



INTERNATIONAL
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GUIDELINE

**on challenges with monitoring the socio-economic rights
by Georgian and Armenian Ombudsperson Institutions
during the emergency situations
prepared within the project**

**“Strengthening the Capacities of the Armenian and Georgian Ombudspersons in
Monitoring the Socio-Economic Rights during Emergency Situations”**

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Introduction

The purpose of the reference tool

Human rights are standards that recognize and protect the dignity of all human beings. They are inherent to all humans regardless of race, sex, nationality, ethnicity, language, religion, or any other status and include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Socio-economic rights are human rights that generally refer to social and economic conditions accepted as necessary for individuals and groups to live sustainably in dignity and freedom within society. These rights have a dual function - they are means for livelihood and they are ends – pillars of human dignity².

The monitoring of human rights, including socio-economic rights, is inevitable to assess countries' fulfillment of obligations laid down in human right treaties and national laws and in order to promote and protect human rights and fundamental freedoms of individuals or groups. Regular monitoring ensures the best results and permanent control of the level of protection. Ombudsperson Offices' involvement in the monitoring process is essential and imperative to seek justice and contribute to global standard setting. Apart from the machinery of control, the reviews offer a chance to educate citizens about their rights and demand realization of the rights enshrined in the treaties ratified and the laws laid down by their governments.

The monitoring of human rights, including socio-economic rights, is especially important in times of emergency, when the enjoyment of lot of basic and essential rights may be endangered. Some rights might be inaccessible for any person, some might be inaccessible for vulnerable groups of society.

States of emergency differ for a number of reasons: according to their causes (a military attack or terrorist threat, martial law, an insurgency, a natural disaster, a health emergency/pandemic/epidemic, such as COVID-19, a financial or economic crisis or a general strike or some other threat to the life of the country and its people), and according to the responses of governing institutions. As states and their respective national human rights institutions (NHRIs), including the Ombudsperson Offices, also differ, the array of responses in a specific situation will also vary.

Depending on the nature, context, and length of a particular emergency situation the human rights which are threatened with derogation or limitation vary. One of the most often affected are

² Farese, G. (2020). Socio-Economic Rights. In G. McCann & F. Ó hAdhmaill (Eds.), *International Human Rights, Social Policy and Global Development: Critical Perspectives* (pp. 105-116). Bristol University Press.

the socio-economic rights, which provide protection for the dignity, freedom, and well-being of individuals by guaranteeing everyday human rights related to employment, housing, health, education, social protection, and welfare. Most recently, situations evoked by the COVID-19 pandemic, the Russian Federation's military aggression against Ukraine, the 44-Day war of Artsakh (Nagorno-Karabakh) and the Armenia-Azerbaijan clashes have required many States to take extraordinary measures to protect the health and well-being of the population and emigrants coming to their countries. The pandemic and the wars, and the responses of States thereto have had a very significant impact on the enjoyment of a wide range of social rights.

Many international human rights treaties, conventions, covenants, charters, and agreements protect socio-economic rights in parallel to the most important legal documents at national level. The international document which must be listed as one of the most important in the European legal order is the Council of Europe's Revised European Social Charter (1996) (hereinafter referred to as the Charter, or the ESC) which guarantees a broad range of human rights related to employment, housing, health, education, social protection, and welfare. The Charter establishes its own mechanisms for monitoring socio-economic rights and promotes the Ombudsperson Offices' involvement in these mechanisms. Due to the above-mentioned facts, it has been treated as the point of reference in the tool.

The guideline aims to assist Georgian and Armenian Ombudsperson Institutions in the exercise of their functions during times of public emergency and post-emergency situations. It describes steps that can be taken to better implement the monitoring of the socio-economic rights during the emergency state as it unfolds and afterwards during the post-emergency social and economic recovery, whether these are "formally declared (as emergency situations or states of emergency³, or under some other formal designation) or *de facto* imposed⁴." ⁵ The tool - prepared within the project "Strengthening the Capacities of the Armenian and Georgian Ombudspersons in Monitoring the Socio-Economic Rights during Emergency Situations" - does not provide an exhaustive list of actions to be undertaken or offer prescriptions. Instead, it aims to serve as a reference and as an inspiration for action by Georgian and Armenian Ombudsperson Institutions in challenges with monitoring the socio-economic rights.

The tool has been written in the context of the COVID-19 pandemic and so most often it makes references to this specific health crisis situation. At the same time, it is meant to assist in any

³ Some countries make a distinction between a state of emergency and an emergency situation, with one of the differences being that a state of emergency applies nationwide, whereas an emergency situation may be localized to a municipality, city, or a region of a state.

⁴ "De facto imposed" refers either to applying restrictive norms that already exist in laws on public health, countering communicable diseases, natural and other disasters, counter-terrorism, etc., but are not invoked in ordinary times; or by introducing amendments to these laws to the same effect; or by implementing or interpreting existing norms in a more restrictive way (including the issuance by the executive of decrees, directives or binding instructions that, in practice, results in a more restrictive implementation of existing laws); or in another way, but all without formally declaring an extraordinary situation or state of emergency.

⁵ Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), National Human Rights Institutions in a Public Emergency. A reference tool, p. 4. Available at: <https://www.osce.org/odihr/465906>

emergency – in any case where an extraordinary situation prompts a state to restrict guaranteed socio-economic human rights and fundamental freedoms. The guideline provides assistance first and foremost to Georgian and Armenian Ombudsperson Institutions but can also be used by other institutions monitoring the socio-economic rights, including the Georgian and Armenian authorities, organizations of workers and employers, civil society and other key stakeholders by clarifying certain aspects of the European Social Charter rights as they apply in the times of crisis.

Methodology and structure

This Guideline was developed as part of work on “Strengthening the Capacities of the Armenian and Georgian Ombudspersons in Monitoring the Socio-Economic Rights during Emergency Situations” Project (‘the Project’), financed by the International Ombudsman Institute from the subsidy for regional projects (2020-2022).

As a first step, desk research was conducted, based on needs and experiences collected from Armenian and Georgian Ombudspersons’ representatives and from information gathered from the UN Paris Principles⁶ and General Observations, academic studies, and conclusions from other projects on challenges with monitoring socio-economic rights, including Council of Europe projects, the case-law of the European Committee of Social Rights. As a second step, meetings were conducted with Armenian and Georgian Ombudsperson Institutions representatives. The subject areas addressed in those meetings were selected by Armenian and Georgian Ombudsperson Institutions representatives on the basis of the needs and priorities they expressed from their national contexts.

This Guide reflects those same subject areas – employment and labour rights, children, families and persons with disabilities and housing – and includes conclusions and practices shared at those meetings, and through other engagements with Armenian and Georgian Ombudsperson Institutions. Resource materials from experts in capacity-building activities on NHRI methodologies provided in reference materials indicated in the footnotes were also used to inform the Guideline.

Each (post-)emergency situation is unique and should be analyzed on a case-by-case basis. However, (post-)emergency contexts also share sufficient similarities – such as divisions in societies and polarization, higher incidence of human rights violations and abuses, or security risks – to discover lessons learned and helpful practices. This observation led Armenian and Georgian Ombudsperson Institutions to identify thematic areas for peer-exchange, of importance and priority in their national contexts, reflected throughout this Guide.

For ease of use, this tool is organized in two sections. The first section explains the crucial role Georgian and Armenian Ombudsperson Institutions have in times of public emergency and the preconditions needed for them to continue to operate effectively. Furthermore, it offers practical

⁶ ‘Principles Relating to the Status of National Human Rights Institutions’ which set out the minimum standards that NHRIs must meet in order to be considered credible and to operate effectively.

advice to Georgian and Armenian Ombudsperson Institutions on actions that can be taken during the unfolding of a public emergency; during the consolidation of emergency stage, when measures introduced remain and are consistently applied, and after the state of emergency has been ended. The second section takes the perspective of particular rights and discusses challenges in the enjoyment of those rights in times of emergency.

Section I – challenges with monitoring the socio-economic rights by Georgian and Armenian Ombudsperson Institutions during the emergency situations – the perspective of monitoring procedures and mechanisms

The mandate of Georgian and Armenian Ombudsperson Institutions

Internationally, an Ombudsperson is usually an independent, non-partisan official who exercises oversight over public administration. An Ombudsperson often has the power to investigate, report upon, and make recommendations on individual cases, administrative procedures, and relevant systemic changes.

The Public Defender of Georgia is a constitutional institution, which supervises the protection of human rights and freedoms within its jurisdiction on the territory of Georgia. It is independent in its activities and does not belong to any branch of the government. It's role is to identify violations of human rights and contribute to restoration of violated rights and freedoms⁷.

The Public Defender of Georgia supervises state agencies, local self-government agencies, public institutions and public officials. It studies cases of human rights violations both on the basis of received applications and on its own initiative. Usually, studied cases relate to decisions of public institutions; violations of human rights and freedoms, including during court proceedings; violations of rights of detainees, prisoners or individuals whose liberties has been otherwise restricted; compliance of normative acts with the Second Chapter of the Constitution of Georgia; constitutionality of the norms regulating referendums and elections, as well as the elections (referendum) held or to be held on the basis of these norms.

As to violations of human rights and freedoms, the Public Defender of Georgia is authorized to consider applications concerning the rights enshrined in the laws of Georgia, as well as in the international treaties and agreements ratified by Georgia. In order to ensure the protection of human rights and freedoms, the Public Defender of Georgia:

- Submits proposals, remarks and recommendations concerning the Georgian legislation and draft laws to the Parliament or other relevant bodies;

⁷ <https://ombudsman.ge/eng/mandati>

- Addresses the state agencies, local self-government bodies, public institutions and public officials with proposals and recommendations concerning the restoration of the violated human rights and freedoms;
- Addresses the relevant investigative authorities with proposals about the launch of an investigation and/or criminal prosecution;
- Addresses the relevant agencies with proposals concerning the disciplinary or administrative responsibilities of the individuals, whose actions caused violations of human rights and freedoms;
- Performs the function of a friend of the court (*Amicus Curiae*) in the Common Courts and Constitutional Court;
- Submits constitutional suits to the Constitutional Court;
- Appeals to the President and Prime Minister in writing, if s/he considers that the means in disposal of the Public Defender are not sufficient;
- In special cases, appeals to the Parliament of Georgia to set up a temporary investigative commission and consider a specific issue.

