



The European Right to Social and Medical Assistance

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Abstract. The provisions of Articles 11 to 17 of the European Social Charter and Articles 23, 30 and 31 of the Revised European Social Charter establish social security standards universally applicable in Europe. Among these provisions, Article 13 is important, which defines common standards of broadly understood social security. Establishing and maintaining these social security systems is the responsibility of the authorities of the Member States forming the Council of Europe. These countries have an obligation to improve their national social security systems. The standards for assessing the conformity of national social security systems in Europe are set, in the case of countries that have ratified the European Charter of Social Rights, by ILO Convention No. 102 or, in the case of countries that have committed themselves to the 1996 Revised European Social Charter, by the European Code of Social Security. In particular, the standards contained in Article 12 paragraph 4 of both Social Charters of the Council of Europe are the basis of the most widely understood principle of social protection on the European continent. This principle applies to all citizens of the Member States of the Council of Europe, regardless of their place of residence on the European continent. The provision of Article 12 paragraph 4 letter 'b' of the European Social Charter is a legal norm that has a chance to initiate the process of free movement of insured persons between the states forming the Council of Europe. In the case of countries belonging to the European Union, the Committee of Social Rights requires that reports on the application of social security standards include information on the movement of insured persons from non-EU countries and their legal situation in matters relating to the granting, maintenance and restoration of rights to social benefits while observing the principle of including periods of insurance in other Council of Europe countries into the insurance period. The achievements of the Committee for Social Rights in matters relating to the establishment and observance of social security standards in Europe, presented in this article, justify the

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thesis that the Council of Europe has adopted and strives to implement high and effective standards of social protection of the insured.

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JEL Classification: K31.

I. THE SECULAR NATURE OF THE REGULATION OF ENTITLEMENTS TO SOCIAL INSURANCE RIGHTS, ADEQUATE SOCIAL ASSISTANCE AND NECESSARY MEDICAL CARE

Article 13 of the European Social Charter (ESC) has become the norm far as introducing the concept of social and medical assistance is concerned in Europe (Świątkowski, 2007, p. 279 etc.). The intention of today's legislation has been to move away from the original concept of social and medical assistance, a departure from identifying social and medical assistance with welfare benefits on a charitable basis provided through administrative bodies for the poor.¹ When interpreting Article 13 of the ESC, the European Committee of Social Rights (ECSR) unanimously agreed the law allows a person subjective rights to monetary and/or resource services.²

The approach to social and medical assistance needed to be altered to eradicate the social stigma associated with people who use such welfare benefits. Article 13 of the ESC, rather than referring to "the poor" uses the term "without adequate resources".³ Persons in need using rightfully from such social or medical assistance, should not be restricted from utilising their political and social rights (Article 13, paragraph 2 ESC).⁴ After analysing reports made by the Member States, the ECSR is of the view that subjective rights in relation to social and medical assistance are guaranteed when: social and medical assistance is guaranteed for all those in need, when services are allocated when considered appropriate, persons who are refused assistance have the right to appeal to an independent body.⁵ The right to social and medical assistance is universal. Therefore the right should be enjoyed by all eligible citizens of the Member States of the Council of Europe, residing legally within member territory. Initially the ECSR monitored whether the governments of individual Member States fulfilled their obligations under Article 13 of the ESC with respect to citizens of other Member States who also ratified that provision of law. From the thirteenth supervisory cycle onwards, the ECSR changed its position on the matter, and began to monitor Member States and their compliance with Article 13 paragraphs 1, 2 and 3 of the ESC who had not ratified Article 13, paragraph 4.⁶ Article 13 paragraph 4 imposes an obligation on Member States (those who have ratified) to treat equally citizens of other Member States "staying legally on their territories" according to the obligations imposed by the European Convention of Social and Medical Assistance (ECSMA) on 11 December 1953.⁷ The annexure to Article 13 paragraph 4 of the ESC stipulates that those Member States, who

¹ Conclusions I, p. 64.

² Conclusions XIII-4, p. 54.

³ Conclusions I, p. 54.

⁴ Conclusions XIII-4, pp. 58-59.

⁵ Conclusions XVI-2, vol. 2, p. 787 (Slovakia).

⁶ Conclusions XIII-4, pp. 60-61.

⁷ Details of Treaty No.014. (ETS No. 014), *Paris 11/12/1953*, available at: <https://www.coe.int/en/web/conventions/recent-changes-for-treaties?module=signatures-by-treaty&treaty=014>.

have failed to ratify the above CSMA, may instead ratify Article 13 paragraph 4 of the ESC, provided they will treat citizens of other Member States pursuant to the provisions of the above CSMA. The right to social and medical care is regulated by a separate article of the ESC. It is distinct in its character from the right to social security stipulated by Article 12 of the ESC. Those Member States that have ratified Article 13 ESC are not obliged in any way by provisions states in Article 12 of the ESC. The same applies in reverse, and those Member States that are under obligations to Article 12 ESC are not automatically obliged to abide the laws of Article 13 of the ESC. In its conclusion, the ECSR in its thirteen supervisory cycle, remarked upon the dependency between social security rights and social and medical assistance.⁸ Even though both concepts are closely related to the idea of social welfare, it is possible for Member States to abide only by one of the two articles stipulated by the ESC.

II. THE RESPONSIBILITY TO PROVIDE ADEQUATE SOCIAL AND ESSENTIAL MEDICAL ASSISTANCE

Article 13 paragraph 1 of the ESC obligates Member States to ensure any person without adequate resources or the ability to secure such resources either through their own efforts or through other sources (such as benefits given under a social security scheme), be granted adequate assistance, and, in cases of illness, the necessary care. The right to social and medical assistance is granted to those who do not have “adequate resources” and are unable to seek such resources from elsewhere. The ECSR has not defined what “adequate resources” are, upon which countries are dependant when developing their welfare services laws. It is a practice for Member States to provide social and medical assistance to those whose income is lower than the minimum wage and does not cover the bear costs of living. Through its decisions the ECSR accepts this general practice. Given the different levels of living standards amongst the member states, the ECSR does not demand information regarding minimum income or costs of living. It does however, demand information from its member states, about procedures which determine such levels of standard of living⁹ and the criteria used in assessing such standards.¹⁰ The ECSR examines whether the Member States performing the above assessments account for national, regional and local conditions.¹¹ It follows the Recommendation of the Council of the European Union 92/441, which determines adequate resources required. This in turn obligates EU member states to consider the protection of human dignity and to determine the minimum standards of living using the cost of living indices and price levels.¹² Effective from the sixteenth supervising cycle, and all subsequent cycles, as a point of reference the ECSR in assessing persons without adequate resources and having the right to social assistance, accepted half the required average monthly income in a given country. Whenever social assistance benefits are determined at a level that is lower than half the average monthly income by member states, the ECSR issues a warning about the failure to comply with obligations set out in Article 13 paragraph 1 of the ESC.¹³ When determining the level of financial resources of a

⁸ Conclusions XIII-4, p. 35.

