for example, that states should improve their systems regarding the scope and the level of protection. Finally, the fourth paragraph sets out the coordination rules of securing the social protection of movement of persons from one country to another, ensuring equal treatment of nationals who are lawfully resident or working regularly on the territory of a State Party (see further Section IV).

a An 'adequate' social security system

According to the case law of the Committee, each country is free to define its own social security system. The ESC intends neither to impose a common model, nor to harmonise social security legislation, but rather to lay down common minimum standards and more importantly a) the adequacy of social security and b) its inclusiveness, in the sense of universal coverage. According to the ECSR, an 'adequate system' is one which:

(a) covers the nine traditional contingencies, at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;
(b) is collectively funded and the state secures the viability of its funding;
(c) its conditions of entitlement are reasonable;
(d) loss of income is compensated in a timely manner;
(e) the minimum level of benefits is higher than the poverty threshold;
(f) the system's scope of persons includes the majority of workers and, as regards universal benefits, the whole population;
(g) there is a possibility of an appeal for a review of decisions concerning the allocation of social security benefits by an independent body and, ultimately, for decision by a fair trial.[11]

The objective of national social security systems should be to maintain the living standard reached by previous employment. According to paragraph 2 of Article 12, which makes reference to the European Code of Social Security (1964), the minimum level of social insurance benefits should not fall a) under 40–50% of previous income,[12] depending on the type of benefit, b) or below the subsistence level (the poverty threshold). The latter is defined according to the Eurostat concept of 'at-risk-of-poverty',[13] so as any income-substituting benefit paid should in principle amount to at least 50% of the country's net median equivalised household income per adult.[14] The Committee holds that countries are in compliance with this standard if the 50% threshold is in individual cases reached by combination of social security benefits and supplementary benefits of social assistance.

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[11] Mikkola (2010) 316.

[12] Bulgarian unemployment benefit, minimum pension and disability-pension; Lithuanian unemployment benefit and old age pension, Romanian agricultural workers' pension and Estonian unemployment support were considered to be manifestly inadequate as their levels were below 40% of the aforementioned equivalised net median income.

[13] *Conclusions, 2007, Belgium*, Article 30.

[14] *Conclusions XVII-4, Netherlands, Conclusions XVII-1.*

The Committee further maintains that the great majority of workers should be covered and, more specifically, health and maternity benefits in kind (services), child allowances and basic pension or minimum type of income for all the elderly should cover the whole population.[15] Moreover, it specified the scope of the state's positive obligation in relation to more vulnerable groups, considering that, due to their different situation, appropriate and targeted measures should be taken to efficiently protect them.[16]

b Conditions related to the acceptance of a job and training offer

Regarding eligibility criteria, conditions of entitlement to unemployment benefits have specifically received attention in the Conclusions of the ECSR. While the conditions for receiving unemployment benefits, such as the acceptance of a suitable job or training offer, are evaluated under the framework of Article 12, under certain circumstances the loss of benefits due to non-compliance with work-related conditions, are assessed under Article 1 (2) ECH, because this 'could amount, indirectly, to a restriction on the freedom to work'.[17] In 2012 the ECSR listed the circumstances under which a recipient of unemployment benefits cannot be obliged to accept a job under Article 1 (2) ESC. These criteria included accepting a job that (1) only requires qualifications or skills far below those of the individual concerned; (2) pays well below the individual's previous salary; (3) requires a particular level of physical or mental health or ability not possessed by the unemployed; (4) is located at a distance from the home of the person concerned which can be deemed unreasonable in view of the necessary travelling time and the transport facilities and; (5) requires persons with family responsibilities to change their place of residence.[18]

The ECSR has also asked contracting states questions regarding the offer of training and the loss of unemployment benefits in the context of Article 1 (2) ESC, but it has almost never examined compulsory trainings.[19]

Based on the ECSR reports Dermine concludes that there is a permeability between the ECSR case law related to social security and the right to freely chosen work. This implies amongst other things that recipients of unemployment benefits must have the right to refuse jobs during an initial period of unemployment.[20] However, as will be further explained later in the chapter, the right to refuse a job offer does not cover long-term unemployed who receive social assistance benefits.

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[15] *Conclusions XVI-1*, l0-ll, *Conclusion XVI-I*, *Introduction and XVII-II* country-by-country conclusions. Cf. Mikkola (2010) 315.

[16] Cf. *ERRC v Italy* Complaint 27/2004, decision on the merits of 7 December 2005, §21: 'equal treatment implies that Italy should take measures appropriate to Roma's particular circumstances to safeguard their rights'.

[17] *Conclusions XIX-I, Statement of Interpretation of Article* 1, p. II. Cf. E Dermine, 'International human rights case law on the right to freely chosen work', in E Dermine and D Dumont (eds), *Activation policies for the unemployed, the right to work and the duty to work*, PIE Peter Lang (2014) 168.

[18] *Conclusions 2012, Statement of interpretation of Article* 1, p. II; cf. Dermine (2014) 169–170.

[19] Dermine (2014) 168.

[20] Dermine (2014) 174.