The Public Defender of Georgia performs the function of the National Preventive Mechanism under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Within the framework of the abovementioned capacity, it regularly checks the situation and treatment of the detainees, prisoners or individuals whose liberty had been otherwise restricted, convicts, as well as the inmates of psychiatric institutions, houses for older persons and orphanages.

Moreover, on 27 October 2014, the Public Defender of Georgia was named as the structure for ensuring implementation, promotion and protection of the Convention on the Rights of Persons with Disabilities. Additionally, together with the Organic Law of Georgia on Public Defender of Georgia, the Law of Georgia on Gender Equality (Article 14(1)) empowers the Public Defender to protect gender equality, monitor the given field and respond to the violations of gender equality within the framework of its competencies.

One of the most important functions of the Public Defender is the conduct of educational activities in the field of human rights and freedoms. Within this capacity, the office organizes events and campaigns aimed at raising awareness of human rights which unites various target groups.

The Public Defender's institution has been granted "A" status, meaning full compliance of the institution with the UN Paris Principles. As a result, the Public Defender of Georgia has the right to take part in the work of the national human rights institutions at the international and regional levels with the right to vote, hold a position in the bureau/sub-committees of the Global Alliance of National Human Rights Institutions (GANHRI) and take part in the sessions of the Human Rights Council.

The Human Rights Defender of the Republic of Armenia, according to the Constitution of Armenia shall is an independent official who observes the maintenance of human rights and freedoms on the part of state and local self-government bodies and officials, whereas in the cases prescribed by the Law on the Human Rights Defender — also on the part of organizations, as well as contributes to the restoration of violated rights and freedoms and improvement of the regulatory legal acts related to human rights and freedoms.

The Human Rights Defender of Armenia is an Ombudsperson and the only National Human Rights Institution in the country and has the "A" international status due to its functioning in accordance with the Paris Principles and other international principles; The Human Rights Defender of Armenia was last re-accredited with A-status in March 2019.

The Defender is entrusted with the mandate of the National Preventive Mechanism provided by the Optional Protocol — adopted on 18 December 2002 — to the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In this regard, the Defender has the power to conduct regular and unannounced *ad hoc* visits to places of deprivation of liberty. The Human Rights Defender also conducts monitoring of the implementation of the provisions of the UN Convention on the Rights of the Child adopted on 20 November 1989 and UN Convention on the Rights of Persons with Disabilities (CRPD) adopted on 13 December 2006, as well as carries out prevention of violations of the rights of the child and the rights of persons with disabilities and the protection thereof.

In the course of exercising his or her powers, the Defender is independent and shall be guided only by the Constitution of the Republic of Armenia, national law and international treaties of the Republic of Armenia. The independence includes the institutional independence that contains the liberty and autonomy in the organization and implementation of functions or any kind of activity related to the Defender's staff and budget. This stems from the Constitution of the Republic of Armenia, and from the Constitutional Law of the Human Rights Defender that serves a basic precondition for operational independence of the national human rights institution. For example, the Constitutional Law on the Human Rights Defender provides amount of allocation for funding provided from the state budget to the Defender and the Staff as well as to the Defender as the National Preventative Mechanism cannot be less than the amount provided the year before. In relation to the guarantees of the activities of the Human Rights Defender, the Constitution of the Republic of Armenia provides that the right of immunity prescribed for a Deputy shall extend to the Human Rights Defender.

The Defender acts in case of a complaint or upon own initiative and has the competence to consider:

- violations of human rights and freedoms enshrined in the Constitution and the laws of the Republic of Armenia by state and local self-government bodies and officials, as well as by organisations exercising the powers delegated thereto by state and local self-government bodies;

- issues concerning violations of human rights and freedoms by organisations operating in the field of public service where there is information about mass violations of human rights or

freedoms or it is of public importance or it is related to the protection of interests of persons who cannot benefit from legal remedies for protection of their rights and freedoms on their own.

Moreover, the Human Rights Defender has to apply to the Constitutional Court of the Republic of Armenia in regard to compliance of laws, decisions of the National Assembly, orders and instructions of the President, decisions of the Government and the Prime Minister of Armenia. The Defender also has the capacity to be present during the sessions of the Government of Armenia and local self-governing bodies, and to deliver a speech according to the relevant procedures.

The Human Rights Defender also has the mandate to prepare an annual report on its activities during the previous year and the situation of the protection of human rights in the country, and to present it during a session of the National Assembly of Armenia. The Defender also has the capacity to prepare *ad hoc* reports.

Moreover, the Human Rights Defender has the capacity to establish councils adjunct to the Human Rights Defender's Office. Currently, the Defender's Office has 5 public councils, dealing with issues related to the protection of the rights of children, women, servicepersons in the Armenian armed forces, persons with disabilities, and the protection from inhuman and degrading treatment and torture.

The role of Ombudsperson Institutions in monitoring the socio-economic rights in times of emergency

Ombudsperson Institutions as national human rights institutions (NHRIs) have a crucial role to play in monitoring and supporting national development policies to ensure that they are based or compatible with human rights principles and deliver genuine human rights outcomes, especially for vulnerable and marginalized persons. This role – set out in the Merida Declaration, adopted in 2015 by NHRIs from all regions of the world – in the light of the special status which Georgian and Armenian Ombudspersons Institutions are granted - makes them the main observers and guardians of human rights and an “on-going, advisory authority in respect of human rights at the national and international level”⁸.

The Georgian and Armenian Ombudsperson Institutions discharge a wide variety of functions such as: monitoring and examining the situation in the country or particular community from the perspective of a particular right; raising public awareness, including the provision of accurate and timely information; working to protect groups in vulnerable situations in cooperation with civil society, rights-holders and other stakeholders; and encouraging States to cooperate with their respective NHRIs and NGOs and ensure that they can effectively discharge their mandate and functions, including by ensuring the allocation of adequate resources.

⁸ Michele Parlevliet, National Human Rights Institutions and Peace Agreements: establishing national institutions in divided societies 2 (Int'l Counc. Hum. Rts. Pol. Working Paper, 2006), at: <http://www.ichrp.org/en/projects/128> .

The work of Georgian and Armenian Ombudsperson Institutions can be particularly challenged in times of emergency, given the higher incidence of human rights violations, and the contexts of deep division or culture of violence or fear in post-emergency societies. Violations of human rights are often both the cause and the consequence of a state of emergency. Emergency itself can arise from widespread human rights violations and systemic discrimination; and the incidence of human rights abuses is higher both during and after an emergency. With their broad human rights mandate and multi-faceted functions, the Georgian and Armenian Ombudsperson Institutions are central actors in Georgia and Armenia for the promotion and protection of human rights in all emergency and post-emergency fragile contexts. Their mandate and dedicated work on the human rights can contribute to the prevention of human rights violations in time of emergency, address violations of rights during this time, and also assist in overcoming its consequences. Armenian regulations guarantee that the applications of measures as a result of the quarantine due to the pandemic, which is the basis of the emergency situation, cannot hinder the normal functioning of the Human Rights Defender's Office of Armenia.

Special role and obligations of Georgian and Armenian Ombudsperson Institutions in times of emergency

In the situation of a state of emergency, it is expected that Ombudsperson Institutions, as National Human Rights Institutions (NHRIs), will conduct themselves with a heightened level of vigilance and independence, and in strict accordance with their mandate. They are expected to promote and ensure respect for human rights, democratic principles, and the strengthening of the rule of law in all circumstances and without exception. In situations of conflict or a state of emergency, this may include monitoring, documenting, issuing public statements and releasing regular and detailed reports through the media in a timely manner to address urgent human rights violations⁹.

The Paris Principles do not explicitly provide guidance on the expected conduct of an NHRI when its country is experiencing a state of emergency, a conflict and war, or coup d'état. However, Paris Principle A.1 clearly specifies that NHRIs shall have the responsibility to promote and protect human rights. Furthermore, Paris Principle A.3 specifies the powers and responsibilities of an NHRI including:

- reporting on human rights violations (Paris Principle A.3(a)(ii) –(iii));
- monitoring and reporting on government action or inaction (Paris Principle A.3(a)(iv)); and

⁹ Global Alliance of National Human Rights Institutions (GANHRI), "General Observations of the Sub-Committee on Accreditation", 21 February 2018. Available at: https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf

- publicizing its views on any matters concerning the promotion and protection of human rights (Paris Principle A.3(a)). This responsibility is further elaborated in Paris Principle C(c), which provides the capacity to address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations.

The enumerated powers and responsibilities shall be exercised with even more attention and care during the time of emergency.

While the impact of emergency circumstances varies from one case to another, they almost always have a dramatic impact on the rights recognized in international human rights treaties, particularly on vulnerable groups. Disruptions to peace and security in no way nullify or diminish the relevant obligations of the NHRIs, including Ombudsperson Institutions. As in other comparable situations, those obligations assume greater practical importance in times of particular hardship. In such circumstances, the protection of human rights becomes all the more important, and Ombudsperson Institutions must ensure that individuals have accessible and effective remedies to address human rights violations. Ombudsperson Institutions, as independent and impartial bodies, play a particularly important role by investigating allegations of violations promptly, thoroughly, and effectively. As such, Ombudsperson Institutions are expected to promote and ensure respect for human rights, democratic principles and strengthening the rule of law in all circumstances without exception. This may include issuing public statements and releasing regular and detailed reports through the media in a timely manner to address urgent human rights violations¹⁰.

States of emergency pose various challenges to the exercise of Ombudsperson Institutions' roles, from minor practical disruptions to their everyday work to the systematic erosion of core elements of their prerogatives, i.e., their mandates and competences, their autonomy from the government, their independence, their resources, and powers of investigation. During an emergency, much of the work done by Ombudsperson Institutions can be challenged in ways that hinder their role and contravene their independence, including with regard to their budgets, both the level of funding and the operational autonomy over its allocation; to the freedom of Ombudsperson Institutions' staff to move around in the discharge of their duties; to unrestricted access to information, officials and specific places, such as, for example, detention facilities, hospitals, nursing institutions, closed institutions, such as psychiatric institutions and places of deprivation of liberty; to the ability of various interlocutors to meet with them; and to access for all interested to Ombudsperson Institutions, including the opportunity to lodge complaints¹¹.

¹⁰ Global Alliance of National Human Rights Institutions (GANHRI), "General Observations of the Sub-Committee on Accreditation", 21 February 2018. Available at: https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/EN_GeneralObservations_Revisions_a_dopted_21.02.2018_vf.pdf

¹¹ Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), National Human Rights Institutions in a Public Emergency. A reference tool, p. 7-8. Available at: <https://www.osce.org/odihr/465906>

In times of emergency, Ombudsperson Institutions have a particularly significant role to play. This is a more proactive and vocal role than usual, sounding the alarm when necessary, filling gaps in oversight and ensuring the accountability of government bodies.

