WYDZIAŁ PRAWA
i ADMINISTRACJI
Uniwersytet Łódzki

Council of Europe standards on the limitation of social benefits, including in times of war

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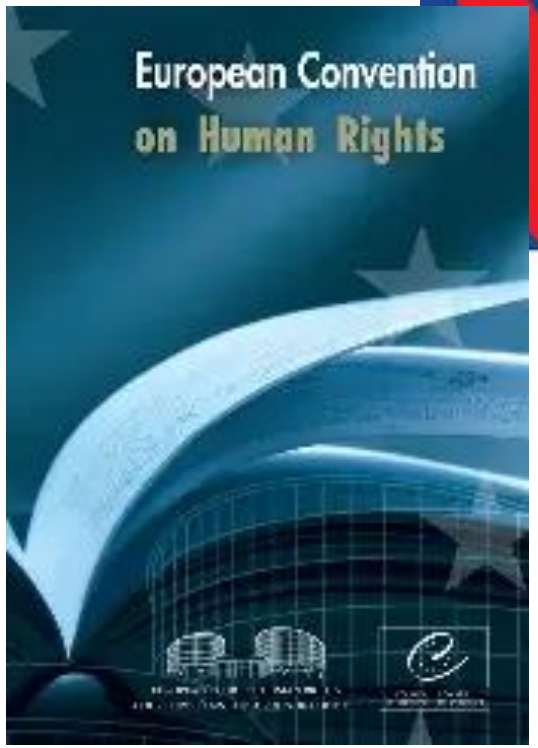
Introductory remarks – European Social Charter



- a Council of Europe treaty, the counterpart for the ECHR
- guarantees fundamental social and economic rights - a broad range of everyday human rights related to employment, housing, health, education, social protection and welfare
- emphasis on the protection of vulnerable persons
- the Social Constitution of Europe
- a living instrument that addresses current challenges

Introductory remarks – the European Committee of Social Rights

European Social Charter | Charte sociale européenne

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- **expert monitoring body**
- **monitors compliance with the Charter**
- **two complementary mechanisms: through collective complaints lodged by the social partners and other non-governmental organisations (Collective Complaints Procedure), and through national reports drawn up by Contracting Parties (Reporting System)**
- **procedure on non-accepted provisions**

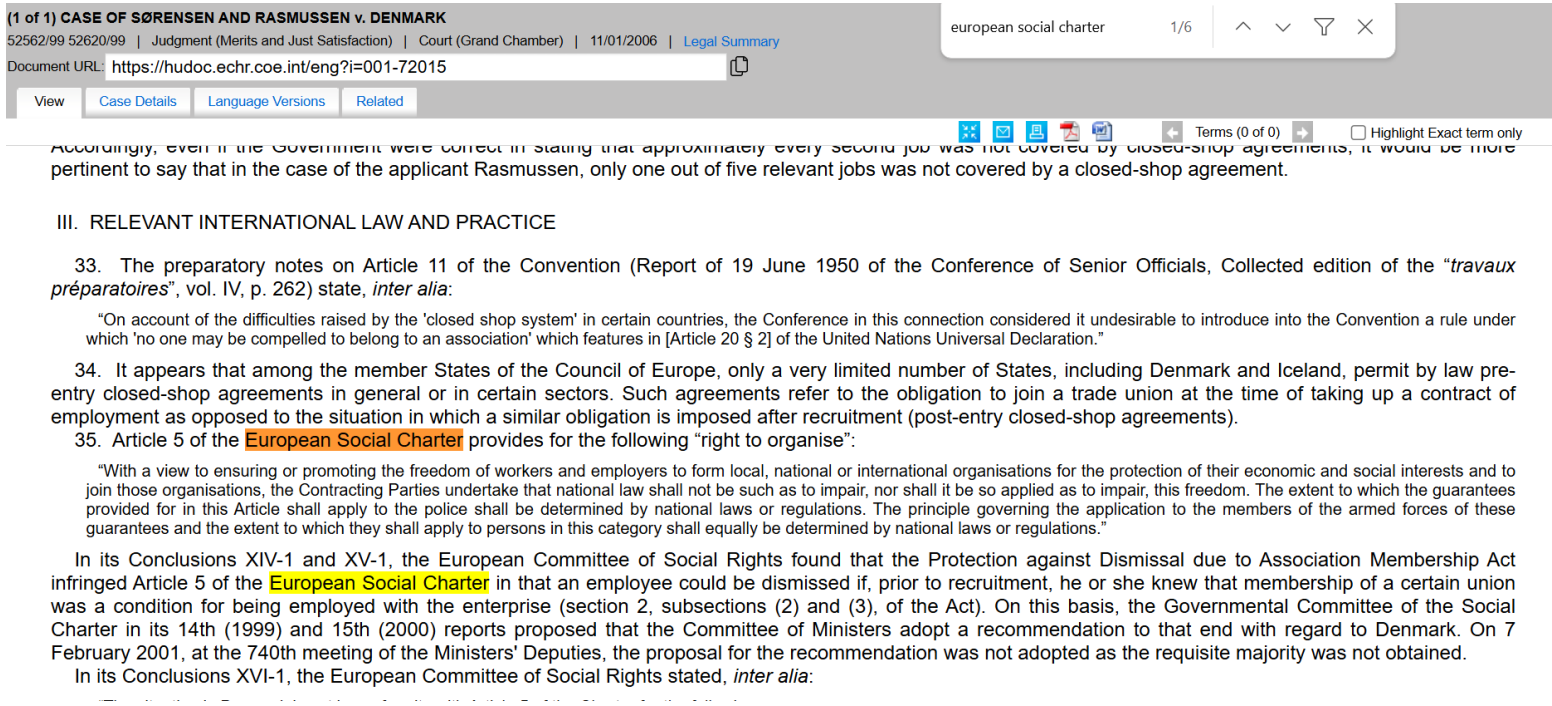
Introductory remarks – The link between the ECtHR and ECSR