⁹ Conclusions I, p. 66.

¹⁰ Addendum to Conclusions IX, p. 33 (Spain).

¹¹ Conclusions XIII-4, p. 56-57.

¹² Council Recommendation 92/441 on Common Criteria Concerning Sufficient Resources and Social Assistance in Social Protection Schemes, OJ 1992 L.245, p.46.

¹³ Conclusions XVI-2, vol. 2, p. 788 (Slovakia provides benefits at a level lower than 25% of the average wage); Conclusions XVII-1, vol. 1, p. 176 (Finland – social assistance benefits amount to 374.92 euros, 50% of the average monthly wage is 619 euros); p. 109 (the Czech Republic – benefits equivalent to 72 euros, 50% of the average monthly wage is 132 euros); p. 76 (Belgium – benefits 550 euros, 50% of the average monthly wage is 645 euros); Conclusions XVII-1, vol. 2, p. 294 (Malta – benefits at a level of 53%); p. 327 (the Netherlands – benefits at a level of 2 452 euros per year, poverty level below 6 663 euros per year); p. 425 (Portugal); p. 524 (Great Britain – benefits equivalent to 690 euros per month, 50 % of the monthly wage of 738 euros); Conclusions 2004, vol. 1, p. 70 (Bulgaria – benefits equivalent to 19 euros, 50% of the monthly wage of 45 euros), p. 177 (Estonia – benefits equivalent to 32 euros,

particular population, the ECSR also considers additional benefits, which supplement the minimum wage, like unemployment benefits and other cash benefits under the social security system.¹⁴ If the benefits remained at a permanent level, the ECSR would be interested if they were subject to indexation.¹⁵ It required from Member States data regarding the level of social and medical assistance expenditures.¹⁶ The right to social and medical assistance is reserved for persons who are not able to secure adequate resources from sources other than social security. Article 13 paragraph 1 of the ECSR used welfare benefits as an example of social security. Persons without sufficient resources will not acquire the right to social and medical assistance benefits, if they can effectively receive a supply of financial resources from the family, who is subject to alimony under family law.¹⁷

A right to social and medical assistance is a subjective right. Therefore national social and medical assistance legislation should determine eligibility criteria for persons with insufficient resources, seeking assistance. The process of granting such assistance should also be regulated, and the principles of refusing grants clearly defined.¹⁸ Decisions made by authorised bodies dealing with grants or refusals of social and medical assistance benefits should be subject to control by an independent appeals tribunal. This implies that decisions regarding social and medical assistance cannot be made arbitrarily. National legislation under social security law should therefore establish a criterion regarding this decision making process.¹⁹ The criteria should be uniform. The ECSR passed decisions dealing with the failure of member states to comply with Article 13 paragraph 1 of the ESC, in cases where there were no clear guidelines set for administrative bodies in dealing with the decision making process involved in granting social and medical assistance.²⁰ The rulings of the ECSR regarding Member States' failure to abide the rules set out in Article 13 paragraph 1 of the ESC were not influenced by the authorities of the Member States, since the scope of arbitrary rulings affects less than one percent society.²¹ The failure to regulate the criteria involved in the decision making process in Greece was decided by the ECSR as a failure to provide social assistance to those without adequate resources.²² The ECSR interprets Article 13 paragraph 1 of the ESC as a standard for international social security law, obligating Member States in establishing a social and medical assistance system. Such national social and medical assistance legislation should in its scope cover all citizens within each Member State as well as those citizens who are living legally on the territory of another Member State. Under such obligations, a social and medical assistance system protecting those requiring its aid.²³ would not be violated if the national social security law would reserve some benefits to particular categories of people (like the disabled and the elderly), allocating such rights also to those without sufficient resources.²⁴ On the other hand, it is not compliant with international standards to grant social and medical assistance rights exclusively to selected categories of people (the disabled, the elderly without rights to pension benefits, single parents raising their

50% of the average monthly wage – 79 euros); Conclusions 2004, vol.2, p. 373 (Lithuania – benefits equivalent to 39 euros per month, 50% of the average monthly wage – 78 euros); p. 483 (Romania – benefits equivalent to 4.3 euros per month, 50% of the monthly wage – 19 euros).

¹⁴ Conclusions XIV-1, P. 85 (Austria); p. 537 (Malta); p.632 (Norway); Conclusions XVII-1 vol. 1, p.77 (Belgium); p. 176 (Finland); Conclusions XVII-1, vol. 2, pp. 294-295.(Malta); p. 425 (Portugal).

¹⁵ Conclusions 2002, p. 94 (Italy).

¹⁶ Conclusions XIII-4, p. 57.

¹⁷ Conclusions XIII-1, p. 188; Conclusion XIII-2, p. 128 (Greece).

¹⁸ Conclusions X-1, p. 116 (Iceland); Conclusions X-2, p. 11; Conclusions XI-2, p.119 (Spain); Conclusions XII-I, pp. 188-189; Conclusions XIII-1, p. 188 (Greece); Conclusions XV-1, p. 376 and subsequent (Italy); Conclusions XVI-2, vol. 1, p. 432 (Hungary); Conclusions XVII-1, vol. 1, p. 110 (Czech Republic).

¹⁹ Conclusions XIII-1, p. 188 (Greece); Conclusions XIII-3, p. 361 (Finland).

²⁰ Case of Greece, Conclusions XIII-4, pp. 177-179; Conclusions XIV-1, p. 35-360.

²¹ Conclusions XIV-1, p. 809 (Great Britain).

²² Conclusions XVII-1, vol.1, p. 248.

²³ Conclusions IV, p. 88 (Italy); Conclusions X-2, p. 121 (Spain); Conclusions XIII-3, pp. 362-363 (Portugal); Addendum to Conclusions XIII-3, p. 73 (Luxembourg).

²⁴ Case of Spain: Conclusions XIII-3, p. 362-363; Conclusions XIII-5, p. 224.

children, people above 65 years of age who are not insured) and subjecting the rights of those who do not have adequate resources.²⁵ Despite the obligation to establish national eligibility criteria for the right to social and medical assistance benefits, it does not mean that Member States' governments are prevented from formulating their own general directives. Nor does this mean regional and local authorities are lacking the discretion to establish more specific criteria requirements, upon which social and medical assistance benefits are dependent. However, if local authorities do utilise this discretion, the ECSR demands from its Member States information about the use of such discretion. In particular, the ECSR is concerned about legal opportunities for claims to be brought to independent bodies against decisions taken.²⁶ An independent body, by definition, is a court (dealing with administration, public insurance or labour cases). If appeals against decisions made regarding social and medical assistance benefits, are dealt with by institutions other than judicial bodies, the ECSR is called upon: to choose members for an appeals institution, to formulate how such members are chosen, to decide how long they will serve their duties, what qualifications are demanded from them and who monitors its conduct and its members' independence from the welfare institutions, according to its statutes.²⁷