The beginning of a state of emergency may take different forms and, in some cases, states of emergencies are *de facto* imposed.¹² During this stage, Ombudsperson Institutions should consider:

- ✓ accepting an invitation from the competent authority to discuss the need to introduce a state of emergency and any related restriction on human rights being proposed or initiating a meeting if the decision on a state of emergency appears to be in the making but the competent authority has not called such a meeting or if the state of emergency appears to have been informally or *de facto* imposed¹³;
- ✓ setting up the Ombudsperson Institution's own advisory committee for the emergency, possibly including independent experts and civil society representatives¹⁴;
- ✓ expressing in writing its opinion about intended derogations of human rights, especially in case when there is no legal requirement for the body authorized to introduce a state of emergency to obtain such a prior opinion from the NHRIs.

When the state of emergency is unfolding – i.e., the decision on how to address and whether to introduce restrictions related to fundamental freedoms and human rights due to a crisis becomes imminent or comes in force, Ombudsperson Institutions should focus on¹⁵:

- ✓ ensuring that they have the necessary capacity and resources to function independently and effectively during the emergency;
- ✓ undertaking a risk assessment of the impact of the emergency and government actions on especially vulnerable groups; and
- ✓ vigorously using their capacity and resources to fulfil their mandates with a heightened level of vigilance and independence.

Maintaining capacity and undertaking an assessment will enable Ombudsperson Institutions to decide what action they need to take to fulfil their remit in protecting human rights, and to ensure that they can act accordingly. Risk assessment shall evaluate potential threats to human rights, including of known vulnerable groups, and identify other groups who are or may become vulnerable because of the situation giving rise to the emergency and /or the government's response to the

¹² ODIHR, "OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic", p.25; see also: European Parliament Research Service (EPRS), "States of Emergency in Response to the Coronavirus Crisis: Situation in certain Member States", June 2020. Available at: [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI\(2020\)651972](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2020)651972)

¹³ Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), National Human Rights Institutions in a Public Emergency. A reference tool, p. 12. Available at: <https://www.osce.org/odihr/465906>

¹⁴ Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), National Human Rights Institutions in a Public Emergency. A reference tool, p. 12. Available at: <https://www.osce.org/odihr/465906>

¹⁵ The list prepared on the basis of activities indicated in: Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), National Human Rights Institutions in a Public Emergency. A reference tool, p. 13. Available at: <https://www.osce.org/odihr/465906>

emergency. Maintaining – and even boosting – capacity to readily meet increased challenges for human rights and fundamental freedoms is frequently a challenge. This challenge may even involve pressure internally or externally to downgrade resources, for example, if there are cuts in funding or if Ombudsperson Institution’s staff are affected by the emergency (as in the Covid-19 pandemic).¹⁶

In a developing state of emergency, the role of Ombudsperson Institutions can be crucial. They shall **prepare and help key stakeholders better prepare for handling a crisis** by¹⁷:

- ✓ Ensuring that two-way communication channels with key stakeholders, including governments, parliaments, mass media, civil society, and legal communities, are in good shape and can be swiftly mobilized. For example, by:
 - Inviting them to regular consultation processes on the crisis and responses; and
 - Establishing methods on organizing communication during the emergency, including using new technologies, social media or activating informal networks between staff members under the supervision of the Ombudsperson Institutions’ leadership.
- ✓ Reviewing their own databases and data collection and analytical capacities on identified key risks; ensuring that the data are disaggregated by gender, age, and ethnicity (if permitted under national law), so that proper analysis may be performed, and remedial action taken;
- ✓ Building or enhancing any necessary data/information-collection and analysis capacity;
- ✓ Assessing the impact of the emergency on Ombudsperson Institutions’ staff and staffing levels;
- ✓ Safeguarding the welfare and well-being of their own staff;
- ✓ Developing plans (and policies, if needed) to maintain the Ombudsperson Institutions’ own service to the public (bearing in mind likely additional demand and the potential impact of the emergency on the Ombudsperson Institutions’ own staff). Such policies may include arrangements for remote working or new arrangements to make reasonable adjustments to enable staff with disabilities to continue working in the changed circumstances; and
- ✓ Reviewing plans, policies, and budgets from a gender perspective as part of gender mainstreaming efforts, and taking into consideration other intersectional elements, such as race, ethnicity, religion or belief, ability, age, occupation, immigration status, location, and other factors.

As both the Georgian and the Armenian Ombudsperson Institutions have **a quasi-judicial capacity**, it is vital to maintain the availability to address individual complainants and to continue performing this function. In order to be accessible to potential complainants from under-privileged or marginalized groups whose situation in time of emergency might have worsen.

¹⁶ Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), National Human Rights Institutions in a Public Emergency. A reference tool, p. 13-15. Available at: <https://www.osce.org/odihr/465906>

¹⁷ The list prepared on the basis of activities indicated in: Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), National Human Rights Institutions in a Public Emergency. A reference tool, p. 14. Available at: <https://www.osce.org/odihr/465906>

Undertaking a risk assessment is a very important task that shall be undertaken during the early stage of a state of emergency. While performing this task Ombudsperson Institutions should consider¹⁸:

- ✓ Identifying potential risks to individuals and groups that can find themselves in situations of vulnerability, e.g., those in places of deprivation of liberty, (prisons, migrant detention centers, compulsory secure units, juvenile detention centers, psychiatric institutions, hotels and similar accommodation facilities designated for isolation), persons with disabilities (physical, mental and learning), minority groups (racial, ethnic, religious, linguistic minorities and indigenous peoples), women, children, LGBTI people older persons, migrants, refugees, IDPs, asylum seekers or other groups at risk people in situation of homelessness, people with substance abuse problems, those in poverty and the unemployed, single-parent families, etc.);
- ✓ Conducting a gender-based analysis of the risks caused by the emergency and the government's response to the emergency to identify any particular risks to women, e.g., by reason of pregnancy, childbirth, gender-based violence (especially domestic violence, as was the case during the COVID-19 pandemic), income, occupational segregation, family responsibilities and age, as well as particular risks to men, e.g., as victims of gang or street violence, higher morbidity rates or lower rates of uptake of health services;
- ✓ Identifying any other vulnerable groups assessed at this stage to have been put at risk by a particular emergency, e.g., in case of COVID-19 pandemic: among COVID-19 "essential" workers (which have included those involved in the food-supply chain, transport, finance and public administration, as well as health and security workers); among those reliant on public transport, migrant workers living in hostels, those in fear of violence in their own homes including women, children or older persons, those with special educational needs, and those with learning or other disabilities who may have difficulty accessing or understanding key government messages regarding the emergency measures;
- ✓ Determining particular risks to known and newly identified vulnerable groups as a result of the emergency and/or government responses to emergency. For example, in the COVID-19 crisis there was the risk, because of school closures, of authorities losing sight of children identified as being at risk of sexual or other abuse; prisoners or other detained people have been at risk of infection and potential abuse due to the prohibition of visits by family members, CSOs, lawyers, etc.; health and care workers in hospitals, community and retirement homes have been at risk because of a lack of adequate personal protective equipment;
- ✓ Considering any specific issues and risks related to the deployment and use of security personnel, especially members of the police and armed forces, e.g., excessive use of force, increased spread of infection to and from personnel engaged, and increased burdens on mental health. Other risks could include the increased actual or perceived securitization of

¹⁸ The list prepared on the basis of activities indicated in: Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), National Human Rights Institutions in a Public Emergency. A reference tool, p. 15-16. Available at: <https://www.osce.org/odihr/465906>

society and public space and fears this may provoke, including being intimidated by the presence of security personnel on the streets; and

- ✓ Calling for a government action plan to provide support to the categories particularly affected or vulnerable to the state of emergency measures (for instance, in case of a lockdown), and providing Ombudsperson Institutions' advice on such measures.

Ombudsperson Institutions should **include gender-based violence as part of a risk assessment** exercise, especially in cases where factors raising the risk of gender-based violence occur, e.g. in case of restrictions in movement, including lockdown.

Difficulties with monitoring the socio-economic rights by Georgian and Armenian Ombudsperson Institutions during the emergency situations and their possible responses

State of emergency is a test for societies, governments, communities and for individuals. It is a time for solidarity and cooperation to tackle the problem, and to mitigate the often-unintended effects, of measures designed to counter the emergency. The work of Georgian and Armenian Ombudsperson Institutions can be particularly challenging in the (post-)emergency period/situation, given the higher incidence of human rights violations, and the contexts of deep division or culture of violence or fear in (post-)emergency societies.

The Georgian and Armenian Ombudsperson Institutions are using various approaches to monitor socio-economic rights. In particular:

- information meetings to identify the problems and challenges;
- assessment of different policies of local self-governing bodies;
- monitoring of National Action Plans;
- requesting official information from the public authorities;
- meetings with the different target groups with the specific questionnaires;
- monitoring of the state institutions e.g., shelters, crisis centers, care houses, children's houses,
- evaluating existing programs, initiatives, and projects regarding socio-economic rights.

Monitoring usually includes:

- elaboration of the relevant methodology and instruments
- desk research- Requesting statistical data and other information from the various state bodies, identifying best international practices, conducting legal research etc.
- field Work, monitoring visits, mostly where relevant experts (Psychologist, Social worker, nutritionists etc.), along with PDO/HRDO staff, are included
- analysis of the data
- elaboration of the Special/AD HOC reports

During the state of emergency Ombudsperson Institutions may face different challenges connected with the above-mentioned activities. The difficulties declared by the Ombudsperson Institutions' representatives as the most challenging include first and foremost **movement and accessibility restrictions imposed by the state authorities due to safety reasons**. Everyday Ombudsperson's activities include conducting interviews and collecting information from different individuals and groups, including the most vulnerable ones. Part of the work is conducted during the on-site visits in institutions like nursing homes or shelters for people in situation of homelessness. Activities include also conducting workshops and trainings. In times of emergency, when possibility of movement is limited and the access to many places restricted, conducting on-site visits, workshops, and trainings, at least temporarily, is not possible and must be replaced with other ways of supervisory activities. The monitoring mechanisms that may be implemented in such cases include gathering information in written – via emails, communicators, social media and by phone. On-site visits might be temporarily replaced with online meetings with the personnel, and where possible, also with persons under the care of an institution. Presentations and trainings might be held on communication platforms such as Zoom. In those cases, where on-site visits could not be replaced with online meetings during the COVID-19 pandemic, the system of passes allowing representatives of the PDO/HRDO has been introduced. The suggested solutions are relatively easy and fast to be introduced and they have proved useful during the COVID-19 pandemic state of emergency.

