

# THE RIGHT TO HEALTH AND THE EUROPEAN SOCIAL CHARTER

March 2009

Information document prepared by the secretariat of the ESC<sup>1</sup>

The European Social Charter (ESC) complements the European Convention on Human Rights in the field of economic and social rights. It guarantees various fundamental rights and freedoms and, through a supervisory mechanism based on a system of collective complaints and national reports, ensures that they are implemented and observed by States Parties. It was recently revised and the 1996 Revised European Social Charter is gradually replacing the original 1961 Charter. The rights enshrined in the Charter concern housing, health, education, employment, social protection, the free movement of persons and non-discrimination.

In either its original version or its revised 1996 version, the Charter has been signed by all 47 member states of the Council of Europe and ratified by 40<sup>2</sup> of them.

The European Committee of Social Rights (ECSR) ascertains whether countries have honoured the undertakings set out in the Charter. The function of the ECSR is to judge the conformity of national law and practice with the Charter. Its fifteen independent and impartial members are elected by the Council of Europe's Committee of Ministers for a period of six years, renewable once.

The Charter has several provisions which guarantee, expressly or implicitly, the right to health. Article 11 covers numerous issues relating to public health, such as food safety, protection of the environment, vaccination programmes and alcoholism. Article 3 concerns health and safety at work. The health and well-being of children and young persons are protected by Articles 7 and 17. The health of pregnant women is covered by Articles 8 and 17. The health of elderly persons is dealt with in Article 23.

## Right to health

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<sup>1</sup> This document is not binding on the ESCR.

<sup>2</sup> For signatures and ratifications of the European Social Charter, see [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

The right to protection of health guaranteed in Article 11 of the Charter complements Articles 2 and 3 of the European Convention on Human Rights, as interpreted by the case-law of the European Court of Human Rights, by imposing a range of positive obligations designed to secure the effective exercise of that right<sup>3</sup>. Article 11 provides for a series of rights to enable persons to enjoy the highest possible standard of health attainable. These are reflected in:

- measures to promote health;
- health care provision in case of sickness.

## I. Health promotion

### A/ Prevention

#### Healthy environment

The ECSR acknowledges that overcoming pollution is an objective that can only be achieved gradually. States must nevertheless take measures to achieve this goal within a reasonable time, with measurable progress and making maximum use of available resources<sup>4</sup>. The measures taken are assessed with reference to their national legislation and regulations and undertakings entered into with regard to the European Union and the United Nations<sup>5</sup>, and in terms of how the relevant law is applied in practice.

#### *Air pollution*

In order to guarantee a healthy environment, states must therefore:

- develop and regularly update sufficiently comprehensive legislation and regulations in the environmental field<sup>6</sup>;
- take specific steps (such as modifying equipment, introducing threshold values for emissions, measuring air quality, etc.) to prevent air pollution at local level<sup>7</sup> and to help reduce it on a global scale (in accordance with the commitments entered into under the United Nations Framework Convention on Climate Change of 9 May 1992 (UNFCCC) and the Kyoto Protocol to the UNFCCC of 11 December 1997<sup>8</sup>);

<sup>3</sup> Conclusions XVII-2 and Conclusions 2005, Statement of Interpretation on Article 11§5.

<sup>4</sup> Marangopoulos v. Greece, Collective complaint no. 30/2005, decision on the merits of 6 December 2006, §§ 203 and 205.

<sup>5</sup> Conclusions XV-2, Italy, Article 11§3, pp. 307-308.

<sup>6</sup> Conclusions XV-2, Addendum, Slovak Republic, p. 201.

<sup>7</sup> Conclusions 2005, Moldova, Article 11§3, p. 453.

<sup>8</sup> Conclusions XV-2, Italy, p. 308.

- ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery that is both effective and efficient, i.e. comprising measures which have been shown to be sufficiently dissuasive and have a direct effect on polluting emission levels<sup>9</sup>;
- assess, systematically if necessary, health risks through epidemiological monitoring of the groups concerned.<sup>10</sup>

### *Nuclear hazards for communities living in the vicinity of nuclear power plants*

The dose limits fixed should be in accordance with the 1990 recommendations of the International Commission for Radiation Protection (ICRP). All states are required to protect their population against the consequences of nuclear accidents abroad<sup>11</sup>.

### *Risks relating to asbestos*

Article 11 requires states to ban the use, production and sale of asbestos and products containing it<sup>12</sup>. There must also be legislation requiring the owners of residential property and public buildings to search for any asbestos and where appropriate remove it, and placing obligations on enterprises concerning waste disposal<sup>13</sup>.

### *Food safety*

States must adopt national food hygiene standards with legal force that take account of relevant scientific data, and establish machinery for monitoring compliance with these standards throughout the food chain. They must develop, implement and up-date systematic prevention measures, particularly through labelling, and monitor the occurrence of food-borne diseases<sup>14</sup>.

They must also take preventive and protective measures concerned with water and noise pollution and – in the case of states which have not accepted Article 31 (right to housing) – the enforcement of public health standards in housing.

### *Tobacco, alcohol and drugs*

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<sup>9</sup> Marangopoulos v. Greece, collective complaint no. 30/2005, decision on the merits of 6 December 2006, §§ 203, 209, 210 and 215.

<sup>10</sup> Marangopoulos v. Greece, collective complaint no. 30/2005, decision on the merits of 6 December 2006, §§ 203 and 220.

<sup>11</sup> Conclusions XV-2, Denmark, pp. 131-132.

<sup>12</sup> Conclusions XVII-2, Portugal, p. 686.

<sup>13</sup> Conclusions XVII-2, Latvia, p. 502.

<sup>14</sup> Conclusions XV-2, Addendum, Cyprus, p. 32.

Special attention needs to be given to anti-smoking measures as smoking, the primary cause of preventable deaths in industrialised countries (in Europe 30% of cancer deaths can be attributed to tobacco), is associated with a broad range of diseases: cardio-vascular diseases, various types of cancer, lung diseases, and so on.

In order to be compliant with Article 11, any protection policy must place effective restrictions on the supply of tobacco through controls on production, distribution, advertising and pricing, etc.<sup>15</sup>. In particular, the sale of tobacco to young persons must be banned<sup>16</sup>, as must smoking in public places, including transport, and advertising on posters and in the press<sup>17</sup>. The effectiveness of such policies is assessed on the basis of statistics on tobacco consumption<sup>18</sup>.

This approach also applies *mutatis mutandis* to anti-alcoholism and drug addiction measures<sup>19</sup>.

### **Immunisation and epidemiological monitoring**

States must operate widely accessible immunisation programmes. They are required to maintain high coverage rates not only to reduce the incidence of these diseases, but also to neutralise the amount of virus and thus achieve the goals set by WHO to eradicate several infectious diseases<sup>20</sup>.

States must demonstrate their ability to cope with infectious diseases (arrangements for reporting and notifying diseases, special treatment for AIDS patients, emergency measures in case of epidemics, etc.)<sup>21</sup>.

### **Accidents**

States must take steps to prevent accidents. The three main sorts of accident covered are road accidents, domestic accidents and accidents which occur during leisure time (including accidents at school and those caused by animals)<sup>22</sup> and accidents at work. Trends in accidents at work are considered from the standpoint of health and safety at work (Article 3).

## **B/ Education and awareness-raising**

### **Personal behaviour**

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<sup>15</sup> Conclusions XVII-2, Malta, pp. 560-561.

<sup>16</sup> Conclusions XVII-2, Portugal, p. 499.

<sup>17</sup> Conclusions XV-2, Greece, p. 253.

<sup>18</sup> Conclusions XVII-2, Malta, pp. 560-561.

<sup>19</sup> Conclusions XVII-2, Malta, pp. 560-561.

<sup>20</sup> Conclusions XV-2, Belgium, p. 103.