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

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

ESC and the case-law of the ECSR is a point of reference for the ECtHR (e.g.):

- **CASE OF SØRENSEN AND RASMUSSEN v. DENMARK** (Applications nos. 52562/99 and 52620/99) – ECtHR's judgement of 11 January 2006



(1 of 1) CASE OF SØRENSEN AND RASMUSSEN v. DENMARK
52562/99 52620/99 | Judgment (Merits and Just Satisfaction) | Court (Grand Chamber) | 11/01/2006 | Legal Summary
Document URL: https://hudoc.echr.coe.int/eng?i=001-72015
View | Case Details | Language Versions | Related
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pertinent to say that in the case of the applicant Rasmussen, only one out of five relevant jobs was not covered by a closed-shop agreement.

III. RELEVANT INTERNATIONAL LAW AND PRACTICE

33. The preparatory notes on Article 11 of the Convention (Report of 19 June 1950 of the Conference of Senior Officials, Collected edition of the "*travaux préparatoires*", vol. IV, p. 262) state, *inter alia*:

"On account of the difficulties raised by the 'closed shop system' in certain countries, the Conference in this connection considered it undesirable to introduce into the Convention a rule under which 'no one may be compelled to belong to an association' which features in [Article 20 § 2] of the United Nations Universal Declaration."

34. It appears that among the member States of the Council of Europe, only a very limited number of States, including Denmark and Iceland, permit by law pre-entry closed-shop agreements in general or in certain sectors. Such agreements refer to the obligation to join a trade union at the time of taking up a contract of employment as opposed to the situation in which a similar obligation is imposed after recruitment (post-entry closed-shop agreements).

35. Article 5 of the European Social Charter provides for the following "right to organise":

"With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this Article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations."

In its Conclusions XIV-1 and XV-1, the European Committee of Social Rights found that the Protection against Dismissal due to Association Membership Act infringed Article 5 of the European Social Charter in that an employee could be dismissed if, prior to recruitment, he or she knew that membership of a certain union was a condition for being employed with the enterprise (section 2, subsections (2) and (3), of the Act). On this basis, the Governmental Committee of the Social Charter in its 14th (1999) and 15th (2000) reports proposed that the Committee of Ministers adopt a recommendation to that end with regard to Denmark. On 7 February 2001, at the 740th meeting of the Ministers' Deputies, the proposal for the recommendation was not adopted as the requisite majority was not obtained.