However, what must be stressed and taken into consideration in the light of the suggested solution is **the problem of digital divide and exclusion affecting mostly vulnerable groups of society** and vulnerable individuals. Therefore – to better prepare for the next state of emergency - it is imperative to improve the communication/internet access especially of the rural population and to enhance their capacity in information technology, as they still remain a challenge.

Timely introduction of proper mechanism replacing the ones which are not possible to be conducted is of the greatest importance. Therefore, internal procedures/rules/regulations for the introduction of such temporary mechanisms shall be prepared in advance and stay ready for their use in the form of an instruction or manual. Taking into consideration the position of a person seeking help from the Ombudsperson Institution, instructions and leaflets should also be prepared providing information on how to contact the Office and address a complaint in times of emergency. Proper information shall be also easily found on the webpage of the institutions.

The second issue mentioned by the Ombudsperson Institutions' representatives as the most challenging was **lack of access to the requested information in good time**. Most of the Ombudsperson Office's activities are based on analyzing information and data provided by different public institutions on the request of the Public/Human Rights Defender's Office or upon their own initiative. In times of emergency, when public institutions face several challenges in performing their daily duties such as personnel shortages and additional obligations, information might be delivered with delay or might not be delivered at all. In the light of the said challenge, it is advisable to consider introducing special mechanisms of exchanging information in times of emergency that will be less bureaucratic and formalized. Prioritizing some information over others might also help to acquire the most important data in good time. Experiences collected during the COVID-19 pandemic indicate

e.g., that along the spread of the novel coronavirus, it was especially important to obtain information on the extent to which shelters, and crisis centers address the dangers of the Covid-19 pandemic and what regulations existed in institutions to prevent the spread of the virus and to protect beneficiaries.

Other challenges mentioned by the representatives of Georgian and Armenian Ombudsperson Institutions as the most difficult are **restrictions in terms of financial or human resources**. In times of emergency – due to increased level of dangers and violations of human rights - the workload of Ombudsperson Institutions may increase, while its staff and financing may be temporarily reduced. Therefore, it is advisable, while introducing the internal procedures/instructions for the time of emergency, to include some mechanisms that will allow reducing formalities and bureaucracy wherever possible. Coordination and cooperation between different departments of the Ombudsperson Institution is also of utmost importance especially when they work on cross-cutting issues. Good, open, and effective coordination and cooperation may save considerable time and provide better results saving both human and financial resources of the Public Defender Office which is especially crucial in times of emergency. Another solution that shall be advisable and has proved to be effective in times of COVID-19 pandemic is the evaluation of the problems, claims, tasks, and activities to determine those most urgent ones and give them priority over the other.

The issue that cannot be forgotten while discussing challenges with monitoring the socio-economic rights during the state of emergency is also **the danger that the emergency poses to Ombudsperson Institution staff's health and safety**. In the context of Covid-19, as regards to the monitoring of socio-economic rights, the offices have ensured the safety of the staff and their beneficiaries, e.g. children or persons with disabilities enrolled in various programs, services, institutions, facilities etc. where the monitoring should have been conducted, by ensuring that the employees involved in the monitoring got tested before the field visit and by providing the staff with safety instructions and all the preventive means: masks, shields, gloves, liquid for hygienic disinfection etc. The staff has been instructed and trained on how to limit the risk of infection.

The problem related to the latter is connected with the need **to monitor the socio-economic rights of the personnel of those institutions which are directly involved in overcoming the emergency** such as, depending on the type of emergency, e.g., medical staff in times of pandemic, military servicepersons in times of armed conflicts, rescue, and uniformed services (e.g., police, army, fire department) in times of natural disasters. The monitoring shall be introduced at the very beginning of the state of emergency and shall be conducted by the Ombudsperson Institutions up to the end of this state. Experiences connected with the COVID-19 pandemic show that especially labor-related rights of this group have been at a great risk of different violations due to insufficient human and financial resources.

Another important challenge with monitoring the socio-economic rights is connected with **the state of armed conflict and war**. In such a case, due to **changes of borders or the control of parts of a territory by certain actors, armed groups or state-like institutions**, individuals may lack clarity where they can claim their social rights and collect their entitlements. Changes to

administrative borders or frontlines can also infringe on individuals' freedom of movement. This, coupled with difficult and inflexible procedures, may require individuals to cross insecure checkpoints to claim their right to social security, and put individuals at risk of discrimination or sometimes physical threats or attacks¹⁹. In such circumstances, it is key for the Ombudsperson Institutions to source research and monitoring in local developments. This can be achieved through engagement with local communities and those affected by conflict, as well as with civil society. Ombudsperson institutions can also engage with the private sector, the media, research centers and academia. They should also ensure that human rights violations against the most vulnerable are recorded and followed-up upon. Ombudsperson Institutions shall then report their findings of monitoring activities demonstrating the local human rights situation to national authorities, as well as regional and international bodies and independent mechanisms (e.g., Council of Europe's European Committee of Social Rights, UN Committee on Economic Social and Cultural Rights, EU)²⁰.

To overcome challenges with monitoring the socio-economic rights in times of emergency, apart from already-mentioned solutions, it may be advisable for Georgian and Armenian Ombudsperson Institutions to **carry out fact-finding activities**, including round the clock missions, to identify key issues connected with possible dangers or violations of the enjoyment of human rights within the country in that especially difficult time. The needs-assessment approach will enable the Ombudsperson Institutions to identify most urgent problems and to provide timely and effective solutions. For example, as a result of the Azerbaijani incursions into the territory of the Republic of Armenia, several socio-economic rights, such as the right to an adequate standard of living, right to education, right to health, and other fundamental rights have been violated or restricted. To monitor the situation of the effected population, the Human Rights Defender's Office of Armenia has implemented various methods, such as monitoring visits and fact-finding missions, constant contact with the affected population, local self-governing bodies, and civil society and non-governmental organizations working in the affected regions.

Additionally, in times of COVID-19 pandemic implementation of **a hotline with 24/7 availability** for inquiries and advice proved to be an effective mechanism of monitoring socio-economic rights.

Apart from these, **membership in European and international platforms/networks of Ombudspersons and NHRIs** brought the possibility to discuss challenges, exchange experiences and search for responses to pending problems. During the COVID-19 pandemic e.g., as regards to children's rights, the Public Defender of Georgia has taken opportunity to discuss lots of issues as a member of ENOC (European Network of Ombudspersons for Children), which is a vital platform to identify the best practices as regards to the protection of children's socio-economic rights, elaborate recommendations as regards to this, and further engage in a constructive and meaningful dialogue with local stakeholders.

¹⁹ European Network of National Human Rights Institutions, Guide on the Role of National Human Rights Institutions in (Post-)Conflict Situations September 2020, p. 44. Available at: <http://ennhri.org/wp-content/uploads/2020/10/Guide-on-the-Role-of-NHRIs-in-Post-Conflict-Situations.pdf>

²⁰ Ibidem, p. 47.

Apart from the above-mentioned, in both emergency and post-emergency contexts, the role of Ombudsperson Institutions as bodies responsible for **raising the awareness of economic and social rights and promoting human rights culture**, by advocating for the rights of those most affected by emergency is of crucial importance. Public/Human Rights Defenders shall highlight the situation of groups facing the most difficulties in accessing economic and social rights (such as ethnic minorities, children, women, older persons, persons with disabilities and internally displaced persons) and ensure the perspective of those vulnerable groups of society is taken into consideration while developing policies and action plans. The role of Ombudsperson in times of emergency shall include providing recommendation to the government of Georgia and Armenia to take into consideration the legal status of groups mostly exposed to discrimination such as e.g., LGBTI+ persons or Roma minority and make special sub-chapters in the National Action Plans on Human rights to consider the needs and challenges of such groups in the state of emergency. In times of COVID-19 pandemic, several NHRIs, including those of Australia, Belgium, India, New Zealand, Nicaragua, Malawi, Morocco, and the Philippines have developed guidelines for governments and public authorities on how to promote and protect the rights of older persons and persons with disabilities in relation to COVID-19. This practice can be followed by Georgian and Armenian Ombudsperson Institutions in case of the next state of emergency.

As to materials already collected, it shall be noted, that during the COVID-19 pandemic, Gender Department at the Public Defender Office in Georgia translated in Georgian language two important policy documents on COVID impact and good practices. The first document discusses Covid-19 and women's human rights guidance²¹, especially promising practices and impact on right to health, gender-based violence, work, income, livelihood, access to education and COVID-19 responses. The second document is a policy brief on Covid-19 impact on women²², exploring how women and girls' lives are changing in the face of pandemic, and outlining suggested priority measures to accompany both the immediate response and longer-term recovery efforts. At the same time, the Human Rights Defender of Armenia has published the guideline "Frequent questions on COVID-19 and human rights during the emergency situation"²³. What is worth noting, the guideline has been published in the languages of national minorities: Yazidi, Kurdish, Assyrian, Russian, English, Indian and printed in Braille.

In addition to that, the Gender Department of the Ombudsman Person Institution of Georgia issued three special reports assessing the impact of Covid-19 on conflict affected women and girls²⁴. One to evaluate local safety policy in this regard and to identify the needs of women and girls living in collective centers, near the dividing line and in the occupied territories. The second to assess the impact of the novel coronavirus pandemic on the rights situation of women working in the health sector, both in their workplace and social life²⁵. The third to assess the needs of women and girls with disabilities and the state of protection of their rights in Georgia²⁶. The study found that in certain

²¹ Available at: <https://bit.ly/3MuRqW9>

²² Available at: <https://bit.ly/3ImW2BN>

²³ Available at: https://www.ombuds.am/en_us/site/ViewNews/1134

²⁴ <https://ombudsman.ge/res/docs/2021092011074925899.pdf>

²⁵ <https://ombudsman.ge/res/docs/2022020112123421151.pdf>

²⁶ Available: <https://bit.ly/3yMAV3F>

areas, such as protection of the right to health and protection from violence, the standard of protection deteriorated during the Covid-19 pandemic. Furthermore, special report on the rights of LGBT+ persons in Georgia²⁷ has been prepared, evaluating the COVID-19 impact on the said group of persons in all areas. In Armenia, the Research and Educational Centre of the Human Rights Defender's Office published information guidelines concerning emergency situations²⁸. Apart from these, the Human Rights Defender Office of Armenia created a working group on monitoring of domestic violence cases during the emergency situation, the group has released an awareness raising video²⁹.