The ECSR saw a discrepancy between a Member State's own labour laws and Article 13 paragraph 1 of the ESC, when a given Member State did not pass its decisions regarding social and medical assistance benefits to other independent tribunals. Such an independent tribunal cannot be seen, according to law, as a governmental administrative institution (e.g. a Ministry) or a council.²⁸ However, such an independent body will retain its status even when employing civil servants and functioning accordingly with administrative channels, if a given member state grants such a body autonomy in its decision making process. An example of such an independent institution is the Social Welfare Appeals Office, employing civil servants who are called upon by a given minister, e.g. the Minister for Social Welfare. To ensure competency within such an independent institution, recognition of appeals is required. The Supreme Court of Ireland ruled, that those civil servants whose role it is to supervise according to law the decisions made regarding social assistance benefits, should remain "free and unrestricted".²⁹ Citing this case as a precedent, the ECSR ruled that if such a body is entitled to acquire evidence, make decisions and allow for them to be appealable – it fulfils the requirements of an independent body. Without breaching international standards, the law of such a body should be able to recognise complaints and to allow appeals against decisions made regarding social and medical assistance benefits.³⁰ In cases of ambiguity, the ECSR demands from Member States' authorities to present the decisions made by the bodies supervising matters dealing with social and medical assistance benefits.³¹ It demands information regarding the number of appeals made.³² It is also interested whether those intending to appeal the decisions concerning social and medical assistance benefits, have the possibility to utilise specialist legal aid.³³ The ECSR accepts the rulings of those appeal bodies supervising social and medical assistance decisions, even if these bodies cannot be regarded as objective or independent, given they are subject to the next level of judicial jurisdiction.³⁴

²⁵ Conclusions XIII-4, pp. 177-179 (Greece).

²⁶ Conclusions XIII-4, p. 56; Conclusions 2002, p. 245 (Sweden); Conclusions XVII-1, vol.1, p.110 (Czech Republic).

²⁷ Conclusions XIII-1, p. 189 (Iceland); Conclusions XIII-4, p. 175 (Denmark); p. 182 (Iceland); p. 184 (Ireland); p.189 (Norway); Addendum to Conclusions XIII-3, p. 71; Conclusions XIV-1, pp. 504-505 (Luxembourg); Conclusions 2004, vol. 2, p. 483 (Romania).

²⁸ Conclusions XIII-2, p. 127 (Greece).

²⁹ *McLoughlin v Minister of Social Welfare*, 1958. in Conclusions XIV-1, p. 429-431.

³⁰ As above.

³¹ Conclusions XIII-3, p. 362 (Finland); p. 364 (Turkey); Conclusions XIII-4, p. 172 (Austria).

³² Conclusions XVI-2, vol. 2, p. 789 (Slovakia); Conclusions XVII-1, vol. 2, p. 487 (Turkey).

³³ As above; Conclusions XVI-2, vol. 1, p. 432 (Hungary).

³⁴ Conclusions XIII-4, p. 56, p. 175 (Denmark); p. 182 (Iceland); Conclusions XIV-1, pp. 632-633 (Norway).

The ECSRC believes the independent appeal body authorised to process appeals against the decisions on social and medical assistance benefits, shall have the following characteristics:

- the appeal body should be empowered to exercise subject matter control over the decisions appealed against.
- should have an objective opportunity to control if the body that issued the decision appealed against acted in compliance with the criteria laid down in the effective legislation on the matters referring to the statement that the person applying for social and medical assistance benefits does not have adequate resources through his/her own efforts from other sources – if a decision on granting social and medical assistance benefit has been made – to be able to check the correctness of determining the benefit level.³⁵

Introducing the above criteria is an indication that Member States are responsible for the authorisation of an appeals body that looks into the decisions made regarding social and medical assistance benefits and to monitor the legitimacy of such appeals based on the evidence collected. The appeals body has the power to determine the legibility of claims through the evidence collected. Such a supervisory system over decisions made, rules out arbitrary rulings over requests for social assistance benefits. The ECSR also conducts research into whether such appeals bodies dealing with social and medical assistance benefits decisions, are carrying out their responsibilities.³⁶ In such cases the ECSR demands the following information regarding: the organisation of social and medical assistance, types of assistance, the bodies allocating such assistance, the categories of people who can use such assistance, the amount of people who are taking advantage of social and medical assistance, the level of such service, the level of funds allocated for such services, the facilities with which national legislation guarantees social and medical assistance benefits, the criteria used in undertaking such decisions regarding social and medical assistance benefits.³⁷

Member States may neither limit nor condition the fulfilments required in exercising the right to social and medical assistance. During its analysis of Member States' reports, the ECSR has found the following irregularities in national social and medical assistance systems:

- the rights to social and medical assistance benefits are subject to the period and conditions residence in a certain Member State or in the territories of certain regions of a single Member State.³⁸ As far as social and medical assistance benefits were concerned, the ECSR decided there was a lack of compliance between national legislation and international standards, when national legislation appropriated such rights according to terms of residency in particular member states (e.g. for 6 months,³⁹ 1 year⁴⁰, 3 years⁴¹, 5 years⁴² or 10 years.⁴³ However, this does not mean Member States do not have rights to introduce conditions on social and medical assistance benefits according to residential terms. Entitlement to social and medical assistance benefits is given to those who are unable to attain resources from elsewhere, who are associated with a given country claiming in it the above benefits. It is for this reason, the ECSR changed its approach, in light of the case of Great Britain's, and ruled that the *Habitual Residence Test* -

³⁵ Conclusions XIII-4, p. 56.

³⁶ Conclusions XIII-5, p. 97 (Finland); Conclusions XIV-1, .126 (Belgium); Conclusions XV-1, p. 44 (Iceland), p. 447 (Norway).

³⁷ Conclusions XIII-4, pp. 56-57.

³⁸ Case of Spain: Conclusions XIII-4, pp. 189-190; Conclusions XIV-1, p. 170; Conclusions XV-1, p. 531; Conclusions XVII-1, vol. 2, pp. 455-456.

³⁹ Conclusions XIII-2, p. 127 (Greece); Conclusions XV-1, p. 344 (Iceland).

⁴⁰ Conclusions XIV-1, p. 193 (Denmark); Conclusions 2004 vol.1, p. 281 (Ireland).

⁴¹ Case of France; Conclusions XIV-1, p. 272; Conclusions 2004, vol.1, p. 236.

⁴² Case of Great Britain: Conclusions II, p.49; Conclusions XIV-1, p. 809; Conclusions XV-1, pp. 644-645; Conclusions XVII-1, vol. 2, pp. 525-526; Conclusions 2004, vol. 2, pp. 374-375 (Lithuania).

⁴³ Addendum to Conclusions XIII-3, pp. 71-72 (Luxembourg).