<sup>21</sup> Conclusions XVII-2, Latvia, p. 504.

<sup>22</sup> Conclusions 2005, Moldova p. 457.

States are required to show, through concrete measures, that they have an appropriate policy in place to educate both the general population and groups affected by specific problems<sup>23</sup>.

These measures should be introduced to prevent activities that are damaging to health, such as smoking, alcohol and drugs, and to develop a sense of individual responsibility in areas such as diet, sexuality and the environment.

Health education must be provided throughout school life and form part of school curricula. After the family, school is the most appropriate setting for health education because the general purpose of education is to impart the knowledge and skills necessary for life.

Informing the public, particularly through awareness-raising campaigns, must be a public health priority. The precise extent of these activities may vary according to the nature of the public health problems in the countries concerned<sup>24</sup>.

### **Counselling and screening**

There should be free and regular counselling and screening for pregnant women and children throughout the country<sup>25</sup>.

Free medical checks must be carried out throughout the period of schooling. In addition, there should be screening, preferably systematic, for all the diseases that constitute the principal causes of death<sup>26</sup>.

## **C/ Regulation**

Public health policy must pursue the promotion of public health in keeping with the objectives laid down by the World Health Organization (WHO). National rules must provide for informing the public, education and participation.

### **Right to health at work**

The right of every worker to a safe and healthy working environment is a “widely recognised principle, stemming directly from the right to personal integrity, one of the fundamental principles of human rights”<sup>27</sup>. It applies to the whole economy, covering both the public and private sectors<sup>28</sup>.

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<sup>23</sup> Marangopoulos v. Greece, collective complaint no. 30/2005, decision on the merits of 6 December 2006, §§ 216 and 219.

<sup>24</sup> Conclusions XV-2, Belgium, pp. 96-99.

<sup>25</sup> Conclusions 2005, Moldova, p. 452.

<sup>26</sup> Conclusions 2005, Moldova, p. 452.

<sup>27</sup> Conclusions I, Statement of Interpretation on Article 3, p. 22.

<sup>28</sup> Conclusions II, Statement of Interpretation on Article 3, p. 12.

## **a) National policy**

Article 3§1 requires states to formulate, implement and periodically review a coherent national policy on occupational health and safety in consultation with employers' and workers' organisations<sup>29</sup>.

### **- General objective of national policy**

The main policy objective must be to foster and preserve a culture of prevention in the areas of health and safety at national level. Occupational risk prevention must be a priority. It must be incorporated into the public authorities' activities at all levels and form part of other public policies (on employment, persons with disabilities, equal opportunities, etc.)<sup>30</sup>.

The policy and strategies adopted must be regularly assessed and reviewed, particularly in the light of changing risks.

### **- Improvement of occupational health and safety (research and training)**

The methods used to increase general awareness, knowledge and understanding of the concepts of danger and risk and of ways of preventing and managing them must include<sup>31</sup>:

- training (qualified staff);
- information (statistical systems and dissemination of knowledge);
- quality assurance (professional qualifications, certification systems for facilities and equipment);
- research (scientific and technical expertise).

### **- Consultation with employers' and workers' organisations**

When devising and implementing national policies and strategies, the relevant authorities must consult trade unions and employers' organisations at national, sectoral and company level.

Consultation mechanisms and procedures must be set up. At national and sectoral level, this requirement is satisfied where there are specialised bodies made up of government, employers' and workers' representatives, which are consulted by the public authorities.

## **b) Implementing and supervising the application of regulations**

<sup>29</sup> Conclusions 2003, Statement of Interpretation on Article 3§1; see in particular ECSR, Conclusions 2003, Bulgaria, p.31.

<sup>30</sup> Conclusions 2005, Lithuania, p. 306.

<sup>31</sup> Conclusions 2003, Statement of Interpretation on Article 3§1: see in particular Conclusions 2003, Bulgaria, p. 31.