During the pandemic, Gender Department at the Public Defender Office has also created online courses on Gender Equality and Women's Empowerment Principles for any interested person, available free of charge.

Section II – challenges with monitoring the socio-economic rights by Georgian and Armenian Ombudsperson Institutions during the emergency situations – the perspective of selected rights under the European Social Charter

Brief considerations concerning the European Social Charter

The European Social Charter (ESC) is European human rights legal agreement promoting the principle of progressive realization of social and economic rights by States to their peoples. The Charter was adopted in 1961 and it recognized the first European list of social rights related to work, social protection, and vulnerable groups of people, as well as the reporting system as a mandatory monitoring mechanism³⁰. Later, the original Charter of 1961 was expanded on and added to by a series of instruments. The result of the process was **the adoption of the Revised European Social Charter (CETS 163)**, opened for signature May 3, 1996, and entered into force July 1, 1999.³¹ The Charter is a mechanism to monitor implementation of improvements in basic conditions of employment and labor practices for all people in the areas of social security and basic standards of living, health, and education.

²⁷ <https://ombudsman.ge/res/docs/2022051115380032325.pdf>

²⁸ <https://ombuds.am/images/files/c06fb1b47d16be14b5ba6cdcc1502642.pdf>

²⁹ Available at: <https://ombuds.am/am/site/VideoGalleryView/400>

³⁰ For early comments, see D. Harris, 'The European Social Charter', *International and Comparative Law Quarterly*, 1964, vol. 13, pp. 1076-87; N. Valticos, 'La Charte sociale européenne: sa structure, son contenu, le contrôle de son application', *Droit social*, 1963, vol. 26, pp. 466-82; H. Wiebringhaus, 'La Charte sociale européenne', *Annuaire français de droit international*, 1963, vol. 9, pp. 709-21.

³¹ CETS No 163, opened for signature in Strasbourg on 3 May 1996, in force since 1 July 1999. Unless expressly noted otherwise all references to the Charter in the remainder of this study designate the provisions of the 1996 Revised European Social Charter.

Today, the Charter treaty system is one of the most widely accepted human rights set of standards within the Council of Europe. The widespread support for social rights is assured by the fact that 43 out of the 47 member States of the Council of Europe are parties to either the 1961 Charter or the Revised Charter. **Both Georgia³² and Armenia³³ are parties to the Revised European Social Charter of 1996.**

The Charter guarantees fundamental social and economic rights as a counterpart to the European Convention on Human Rights, which refers to civil and political rights. It guarantees a broad range of everyday human rights **related to employment, housing, health, education, social protection, and welfare**. The treaty system of the European Social Charter is **aimed at applying the United Nations' Universal Declaration of Human Rights of 1948 within Europe**; for this reason, it is linked to the United Nations' Human Rights Treaty System and the European Union's Charter of Fundamental Rights. It lays **specific emphasis on the protection of vulnerable persons such as elderly people, children, persons with disabilities and migrants**. It requires that enjoyment of the abovementioned rights be guaranteed **without discrimination**.

The rights protected under the Charter concern (in the order of provisions): work; working conditions; safe and healthy working conditions; fair remuneration; freedom of association; collective bargaining; protection of children and young persons; maternity; vocational guidance; vocational training; protection of health; social security; social and medical assistance; social services; independence, social integration and participation of persons with disabilities; social, legal and economic protection of the family; social and economic protection of children and young persons; social and economic protection of mothers and children; gainful occupation in the territory of other States Parties; protection and assistance for migrant workers and their families; equal opportunities and treatment in employment and occupation without sex discrimination; information and consultation of workers; participation in the determination and improvement of working conditions; elderly persons; termination of employment; insolvency of the employer; dignity at work; equal opportunity and treatment for workers with family responsibilities; protection of workers' representatives in the undertaking; information and consultation in procedures of collective redundancy; protection against poverty and social exclusion; housing; non-discrimination.

The State may decide at the time of ratification which provisions of the Charter it intends to accept, subject to the choice of a certain minimum: at least 16 items, including 6 of those which constitute the 'core' of the Charter (Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20) or 63 numbered paragraphs. This means that different countries may be bound by different provisions of the Charter.

Georgia ratified the Revised European Social Charter on 22 August 2005, accepting 63 of the Revised Charter's 98 paragraphs. It has not yet ratified the Additional Protocol providing for a system of Collective Complaints.

³² Country profile available at: <https://www.coe.int/en/web/european-social-charter/georgia>

³³ Country profile available at: <https://www.coe.int/en/web/european-social-charter/armenia>

Table of provisions accepted by Georgia

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3
6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1
8.2	8.3	8.4	8.5	9	10.1	10.2	10.3	10.4	10.5	11.1	11.2
11.3	12.1	12.2	12.3	12.4	13.1	13.2	13.3	13.4	14.1	14.2	15.1
15.2	15.3	16	17.1	17.2	18.1	18.2	18.3	18.4	19.1	19.2	19.3
19.4	19.5	19.6	19.7	19.8	19.9	19.10	19.11	19.12	20	21	22
23	24	25	26.1	26.2	27.1	27.2	27.3	28	29	30	31.1
31.2	31.3										

Violet = Accepted provisions

Armenia ratified the Revised European Social Charter on 21 January 2004, accepting 67 of the Revised Charter's 98 paragraphs. It has not yet accepted the Additional Protocol providing for a system of Collective Complaints.

Table of provisions accepted by Armenia

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3
6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1
8.2	8.3	8.4	8.5	9	10.1	10.2	10.3	10.4	10.5	11.1	11.2
11.3	12.1	12.2	12.3	12.4	13.1	13.2	13.3	13.4	14.1	14.2	15.1
15.2	15.3	16	17.1	17.2	18.1	18.2	18.3	18.4	19.1	19.2	19.3
19.4	19.5	19.6	19.7	19.8	19.9	19.10	19.11	19.12	20	21	22
23	24	25	26.1	26.2	27.1	27.2	27.3	28	29	30	31.1
31.2	31.3										

Violet = Accepted provisions

Monitoring the socio-economic rights under the European Social Charter in Georgia and Armenia – the Reporting system

The honoring of commitments entered into by the States Parties of the European Social Charter is subject to the monitoring of the European Committee of Social Rights. This body monitors the compliance under the two existing monitoring mechanisms: through national reports drawn up by States Parties (**reporting system**) and through collective complaints lodged by the social partners and other non-governmental organizations (**collective complaints procedure**).

The European Committee of Social Rights is an expert body consisting of 15 independent, impartial members elected by the Council of Europe's Committee of Ministers for a period of six years, renewable once. The Committee rules on the conformity of the situation in States with the European Social Charter. **It adopts conclusions within the framework of the reporting procedure and decisions under the collective complaints procedure.**

The reporting system is formally governed by Articles 21-29 of the 1961 Charter. In the framework of this monitoring system, States Parties regularly submit a report on the implementation of the Charter in law and in practice. The system is obligatory for all the parties of the European Social Charter (both the 1961 and the Revised of 1996). The reporting system will be described in details in the next subtitle of the guideline.

The collective complaints procedure was introduced by the Additional Protocol providing for a system of collective complaints, which was adopted in 1995 and entered into force in 1998. The aim pursued with the introduction of the procedure was to increase the effectiveness, speed and impact of the implementation of the Charter. In this context, the collective complaints procedure has strengthened the role of the social partners and non-governmental organizations by enabling them to directly apply to the European Committee of Social Rights for rulings on possible non-implementation of the Charter in the countries concerned, namely those States which have accepted its provisions and the complaints procedure. **Neither Georgia, nor Armenia ratified the said Protocol, so the collective complaints procedure is not used for these countries and as a result will not be described in the guideline.**

Apart from the above-mentioned procedures, monitoring the situation in states from the perspective of its compliance with the provisions of the Charter the state has accepted, the Council of Europe has established also **the mechanism to promote further acceptance of the Charter and monitor countries' readiness to take such a step. This monitoring is conducted in the frames of the procedure for non-accepted provisions** that is held every five years. The procedure will be described in more details in the next subtitle of the guideline.

In the framework of the reporting system, States Parties regularly submit a report on the implementation of the Charter in law and in practice. National reports are examined by the European Committee of Social Rights, which decides whether the national situations they describe comply with the Charter. The regulation of system is set out in Part IV of the 1961 Charter as amended by the 1991 Turin Protocol³⁴. **The reporting system is an obligatory monitoring mechanism for all the State Parties of the Charter, including Georgia and Armenia.**

In the framework of the reporting system, the European Committee of Social Rights adopts conclusions which are published every year. They can be consulted on the European Social Charter HUDOC Database³⁵. Insofar as they refer to binding legal provisions and are adopted by a monitoring body established by the Charter, the Conclusions of the European Committee of Social Rights must be respected by the States concerned; however, they are not enforceable in the domestic legal

³⁴ ETS No. 142

³⁵ <https://hudoc.esc.coe.int/eng>

systems. In practice, this means that when the Committee rules that the situation in a country is not in compliance with the Charter, one cannot require the Committee's conclusions to be enforced in domestic law as would be the case with a ruling by a court in the State concerned. As the decisions adopted by the European Committee of Social Rights in the framework of the Collective Complaints procedure, the Conclusions adopted within the reporting system are declaratory; in other words, they set out the law. On this basis, national authorities are required to take measures to give them effect under domestic law. In this context, domestic courts can declare invalid or set aside domestic legislation if the Committee has ruled that it is not in compliance with the Charter³⁶.

The follow-up of the conclusions of the European Committee of Social Rights is ensured by the Committee of Ministers of the Council of Europe, which adopts a Resolution. The resolution closes each supervision cycle and may contain individual recommendations to the States parties concerned. If a State takes no action, the Committee of Ministers, on the proposal of the Governmental Committee, may address a Recommendation to that State, asking it to change the situation in law and/or in practice. Ultimately, it falls to the European Committee of Social Rights to determine whether the situation has been brought into compliance with the Charter. This is done by the European Committee of Social Rights in the framework of the reporting system or the Collective Complaints procedure.