In its Conclusions XVI-1, the European Committee of Social Rights stated, *inter alia*:

Introductory remarks –
HUDOC and DIGEST

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- database of the case-law of the judicial and monitoring bodies of the CoE – including **The European Committee of Social Rights (HUDOC-ESC)**
  - https://hudoc.esc.coe.int
- **DIGEST OF THE CASE LAW OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS (2022)**
  - **https://rm.coe.int/digest-ecsr-prems-106522-web-en/1680a95dbd**

HUDOC
European Court of Human Rights

Social benefits under the ECHR and in the case-law of the ECtHR

IV. Social benefits and pensions[25]

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Article 8 of the Convention – Right to respect private and family life

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14 of the Convention – Prohibition of discrimination

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 1 – Right to property

"1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

2. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

- **Principles** which apply generally in cases concerning **Article 1 of Protocol No. 1 are equally relevant when it comes to welfare benefits** *(Andrejeva v. Latvia [GC], 2009, § 77).*
- In *Beeler,* the Court analyzed the **factors capable of bringing complaints concerning welfare benefits within the ambit of Article 8**, as they transpired from the more numerous cases where complaints of this kind had been examined under Article 14 in conjunction with Article 8 of the Convention. *(Beeler v. Switzerland [GC], 2022, §§ 61-62)*

Social benefits under the ESC and in the case-law of the ECSR

ESC guarantees **the right to social protection in many of its provisions**, especially by establishing:

- **the right to social security in Article 12,**
- **the right to social and medical assistance in Article 13**,
- **the right to benefit from social welfare services in Article 14**,
- the right of employed women to protection of maternity in Article 8,
- **the right of the family to social, legal and economic protection in Article 16**,
- the right of children and young persons to social, legal and economic protection in Article 17
- **the right to protection against poverty and social exclusion in Article 30**.

The said **provisions require positive action form the state both in times of peace and prosperity and in times of armed conflict and war**.

The limitation of social benefits in the case-law of the ECtHR - general

- Where **the suspension or diminution of a pension was not due to any changes in the applicant's own circumstances, but to changes in the law or its implementation, this may result in an interference with the rights under Article 1 of Protocol No. 1**. Accordingly, where the domestic legal conditions for entitlement to **any particular form of benefits or pension** have changed and where, as a result, the person concerned no longer fully satisfies them, a careful consideration of the individual circumstances of the case – in particular, the nature of the change in the conditions – may be warranted in order to verify the existence of a sufficiently established, substantive proprietary interest under the national law. *(Béláné Nagy v. Hungary [GC], 2016, §§ 86-89).*
- The Court has also attached **particular importance to the principle of 'good governance', according to which public authorities must act with the utmost scrupulousness when dealing with matters of vital importance to individuals, such as welfare benefits and other property rights**. While it has considered that public authorities should not be prevented from correcting their mistakes, being mindful of the importance of social justice, this cannot prevail in a situation where the individual concerned is required to bear an excessive burden as a result of a measure divesting him or her of a benefit *(Moskal v. Poland, 2009, §§ 72-73).*

The limitation of social benefits in the case-law of the ECtHR - general

- **Where the person concerned does not satisfy** *(see Bellet, Huertas and Vialatte v. France (dec.), no. 40832/98, § 5, 27 April 1999),* **or ceases to satisfy, the legal conditions laid down in domestic law for the grant of any particular form of benefits or pension, there is no interference with the rights under Article 1 of Protocol No. 1** *(see Rasmussen v. Poland, no. 38886/05, § 71, 28 April 2009),* **as long as the conditions had changed before the applicant became eligible for a specific benefit** *(see Richardson v. the United Kingdom (dec.), no. 26252/08 , § 17, 10 April 2012, and Béláné Nagy, § 86).*
- **The mere fact that new, less advantageous legislation deprives persons entitled to a pension benefit, by dint of retrospective amendments to the conditions attaching to the acquisition of pension rights does not, per se, suffice to find a violation. Statutory pension regulations are liable to change, and the legislature cannot be prevented from regulating, by means of new retrospective provisions, pension rights derived from the laws in force** *(see Khoniakina v. Georgia, no. 17767/08, §§ 74 and 75, 19 June 2012; Arras and Others v. Italy, no. 17972/07, § 42, 14 February 2012; Sukhobokov v. Russia, no. 75470/01, § 26, 13 April 2006; and Bakradze and Others v. Georgia (dec.), no. 1700/08, § 19, 8 January 2013).*
- **The Court has accepted the possibility of amendments to social security legislation that may be adopted in response to societal changes and evolving views on the categories of persons who need social assistance, and also to the evolution of individual situations** *(see Béláné Nagy, cited above, § 88, and Wieczorek v. Poland, No. 18176/05, § 67, 8 December 2009).*