HRT used by Great Britain in determining a person's residential details, is in accordance with Article 13 paragraph 1 of the ECSR.⁴⁴ The goal of this test is to establish the relationship of a person seeking social and medical assistance benefits with Great Britain. Because British regulations do not require a clearly defined period of time to reside on either British or Northern Ireland's territory, and decisions verifying circumstances made by administrative bodies regarding social and medical assistance benefits are determined objectively, the ECSR ruled the British regulations do comply with international standards despite the residential requirement to live on British territory even if for a brief period of time when applying for social and medical assistance benefits. The ECSR considered the fact that because people move easily within the European Union, British administrative authorities did not refuse social and medical assistance benefits to those who initially lived on British territory, then moved and then returned to reside in Britain again.⁴⁵

- excluding from eligibility for social and medical assistance benefits young people below 25 years of age⁴⁶ or 30 years of age.⁴⁷ The ECSR has decided that allocating a lower level of social and medical assistance benefits for younger people may be seen as evidence of legislative contradiction between national regulations and Article 13 paragraph 1 of the ESC.⁴⁸ This decision has therefore introduced a legal barrier in attaining social and medical assistance benefits for those who have not reached the eligible age according to national requirements. A prerequisite to acquire the right to social and medical assistance benefits is a person's lack of adequate resources and the inability to attain such resources by the person applying for such benefits. Young people who are studying may apply for scholarships or loan schemes. Therefore, in principle they are not qualified to rights of social and medical assistance benefits. Despite the fact the ECSR debated twice on this matter, it failed to adopt a position.⁴⁹
- the above rights of the persons applying for social and medical assistance benefits are dependent upon the employment or training proposals made for them by appropriate administrative authorities. The ECSR believes social and medical assistance of a State allocated to people who do not have adequate resources should not be limited to paying them cash benefits. The objective of social and medical assistance should be to enable those individuals without adequate resources, to participate, to a universally accepted extent, in the life of a community. Therefore, exercising the right to social and medical assistance benefits should indeed be dependent upon the acceptance of employment or vocational training offers, especially if the proposal of such employment or training will enable the individual to return to a normal life. Accordingly, this will be viewed as compliant with international standards.⁵⁰ When analysing the case where a prerequisite to the acquisition of the right to social and medical assistance benefits by a person below the age of 24 was to accept a job selected by the administrative body⁵¹, the ECSR demanded an explanation regarding the dependency between the right to social and medical assistance benefits and the obligation to accept the proposal for such a job. Information was required to such an extent, as to explain the dependency between the right to social and medical assistance benefits and an obligation to register as an

⁴⁴ Conclusions XIV-1, p. 810; Conclusions XVII-1, vol. 2, pp. 525-526.

⁴⁵ As above, . 526, case of *Robin Swaddling v Adjudication Officer*, Case C-90/97, 1999 E.C.R. 1075.

⁴⁶ Case of France: Conclusions XIV-2, p. 272; Conclusions 2002, p. 48; Conclusions 2004, vol. 1, p. 236; Conclusions XVII-1, vol. 2, p. 456.

⁴⁷ Case of Luxembourg: Addendum to Conclusions XIII-3, p. 73; Conclusions XIV-1, p. 504 and following; Addendum to Conclusions XV-1, p. 64.

⁴⁸ Conclusions XIV-1, pp. 193-94 (Denmark).

⁴⁹ Case of Finland: Conclusions XIII-5, p. 98; Conclusions XIV-1. p. 123.

⁵⁰ Conclusions XIV-1, p. 52.

⁵¹ Conclusions XVII-1, vol. 1, p. 177 (Finland).

unemployed person without adequate resources.⁵² The Committee is interested in examining, if and for which purpose and what conditions are set by Member States' governments for the persons applying for social and medical assistance benefits. In particular the ECSR is determined to seek out the legal consequences involved when an individual refuses to accept such conditions when applying for social and medical assistance benefits.⁵³

- unequal treatment of own and foreign citizens. Decisions regarding non-compliance with national social security legislation and Article 1 paragraph 1 of the ESC, were issued when the ECSR came to realise the inequality of treatment of citizens of other Member States existed by member state governments. Regardless, it matters not whether the diversification of rights takes place during the acquisition rights to social and medical assistance benefits or the renewal of rights acquired earlier.⁵⁴

Article 13 paragraph 1 of the ESC obligates the Member State governments to provide those in need and without adequate resources not being able to secure such resources through their own efforts, appropriate assistance. According to the ECSR, social and medical assistance for those without adequate resources must not be simply reduced to financial aid – benefits and allowances. Comments made regarding social and medical assistance apply also to other right to protection of health, social security and the right to benefit from social welfare services and care for the sick who do not have adequate resources. The implementation of the right to medical assistance and doctor's care may have a legal form of purpose-specific financial benefits that will be utilised by those in need to pay for medical services, otherwise when necessary granting them the right to free-of-charge doctor's services.⁵⁵

III. ENSURING THAT THOSE WHO RECEIVE SOCIAL AND MEDICAL ASSISTANCE ARE NOT DISCRIMINATED AGAINST

Article 13 paragraph 2 of the ESC obligates Member States to ensure political and social rights for those who benefiting from social and medical assistance. During its first supervisory cycle, the ECSR emphasised that those benefiting from social and medical assistance cannot be treated as second class citizens, simply because they are not able to support themselves. Benefiting from social and medical assistance cannot stand in the way of their citizen political and civil rights.⁵⁶ The ECSR did not define what civil and political rights are protected in the case of those benefiting from social and medical assistance. For example it referred to: the right to stand for election, the right to hold public office, right to run for a public service position.⁵⁷ The ECSR did not control whether the right to benefit from social and medical assistance affects negatively on the utilisation of political and economical rights, hence the scope of these laws protected by Article 13 paragraph 2 of the ESC is unknown. According to written reports it is definite that among social and economical rights protected by law there are social and economical rights guaranteed by the ESC. Beyond social rights guaranteed by the ESC, the Committee defined that the right to privacy is also guaranteed by Article 13 paragraph 2 of the ESC.⁵⁸ The Committee claims Article

⁵² Conclusions XVII-1, vol. 2, p. 328 (the Netherlands).

⁵³ Conclusions XIV-1, p. 52.

⁵⁴ Case of Denmark: Conclusions XV-1, p. 166; Conclusions XVII-1, vol. 1, p. 148; Case of Spain in the part dealing with medical assistance: Conclusions XIII-4, p. 191; Conclusions XIV-1, p. 712; Case of Malta: Conclusions XIII-4, pp. 187-188; Conclusions XIV-1, pp. 537-538; Conclusions XV-1, p. 411; Case of Germany: Conclusions XIV-1, pp. 322-323; Addendum to Conclusions XV-1, pp. 40-41; Conclusions XVII-1, vol. 1, p. 214.

⁵⁵ Conclusions XIII-4, p. 57.

⁵⁶ Conclusions I, p. 64

⁵⁷ As above, p. 67; p. 203 (Ireland).

⁵⁸ Conclusions XIII-1, p. 324 (Germany); Conclusions XIV-1, pp. 324-325.