Following the decision taken by the Committee of Ministers in 2006³⁷, **the provisions the Charter have been divided into four thematic groups. States parties present a report on the provisions relating to one of the four thematic groups on an annual basis.** Consequently each provision of the Charter is reported on once every four years.

The four groups of provisions are as follows:

- **Group 1:** *Employment, training and equal opportunities* / Article 1 - Article 9 - Article 10 - Article 15 - Article 18 - Article 20 - Article 24 - Article 25.
- **Group 2:** *Health, social security and social protection* / Article 3 - Article 11 - Article 12 - Article 13 - Article 14 - Article 23 - Article 30.
- **Group 3:** *Labour rights* : Article 2 - Article 4 - Article 5 - Article 6 - Article 21 - Article 22 - Article 26 - Article 28 - Article 29.
- **Group 4:** *Children, families, migrants* / Article 7 - Article 8 - Article 16 - Article 17 - Article 19 - Article 27 - Article 31.

In April 2014, the Committee of Ministers adopted new changes to the Charter's monitoring system. The most important aim of the changes is to simplify the reporting system for States Parties having accepted the Collective Complaints procedure. Following these modifications, **States having accepted the Collective Complaints procedure have to submit a simplified report every two**

³⁶ See more: <https://www.coe.int/en/web/european-social-charter/reporting-system>

³⁷ Decision (CM(2006)53). Available at:

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d7f05

years. Neither Georgia nor Armenia has ratified the collective complaints procedure so both these countries supply standard (not simplified) reports.

Employment and labor rights during the time of emergency

Full employment and employment services (Article 1)

The impact of emergencies, such as e.g., the COVID-19 crisis, on employment poses a serious challenge in terms of the obligation on States Parties laid down by the European Social Charter in its very first provision on the right to work, Article 1§1 of the Charter, namely, to maintain a high and stable level of employment with a view to realizing the objective of full employment.

The European Committee of Social Rights considers that employment policy measures must be key elements of the response to emergency situations. Article 1§1 of the Charter requires that States Parties apply a mix of “active” and “passive” labour market measures which are conducive to creating and preserving jobs, while adequately assisting in finding and/or qualifying for jobs³⁸. It further requires that such measures shall be adequately funded, notably as a function of unemployment levels³⁹.

Pertinent active labour market measures in emergency situations shall include facilitating flexible working arrangements, notably teleworking and work-sharing, up- and/or re-skilling measures to enhance workforce adaptability, and increased use of digital delivery of employment services. Passive measures that have been widely applied by States Parties to the Charter since the outbreak of the COVID-19 pandemic include innovative uses of unemployment benefit systems and other income replacement schemes (furloughs, short-time work, wage subsidies, basic/minimum income provision, etc.)⁴⁰.

The European Committee of Social Rights considers it essential that such labour market policy measures be pursued for as long as necessary to maintain a high and stable level of employment. Ensuring that these measures be extended to vulnerable categories of workers, for example those who are not covered by unemployment benefits, is vital. In the longer term, compliance with the Charter obligations relating to the right to work, will require employment creation, including through public employment programmes, public works, hiring subsidies and various support measures for the creation of quality jobs with decent working conditions. Workforce reallocation will be necessary, which will require investment in training for employability (up- and/or re-skilling) and in incentives for geographical mobility. Finally, efficient employment services as required by Article 1§3 of the Charter will be crucial to meet increased demand for job mediation, counselling, and labour

³⁸ ECSR, Statement on COVID-19 and social rights, adopted on 24 March 2021, p. 3. Available at: <https://rm.coe.int/statement-of-the-ecsr-on-covid-19-and-social-rights/1680a230ca>

³⁹ ECSR, Conclusions 2002, Article 1§1, Italy.

⁴⁰ ECSR, Statement on COVID-19 and social rights, adopted on 24 March 2021, p. 3.

market information, not least where redundancies become inevitable⁴¹.

Health and safety at work (Article 3)

Article 3 of the Charter guarantees the right of every worker to a safe and healthy working environment. Most emergency situations, including the COVID-19 pandemic, involve biological agent posing a risk to health and safety at work. A response in terms of national law and practice, covering both preventative and protective measures, is required if the rights set out in Article 3 are to be secured.⁴² This involves the introduction of immediate health and safety measures at the workplace such as adequate physical distancing, the use of personal protective equipment, reinforced hygiene and disinfection and closer medical supervision, where appropriate⁴³. In this respect, due account should be taken of the fact that certain categories of workers are exposed to heightened risks, such as frontline health care workers, social workers, teachers, transport and delivery workers, garbage collection workers, agro-food processing workers.

States Parties must ensure that their national policies on occupational safety and health, and their health and safety regulations, reflect and address the hazardous agent and the particular psychosocial risks faced by different groups of workers in the emergency situation context. At a more general level, the situation requires a thorough review of occupational risk prevention at national policy level as well as at company level in close consultation with the social partners as stipulated by Article 3§1 of the Charter. The national legal framework may require amendment and risk assessments at company level must be adapted to the new circumstances⁴⁴.

Under Article 3§§2 and 3 of the Charter all workplaces and all sectors of activity must be covered by health and safety regulations. Pursuant to the ECSR, many States Parties have taken rapid steps to issue new health and safety standards specifically related to the SARS-Cov-2 during the recent COVID-19 pandemic. In some cases, States have decided that contracting COVID-19 may be classified as a work-related injury or disease. Insurance and health coverage for work-related accident or injury due to contracting COVID-19 should extend to travel to and from the workplace, especially when telework is not possible or is not enabled by the employer. On the other hand, the ECSR also noted that teleworking, remote working, or work from home practices may be associated with specific health and safety risks, including unsuitable workplace ergonomics and psychosocial stress factors such as isolation, electronic surveillance and “hyperconnected” working methods⁴⁵.

⁴¹ ECSR, Statement on COVID-19 and social rights, adopted on 24 March 2021, p. 3.

⁴² Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, Decision on the merits of 6 December 2006, §224. See also Conclusions XIV-2 (1998), Statement of interpretation on Article 3§2 of the Charter (Article 3§1 of the 1961 Charter).

⁴³ ECSR, Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020.

⁴⁴ ECSR, Statement on COVID-19 and social rights, adopted on 24 March 2021, p. 3.

⁴⁵ ECSR, Conclusions 2013, Statement of interpretation on Article 3.

Health and safety regulations must be adequately enforced through labour inspection. In the situation of emergency therefore, labour inspections must be provided with appropriate powers and adequate resources, especially labour inspection staff as required by Article 3§3 of the Charter⁴⁶.

Just working conditions, including fair remuneration (Articles 2 and 4)

Article 2 of the Charter guarantees the right of all workers to just working conditions, including reasonable daily and weekly working hours (Article 2§1), annual holiday with pay (Article 2§3), and weekly rest periods (Article 2§5). Protection of the said rights is especially important in times of emergency when the labour market must adjust to the changing conditions. In times of COVID-19 pandemic new forms of work organization such as teleworking and work from home started to be used on a large scale often leading to *de facto* longer working hours, due to inter alia a blurring of the boundaries between work and personal life. Consideration must therefore be given to ensuring that especially in times of emergency the right to rest periods is effectively guaranteed and that home-based workers can and are obliged to disconnect from the work environment.

The ECSR, while discussing the influence of the COVID-19 state of emergency on working hours refers to its long-standing jurisprudence on what constitute reasonable working hours and recalls that the defined outer limits must not be exceeded except in situations of force majeure.⁴⁷ In this respect, the ECSR also recalls that overtime work must be paid at an increased rate of remuneration pursuant to Article 4§2 of the Charter.

Apart from assessing the influence of the last state of global emergency on working time, the ECSR highlighted that precarious and low-paid workers, including in the gig economy and those on zero-hour contracts, are particularly vulnerable to the impacts of the COVID-19 crisis. Therefore, States Parties must ensure that these categories of workers enjoy all the labour rights set out in the Charter. This includes not only those pertaining to safe and healthy working conditions, reasonable working hours and fair remuneration (see below), but also rights relating to notice periods, protection against deduction from wages, dismissal protection, trade union membership, information and consultation at the workplace (notably Articles 4, 5, 21, 22 and 24 of the Charter).

Fair remuneration is a key Charter right (Article 4§1 of the Charter) which requires that net minimum wages do not fall below 60% of average wage in the labour market.⁴⁸ States Parties must devote necessary efforts to reaching and respecting this minimum requirement and to regularly adjust minimum rates of pay also during the emergency situations. The ECSR considers that the right to fair remuneration includes the right to an increased pay for workers most exposed to emergency-related risks. More generally, income losses during lockdowns or additional costs incurred by teleworking and work from home practices due to emergency should be adequately compensated⁴⁹.

⁴⁶ ECSR, Statement on COVID-19 and social rights, adopted on 24 March 2021, p. 4.

⁴⁷ ECSR, Conclusions XIV-2 (1998), Article 2§1, Norway.

⁴⁸ ECSR, Conclusions XIV-2 (1998), Statement of interpretation on Article 4§1.

⁴⁹ ECSR, Statement on COVID-19 and social rights, adopted on 24 March 2021, p. 4.

Protection of dignity, including protection against harassment (Article 26)

During the state of emergency, Article 26 of the Charter, which guarantees the right of all workers to protection of their dignity at work, is also of the utmost importance. Indications are that the COVID-19 situation has led to increased tensions at the workplace and that in particular healthcare workers and other frontline workers have more often experienced attacks and harassment. Therefore, it is inevitable to stress that especially in time of emergency employers must ensure that all workers are protected against all forms of harassment. It must be possible to hold employers liable when harassment occurs in relation to work, or on premises under their responsibility, even when it involves a third person not employed by them, such as visitors, clients, etc.⁵⁰

Protection against unfair termination of employment, including in cases of collective redundancies and in case of insolvency (Articles 24, 25 and 29)

Protection against termination of employment without a valid reason guaranteed under Article 24 of the Charter must also not be overlooked during the state of emergency and in its aftermath. The ECSR emphasizes in this respect that termination of employment for certain reasons is explicitly prohibited under Article 24 as well as in the context of other provisions of the Charter, in particular, discrimination (Article 1§2, 4§3, 15 and 20), trade union activities and participation in strikes (Articles 5 and 6§4, see below), maternity (Article 8§2), family responsibilities (Article 27), worker representation (Article 28). The filing of a complaint or participation in proceedings against an employer involving alleged violation of laws or regulations (Article 24, Appendix para. 3.c), or temporary absence from work due to illness or injury (Article 24, Appendix para. 3.f) also do not constitute valid reasons for termination of employment.