IV. THE RIGHT TO SOCIAL ASSISTANCE (ARTICLE 13 OF THE CHARTER)

Although the ECSR has acknowledged that treaty states may qualify the same type of benefit either as a social assistance benefit or a social security benefit,[21] social assistance is usually seen as a part of the wider concept of social security. In this sense, Article 13 is supplementary to Article 12 providing for an ultimate security net and medical assistance for any person who is without adequate resources and who is unable to secure such resources by his own efforts or from other sources.[22] Article 13 stipulates:

> 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 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.

The first paragraph establishes a subjective right to social assistance for people in need, which is subjected to means-testing. The second paragraph ensures that an application for social assistance benefits does not deprive people of their right to vote and other democratic rights. The third paragraph stipulates that advice and assistance must be provided free of charge. The fourth paragraph extends the personal scope of Article 13 ESC to legally residing nationals from other contracting states (see further Section IV).

IV.i An Adequate Social Assistance System

The meaning of the 'adequacy of the social assistance system' has been further explained in the Conclusions of the ESCR and in the Complaint Procedures. In its statement on Article 13 ESC (1969), the ECSR held that 'the Contracting Parties are no longer merely empowered to grant assistance as they think fit; they are under an obligation, which they may be called on in court to honour'.[23] Hence, the Charter provides for a right to last resort to income support mechanisms with a universal character, i.e. not only to those excluded from the market,

[21] A Aranguiz, 'Bringing the EU up to speed the protection of living standards through fundamental social rights: Drawing positive lessons from the experience of the Council of Europe' (2021) 28(5) *Maastricht Journal of European and Comparative Law* 617.

[22] G Vonk and M Olivier, 'The fundamental right of social assistance: A global, a regional (Europe and Africa) and a national perspective (Germany, the Netherlands and South Africa' (2019) 21(3) *European Journal of Social Security* 219–240.

[23] ECSR, *Conclusions I, Statement of Interpretation of Article 13* p. I of the ESC, 1969.

but also to pensioners and their dependents, as well as the working poor, so that all can have their basic needs covered and guaranteed an adequate standard of living. It is complementary to Article 12, in the sense that the obligation to provide assistance arises as soon as a person is unable to obtain 'adequate resources' by other means, including social insurance, in order to live a decent life and 'meet basic needs in an adequate manner'.[24] Eligibility to social assistance benefits may also be necessary to guarantee sanctioned recipients of unemployment benefits a minimum income.[25] The Charter does not, however, embrace the principle of subsidiarity: Family solidarity is not regarded as an 'other source' of income where it appears as 'a moral value not legally defined'.[26]

The system of assistance must be universal in the sense that benefits must be attributed to 'any person' in need, as the basic criterion for eligibility.[27] Of course, this does not preclude specific benefits for the most vulnerable categories of the population.[28] A minimum age can be required, provided that young people receive appropriate assistance.[29] With regard to elderly persons, Article 13 is applied in association with Article 23, which provides for their right to social protection, especially with regard to the level of non-contributory pension, for the states having accepted this provision.

Social assistance is given as a human right,[30] when no social security benefit ensures that the person concerned has sufficient resources or the means to meet his basic needs, without any requirement of affiliation to a social security scheme aimed to cover a particular risk, or any requirement of professional activity or payment of contributions.[31] According to the Committee, 'the Contracting Parties are not merely empowered to grant assistance as they think fit; they are under an obligation which they may be called on in court to honour'.[32] Even if, under domestic law, local or regional authorities are responsible in the field of social assistance, the ultimate responsibility for implementation of official policy lies with the state. Twenty of the 34 State Parties to the revised ESC have accepted to be bound by all paragraphs of Article 13.

The Charter leaves room for discretion regarding the form of the social assistance provided, e.g. benefits in cash, in kind or services. Therefore, the introduction of a minimum income

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[24] Council of Europe, Digest of the case law of the European committee of social rights (2018) refers in this respect to the *Conclusions 2013, Bulgaria, Conclusions XIII-4, Statement of Interpretation on Article 13, p. I*, 1996*; Conclusions XIV-1*, *Portugal*, 1998.

[25] *Conclusions XV-I Italy*, on the Application of Article 1, p. II, 2000.

[26] See references in Digest of the Case law (2018): *Conclusions XIII-2, Greece 870*, 1994; *Conclusions 2009, France*.

[27] *Finnish Society for Social Rights v Finland* Complaint 88/2013, decision on the merits of 9 September 2014, §110.

[28] *European Roma Rights Centre (ERRC) v Bulgaria* Complaint 48/2008, decision on the merits of 18 February 2009, §38; *Conclusions X-2, Spain*, 1990; *Conclusions XIII-4*, Statement of Interpretation on Article 13, 1996.

[29] For example, age conditions required in Spain (25=) and the levels of social assistance benefits paid to persons under the age of 30 in Denmark did not comply with Article 13 ESC (*Conclusions XXI-2*, Denmark and Spain, 2017).

[30] M Dalli, 'The content and potential of the right to social assistance in light of Article 13 of the European Social Charter' (2020) *European Journal of Social Security* 22(1) 3–23; Lukas (2021) 185–198.