13 paragraph 2 of the ESC is violated when Member States restrict in an obvious manner, political and civil rights of those benefiting from social and medical assistance.⁵⁹ A poignant example of the law regulation contradicting Article 13 paragraph 2 is a rule forbidding those benefiting from social and medical assistance to apply for a position in local government, during the period of assistance and 12 months thereafter.⁶⁰ The rule may be understood in a particular case of a conflict of interest, which provoked the ECSR's ruling, seen by the clash of local Irish legislation and international standards. The case involved a person benefiting from social assistance who applied for a job with the social welfare department. The ECSR clearly stated that benefiting from social and medical assistance could not by definition, restrict any political or social rights of citizen and legal residents of any member states. The ECSR, when interpreting Article 13 paragraph 2 of the ESC, did not limit its research to the determination whether those benefiting from social and medical assistance are discriminated by law. The ECSR analysed whether Member States did not introduce regulation, which would allow such discrimination.

It was proven, that the Danish Constitution of 1953 gives an employer the right to limit those benefiting from social and medical assistance. According to the Danish Constitution minor laws can regulate the scope of usage of political rights by those benefiting from social assistance.⁶¹ The Committee did not make a ruling against the Danish Constitution violating Article 13 paragraph 2 of the ESC. It did obligate the State to present detailed information on the regulations restricting political and social rights of those benefiting from social and medical assistance. It was a common exercise for the ECSR to familiarise itself with those codes and practices guaranteeing equality to those benefiting from social assistance. The ECSR was not satisfied by declarations formulated by constitutions or international treaties.⁶² It demanded information regarding equal treatment of those benefiting from social and medical assistance.⁶³ However, when information was not provided, it did not make any rulings against the local regulations.⁶⁴ The ECSR prolonged its final decisions, until such information regarding was attained from the officials of the Member States.⁶⁵ The ECSR gave detailed attention to cases of indirect discrimination those benefiting from social assistance. Usually this applies to the homeless. Introducing permanent residency as a condition for obtaining social assistance is regarded by the ECSR as discriminatory practice. This is because the above condition affects negatively and solely those who are benefiting from social and medical assistance.⁶⁶

Ensuring that those who receive social and medical assistance are not discriminated against, is also applied to citizen of other Member States. Although, the ECSR is aware political, economical and social regulations differ, depending on the period of residency in a particular state.⁶⁷ Applying for social assistance or benefiting from it cannot be a fundamental reason for deportation by Member State authorities, of persons without adequate resources or the ability to sustain themselves from other sources.⁶⁸ Analysing documents provided by authorities of Member States, the ECSR declared contradictions between local regulations and standards regulated by Article 13 paragraph 2 of the ESC, only once. It occurred in the already mentioned case in Ireland where regulations prohibited those who benefit from social assistance to run for public office.⁶⁹

⁵⁹ Conclusions I, p. 67.

⁶⁰ As above, p. 203 (Ireland).

⁶¹ Conclusions XIII-4, p. 195.

⁶² Conclusions XVII-1, vol. 2, p. 295 (Malta).

⁶³ Conclusions 2004, vol. 2, p. 484 (Romania).

⁶⁴ Conclusions 2002, p. 152 (Romania).

⁶⁵ Conclusions XVI-2, vol. 1, p. 433 (Hungary).

⁶⁶ Conclusions XV-1, p. 167.

⁶⁷ Conclusions XII-4, pp. 61-62.

⁶⁸ Case of Denmark: Conclusions XIII-4, p. 61; Conclusions XV-1, p. 166.

⁶⁹ Conclusions XV-1, p. 412.

IV. THE RIGHT TO ADVICE AND NECESSARY ASSISTANCE

Authorities of Member States should organise a system of social and medical assistance (public or private services) in such a way that everyone could obtain advice and personal help as may be required to prevent, to remove, or to alleviate personal or family deprivation. According to the ECSR authorities of Member States should perform all that is possible to help those in need. Article 13 paragraph 3 of the ESC is dynamic in character. On the one hand, it obligates authorities of Member States to organise efficient help for those who need it. On the other, it leads to a situation where demand for the above mentioned help would decrease and then disappear.⁷⁰ Article 13 paragraph 3 of the ESC is regarded by the ECSR as guaranteeing the fulfilment of responsibilities formulated by Article 13 paragraph 1.⁷¹ Duty of ensuring social and medical assistance is executed, among others, by a system of advice and help for those without adequate resources or means of supporting themselves.

Scope of application of Article 13 paragraph 3 of the ESC is covered by the scope of application of Article 14 of the ESC (the right to benefit from social welfare services), a regulation giving rights to benefit from social and medical assistance. Analysing the connection between the abovementioned regulations of the ESC, the ECSR concluded Article 13 paragraph 3 of the ESC obliges Member States to organise a system of advice and social assistance for those in need while Article 14 of the ESC forces Member States to organise a specialised net of social and medical assistance services. For this reason the ECSR estimates independently the way Member States fulfil their freely accepted obligations. A positive opinion made by the ESC on fulfilling one of the obligations does not automatically mean a positive opinion of fulfilling the other.⁷² Member States that ratified both regulations can organise two separate systems of social and medical assistance, one assisting only those who do not have adequate resources to support themselves, the other assisting all parties interested. They can also organise one common system of social and medical assistance services advising persons without adequate resources.⁷³ The differences between the social and medical assistance services providing required help, referred to the abovementioned regulations, rely upon the division of allocated services (according to Article 13 paragraph 3 advice is exclusively given) as well as upon a group of beneficiaries. According to Article 13 paragraph 3 of the Charter those who do not have adequate resources to support themselves are entitled to advice and personal help. If a Member State does not report to succinctly how the social and medical assistance is organised, the ECSR insists on answers to questions whether proper social and medical services providing advice and help for those without adequate resources and means of supporting themselves, were organised.⁷⁴

Article 13 paragraph 3 of the ESC does not define the scope of application of advice and personal help for those without adequate resources and means of supporting themselves, and find themselves or their families in danger. It has to be noted advice and personal help should embrace housing issues, social welfare benefits, and the possibility of taking advantage of social and medical services.⁷⁵ The ECSR interprets the analysed regulation in a broader manner. It forces the authorities of Member States to ensure that those who do not have adequate resources to support themselves have access to advice and personal help in all issues regarding social and medical assistance regulated by Article 13 of the ESC.⁷⁶ The ECSR is also interested in the scope of services provided

⁷⁰ Conclusions I, p. 64; Conclusions XIII-4, p. 55.

⁷¹ Conclusions XIV-1, p. 52.

⁷² Conclusions I, pp. 64-65.

⁷³ Conclusions XIII-4, p. 59; Conclusions XIV-1, pp.86-87 (Austria).

⁷⁴ Case of Romania: Conclusions 2002, p. 152; Conclusions 2004, vol. 2, p. 485.

⁷⁵ D. Harris, J. Darcy, European Social Charter, op.cit., p. 173.