In cases of collective dismissals due to a reduction or change in the company's activities caused by the emergency crisis, due respect must be accorded to the Charter requirement that workers' representatives are informed and consulted in good time before redundancies and that the purpose of such consultations is respected in redundancy procedures, namely that the workers are made aware of reasons and scale of planned redundancies and that the position of the workers is taken into account when their employer is planning collective redundancies. This applies in particular to the scope, mode and manner of such redundancies and the extent to which their consequences can be avoided, limited and/or mitigated (Article 29)⁵¹. The state of emergency cannot be an excuse for not respecting the important role of social dialogue in finding solutions to the problems caused

⁵⁰ ECSR, Conclusions 2003, Sweden; Conclusions 2014, Finland.

⁵¹ ECSR, Conclusions 2014, Statement of Interpretation on Article 29.

by the emergency that also affect the workers. Simple notification of redundancies to workers or their representatives is not sufficient.⁵²

The state of emergency and its consequences may also increase the risk of companies becoming insolvent, despite the different measures taken by States Parties aiming to support enterprises facing difficulties due to the pandemic. In such cases, the workers affected are at a higher risk to lose their regular remuneration, i.e., their basic and often the only means of subsistence for them and their families. The protection of workers' claims in the event of the insolvency of their employer must therefore effectively be guaranteed during the state of emergency crisis, in accordance with the requirements of Article 25 of the Charter⁵³.

Gender equality (Articles 1§2, 4§3, 20, 27)

The state of emergency must not be allowed to eradicate or roll back progress made in relation to gender equality in the labour market, especially having regard to the fact that such gender equality was far from achieved prior to the onset of the crisis.⁵⁴ Indications are that women's employment during the COVID-19 crisis has been placed at greater risk than men's. Women workers are likely at a greater danger of infection as they make up the vast majority of exposed domestic, health and social care workers. The need to reconcile family life with teleworking from home, home-schooling of children and childcare, combined with the stresses of potential COVID-19 health concerns, has led to serious pressures and challenges for many families, frequently with a disproportionate impact on women.

In effect, women, more so than men, are confronted with a "double burden" of both paid and unpaid work making it difficult or impossible to achieve an appropriate work-life balance. The disadvantage for women is not only short-term in terms of loss of income because of the higher likelihood of their giving up remunerated work or opting for part-time work in order to respond to family needs, to carry out home-schooling of children or to carry out unpaid work generally, including as unpaid caregivers (e.g., for older or ill relatives). Such disadvantage is also likely to be more lasting in terms of reduced career prospects and even ultimate exit from the labour market.

Faced with this situation, States Parties must take all necessary measures to apply and reinforce as appropriate Charter rights such as Article 1§2 (non-discrimination in employment), Article 4§3 (equal pay for women and men for work of equal value), Article 20 (equal opportunities in employment, including in respect of working conditions, dismissal protection, vocational training and career development) and Article 27 (reconciliation of work and family life, notably through non-

⁵² ECSR, Conclusions 2014, Georgia.

⁵³ ECSR, Statement on COVID-19 and social rights, adopted on 24 March 2021, p. 5-6.

⁵⁴ See for example the ECSR's recent decisions in collective complaints lodged by University Women of Europe (UWE) against several States Parties finding insufficient progress in eliminating the gender pay gap in violation of Articles 4§3 and 20 of the Charter.

discrimination of workers with family responsibilities, childcare provision and the granting of parental leave arrangements) especially in times of emergency⁵⁵.

Migrant workers (Article 19)

Migrant workers are frequently over-represented in the sectors hardest hit by the emergency crisis, for example the construction, care, and service sectors. They are also often employed in essential jobs with significant exposure to health risks, such as in health care, elderly care, agriculture, and agro-food processing.

Migrant workers face particular obstacles in achieving full enjoyment of the rights guaranteed by the Charter and formal guarantees in domestic law of equal treatment and non-discrimination do not always suffice.⁵⁶ The situation gets even worse during emergency situations when the labour market is unpredictable and must adjust to often rapidly changing conditions.

The obstacles faced by migrant workers in terms of Charter rights can be legal, administrative, or practical in nature⁵⁷:

- In case of redundancies due to the crisis invoked by the state of emergency, migrant workers are likely to be the first to lose their jobs and experience considerable difficulty in finding new employment. In addition to loss of income, this may also lead to the loss of their work and residence permits. In this respect, The Committee's decisions shall be recalled that Article 18§3 of the Charter requires that loss of job does not automatically lead to revoking the residence permit of a foreign worker.
- Due to lack of accessible information or language barriers migrant workers may not be aware of their rights or available benefits and support or be disinclined to access them. Information and support services for migrant workers are likely to scale down or even close during the state of emergency, especially in lockdown periods. To prevent such situations, it must be highlighted that rights to information and support for migrant workers and their families are guaranteed by Articles 19§§2 and 3 of the Charter.
- Migrant workers often live in overcrowded accommodation with only basic or inadequate sanitary facilities, which may increase their exposure to health-related states of emergencies (e.g., COVID-19 pandemic) and in some cases lead to their becoming victims of xenophobia and stigmatization. Under Article 19 of the Charter, States Parties are obliged to guarantee equal treatment of migrant workers with respect to working conditions, trade union rights and accommodation (Article 19§4) and to take measures against misleading propaganda and xenophobia (Article 19§1).

⁵⁵ ECSR, Statement on COVID-19 and social rights, adopted on 24 March 2021, p. 6.

⁵⁶ ECSR, Conclusions I, Statement of interpretation on Article 19.

⁵⁷ ECSR, Statement on COVID-19 and social rights, adopted on 24 March 2021, p. 7.

The COVID-19 pandemic has in some cases led to separation of migrant workers and their families for extended periods, for example due to closure of borders, travel restrictions and quarantine requirements or due to fear of job loss in case of travel. In the light of the mentioned challenges, it shall be noted that Article 19§6 requires States Parties to facilitate family reunion as far as possible and refers to the possibility for the States Parties to take extraordinary measures to avoid separation of families in the times of crisis caused by the state of emergency.

The recent COVID-19 pandemic has also revealed increased risk of labour exploitation and human trafficking, including in domestic work and the agro-food processing sector which raises issues in terms of Articles E, 16 and 7§10 of the Charter⁵⁸.

Children and families' rights during the time of emergency

Children (Articles 7, 16, 17 and 30)

The influence of the state of emergency on children depends mostly on its character and nature. However, in many cases e.g., COVID-19 pandemic, although children do not seem to suffer the most severe effects associated with the emergency they are still affected by the emergency in multiple ways. The economic impact of the state of emergency carries the risk of many children experiencing reduced enjoyment of their rights under the Charter. Parents/care givers losing jobs and houses and reduced household income are a key cause of reduced rights enjoyment for children in many instances. The situation is aggravated during military attacks and lockdown periods by other factors such as only partially operating social services for children, the absence or limitation of access to meal services, reduced social contacts, poor quality housing, and school closures for face-to-face teaching for many children.⁵⁹ These and other challenges faced by children raise issues of conformity with Charter provisions such as Articles 16, 17, 7 and 30.

The prevalence of child poverty in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of States Parties' efforts to ensure the right of children and young persons to social, legal and economic protection guaranteed by Article 17§1 of the Charter⁶⁰. The obligation of States Parties to take all appropriate and necessary measures to ensure that children and young persons have the assistance they need is strongly linked to measures directed towards the amelioration and eradication of child poverty and social exclusion. This also applies where child poverty and social exclusion are caused or exacerbated by a state of emergency.

Loss of jobs and income are not the only causes of rights harms experienced by children and families during the state of emergency. Domestic violence tends to increase in times of emergency

⁵⁸ ECSR, Statement on COVID-19 and social rights, adopted on 24 March 2021, p. 7-8.

⁵⁹ Council of Europe, The COVID-19 pandemic and children, September 2020. Available at: <https://assembly.coe.int/LifeRay/SOC/Pdf/TextesProvisoires/2021/20210521-CovidChildRights-EN.pdf>

⁶⁰ ECSR, 'Protecting the Child from Poverty: The Role of Child Rights in the Council of Europe' (COE, 2019).

and emerging data covering e.g., the lockdown periods during health crisis of the COVID-19 pandemic show an alarming increase in the reported cases of such violence worldwide and in numerous Council of Europe member States.⁶¹ With respect to children, Article 17§1 of the Charter requires States Parties to prohibit all forms of violence against children (including all forms of corporal punishment). States must act with due diligence to ensure that violence is eliminated in practice.⁶² This obligation is of crucial importance given the evidence of increased physical, psychological, and sexual violence against children during states of emergency. Article 7§10 of the Charter guarantees protection against sexual and other exploitation of children as well as protection against the misuse of information technology and social media (for the purposes of online bullying, child pornography, grooming, harassment, etc.),⁶³ which is particularly pertinent in view of the acceleration of digitalization and online activity brought about by the pandemic.⁶⁴

Women

Women are on the frontlines of most of the state of emergency crises due to several reasons. According to OECD data, up to 70% of health workers are women and health sector is the one usually most affected by the state of emergency. Women workers are also more likely than men to have lower paid and less secure jobs. Women's burden of housework and care for children and elderly household members is much greater and in need of redistribution which exacerbates during the time of emergency. More particularly, during the COVID-19 crisis, the pandemic itself and some of the measures to contain it have been putting women's lives and personal safety at risk. The evidence is clear that policies of isolation and lockdown have been associated with an increase in levels of domestic, sexual and gender-based violence.

In this context it must be recalled that Article 16 of the Charter applies to all forms of violence against women and domestic violence and States Parties are required to ensure an adequate protection against such violence in both law and practice, including, or even especially, during the state of emergency. States Parties must show due diligence in deploying measures such as restraining orders penal sanctions for perpetrators, adapted judicial procedures, and adequate compensation for victims, and training, particularly for police officers and other working directly with victims as well as collection and analysis of reliable data.⁶⁵ States must ensure provision of shelter or protected accommodation for victims or for women at risk of violence, as well as services to reduce the risk of violence and support and rehabilitate victims. Victim empowerment should also

⁶¹ Declaration of the Committee of the Parties to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) on the implementation of the Convention during the COVID-19 pandemic, Council of Europe, 20 April 2020.

⁶² ECSR, *APPROACH v. Belgium*, Complaint No. 98/2013, decision on the merits of 20 January 2015.

⁶³ ECSR, *Conclusions 2004*, Article 7§10, Bulgaria.