[31] *Conclusions XIII-4, Statement of Interpretation on Articles 12 and 13*, 1996; *Finnish Society for Social Rights v Finland* Complaint 88/2012, decision on the merits of 9 September 2014, §111.

[32] *Conclusions I, Statement of Interpretation on Article 13*, 1969.

system is not considered an obligation arising from Article 13 (1). Still, the lack of a general safety net could be considered a breach of the obligation of the universal coverage of the assistance, if no other schemes are provided.[33]

The law should set objective criteria, so as the right to be effective and judiciable and not leave the assessment of the state of need and the necessity of assistance entirely to the sole discretion of the administrative authority. This includes also the procedure and the methods used to investigate resources and needs[34] and it should be supported by an effective appeal procedure. Social assistance must be provided for as long as the situation of need persists and cannot therefore be subject to time-limits.[35]

The minimum amount of payments is linked to the average income of families in a country and the poverty threshold. In order to assess the level of assistance, the Committee calculates whether the income meets the poverty threshold at 50% of the median equivalised disposable income as calculated on the basis of the Eurostat at-risk-of-poverty threshold.[36] Assistance is appropriate where the monthly amount of assistance benefit is not manifestly below the poverty threshold in the above sense[37] for each member of the household.[38] In the absence of this indicator, the national poverty threshold is taken into account, i.e. the monetary cost of the household basket containing the minimum quantity of essential food and non-food items necessary for a decent living.[39] Nonetheless, it remains unclear how the poverty threshold of 50% should be measured.[40] It should also be noted that for many countries the ECSR considers the level of social assistance benefits inadequate.[41]

IV.ii Conditions Related to the Acceptance of a Job and Training Offer

The requirement imposed on recipients of social assistance benefits to seek employment or to receive vocational training is considered by the Committee in conformity with the Charter, in so far as such conditions are reasonable and proportional.[42] According to the Digest of the Case Law of the European Committee of Social Rights, reducing or suspending social assistance benefits can only be in conformity with the Charter if the conditions to seek employment or to receive vocational training are (1) 'reasonable and consistent with the aim pursued, that

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[33] Conclusions 2006, Moldova.

[34] Conclusions XIII-4, Statement of Interpretation on Article 13, 1996.

[35] *European Roma Rights Centre (ERRC) v Bulgaria* Complaint 48/2008, decision on the merits of 2009, §39.

[36] Conclusions XIX-2, Latvia, 2009. Also see the Digest of Case Law 2008, p. 99 and Mikkola (2010), p. 331.

[37] Conclusions 2004, Lithuania, *Finnish Society for Social Rights v Finland* Complaint 88/2012, decision on the merits of 9 September 2014, §113.

[38] Finnish Society for Social Rights v. Finland, Complaint No 88/2013, decision on the merits of 9 September 2014, §112; cf. Digest of the Case Law of the ECSR, 2018, p. 146.

[39] Conclusions 2009, Armenia.

[40] Mikkola (2010) 331.

[41] See A Eleveld, 'The European Pillar of Social rights and the instrumentalization of the right to adequate minimum income benefits', in T Bazzani and R Signer (eds), *Dealing with unemployment: Labour market policy trends* (Humboldt-Universität 2018) 115–117. Social assistance benefits may also be considered inadequate for certain groups.

[42] *Conclusions I, Statement of Interpretation on Article 13*, p. II; *Conclusions XIII-4, Statement of Interpretation on Article 13*, p. II.

is to say to find a lasting solution the individual's difficulties'; 2) do 'not deprive the person concerned of his/her means of subsistence' (at least emergency assistance should remain available); and 3) subject to the condition that it is 'possible to appeal against a decision to suspend or reduce assistance'.[43] With regard to the first point, the ECSR has clarified that it does not accept that social assistance benefits are rejected or withdrawn because of a failure to register with the competent employment service or to accept a job.[44] Also excluding from social assistance people who have been dismissed for serious misconduct is not in keeping with Article 13 (1).[45] Unfortunately, the case law of the ECSR does not provide further guidance as to when sanctions should be considered unreasonable, disproportional and inconsistent with the aims pursued.

The case law of the ECSR is clearer with regard to the second condition (i.e. the prohibition to deprive the person concerned of his/her means of subsistence). Apart from the availability of emergency assistance,[46] the case law of the ECSR suggests that the ECSR condones work-related sanctions in case social assistant legislation contains hardship clauses.[47] This is remarkable because the regulation of hardship clauses does not imply that persons concerned have *effective* access to emergency benefits. Moreover, in some states, in contrast to the general right to social assistance benefits laid down in Article 13 ECR, sanctioned recipients may only be able to successfully invoke hardship clauses where they are not able to rely on other resources, such as help from their family or loans.[48]

Whilst recipients of unemployment benefits have the right to refuse a job during an initial period of unemployment, under the ESC contracting states are allowed to make the right to social assistance entirely conditional upon the acceptance of a job or training offer. At the same time, however, from the questions posed by the ECSR to the contracting states (as part of the regular supervisory procedure), we may infer that the ECSR has sought to establish a balance between the obligation to participate in work programmes imposed on social assistance recipients and the general interest objective pursued by these programmes.[49] For example, under Article 1 (2) ESC the ECSR has asked questions regarding the severity and number of sanctions imposed on recipients who refuse to participate in these programmes.[50] The ECSR

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[43] Digest of the case law of the European Committee of Social Rights, 144 (2018), see, e.g. *Conclusions 2006, Estonia, Conclusions 2009, Estonia*.