⁷⁶ Conclusions XIII-4, p. 59; Conclusions XIV-1, p. 743 (Sweden).

based on the analysed regulation of Article 13 paragraph 3 of the ESC.⁷⁷ In the case of personal help it is valid whether persons in need can rely on the assistance of a nurse, house assistance, meal services, drivers, and means of transport when hospitalisation is required.⁷⁸

Advice and personal help should be provided for at an adequate level. Both should also be readily accessible to those who need them. The ECSR monitors the number and the qualifications of the personnel providing such services.⁷⁹ In special instances the ECSR demands information from Member States, regarding the amount of personnel assisting in services advising those in need of matters of housing.⁸⁰ It requires funds information for the abovementioned services as well as details concerning the expenses made for such purposes.⁸¹ It is also interested in researching the ability of access to social and medical assistance and help service centres for those in need. It is for this reason the ECSR requires information regarding geographical location of public or private institutions providing such advice and assistance to people in need.⁸²

Article 13 paragraph 3 of the ESC does not allow in Member States' legislation the introduction of laws protecting social circumstances, on which acquiring such assistance and personal help is dependent. The ECSR researches conditions of access to the abovementioned services.⁸³ It regards that States' regulations dealing with rights of local protection cannot be based on the period of residency in a particular Member State. On more than one occasion the ECSR unanimously decided against regulations passed by Member States where rights to take advantage of advice and personal help were dependent on the period of residency in a particular Member State in which a person who does not have adequate resources to support themselves applies for such advice.⁸⁴ Above all the ECSR wants to provide protection for citizens of other Member States – parties to the international treaty that is the ESC – residing in other Member States.⁸⁵ The ECSR made a ruling against German regulations regarding social protection, verified by Article 13 paragraph 3 of the ESC. Germany did not guarantee rights to access advice and assistance for the citizens of Member States, which did not belong to the European Union or the European Economic Area, allowing for such decisions to be made by social and medical assistance services.⁸⁶ Article 13 paragraph 3 of the ESC obliges Member States to provide those in need with adequate advice and assistance. It does not allow to define such conditions for accessing the abovementioned services by the authorities of Member States. The ECSR is interested in familiarising itself with the conditions of accessing the services,⁸⁷ most probably in order to underline discrepancies with the ESC.

Article 13 paragraph 3 of the ESC obliges Member States to provide those in need advice and personal help, which may be necessary for improving personal or family situations of a person who does not possess adequate resources. The analysed regulations encroach on the protective sphere legislated by Article 16 (the right of the family to social, legal and economic protection) of the ESC guaranteeing a family the right to social, legal and economical protection. The ECSR did not consider the relations between Article 13 paragraph 3 and Article 16 of

⁷⁷ Conclusions XVII-1, vol. 2, p. 296 (Malta).

⁷⁸ Conclusions XV-1, p. 93 (Belgium); Addendum to Conclusions XV-1, p. 105 (the Netherlands).

⁷⁹ Conclusions XIII, p. 59; Conclusions XV-1, p. 167 (Denmark); p. 345 (Iceland); pp. 381-382 (Italy); p. 412 (Malta); Addendum to Conclusions XV-1, pp. 164-165 (Poland); Conclusions XVI-2, vol.1, p. 148 (Denmark); p. 434 (Hungary); Conclusions 2002, p. 204 (Slovenia).

⁸⁰ Conclusions 2004, vol.1, p. 180 (Estonia).

⁸¹ Conclusions XIII-4 p. 59; Conclusions XVII-1, vol. 1, p. 111 (Czech Republic); p. 148 (Denmark); Conclusions 2002, p. 95 (Italy); Conclusions 2004, vol. 1, p. 113 (Cyprus); p. 180 (Estonia); Conclusions 2004, vol. 2, p. 379 (Lithuania); p. 534 (Slovenia).

⁸² Conclusions 2004, vol. 1 p. 113 (Cyprus); p. 180 (Estonia); Conclusions 2004, vol. 2, p. 534 (Slovenia).

⁸³ Conclusions 2004, vol. 1, p. 73 (Bulgaria); p. 180 (Estonia).

⁸⁴ Conclusions XIV-1, pp. 325-326 (Germany); Conclusions XVII-1, vol. 2, p. 296 (Malta); Conclusions 2002, p. 204 (Slovenia); Conclusions 2004, vol. 2, p. 379 (Lithuania).

⁸⁵ Conclusions XIII-4, p. 62; Conclusions 2002, p. 204 (Slovenia); Conclusions 2004, vol. 2, p. 534 (Slovenia).

⁸⁶ Conclusions XIV-1, pp. 325-326; Addendum to Conclusions XV-1, p. 42.

⁸⁷ Conclusions 2004, vol. 1, p. 73 (Bulgaria); Conclusions 2004, vol. 2, p. 534 (Slovenia).

the ESC. It appears Article 13 paragraph 3 of the ESC guarantees an individual the right to access to advice and personal help in a situation when taking advantage of such help can improve the living standards of the person entitled to the abovementioned benefits or its family. Simultaneously Article 16 of the ESC imposes on Member States responsibilities in supporting the protection of family life in economic, social and legal spheres. Execution of duties formulated by Article 13 paragraph 3 of the ESC can be carried out by public or private charity organisations. The ECSR's applauds both ways of proving services guaranteed by Article 13 paragraph 3 of the ES. It also accepts advisory legal partnerships as well as co-ordinations of such services executed by public sectors and charity organisations.⁸⁸

IV. THE RESPONSIBILITY TO TREAT OWN AND FOREIGN CITIZEN ON EQUAL FOOTING

Member States are obliged to apply provisions of Article 13, paragraphs 1, 2, and 3 of the ESC towards citizens of other countries that are legally residing on their territories. The ECSR stated, the analysed regulation Article 13 paragraph 4 of the ESC broadened the scope of application of Article 13 paragraph 1, 2 and 3 because it entitled legal residents of particular Member States to social and medical assistance.⁸⁹ Foreigners, citizens belonging to other Member States, are entitled to access, social and medical assistance at the same level as citizens and permanent residents of the particular territory. Since the thirteenth supervisory cycle the ECSR has demanded from Member States reports of compliance of Article 13 paragraphs 1, 2 and 3 of the Charter, regarding their treatment of citizens of other Member States.⁹⁰ Article 13 paragraph 4 is considered to be the standard in international treaties, obligating Member States to guarantee citizens of other Member States temporarily residing on foreign territories, the right to social and medical assistance, as well as those protected under Article 13 paragraph 1, 2 and 3 of the ESC. Hence the abovementioned responsibility includes the protection of tourists and students coming from other member states.⁹¹ Broadening the categories of beneficiaries of social and medical assistance under Article 13 of the ESC decreased the range of entitlements for citizens of other Member States temporarily residing on the territories of other member states. The ECSR stated according to Article 13 paragraph 4 of the Charter that Member States are obliged to ensure adequate social and medical assistance.⁹² The abovementioned term is regarded by the ECSR as a duty to provide help in cases of emergency. The scope of this help includes providing shelter, food supplies, clothing as well as ensuring medical assistance. The above interpretation of Article 13 paragraph 4 of the ESC is limiting in nature. The analysed regulation compels authorities of Member States to provide equal treatment towards citizens of other member states and their own in all matters regulated by Article 13 paragraph 1, 2, and 3 of the ESC. These regulations are not limited to providing assistance solely to cases of emergency for people in need without adequate resources.