⁶⁴ ECSR, *Conclusions 2019*, Article 17§1, France; ECSR, *Statement on COVID-19 and social rights*, adopted on 24 March 2021, p. 9-10.

⁶⁵ ECSR, *Conclusions 2004*, Article 7§10, Bulgaria.

be strengthened through early advice and protection measures as well as minimum or supplemented income for victims or would-be victims⁶⁶.

Older persons

The state of emergency may have devastating effects on older persons' rights, in particular their right to protection of health (Article 11 of the Charter), with consequences in many cases for their rights to autonomy and to make their own decisions and life-choices, their right to continue to live in the community with adequate and resilient supports to enable them to do so, as well as their right to equal treatment in terms of Article E when it comes e.g. to the allocation of health care services including life-saving treatments (e.g., triage and ventilators).

During COVID-19 pandemic, whether still living independently or not, many older persons have had their services removed or drastically reduced. This has served to heighten the risk of isolation, loneliness, hunger and lack of ready access to medication. The lack of stability, continuity and resilience in service models has considerably undermined the goal of community living as the main means of achieving long term care for older persons. This isolation has been exacerbated for those older persons living in institutions due to the withdrawal of services, lack of personal protective equipment for staff and residents, bans of visitors (including bans on third parties normally relied on to police institutions). It is no accident that some of the highest rates of morbidity experienced has been in such residential settings. To the human rights-based argument for investment in the community to give reality to the right to community living is now added a public health argument in favour of moving away from residential institutions as an answer to long term care needs. All of this has impacted on the social inclusion and social citizenship of older persons across a wide range of Council of Europe states⁶⁷.

The COVID-19 crisis has exposed examples of a lack of equal treatment of older persons, such as in medical care where rationing of scarce resources (e.g., ventilators) has sometimes been based on stereotyped perceptions of vulnerability and decline in old age. Too much space was allowed for implicit judgments about the 'quality of life' or 'worth' of lives of older persons when setting the boundaries for such triage policies. Equal treatment calls for an approach based on the equal recognition of the value of older persons' lives⁶⁸.

Article 23 of the Charter requires the existence of an adequate legal framework for combating age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services, healthcare, education, services such as insurance and banking products, allocation of resources and facilities. This article must be fully respected during all the states of

⁶⁶ ECSR, Statement on COVID-19 and social rights, adopted on 24 March 2021, p. 10.

⁶⁷ ECSR, Statement on COVID-19 and social rights, adopted on 24 March 2021, p. 10-11.

⁶⁸ Ibidem.

emergency.⁶⁹ Discrimination against older persons in terms of social rights enjoyment, including those related to health, is also contrary to Article E.

Under Article 23 of the Charter States Parties must also ensure that older persons have adequate resources such as will allow them to lead a decent life and play an active part in public, social and cultural life. This applies equally in the emergency context. Enabling older persons to remain in their familiar surroundings as required by Article 23 of the Charter has become even more important in view of the heightened risk of contagion in the congregated settings of nursing homes and other long-term institutional and residential facilities⁷⁰.

There is an overall emphasis in the Charter on using social rights to underpin personal autonomy and respect the dignity of older persons and their right to flourish in the community, resulting in a pressing need to re-invest in community-based supports as an alternative to institutions. Where, in the transition period, institutionalization is unavoidable, Article 23 requires that living conditions and care be adequate and that the following basic rights are respected: the right to autonomy, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the institution, the protection of property, the right to maintain personal contact (including through internet access) with persons close to the elderly person and the right to complain about treatment and care in institutions.⁷¹ This also applies in the emergency context.

Due to the specific health-related risks and needs in nursing homes, during state of emergency, States Parties must urgently allocate them sufficient additional financial means, organize and resource necessary personal protective equipment and ensure that nursing homes have at their disposal sufficient additional qualified staff in terms of qualified health and social workers and other staff in order to be able to adequately respond to emergency and to ensure that the above mentioned rights of older people in nursing homes are fully respected.

Lastly, Article 23 requires that older persons and their organizations be consulted on policies and measures that concern them directly, including on ad hoc measures taken with regard to emergency crises. Planning for the recovery after the emergency must take into account the views and specific needs of older persons and be firmly based on the evidence and experience gathered in the pandemic so far⁷².

Persons with disabilities

Persons with disabilities are especially vulnerable members of society in terms of emergency situations; therefore, their rights are impacted very severely by crises and states responses thereto. Emergencies and disasters can strike quickly and without warning, forcing people to quickly leave or

⁶⁹ ECSR, Conclusions 2009, Article 23, Andorra.

⁷⁰ ECSR, Statement on COVID-19 and social rights, adopted on 24 March 2021, p. 10-11.

⁷¹ ECSR, Conclusions 2003, Article 23, Slovenia.

⁷² ECSR, Statement on COVID-19 and social rights, adopted on 24 March 2021, p. 10-11.

be confined in their home unexpectedly. For persons who have disabilities, emergencies, such as especially fires, floods, and acts of terrorism, present a real challenge. The same challenge might apply to the elderly and other special needs populations. Protecting people with disabilities and their families for the strike of a disaster requires planning ahead both from the side of the authorities and from the side of the person him/herself. The manual “Preparing for Disaster for People with Disabilities and other Special Needs” might be of help⁷³. The role of the Ombudsperson shall be to promote and provide assistance in such preparations.

Most recently, the rights of persons with disabilities have been impacted very severely by the COVID-19 pandemic. The particular vulnerability of persons with disabilities to the virus – at least some of which results from the environmental factors (including social and economic policy factors) that expose them to increased risk of harm – has resulted in high rates of transmission and death. Containment measures have resulted in many disabled persons having had necessary social protection support removed from them or drastically reduced. Persons with disabilities in an institutional context have faced particular risks from the virus due to the increased risk of transmission in such contexts, as well as reduced regulation and monitoring of institutions during the pandemic.

Article 15 of the Charter has as its underlying vision the equal citizenship for persons with disabilities and, fittingly, the primary rights are those of “independence, social integration and participation in the life of the community” on the basis of non-discrimination. It applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age.⁷⁴

To fulfill their obligations arising from Article 15, States Parties must ensure that basic services and support for persons with disabilities, such as health care, home care, personal assistance and rehabilitation services are not discontinued or limited in the context of emergency. Services for the population specifically set up to cope with the pandemic, including remote and online services, quarantine facilities, personal protective equipment, and public information and guidelines, should be accessible to persons with disabilities on an equal basis to other members of the community. Amongst other things, public health information must be made available in sign language and accessible means, modes, and formats. Persons with disabilities and their organizations must be consulted and participate in the design, implementation, and review of disability policies in the context of emergency. State of emergency must not result in increased institutionalization of persons with disabilities⁷⁵.

In view of the fact that school closures due to the state of emergency impacts persons with disabilities more than others, it shall be recalled that Article 15§1 of the Charter requires States Parties to provide education, including vocational guidance and training, for this group of persons. The existence of non-discrimination legislation is necessary as an important tool for the

⁷³ Available at:

https://www.redcross.org/content/dam/redcross/atg/PDF_s/Preparedness_Disaster_Recovery/General_Preparedness_Recovery/Home/A4497.pdf

⁷⁴ ECSR, *Autism-Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, §48.

⁷⁵ ECSR, *Statement on COVID-19 and social rights*, adopted on 24 March 2021, p. 12-13.

advancement of the inclusion of children and other persons with disabilities into general or mainstream educational schemes. In this respect, it shall be noted that inclusive education implies the provision of support and reasonable accommodation to which persons with disabilities must be entitled in order to access schools effectively, including in times of emergency.⁷⁶

Promotion of an equal and effective access to employment on the open labour market for persons with disabilities is the key requirement of Article 15§2 of the Charter. This obligation is not reduced in times of emergency crises. This requires states to take the reasonable accommodation measures required to ensure that persons with disabilities are protected from the risks caused by the virus associated with the workplace context (including travel to and from work).

With persons with disabilities being less likely than others to be employed in the ordinary labour market, the state of emergency crises risk marginalizing them further. In this situation, States Parties should, on the one hand, ensure that job and income losses of persons with disabilities are compensated by adequate social security benefits and, on the other hand, reinforce efforts to integrate persons with disabilities into the labour market. In this latter respect, the emergency conditions make it particularly important that domestic law must provide for obligations on the employer to take steps in accordance with the requirement of reasonable accommodation to ensure effective access to employment and to keep in employment persons with disabilities.⁷⁷

The right to housing during the time of emergency

The rights guaranteed by Article 31 of the Charter, become even more crucial to rightsholders during the state of emergency. The COVID-19 pandemic crisis has highlighted the importance of the requirements of Article 31§1, notably that dwellings must be safe from a sanitary and health point of view (i.e. have all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity), and that they must not be overcrowded (i.e. the size of dwellings must be suitable in light of the number of persons and the composition of the household).⁷⁸ These requirements are essential to prevention of, and protecting from, transmission of virus.

During the state of emergency States Parties shall take *ad hoc* measures to address homelessness providing emergency housing as required by Article 31§2 of the Charter and, in some cases, imposing moratoria on evictions. In this last respect, the key tenets of the interpretation of Article 31§2 of the Charter shall be recalled:

- Evictions should be governed by rules of procedure sufficiently protective of the rights of the persons concerned and should be carried out according to these rules.

⁷⁶ ECSR, International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium, Complaint No. 141/2017, decision on the merits of 9 September 2020, §170.

⁷⁷ ECSR, Conclusions 2007, Statement of interpretation on Article 15§2; ECSR, Statement on COVID-19 and social rights, adopted on 24 March 2021, p. 12-13.

⁷⁸ ECSR, Conclusions 2003, Article 31§1, France.

- When evictions do take place, they must be carried out under conditions which respect the dignity of the persons concerned. Domestic law must prohibit evictions carried out at night or during the winter period. Domestic law must also provide for legal remedies and offer legal aid to those wishing to seek redress from the courts.⁷⁹

However, the experience gained during the COVID-19 pandemic show that COVID-related measures taken by States Parties to tackle homelessness have not always adequately reached or applied to all persons and families in need and they have generally been time-limited. The ECSR stresses therefore that during a pandemic all evictions must be prohibited, except in the most exceptional and duly justified cases. If evictions must exceptionally be carried out, adequate alternative accommodation must be provided instantly.

⁷⁹ ECSR, *ERRC v. Bulgaria*, Complaint No. 31/2005, decision on the merits of 18 October 2006, §52.

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