[44] *Conclusions XIX-2, Luxemburg, 2010*; *Conclusions XX-2, Croatia, 2014*; *Conclusions 2017, Bulgaria*.

[45] *Conclusions XVI-1, Spain, 2003*; *Conclusions XVIII-1, Czech Republic, 2006*; *Conclusions 2013, Bosnia and Herzegovina*; *Conclusions 2013, Bulgaria*. Cf. A Eleveld 'The sanctions mitigation paradox in welfare to work benefit schemes' (2018) *Comparative Labor Law & Policy Journal* 39(2) 449–447.

[46] See Digest of the case law of the European Committee of Social Rights, 144 (2018) Law; also see *Conclusions 2017, Portugal*.

[47] *Conclusions XX-2, UK*; *Conclusions 2013, Lithuania*.

[48] For the UK, see M Adler, *Cruel, inhuman or degrading treatment? Benefit sanctions in the UK* (Palgrave Macmillan 2018). For the Netherlands, see A Eleveld and E Dermine, 'Het verbod op verplichte arbeid en het recht op vrije arbeidskeuze bij re-integratie en tegenprestatie', in A Eleveld (ed), *De Participatiewet. Een grondrechtenperspectief*, *Monografieën Sociaal Recht nr. 73* (Wolters-Kluwer 2018) 103.

[49] E Dermine 'The prohibition of forced labour and the right to freely chosen work', in A Eleveld, T Kampen and J Arts (eds), *Welfare to work in contemporary European Welfare States. Legal sociological and philosophical perspectives on justice and domination* (Policy Press 2020) 73–75. Also see Eleveld and Dermine (2018) 89–93.

[50] E.g. Conclusions XIV-1, Belgium, Italy and United Kingdom, 1998.

has also asked whether and to which extent social assistance recipients are allowed to refuse to participate in these programmes for reasons related to their physical, psychological or family situation[51] and to which extent these programmes take account of personal preferences, qualifications physical and intellectual abilities and transportation.[52] In addition, the ECSR has asked questions about the objective pursued by the programmes and its effectivity with regard to moving social assistance recipients into regular work. Hence, although the Digest of the case law suggests that states are allowed to impose work-related obligations on recipients of social assistance as long as these obligations are reasonable and do not deprive the recipients of minimum means of subsistence, the questions posed by the ESCR indicate that the imposition of work-related sanctions can be subjected to additional restrictions.

In sum, although the Charter does not predefine a code of work ethics, according to the prevailing conceptions, to opt either for an employment-oriented or 'post-productivist', 'decommodified' welfare regime,[53] the ECSR has, under Article 1 (2) ESC subjected welfare conditionality to a proportionality test. As such, contracting states are not entirely free to impose work-related obligations on recipients of social assistance benefits. In addition, it could be argued, more in general, that a national strategy, more intended to discipline and to make social rights instrumental to economic participation than to social citizenship, is against the prohibition of Article 13 (2), that persons receiving assistance shall not suffer from a diminution of their political or social rights.[54]

V. THE RIGHTS OF MIGRANTS

The previous section briefly examined the rights of migrants under Articles 12 (4) and 13 (4) ESC. These provisions stipulate that the Parties undertake to guarantee, in principle, equal treatment with their own nationals or the nationals of other Parties, and should be read together with the Appendix to the Charter regarding the scope of protection of the right to social security of foreigners. With respect to Article 1 of the ESC, the Appendix stipulates:

> Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned.

Hence, the textual interpretation of the Appendix indicates that the rights laid down in the Charter are guaranteed on an equal footing to those and only to those foreigners who are nationals of a contracting state and are either legally resident or regularly employed in the

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[51] E.g. Conclusions XIII-4, Germany, 1996.

[52] E.g. Conclusions XV-1, United Kingdom, 2000.

[53] RE Goodin**,** **'**Work and Welfare: Towards a Post-Productivist Welfare Regime' (2001) 31(1) *British Journal of Political Science* 13–39.

[54] Cf. A Kessler-Harris and M Vaudagna (eds), *Democracy and the Welfare State: The Two Wests in the Age of Austerity*, (Columbia University Press 2017); R Lister, 'Poor Citizenship: Social Rights, Poverty and Democracy in the Late Twentieth and Early Twenty-First Centuries', in A Kessler-Harris and M Vaudagna (eds), *Democracy and Social Rights in the 'Two Wests'* (OTTO editore 2009).

host state.[55] With regard to Article 12, the Appendix of the Charter further specifies that states may require the completion of a prescribed period of residence before granting immigrants social security benefits under Article 12 which are available independently of any insurance contributions (i.e. 'non-contributory benefits'), such as family benefits. The remainder of this section examines how the ECSR Conclusions and decisions in Complaint Procedures have further clarified the application of Articles 12 and 13 to non-nationals.