With a view to ensuring the effective exercise of the right to safe and healthy working conditions provided for in Article 3§4, the Parties undertake, in consultation with employers' and workers' organisations, to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions. The organisation and conditions of operation of these services must be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

All workers in all branches of economic activity and all companies must have access to occupational health services. These services may be run jointly by several companies<sup>32</sup>.

States are required to promote the progressive development of such services, which means that "a State Party must take measures that 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"<sup>33</sup>. If, therefore, occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose<sup>34</sup>.

## **Children's right to health**

Under Article 11 health education at school must be a priority of public health policy. It should be provided throughout schooling and should form part of the curricula. There should be a particular focus on smoking, drugs, alcohol abuse, nutrition and sex education. Medical services should exist at school and periodical medical examinations should be carried out throughout schooling<sup>35</sup>.

Immunisation programmes must be widely accessible and there must be high vaccination coverage rates<sup>36</sup>.

Health care must be available to all children without discrimination, including children of illegal or undocumented migrants<sup>37</sup>.

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<sup>32</sup> Conclusions 2003 and 2005, Statement of Interpretation 3§4, see for example Conclusions 2003, Bulgaria p. 37.

<sup>33</sup> See, *mutatis mutandis*, *Autism Europe v. France*, collective complaint no. 13/2002, decision on the merits of 4 November 2003, §53.

<sup>34</sup> Conclusions 2003 and 2005, Statement of Interpretation on Article 3§4.

<sup>35</sup> See, for example, *Belgium and France, ECSR, Conclusions XV-2*.

<sup>36</sup> See *Belgium and Turkey*, where the situation was found to be in breach of Article 11§3 owing to insufficient coverage rates for certain diseases (*ECSR, Conclusions XV-2*).

<sup>37</sup> See *International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003*.

## Women's right to health

The following rights concern more directly the mother but they also affect the unborn child.

### *i) right to maternity leave*

Article 8 (right of employed women to protection of maternity) of the Charter guarantees women a period of paid maternity leave; maternity leave of at least fourteen weeks should be guaranteed, six of which must be taken post-natally.

### *ii) right to maternity pay*

Maternity pay must be assured, either by social security benefits or from public funds. The obligation to guarantee maternity pay may only be fulfilled by the continued payment of a salary or through payment of a benefit equal to the salary or close to its value.

### *iii) Prohibition of dismissal during pregnancy*

The Charter prohibits dismissal from the time the working mother notifies her employer that she is pregnant until the end of her maternity leave.

### *iv) Right to health of the mother and maternal and infant health protection*

Under Article 11 (right to protection of health), states are required to bring infant and maternal mortality under control. All measures should be taken to obtain a result as close as possible to "zero risk". The Committee monitors maternal and infant mortality rates<sup>38</sup>.

Under Article 8 of the Charter, working mothers must be granted time off to nurse their babies. Such time off must be treated as normal working time and remunerated as such<sup>39</sup>.

## Elderly persons' right to health

States are required to adopt, either directly or in co-operation with public or private organisations, appropriate measures designed in particular to enable elderly persons to choose their life-style freely and to lead independent lives in

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<sup>38</sup> See conclusions in respect of Turkey, Bulgaria, Moldova and Romania where the Committee found the situation to be in breach of the Charter as the rate of maternal and/or infant mortality was too high (Conclusions XV-2 and Conclusions 2005).

<sup>39</sup> The Charter does not specify the length of time off nor the period during which it must be granted; the ECSR appraises each situation on its merits, therefore. In certain cases flexible working time (part time arrangements) may be sufficient if they are compensated.



their familiar surroundings for as long as they wish and are able, by means of the health care and the services necessitated by their state.

In the context of a right to adequate health care for elderly persons, Article 23 calls for the setting-up of health care programmes and services (in particular nursing and domiciliary care) specifically aimed at the elderly. In addition, there should be mental health programmes for any psychological problems in respect of the elderly and adequate palliative care services<sup>40</sup>.