The scope of responsibilities of Member States is regulated by the ECMA. Article 13 paragraph 4 of the Charter compels those Member States that ratified this document to apply Article 13 paragraph 1, 2, and 3 of the ESC towards their own citizens and citizens of other Member States – parties to the UEC, in accordance with the ECSMA. Member State of the Council of Europe who are not parties to ECMA, however who have ratified Article 13 paragraph 4 of the UEC are obliged to treat citizens of other Member States of the UEC according to

⁸⁸ Conclusions XIII-4, p. 62; Addendum to Conclusion XV-1, p. 165 (Poland).

⁸⁹ Conclusions II, p. 51 (Norway); Conclusions XIV-1, pp. 53-54.

⁹⁰ Conclusions XIV, p. 55.

⁹¹ Conclusions XIII-4, p. 62.

⁹² Conclusions XIV-1, p. 55.

the abovementioned Convention.⁹³ Used within the jargon of the ECMA, the term “assistance” is defined broadly into all types of assistance as seen by regulations existing within Member States, which is “granted under the laws and regulations in force in any part of its territory under which persons without sufficient resources are granted means of subsistence and the care necessitated by their condition” (Article 2(a)(i)). Excluded from this obligation to assist are non-premium benefits and benefits for war veterans. Article 1 of the ECMA reinstates the obligation of equal treatment of foreign and own citizens. Therefore there is a lack of legal basis for limiting interpretation of Article 13 paragraph 4 of the USC. Particular heed is taken by Central and Eastern European countries when applying responsibilities under Article 13 paragraph 4 of the USC.⁹⁴ The abovementioned concerns are not without reason. The wealthy scope of rulings include almost all Central and Eastern European cases, where other Member States’ citizens were discrimination against in situations of social and medical assistance.⁹⁵

V. GENERAL OPINIONS OF THE ECSR ON THE OBSERVANCE OF SOCIAL RIGHTS

In 2008 the ECSR concluded that during the period covered by the 2009 supervision cycle Europe had benefited from generally favourable economic conditions. However, the serious economic and financial crisis that broke out in 2008 and 2009 already seemed to be having significant repercussions on social rights, particularly those covered by the health, social security and social protection thematic group, which it considered in 2009⁹⁶. One of the ESC objectives is to ensure that social rights, and more specifically rights to social protection, are safeguarded, despite any constraints arising from economic conditions, partly because it is in periods of crisis that such protection is particularly needed and partly because any amplification of the automatic effects of the crisis in this area will tend to reinforce these adverse cyclical effects. There are still problems in several countries with regard to: - occupational health and safety; - inadequate data on occupational accidents and diseases and the nature and frequency of checks and inspections to ensure that the regulations are complied with; - the limited development of prevention strategies; - health protection; - significant infant and maternal mortality rates. It has to be recognised that in many countries that have only recently accepted various obligations in this area and that face considerable economic difficulties, the introduction of adequate social protection systems is a considerable challenge that cannot be rapidly overcome. In respect of the state reports on the ESC represented the second round of supervision under the new system of thematic reporting adopted by the Committee of Ministers in 2006^{97,98}. The theme for this second round was “Health, social security and social protection” and concerned among the social articles the right to social and medical assistance (Article 13).

The violations identified by the ECSR concerned to a large extent well known issues already identified in the past, namely on the one hand manifestly inadequate levels of various income-substituting social security and social

⁹³ Annexure to Article 13 paragraph 4 of the ESC.

⁹⁴ This article was not ratified by Armenia, Azerbajdzhan, Bulgaria, Cyprus, Estonia, Lithuania, Moldova, Poland, Romania, Slovakia, Slovenia. Tables of accepted provisions. Situation at 1.01.2005 (in:) European Social Charter. Collected texts (5th Edition), op. cit., pp. 85, 90.

⁹⁵ Cases of: Austria (Conclusions Xii-1, p. 196; Conclusions XIII-2, p. 139); France (Conclusions XVI, p. 91; Conclusions 2002, p. 49; Conclusions 2004, vol. 1, p. 237); Greece (Conclusions XI-1, p. 133; Conclusions XIII-2, p. 138); Spain (Conclusions XIV-1, p. 714); the Netherlands (Conclusions XV-1, pp. 572-573; Conclusions XVII-1, vol. 2, p. 329); Malta (Conclusions XIII-2, p. 349; Conclusions XIII-4, p. 208; Conclusions XIV-1, p. 539; Conclusions XV-1, p. 412); Germany (Addendum to Conclusions XV-1, pp. 42-43); Portugal (Conclusions XIV-1, pp. 674-675; Conclusions XVII-1, vol. 2, p. 426; Conclusions XV-1, p. 491); Great Britain (Conclusions XIV-1, pp. 811-812; Conclusions XV-1, p. 648).

⁹⁶ Activity Report 2009, Council of Europe 2009, p. 7 and following.

⁹⁷ Activity Report, 2009. Annex 3: Presentation of Conclusions 2009/XIX-23 in respect of the state reports on the Revised Charter and Conclusions XIX-2, p.15.

⁹⁸ New system for the presentation of reports on the application of the ESC, Reporting system, European Social Charter Collected texts (7th Edition) updated : 1st January 2015, Council of Europe, p. 207 and following.

assistance benefits and on the other hand the existence in a number of countries of discriminatory rules and practices as regards the payment of benefits to nationals of other Member States.

The ECSR also took the opportunity to make a statement in the General Introduction about implementation of the ESR in the context of the current economic crisis. The Committee emphasized notably that the crisis already had significant implications on social rights and notably that “increasing levels of unemployment is presenting a challenge to social security and social assistance systems”⁹⁹. The ECSR underlined that under the ESC the Member States have accepted to pursue by all appropriate means, the attainment of conditions in which *inter alia* the right to social and medical assistance and the right to benefit from social welfare services may be effectively realised. On this basis the ECSR stated that “the economic crisis should not have as a consequence the reduction of the protection of the rights recognized by the ESC. Hence, the governments are bound to take all necessary steps to ensure that the rights of the ESC are effectively guaranteed at a period of time when beneficiaries need the protection most”¹⁰⁰

The guarantee of a genuine individual right to social and medical assistance together with a right to legal remedy is a major contribution made by Article 13 and in particular Article 13§1¹⁰¹. Social and medical assistance for persons in need and with no resources is a crucial safeguard against poverty which makes it all the more striking and a cause for concern that no fewer than 25 out of 31 countries examined were found to be in breach of this provision¹⁰².