Since 2006 the ECSR has interpreted the equal treatment clause laid down in Article 12 (4) in the sense that the following principles must be guaranteed with respect to 'mobile' citizens of other State Parties: equal treatment, maintenance of accruing rights and retention of accrued rights. Equal treatment includes prohibition of direct discrimination (nationality requirement) and indirect discrimination (residence condition and length of residence requirement, employment requirements) for contributory benefits and non-excessive residence and length of residence requirement. According to the Committee's interpretation, Article 12 (4) further entails a right to maintenance of acquired rights comprising invalidity, old age, survivors', employment injury or disease, whatever the movements of the beneficiary. However, due to the particular nature of the unemployment benefit, which is a short-term allowance closely linked to trends in the labour market, its exportability is not a requirement under Article 12 (4a). The respective obligations must be fulfilled through bilateral agreements or any other means such as unilateral, legislative or administrative measures. The right to retention of accruing rights through aggregation of employment or insurance periods completed abroad must be fulfilled in similar ways, irrespective of any other multilateral social security agreement that might be applicable.[56]

With regard to the right to social assistance, the ECSR holds that a condition in respect of the length of residence in the country or part of its territory is not in keeping with Article 13 (1).[57] In addition, the Committee has considered that foreign nationals who are legally resident or regularly working in the contracting state cannot be deported solely on the ground that they are in need of social assistance, nor can their residence status be withdrawn because of this.[58] Migrants who are in an irregular situation of stay may instead come within the scope of Article 13 (1), albeit in a limited and exceptional way.[59] In this respect, the Committee has insisted on the complementary nature with the ECHR, in the sense 'the rights guaranteed by the Charter are not an end in themselves; rather they complete the rights enshrined in the Convention'.[60] For the Committee, then, the Charter should be considered as a 'counterpart' to the ECHR, since both instruments were conceived to serve the same purpose, namely the effective protection of human rights, and

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[55] For the protection of citizens of third, non-European countries, immigrants and stateless persons, crucial are the provisions of the European Convention on the Legal Status of Migrant Workers (1977), as well as the European Convention on Social Security, which ensures that the protection of the aforementioned categories is equal to the protection enjoyed by the citizens of the contracting states.

[56] *Conclusions XIII-4, Statement of Interpretation on Article 12* 45.

[57] *Conclusions XVI-1, Spain,* 2003*; Conclusions XVIII-1, Czech Republic*, 2006; *Conclusions 2013, Bosnia and Herzegovina; Conclusions 2013, Bulgaria.*

[58] Compare ECSR, *Conclusions XXI-2, Denmark,* 2017 and ECSR Conclusions 2017, Malta.

[59] *Conclusions XX-2, Statement of interpretation of on Article 13* p. I and *13* p. IV.

[60] *Complaint FIDH v France* Complaint 14/2003, decision on the merits, §27.

are both based on common values promoted by the Council of Europe.[61] This implies that any restrictions of the personal scope of the provisions of the Charter should not be read in such a way as to deprive foreigners coming within the category of unlawfully present migrants of the protection of the most basic rights enshrined in the Charter, or to impair their fundamental rights such as the right to life or to physical integrity or the right to human dignity.[62] In addition, the Committee has recognised that the Charter should so far as possible be interpreted 'in harmony with other rules of international law of which it forms part'.[63]

The most indicative decision of this trend is on a 2003 collective complaint *FIDH v France*, related to the right to health of an illegal migrant family with children, who had been denied medical treatment.[64] The decision asserted a right to health for the children, but not for the parents (except for life-threatening situations)[65] on an ethical rather than legal argument, according to which: 'Children following their parents but without the required permits could not be blamed and considered as illegal immigrants'.[66] Hence, their right to adequate health care services was grounded on Article 13 in conjunction with Article 17 of the Charter, which does not allow any requirements on the length of residence. According to the Committee, the restriction provided for in the Appendix affected 'a right of fundamental importance to the individual, since it is connected to the right to life itself and goes to the very dignity of the human being'.[67] Along the same line, the ECSR decided, in the case of *Autisme Europe v France* not to apply the distinction of the Appendix between nationals and non-nationals of Member States, when it is incompatible with the due respect to life and to human dignity.[68] In a series of subsequent decisions,[69] the Committee has used the same argumentation based on fundamental human rights, so as to reach a reasonable balance between the state's interest in contrasting illegal immigration and the protection of fundamental rights, even expanding it beyond individual cases, to vulnerable groups.[70] Hence, it can be concluded that the right to dignity enshrined in the ECHR has played an important role in the extension of the personal scope of Article 13.

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[61] Ibid.

[62] *Conclusions XX-2, Statement of interpretation of Article 13*, p.I and *13* p. IV.

[63] Complaint 69/2011, decision on the merits of 23 October 2012, § 28; *Defence for Children International v the Netherlands* Complaint 47/2008, decision on the merits of 20 October 2009, § 35.