The limitation of social benefits in the case-law of the ECtHR - general

- **Any interference must be reasonably proportionate to the aim sought to be realised** *(see Jahn and Others v. Germany [GC], nos. 46720/99, 72203/01 and 72552/01, §§ 81-94, ECHR 2005-VI).* The requisite "**fair balance" will not be struck where the person concerned bears an individual and excessive burden** *(see Béláné Nagy, cited above, § 115, and the case-law cited therein)*.
- **The fair balance test cannot be assessed in the abstract, but needs to take into account all the relevant elements against the specific background** *(see Stefanetti and Others v. Italy, nos. 21838/10 and 7 others, § 59, 15 April 2014, with examples and further references)*. In so doing, the Court has attached **importance to such factors as the discriminatory nature of the loss of entitlement** (see Kjartan Ásmundsson, cited above, § 43) or **the absence of transitional measures** (*see Moskal v. Poland, no. 10373/05, § 74, 15 September 2009, where the applicant was faced, practically from one day to the next, with the total loss of her early-retirement pension, which constituted her sole source of income, and with poor prospects of being able to adapt to the change*).
- An **important consideration is whether the applicant's right** to derive benefits from the social insurance scheme in question **has been infringed in a manner resulting in the impairment of the essence of his or her pension rights** *(see Domalewski v. Poland (dec.), no. 34610/97, ECHR 1999-V; Kjartan Ásmundsson, cited above, § 39; and Wieczorek, § 57, 8 December 2009; among many others).*

The limitation of social benefits in the case-law of the ECSR - general

- The establishment of **a link between social assistance and a willingness to seek employment or to receive vocational training is in conformity with the Charter, in so far as such conditions are reasonable and consistent with the aim pursued, that is to say to find a lasting solution to the individual's difficulties**. *(Conclusions XIV-1 (1998), Statement of Interpretation on Article 13§1; Conclusions 2006; 2009 Estonia)*
- **Reducing or suspending social assistance benefits** can only be in conformity with the Charter **if it does not deprive the person concerned of their means of subsistence** (at least emergency assistance should remain available). *(Conclusions XIV-1 (1998), Statement of Interpretation on Article 13§1; Conclusions 2006; 2009 Estonia)*
- **All unfavourable decisions concerning the granting and maintenance of assistance must be subject to appeal**, including decisions to suspend or reduce assistance benefits, for example in the event of refusal by the person concerned to accept an offer of employment or training. *(Conclusions XVIII-I (2006), Hungary; Conclusions 2009, Andorra; Conclusions 2006, Estonia)*

The limitation of social benefits in the case-law of the ECSR - general

- **Social assistance must be provided for as long as the situation of need persists and cannot therefore be subject to time-limits.** *(European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 48/2008, decision on the merits of 18 February 2009, §39)*
- Subject to participating in training or accepting employment (see above), the right to social assistance must be conditional only on the criterion of necessity, and **the availability of adequate resources must be the sole criterion according to which assistance may be denied, suspended or reduced**. *(Conclusions XVIII-1 (2006), Spain)*

The limitation of social benefits in the case-law of the ECtHR – wide margin of appreciation

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- The Court will generally allow **a wide margin when it comes to general measures of economic or social strategy** *(Luczak v. Poland, 2007, § 48; Andrejeva v. Latvia [GC], 2009, § 83)*. Because of their direct knowledge of their society and its needs, the **national authorities are, in principle, better placed than the international judge to appreciate what is in the public interest on social or economic grounds**, and **the Court will generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation"** *(Stec and Others v. the United Kingdom [GC], 2006, § 52; Carson and Others v. the United Kingdom, [GC], 2010, § 61). Indeed, the Court has emphasised the essentially national character of social security systems (Carson and Others v. the United Kingdom, [GC], 2010, § 85; X and Others v. Ireland, 2023, §§ 97 and 9826)*.
- **This is particularly so in the context of the allocation of limited State resources** *(Hudorovič and Others v. Slovenia, 2020, § 141; Šaltinytė v. Lithuania, 2021, §§ 64 and 77).* The Court has also held that **the margin of appreciation in housing matters is narrower when it comes to the rights guaranteed by Article 8 compared to those in Article 1 of Protocol No. 1 to the Convention**, regard being had to the central importance of Article 8 of the Convention to the individual's identity, self-determination, physical and moral integrity as well as to the maintenance of relationships with others and a settled and secure place in the community *(Andrey Medvedev v. Russia, 2016, § 53; Gladysheva v. Russia, 2011, § 93).*