## **II. Health care provision in case of sickness**

### **A/ Health care facilities**

Under Article 11, health means physical and mental well-being, in accordance with the definition of health in the Constitution of the World Health Organization (WHO), which has been accepted by all the Parties to the Charter<sup>41</sup>.

States must ensure the best possible state of health for the population according to existing knowledge. Health systems must respond appropriately to avoidable health risks, i.e. ones that can be controlled by human action<sup>42</sup>. The main indicators are life expectancy and the principal causes of death. These indicators must show an improvement and not be too far behind the European average<sup>43</sup>.

Infant and maternal mortality rates are another key indicator as to whether the health system as a whole is functioning well or not in a given country<sup>44</sup>. Since they are regarded as avoidable risks, every step should be taken, particularly in highly developed health care systems, to reduce these rates to as close to zero as possible<sup>45</sup>.

### **B/ Health care**

The system of health care must be accessible to the entire population. To that end, states should take as their main criterion for judging the success of health system reforms effective access to health care for all, without discrimination, as a basic human right<sup>46</sup>.

The right to access to health care implies:

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<sup>40</sup> Conclusions 2003, France, p. 189.

<sup>41</sup> Conclusions XVII-2 and Conclusions 2005, Statement of Interpretation on Article 11§5.

<sup>42</sup> Conclusions XV-2, Denmark, pp. 126-129; United Kingdom, p. 599.

<sup>43</sup> Conclusions 2005, Lithuania, pp. 336-338.

<sup>44</sup> Conclusions 2003, Romania, p. 390.

<sup>45</sup> Conclusions XV-2, Belgium, pp. 93-96; Conclusions 2003, France, p. 146.

<sup>46</sup> Conclusions XVII-2 and 2005, Statement of Interpretation on Article 11, §5.

- that the cost of health care should be borne, at least in part, by the community as a whole<sup>47</sup>;
- that health costs should not place an excessive financial burden on individuals. Steps must therefore be taken to reduce the financial burden on patients from the most disadvantaged sections of the population<sup>48</sup>;
- that arrangements for such access must not lead to unnecessary delays in its provision. Access to treatment should notably be based on transparent criteria, agreed at national level, that address the risk of deterioration both in clinical and quality of life terms<sup>49</sup>;
- the number of health care professionals and equipment must be adequate (the criterion is 3 beds per thousand population<sup>50</sup>).

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<sup>47</sup> Conclusions I, p. 59-60, Statement of Interpretation on Article 11; Conclusions XV-2, Addendum, Cyprus, pp. 26-28.

<sup>48</sup> Conclusions XVII-2, Portugal, pp. 680-683.

<sup>49</sup> Conclusions XV-2, United Kingdom, p. 599.

<sup>50</sup> Conclusions XV-2, Addendum, Turkey, p. 257.

**APPENDIX I**

**Please consult our web site to find further information on monitoring,  
the reporting procedure and the system of collective complaints**

**[www.coe.int/socialcharter](http://www.coe.int/socialcharter)**

## APPENDIX II

### Provisions from the (revised) Charter concerning the right to health

#### **Article 3**

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations:

1. to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;
2. to issue safety and health regulations;
3. to provide for the enforcement of such regulations by measures of supervision;
4. to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.

#### **Article 7**

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

1. to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
2. to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;
3. to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;

4. to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;
5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;
6. to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;
7. to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay;
8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;
9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;
10. to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

## **Article 8**

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

1. to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;
2. to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;
3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;
4. to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;
5. to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.

## **Article 11**

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed *inter alia*:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

### **Article 17**

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

- 1 a to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services adequate for this purpose;
- b to protect children and young persons against negligence, violence or exploitation;
- c to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;
- 2 to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

### **Article 23**

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

- to enable elderly persons to remain full members of society for as long as possible, by means of:
  - a adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;
  - b provision of information about services and facilities available for elderly persons and their opportunities to make use of them;
- to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:
  - a provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;
  - b the health care and the services necessitated by their state;
- to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.