[64] *FIDH v France* Collective Complaint 14/2003, decision of 5 September 2003, § 17–19.

[65] Ibid., § 33–34.

[66] Ibid. §§ 35–37.

[67] Ibid. §§ 30–31.

[68] *Autisme Europe v France* Collective Complaint 13/2002, decision on the merits of 4 November 2003.

[69] Decision on the merits of 20 October 2009, complaint 47/2008; *Defence for Children International (DCI) v the Netherlands* Complaint 86/2012, decision on the merits of 2 July 2014; European Federation of National Organisations working with the *Homeless (FEANTSA) v the Netherlands* Complaint 90/2013, decision on the merits of 1 July 2014.

[70] *Defence for Children International (DCI) v the Netherlands*, ibidem, §37.

VI. REDUCING LEVELS OF PROTECTION

We already saw that under Article 12 (3) the Charter prescribes that the contracting states are to raise progressively the system of social security to a higher level. Nonetheless, there may be circumstances which forces a state to decrease the level of social protection. An economic crisis may be one of these circumstances. The Committee has stressed in this regard 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 protection the most.[71]

In addition, in a series of collective complaints against Greece and its readjustment programmes imposed by its creditors,[72] the Committee considered that the reductions of pensions that have been introduced individually taken may be considered to be legitimate, but the cumulative effect of these restrictions brought about a significant degradation of the standard of living of the pensioners concerned.

Also, the introduction of work-related conditions or the restriction of legally residing migrants' rights may decrease the level of protection offered by the national system. This subsection examines under which conditions these kinds of limitations and/or restrictions of the right to social security and social assistance are allowed.

First, a restriction of the rights and principles laid down in the ESC should comply with Article G, based on which limitation of protection is possible only in cases of collision with other rights, or an important public interest, but only satisfying the following conditions:

a. The restrictions should be imposed by a law that is sufficiently clear, precise and predictable.
b. The restriction has to serve a legitimate purpose of public interest, national security, public health or morals.
c. The restriction also needs to be necessary in a democratic society for the pursuance of these purposes, i.e. that a restriction is a justifiable response to a 'pressing social need', bearing in mind that a restriction is permitted under Article G only in 'exceptional cases'.[73]

The Committee has in its Conclusions insisted on the following general conditions so as the limitations to be conforming with the Charter:[74]

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[71] General introduction to *Conclusions XIX-2*, 2009.

[72] *General Federation of employees of the national electric power corporation (GENOP-DEI)/ Confederation of Greek Civil Servants' Trade Unions (ADEDY) v Greece* Complaint 65/2011, decision on the merits of 23 May 2012, § 18, cf. also Complaints 78–80/2012.

[73] Also see Mikkola (2010) 79.

[74] *Conclusions XIII-4, XVI- 1, XVI-2 Introduction, Conclusions 2009, Ireland*; *Conclusions 2009, Finland*; *Conclusions 2009.* Regarding the implication of Article G for lowering benefits during times of economic crisis see Chapter 4 of the first edition of this *Research Handbook*.

a. The restrictions must not encroach on fundamental social human rights.
b. The goal of the reform should be to ensure the viability of the social protection system. Hence, short-term economic losses do not justify restrictions of the Charter's Rights.
c. Benefits may never fall below the minimum income level (poverty threshold).
d. The measures taken should not be discriminatory to any group of people and especially the more vulnerable ones.
e. The means and aims of the measures should be appropriate and reasonable.

Regarding the last point (the proportionality requirement), the Committee has considered that Contracting Parties that adopt a measure that restricts the rights that are protected by the ESC of 1961 should analyse the possible impact of this restrictive measure on the most vulnerable groups in the labour market. This implies *inter alia* that they have to consult those who are most affected by the measure.[75] Thus far, the requirement has only been referred to in the context of restrictions being made on the right to work, minimum wage and working time, dismissal protection, information and consultation in the workplace and collective bargaining during times of economic crisis. Whilst up until now, the ECSR has not applied Article G in the context of the right to social security and the right to social assistance, it is likely that the proportionality requirement also applies to the rights stipulated under Articles 12 and 13 ESC.[76] This means that, before the contracting party adopts any restrictive measure, such as limiting migrants' access to social security and social assistance benefits as well as making entitlement to benefits conditional on the participation in specific work programmes, a democratic debate must have taken place, involving the Parties affected by the measure.[77]

VII. CHALLENGES TO THE RIGHTS TO SOCIAL SECURITY AND SOCIAL ASSISTANCE

Previous sections have revealed some challenges regarding the objective to give full effectiveness to the Charter's provisions, especially when focusing on the objective to safeguard a decent standard of living or a life with human dignity for all people living in the contracting states.

First of all, we notice that it is not entirely clear how the threshold of 50% of the country's net median equivalised household income per adult is measured. Recent research calculates the poverty threshold by taking into account the replacement ratio mentioned in the European Social Security Code, the social security contributions and different family types.[78] In addition, Chapter 8 of this *Research Handbook* mentions the need for more individualised and transparent indicators which could consist of a combination of the at-risk-of-poverty threshold with baskets of goods and which ensures that these indicators are regularly adapted to the costs of living and that people have sufficient means of subsistence to live a life in dignity.