The limitation of social benefits in the case-law of the ECtHR – wide margin of appreciation but within art. 14 ECHR

- **While the margin of appreciation is in principle wide**, the Court has stressed **that measures of economic and social policy must, nevertheless, be implemented in a manner that does not violate the prohibition of discrimination and complies with the requirement of proportionality**. In the context of **Article 14 in conjunction with Article 1 of Protocol No. 1**, the Court has limited its acceptance to respect **the legislature's policy choice as not "manifestly without reasonable foundation"** to circumstances where an alleged difference in treatment resulted from a transitional measure forming part of a scheme carried out in order to correct an inequality. Outside that context, and where the alleged discrimination is on the basis of disability or gender, the State's margin of appreciation is considerably reduced and "very weighty reasons" would be required to justify the difference of treatment at issue *(J.D. and A. v. the United Kingdom, 2019, §§ 88-89, 97 and 104).*
- In addition, in its case-law the Court has stressed **the necessity for States to take into account vulnerable and disadvantaged social groups, such as, for example, the Roma population**, who may need assistance in order to be able to enjoy effectively the same rights as the majority population (Hudorovič and Others v. Slovenia, 2020, § 142). **Such circumstances may give rise to a positive obligation** under the Convention, by virtue of Article 8, to facilitate the Roma way of life *(Connors v. the United Kingdom, 2004, §§ 84 and 94).*

The limitation of social benefits in the case-law of the ECtHR – art. 14

- **…where a State creates a right to a social welfare benefit, thus going beyond its obligations under Article 8, it could not, in the application of that right, take discriminatory measures within the meaning of Article 14** *(Beeler v. Switzerland [GC], 2022, §§ 61-62 and the references cited therein).*
- **very weighty reasons need to be put forward for a difference of treatment based exclusively on the grounds of nationality or sex to be considered compatible with the Convention** *(Gaygusuz v. Austria, 1996, § 42; Luczak v. Poland, 2007, § 48; Zeïbek v. Greece, 2009, § 46; P.B. and J.S. v. Austria, 2010, § 38).*
- **While the justification of a difference in treatment based exclusively on nationality requires "very weighty reasons", thus indicating a narrow margin**, the Court has clarified the application of this principle in a field where a wide margin is, and must be, granted to the State in formulating general measures (notably of economic and social policy). In particular, even **the assessment of what may constitute "very weighty reasons" for the purposes of the application of Article 14 may have to vary in degree depending on the context and circumstances** *(Savickis and Others v. Latvia [GC], 2022, § 206)*.

The limitation of social benefits in the case-law of the ECtHR - categorisation

- **for any welfare system to be workable, the State may have to use broad categorisations to distinguish between different groups in need** *(Runkee and White v. the United Kingdom, 2007, § 39).*
- The Court has found it **legitimate for States to put in place criteria according to which a benefit such as social housing can be allocated, when there is insufficient supply available to satisfy demand**, **so long as such criteria are not arbitrary or discriminatory.** States may be justified in distinguishing between different categories of immigrants and in limiting the access of certain categories to public services such as social housing *(Bah v. the United Kingdom, 2011, § 49)*.

The limitation of social benefits in the case-law of the ECSR - cases

Legitimate expectations in limiting social benefits: recent ECtHR decisions translated into Ukrainian

- **Case „Valverde Digon v. Spain"**
- **Case "Domenech Aradilla and Rodríguez González v. Spain"**
- **Application "Jerzy Denysiuk v. Poland"**
- **Application "Alenka Špoljar and Dječji Vrtić Pčelice v. Croatia"**
- https://rm.coe.int/ecthr-judgments-on-social-benefits-ukr-/1680afb1f4

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

VALVERDE DIGON v. SPAIN JUDGMENT

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- **FACTS:** The **applicant requested a survivor's pension shortly after her partner's death** with whom she had a daughter and although not being married had been living together in excess of eight years in the Catalonia region. **Three days before her partner's death they had formally registered their civil partnership**. The administrative authorities dismissed the applicant's application on the grounds that **she had failed to meet the requirement of having registered her civil partnership with the deceased at least two years prior to his death – a new requirement ushered in by a judgment of the Constitutional Court three months before her partner's death**.
- **JUDGMENT**: the crux of the applicant's claim is that, in the case of her partner's death, she met the requirements of eligibility for the survivor's pension before the Constitutional Court's judgment, when her partner still lived; and that the imposition of a more stringent formal requirement by the Constitutional Court **without any adequate transitional provisions was disproportionate in the light of all the circumstances of the case**.