The large majority of the violations concerns inadequate levels of social assistance and discrimination of foreigners as regards access to social assistance. On the first point, the ECSR holds that public assistance should not condemn beneficiaries to income poverty and that cash benefits, including any supplements, therefore must not fall below 50% of median equivalised income (the poverty threshold as applied by the ECSR). An increasing number of Member States, both EU and non-EU, fail to meet this threshold, although in some cases the ECSR had to conclude for non-conformity due to repeated lack of information on the relevant figures. Discriminatory treatment of foreigners in violation of the ESC usually arises from excessive length of residence requirements before being eligible for assistance, but in some cases it is also due to automatic withdrawal of residence status for foreigners in need of social assistance. It may be mentioned in this respect that Article 13§1 at the outset applies exclusively to those foreigners who are nationals of other Member States¹⁰³.

Other violations include:

- limits on the duration of social assistance, which is contrary to the ESC. The ECSR holds that assistance must continue for as long as the state of need persists. Age requirements, such as those applied in France and in Spain where social assistance is guaranteed only to persons aged 25 or over, are also not permitted. In some countries the ECSR did not find it established that there was a properly functioning system for providing social and/or medical assistance to persons in need in the meaning of the ESC¹⁰⁴.
- foreign nationals; the ECSR previously noted that foreign nationals, legally and effectively resident in Andorra, are entitled to social assistance but concluded that the situation was not in conformity with Article 13§1 on account of the fact that, to become eligible to social assistance, they were required to have

⁹⁹ *Ibidem*.

¹⁰⁰ *Ibidem*.

¹⁰¹ Activity Report 2013, Article 13: the right to social and medical assistance, p.17 and following.

¹⁰² Only two countries, Sweden and the United Kingdom, were found to comply with Article 13§1.

¹⁰³ The countries being condemned for this type of violation include Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Finland, France, Lithuania, Latvia, Spain and the former Yugoslav Republic of Macedonia.

¹⁰⁴ This concerned Greece, Hungary, Italy, Republic of Moldova, Romania and Turkey.

resided in the country for three years¹⁰⁵. The ECSR also notes from the report that the Regulation on social welfare benefits has been amended in February 2011, with the purpose to bring it into conformity with the ESC.

- The residence requirements that applied for access to the basic benefits have been entirely abrogated (Article 13§1)¹⁰⁶. As regards the breach of the ESC found in *European Roma Rights Centre (ERRC) v. Bulgaria*¹⁰⁷, the ECSR noted from the report that the provision limiting to 12 months entitlement to social assistance was repealed in December 2009 with effect from January 2011 (Article 13§1)¹⁰⁸.

The ECSR noted two positive developments regarding the GMI benefit which intervened during the reference period¹⁰⁹. In Latvia case the upper limit on the total amount of GMI which could be granted to family households (€135 per family per month) was removed as from 2009. Secondly, the limit on the duration of the benefit period which was 9 months per year, was abolished also in 2009 (Article 13§1). In case of Malta, the Committee took note of new information showing that the right of appeal is effectively guaranteed, by providing legal aid to people lacking adequate means. In particular, decisions concerning suspension of assistance can be appealed cost-free before the umpire and, in second instance, before the Court of Appeal. The Committee accordingly held that the situation is in conformity on this point (Article 13§1). In other cases:

- Slovak Republic: the new Act on Social Services provides for adequate assistance and necessary care to be available to persons without sufficient financial means, including as regards their basic living needs (accommodation, food, necessary clothing, footwear and basic personal hygiene, crisis intervention and basic social counseling). The ECSR also understood that henceforth no length of residence condition is applied to resident foreign nationals to be eligible to the benefits in material need and supplementary social assistance allowances on equal footing with Slovak nationals (Article 13§1).
- United Kingdom (UK): due to the new explanations and case-law examples provided by the Government, the ECSR now holds that the «habitual residence» test, as applied in the UK, is in conformity with the Charter (Article 13§1).
- Republic of Moldova: the social services system has been re-organised to ensure operational social services in the meaning of the Charter (Article 13§3).
- Germany: according to new information the ECSR was now able to ascertain that all persons, without resources, present in Germany may be granted emergency medical and social assistance, even if they are there unlawfully (Article 13§4).
- Italy: from new information available the ECSR was able to conclude that all persons, in particular foreigners unlawfully present in Italy and not sheltered in Centers for temporary stay or assistance (CTSAs), were entitled to emergency assistance (Article 13§4).

In April 2020, the ECSR issued a statement of interpretation on the right to protection of health, reminding Member States that responses to the COVID-19 pandemic must be designed and implemented having regard to the current state of scientific knowledge and in accordance with relevant human rights standards¹¹⁰. At videoconference on “Protection of human life and public health in the context of a pandemic” organised by the Council of Europe which took place on 3 June 2020 a preconception was indicated that the virus and its social impacts will last for years to come and highlighted that pandemic-readiness requires Member States to ensure the

¹⁰⁵ Article 13 – the right to social and medical assistance, Andorra.

¹⁰⁶ Case of Andorra.

¹⁰⁷ Complaint No. 48/2008, decision on the merits of 18 February 2009.

¹⁰⁸ The 2013 Activity Report of the European Committee of Social Rights, p. 27.

¹⁰⁹ Latvia, Malta.

¹¹⁰ Activity Report 2020, p.6.

enjoyment of a range of social rights, and that Member States should therefore strengthen their commitment to the ESC. On the ground of inadmissibility of the complaint No.196/2020, the ECSR refused on 23rd March 2021, to consider the complaint brought by the Hellenic Association of Lawyers against Greece (Kotsoni, 2021). The applicants demanded that the lawyers appearing in the courts be guaranteed health protection during the pandemic period. Relatives of people injured by Covid-19 can only count on positive recognition by the ECSR of two other cases: *Validity v The Republic of Finland*¹¹¹ and *European Roma Rights Center (ERRC) v. Belgium*.¹¹² Both legal institutions, European Committee of Social Rights and European Tribunal of Human Rights are a potential instruments for challenging underpinning of Member State's responses to the pandemic since through their interpretation of certain provisions of ESC, it has accommodated the review of applications to socio-economic rights challenges. Forced gathering in times of plague of large numbers of people should be considered a threat to the health of those involved.

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¹¹¹ Case No. 197/2020; registered on 12 July 2019. Validity alleges that the response of the Government to the corona virus pandemic in spring 2020 violated the rights of persons with disabilities under these ESC provisions (Article 13 and others) in that the Government failed to adopt appropriate measures to protect the life and health of persons with disabilities during the pandemic, available at: <https://www.coe.int/web/content>.

¹¹² The complaint was registered on 12 July 2019. The dispute concerns, inter alia, Article 13 § 1 of the ESC. ERRC argued that a massive and disproportionate police operation failed to take into account individual circumstances or health consequences. The ECSR issued a decision on admissibility and on immediate measures on May 14 2020, available at: <https://www.coe.int/web/content>.