[75] Compare (regarding the restriction of A ECSR, *Greek General Confederation of Labour (GSEE) v Greece*, decision on the merits) 23 March 2017, Complaint 111/2014, § 80–91.
[76] Also see Mikkola (2010) 80.
[77] With respect to work related requirements compare Dermine (2020) 78–79.
[78] E de Becker et al, 'Working, yet poor. Comparative report on social security' (2022).

These indicators could be established in a collaboration between e.g. the state, non-governmental organisations, workers' representatives and social researchers.

In addition, it can be questioned whether all obligations imposed on benefit recipients can be assessed under Article 1 (2), as not all obligations affect the access to (freely chosen) work. For example, work-related obligations may be mainly imposed to deter people from asking for social benefits.[79] In that case, it could also be assessed whether these obligations can be classified as 'reasonable' conditions under Article 13 ESC. In addition, while the ECSR has clarified that recipients who do not comply with the obligations related to social benefits, should not be deprived of their means of subsistence, it is not clear how the Committee assesses whether the contracting states meet this requirement. For example, while the ECSR recommends the regulation of hardship clauses to guarantee access to minimum means of subsistence, the regulation of hardship clauses does not necessarily imply that these clauses are implemented in practice. Furthermore, thus far, the Committee has failed to explain *how* restrictive measures regarding the regulation of social security and social assistance benefits are subjected to the proportionality requirement enshrined in Article G. This is remarkable since governments have made access to social security and social assistance benefits increasingly dependent on the fulfilment of various (most times work-related) conditions.[80]

We also noted that the Charter only applies to irregular migrants and other vulnerable groups thanks to its complementary nature with the ECHR, which provisions, more explicitly than the ESC, respect the right to human dignity. The ECHR's s complementary nature with the Charter is important for another reason as well: despite the Canon adopted in the Vienna Declaration (1993) that all human rights are 'indivisible, interdependent and interrelated', many national jurisdictions still do not recognise the justiciability of the right to social security and social assistance laid down in Article 12 and 13 ESC,[81] and, in this line, consider that the Charter establishes merely objective obligations for the states and not subjective rights. In these jurisdictions reference to ECHR reinforces the normative content of the Charter.

Therefore, the rights laid down in Article 2 ECHR (the right to life) and Article 3 ECHR (the prohibition of torture and degrading treatment), which are considered justiciable rights, are particularly important for irregular migrants who do not have access to national assistance systems and who cannot invoke Article 12 and 13 ERC before the national courts. But also for nationals, these ECHR provisions may create a 'safety net under the safety net'.[82] However, considering the fact that the ECtHR only recognises a safety net under a safety net as a theoretical drawing line between life and death, we also believe that the Charter should offer more far-reaching obligations. First of all, under the ESC people should be entitled to a *subjective* right to a minimum means of subsistence. Second, irregular immigrants should be entitled to at least a right to emergency support.[83]

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[79] T Peck, *Workfare States* (The Guilford Press 2001).

[80] See e.g. the examples of the UK, the Netherlands and Denmark in A Eleveld, T Kampen and J Arts (eds), *Welfare to work in contemporary European welfare states. Legal, sociological and philosophical perspectives on justice and domination* (Policy Press 2020).

[81] Vienna Declaration and Programme of action. The world conference on human rights in Vienna, 25 June 1993.

[82] Vonk and Olivier (2019); cf. I Leijten, *Core Socio-Economic Rights and the European Court of Human Rights* (Cambridge University Press 2018).

[83] Compare European Federation of National Organisations working with the *Homeless (FEANTSA) v the Netherlands* Complaint 90/2013, decision on the merits of 1 July 2014.

We believe that there are other ways as well in which the Committee can encourage contracting states to fulfil the obligations resulting from Articles 12 and 13 ESC. For example, the Committee may apply the suggestion of the supervising body of the International Covenant on Economic, Social and Cultural Rights, the UN Committee on Economic, Social and Cultural Rights (CESCR), to encourage Contracting Parties to monitor effectively the realisation of the right to social security by developing action plans and identifying indicators which address the different elements of social security (e.g. adequacy, coverage, contingencies, affordability and accessibility).[84] Researchers may also contribute to encouraging contracting states' compliance, by, for example, sharing the research findings in these fields directly or indirectly (via e.g. NGOs and other civil society actors) with the ECSR. In this way engaging in human rights experimentalism,[85] researchers may actively contribute to the gradual determination and redetermination of the content of the right to social security and social assistance.

