



The impact of the economic crisis and austerity measures on human rights in Europe

Steering Committee
for Human Rights
(CDDH)

Feasibility study

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

THE IMPACT OF THE ECONOMIC CRISIS AND AUSTERITY MEASURES ON HUMAN RIGHTS IN EUROPE

FEASIBILITY STUDY

Adopted by the Steering Committee
for Human Rights (CDDH) on 11 December 2015

Council of Europe

French edition:

*L'impact de la crise économique et des
mesures d'austérité sur les droits de l'homme
en Europe – Etude de faisabilité*

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I. Introduction

1. In the terms of reference for the Steering Committee for Human Rights (CDDH) for the biennium 2014/2015, the Committee of Ministers asked the CDDH to conduct a study by 31 December 2014 on “the feasibility of new activities as well as on the revision of existing instruments to deal with the impact of the economic crisis on human rights in Europe”.¹

2. In order to prepare the present feasibility study, the CDDH instructed the Secretariat at its 80th meeting in November 2013 to select in a preliminary study existing relevant standards and identify outstanding issues on the subject.² The CDDH discussed that preliminary study (document CDDH(2014)011) at its 81st meeting in June 2014. At that meeting, the CDDH also held an exchange of views with Ms Françoise Tulkens, former Vice-President of the European Court of Human Rights, on the impact of the economic crisis and austerity measures on human rights in Europe.

3. Subsequent to that exchange, the CDDH appointed Ms Zinovia Stavridi (Greece) as Rapporteur on the preparation of the feasibility study. It gave the following guidance for the preparation of this study (see CDDH(2014)R 81, paras. 17-20):

“... With regard to the expected contents and outcome of the study, the CDDH considered that any option should be left open for the time being, including the possibility that no further activity be carried out, depending on whether any gaps could be identified that would sufficiently justify the proposal of any activity by the CDDH. In this respect, some delegations stressed that the standards dealing with this topic may be sufficient, and that it was rather their lack of

1. Terms of reference of the CDDH and its subordinate bodies for 2014-2015 (adopted by the Ministers’ Deputies on 21 November 2013).

2. Report of the 79th CDDH meeting (CDDH)R79, para. 23.

implementation that deserved attention. It was also argued that many of the problems currently linked to the economic crisis and to austerity measures, including poverty, have not been created but merely exacerbated by the crisis. The CDDH also agreed that the emphasis of the study should be rather on the impact of the economic crisis on human rights than on its root causes. ... In addition to those indicated in the conclusions of the Secretariat in the preliminary study, the CDDH indicated as possible issues for further consideration gender equality-related issues and the question of the indivisibility of human rights in this particular context."

4. The CDDH considered and discussed the draft feasibility study at its 82nd meeting in November 2014. Noting that the narrow timetable had not allowed to ask delegations for written comments on the draft, which could have been useful in view of the complexity of the topic, the CDDH considered that it would be convenient to finalise the work on the present topic simultaneously with its work for the next biennium (see CDDH(2014)R82, pp. 9-10). Therefore, it decided to ask the Committee of Ministers to extend the deadline for the adoption of the feasibility study; that request was subsequently granted. The CDDH continued to discuss a revised version of the draft feasibility study, which had been amended in light of comments by delegations and observers, at its 83rd meeting in June 2015. The CDDH adopted the feasibility study at its 84th meeting on 11 December 2015.

II. The economic crisis in Europe

5. The economic crisis which Europe and the world have experienced in past years has created challenges for the protection of civil and political as well as social and economic rights,³ but also the rule of law, democracy, political stability or social cohesion in Europe. In his report on the “State of democracy, human rights and rule of law in Europe” of 17 April 2014, the Secretary-General of the Council of Europe, Mr Thorbjørn Jagland, stated that:

“People’s rights are ... threatened by the impact of the economic crisis and growing inequalities. ... European societies have suffered the effects of the recent economic crisis, which has deeply affected social cohesion in many member States, and which may eventually threaten both the rule of law and democracy.”⁴

6. Such concerns were shared by the then President of the European Court of Human Rights, Sir Nicolas Bratza, who remarked at the occasion of the opening of the judicial year at the European Court of Human Rights in January 2012:

“The economic crisis with its potential for generating political instability seems to spiral further and further out of control. All our societies are experiencing difficulties that few of us can have foreseen only a short time ago. ... Human rights, the rule of law, justice seem to slip further down the political agenda as governments look for quick solutions or simply

3. See the presentation of J. Laffranque in: Dialogue between Judges – “Implementing the European Convention on Human Rights in times of economic crisis”, January 2013, p. 7.

4. “State of democracy, human rights and rule of law in Europe” (SG(2014)1-Final), pp. 5 and 40.

*find themselves faced with difficult choices as funds become scarce. It is in times like these that democratic society is tested. In this climate we must remember that human rights are not a luxury.*⁵

7. In his welcoming speech for the seminar “Implementing the European Convention on Human Rights in times of economic crisis” in January 2013, Mr Dean Spielmann, the then President of the European Court of Human Rights, commented as follows:

*“It must be said that those most affected by the crisis are the vulnerable, for example prisoners (and in difficult times many people clearly find it hard to accept high expenditure on prison renovation), migrants, who are not received with much enthusiasm, pensioners, who see their pensions being reduced – that is to say, the kind of people that our Court tends to protect in many of its cases.”*⁶

8. While the economic crisis has been a global phenomenon, the present feasibility study limits itself to the way the crisis has affected human rights in Council of Europe member States.⁷

5. The speech is reproduced in the European Court of Human Rights’ Annual Report 2012 (Strasbourg, 2013), pp. 29–38 (quote at p. 29).

6. Dialogue between Judges 2013, “Implementing the European Convention on Human Rights in times of economic crisis”, Seminar of 25 January 2013, p. 5.