Equal Rights Trust v. Bulgaria, Complaint No. 121/2016

- **FACTS:** the Family Allowances for Children Act, as amended on 28 July 2015, provides that:
  1. monthly family allowances can only be paid in-kind rather than in cash, if the qualifying parent is a minor;
  2. monthly family allowances is suspended or terminates where the child stops attending school, and is thereafter stopped for a minimum period of one year, even if the child returns to school;
  3. monthly family allowances terminate where the child becomes him or herself a parent.
- **DECISION**:
- Concerning mandatory in-kind rather than in-cash family allowances when the mother is under 18 years old
  1. **there is a difference in treatment**, imposing an exceptional regime of mandatory in-kind family allowances on to mothers under 18 years old and not on to other parents. **However, this difference is based on the differences which exist between two groups**: mothers under 18 years old and other mothers, and that the difference **is not detrimental** for mothers under 18 years old, as the in-kind allowances have equal value to cash payments, and therefore that there is no violation of Article 16 of the Charter and **no discrimination**.

Equal Rights Trust v. Bulgaria, Complaint No. 121/2016

Concerning the suspension or termination of family allowances when the child stops attending school

- this measure is a **restriction on the exercise of a right enshrined in the Charter**, namely Article 16. It is therefore for the Committee to **decide whether such measure is prescribed by the law, whether it pursues legitimate aim and whether it is necessary in a democratic society**.
- the impugned measure is provided for by law, more precisely, by Article 7(11).2 and 3 of FACA. It is established in 7(11).2 that the termination of the family allowances in case of absenteeism will take place after the interruption of the assistance for 3 successive months or for 6 months within the frame of one school year**.**
- the suspension or termination of the family allowances when the child stops attending school, **may pursue the legitimate aim to reduce absenteeism and support pupils' return to school**, **the aim being to guarantee rights and freedoms of others and even, in this case, the right of children to education**. Here, States Parties have a margin of appreciation when devising and implementing such measures
- As to the proportionality of the measure, in this case, the suspension and possible termination for one year under certain conditions of family allowances, which **is punitive in nature, could make the family concerned more vulnerable regarding their economic and social situation, thereby making it more difficult to create the necessary conditions for the full development of the family** (as required by Article 16).
- **Social vulnerability, which is linked to not being in a position to fulfill parental responsibilities, often goes hand in hand with increased economic hardship** (European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 82/2012, decision on admissibility and the merits of 19 March 2013, §41). The Committee has already considered that measures less restrictive than the ones proposed by FACA to fight absenteeism were not proportionate and violated the Charter in this same decision (EUROCEF v. France, *op.cit*.). **Therefore – not proportionate**.
- Consequently, the Committee held that there is a violation of Article 16 of the Charter.

Equal Rights Trust v. Bulgaria, Complaint No. 121/2016

Concerning the termination of family allowances when the child becomes a parent

- The measures introduced by the FACA consisting of **terminating family allowances when the minor becomes a parent are not directly related to a change in the civil status of the minor**. Moreover, the termination is **not based on a change regarding the means of the family, on the fact of living together or on the need to raise the child in a family environment, but exclusively on whether the minor becomes a parent**.

- In the instant complaint, the issue submitted to the Committee is whether the parents of those minors who become parents should or not be deprived of the right to perceive family allowances. The decision concerns **whether such restriction on accessing family allowance measure is prescribed by the law, whether it pursues one of the aims referred to in Article 16 of the Charter and whether it is necessary in a democratic society**.

- The measure in question is clearly prescribed by law, by Article 7(11).3 of the FACA.

- **As to the justification for the measure, it does not result from the legislation or from the submissions of the Government** that it pursues any of the legitimate aims established by the Charter. Minor parents cease, according to this measure, to be considered minors. Consequently, **the termination of family allowances is not justified**.

Thank you for your attention

Dr Monika Smusz-Kulesza

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