We also want to emphasise the relevance and importance of the ESC with regard to the right to social security and social assistance in ratifying states. The European Social Charter is not 'soft law'. From of formal point of view, it is an international treaty, with the same constitutional recognition as the ECHR. Materially, the ECSR insists on the interdependence of the Charter and the European Convention of Human Rights, trying to give substance to a uniform system of protection of human rights combining, on an equal footing, civil and political rights with economic and social rights. Besides its doctrinal virtue, this is clearly a strategy to strengthen the authority of its rulings and an effort to render them less questionable by states.[86] The common wisdom that ECSR refers to the case law of the ECtHR, but that the ECtHR does not refer back is no longer accurate. At present, the interference between the two instruments is more and more frequent, through an increasing number of cross-referencing.[87] The Court refers also to the Charter in order to define the respective scopes of the two conventions. However, it does not consider itself to be bound by the Committee's jurisprudence, although it is considering it 'particularly qualified' to provide an authoritative interpretation of the European Social Charter's provisions.[88]

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[84] General Comment No. 19, §§ 75–76.

[85] G De Burca, 'Human rights experimentalism' *American Journal of International Law* 2017, 111(2), 277–316; E Dermine and A Eleveld, 'Protecting working welfare recipients through human rights experimentalism' (2021) *International Journal of Law in Context;* CF Sabel, 'Rolling rule labor standards: why their time has come, and why we should be glad of it', in P Politakis (ed), *Protecting labour rights as human rights: present and future of international supervision* (2007). Proceedings of the International Colloquium on the 80th Anniversary of the ILO Committee of Experts on the Application of Conventions and Recommendations. Geneva: ILO, 257–272.

[86] See on that, for instance, *CFE/CGC v France* Complaint 16/2003, where the Committee concludes that 'its decisions constitute legally enforceable interpretations of the Charter'. Cf. T Chatton Gregor, 'L'harmonisation des pratiques jurisprudentielles de la Cour européenne des Droits de l'Homme et du Comité européen des Droits sociaux: une évolution discrète', in C Chappuis, B Bénédict Foëx, T Kadner Graziano (eds), *L'harmonisation internationale du droit* (Edition Schulthess 2008) 45.

[87] Cf. R Brillat, 'La Charte sociale européenne', in C Grewe (ed), *Les droits sociaux ou la démolition de quelques poncifs* (Presses universitaires de Strasbourg 2003) 83 ff.

[88] See Case of *the National Union of Railroad, Marine and Transport Workers v the United Kingdom* Applcation 31045/10, judgment of 8 April 2014, § 94: 'the ECSR's competence is to assess from a legal standpoint the compliance of national law and practice with the obligations arising from the Charter'. The interpretative value of the ECSR appears to be generally accepted by States and by the Committee of Ministers of the Council of Europe. Cf. D Harris, 'The Council of Europe: The European

The same is true regarding the Court of Justice of the European Union, which has relied on the European Social Charter in order to interpret the requirements of EU law.[89] Besides, the EU Member States have 'confirm[ed] their attachment to fundamental social rights as defined in the European Social Charter' in the 5th preambular paragraph of the Treaty on the European Union. Also, Article 13 has been an important source to Article 34 (3) of the EU Charter of Fundamental Rights which acknowledges the right to social assistance.[90] So, the least it can be expected by national courts is to interpret constitutional provisions in harmonisation with Articles 12 and 13 of the Charter. Along the same line and pending the question of accession of the EU to the Social Charter, the Court of Justice of the European Union should take into account the interpretation given by the ECSR, when interpreting the social provisions of the EU Charter of Fundamental Rights.

Finally, while we fully endorse the Committee's intention to interpret the Charter as 'a living instrument attached to certain values which inspire it: dignity, autonomy, legality and solidarity', whose 'aim is to protect effective and not theoretical rights',[91] we also hope to have shown that more action is needed in order to establish a new, European social citizenship that is based on human dignity and leading to a more fair, equitable and just society.[92] In that regard, further research on the (possible) interaction between Article 12 and 13 ESC with Articles 2 and 3 (and 8) EHRC, Articles 9 and 11 ICESCR and ILO Convention No. 102 and ILO Recommendation No. 202 that provides guidance to establish and maintain Social Protection Floors[93] is highly recommended.

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[89] Cf. Cases C-116/06, Sari Kiiski, judgment of 20 September 2007, §§ 48–49, C-268/06, Impact, judgment of 15 April 2008. See O de Schutter, 'The European Social Charter in the context of implementation of the EU Charter of Fundamental Rights, Study for the AFCO Committee' (2016) *European Parliament* 40 ff. https://www.europarl.europa.eu/RegData/etudes/STUD/2016/536488/IPOL_STU(2016)536488_EN.pdf.

[90] See the explanations relating to the Charter of Fundamental Rights (O.J. 2007/C 303/27).

[91] International Commission of Jurists against Portugal, complaint 1/98 decision on the merits of 9 September 1999 § 32, *Autism Europe* Complaint 13/2002, decision on the merits of 4 November 2003 §52, cf. JM Laralde, 'Charte sociale européenne et Convention européenne des droits de l'Homme', *in* JF Akandji-Kombe and S Leclerc (Eds), *La Charte sociale européenne* (Collection Rencontres européennes 2001) 136 ff.

[92] Cf. MA Moreau, *Normes sociales, droit du travail et mondialisation* (Dalloz 2006).

[93] T Dijkhoff, 'The ILO social protection floors recommendation and its relevance in the European context', (2019) 21(4) *EJSS* 351–369. Paragraph six of this recommendation explicitly refers to existing international obligations.

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