7. Even though sometimes referred to as “the economic and financial crisis” (to take account of both the global financial crisis in 2007–2008 and the European sovereign debt crisis which commenced in 2010), the present study uses the term “economic crisis” for the purposes of brevity.

9. As the consequences of the economic crisis are lasting in Europe, so is their impact on the human rights protection system. As an examination of the relevant case-law of the European Court of Human Rights below shows, a recurrent theme is the balancing of interests of certain individuals with wider policy issues in times of scarce resources and the financial crisis, and the question of whether and what margin of appreciation should be granted to national authorities balancing those interests.

III. The impact of the economic crisis on human rights as addressed by the various Council of Europe organs and bodies

10. As already elaborated in detail in the preliminary study, and described in more detail hereafter, various organs and bodies of the Council of Europe addressed in one form or another the consequences of the economic crisis.⁸ Both the European Court of Human Rights (also referred to as “the Court”) as well as the European Committee of Social Rights (also referred to as “the Committee”) had to deal in their decisions with austerity measures and other responses to the crisis. The Committee of Ministers briefly covered the economic crisis in its Recommendation CM/Rec(2014)1 to member States on the Council of Europe Charter on Shared Responsibilities. The Parliamentary Assembly has adopted in previous years numerous

8. The preliminary study also covered responses by other international organisations such as the United Nations, the European Union, the Organisation for Security and Cooperation in Europe and the International Labour Organisation, which are not fully replicated in the present study.

instruments on the economic crisis in its various human rights aspects,⁹ while the Congress of Local and Regional Authorities looked at the impact of the crisis from the angle of local communities.¹⁰ Several other monitoring bodies, such as the Committee for the Prevention of Torture (CPT) and the European Commission against Racism and Intolerance (ECRI), have addressed the impact of the economic crisis on human rights within the margins of their specific mandates, and the Commissioner for Human Rights has identified the subject as a major priority which has run as an

9. See, for example, Resolution 1651 (2009) on “Consequences of the global financial crisis”, Resolution 1673 (2009) on “The challenges of the financial crisis for the world economic institutions”, Resolution 1718 (2010) on “The impact of the global economic crisis on migration in Europe”, Resolution 1719 (2010) and Recommendation 1911 (2010) on “Women and the economic and financial crisis”, Resolution 1746 (2010) and Recommendation 1928 (2010) on “Democracy in Europe: crisis and perspectives”, Resolution 1800 (2011) on “Combating poverty”, Resolution 1882 (2012) and Recommendation 2000 (2012) on “Decent pensions for all”, Resolution 1884 (2012) on “Austerity measures – a danger for democracy and social rights”, Resolution 1885 (2012) and Recommendation 2002 (2012) on “The young generation sacrificed: social, economic and political implications of the financial crisis”, Resolution 1886 (2012) on “The impact of the economic crisis on local and regional authorities in Europe”, Recommendation 1910 (2010) on “The impact of the global economic crisis on migration in Europe”, Resolution 1946 (2013) and Recommendation 2020 (2013) on “Equal access to health care”, Resolution 1995 (2014) and Recommendation 2044 (2014) on “Ending child poverty in Europe”, Recommendation 1990 (2012) on “The right of everyone to take part in cultural life”, Resolution 1929 (2013) on “Culture and education through national parliaments: European policies”, Resolution 1930 (2013) and Recommendation 2014 (2013) on “Young Europeans: an urgent Educational Challenge”, Recommendation 2015 (2013) “Young people’s access to fundamental rights” as well as Resolution 2013 (2014) and Recommendation 2054 (2014) on “Good governance and enhanced quality in education”.

10. Congress of Local and Regional Authorities, Resolution 357 (2013) and Recommendation 340 (2013) on “Local and regional authorities responding to the economic crisis”, October 2013.

overarching theme through much of his activities in the past three years.¹¹ The following section gives an overview and a brief analysis of those activities.

A. European Court of Human Rights

11. In its jurisprudence, the European Court of Human Rights has rendered numerous judgments where the economic parameter can be discerned in the argument. The following are examples from this case-law – which has been elaborated upon in more detail in the preliminary study – which demonstrate the adequacy of the Convention system to hold States to account, regardless whether a case is specifically related to the crisis:¹²

- the death of 15 children who died in a home for children with severe mental disabilities in a situation of an economic crisis due to lack of food, heating and basic care, which the Court considered as a violation of Article 2 of the European Convention on Human Rights (ECHR);¹³

11. See the Commissioner’s annual activity reports for 2012 (CommDH(2013)5, p. 15) and 2013 (CommDH(2014)5, p. 32). In December 2013, the Commissioner also published an issue paper (“Safeguarding human rights in times of economic crisis”) which outlines the related human rights problems and provides guidance to member States in view of their responses to the crisis (for more details, see para. 40 of the preliminary study).

12. See the preliminary study (paras. 4-23) as well as the written presentation from the seminar on the subject held at the European Court of Human Rights in January 2013 in: Dialogue between Judges – “Implementing the European Convention on Human Rights in times of economic crisis”.

13. *Nencheva and Others v. Bulgaria* (No. 48609/06), judgment of 18 June 2013, in particular paras. 117 et seq.

- certain issues of access to health care for detainees or asylum seekers which concerned Articles 2¹⁴ and 3¹⁵ ECHR;
- an allegedly insufficient amount of pension and other social benefits which could in principle raise an issue under Article 3 ECHR, even though the Court did not find a violation in the actual case;¹⁶
- prison conditions in times of financial constraints, which the Court considered as a violation of Article 3 ECHR;¹⁷
- a failure to execute a final judgment by a domestic court on account of financial difficulties of the State concerned, which amounted to a violation of Article 6 ECHR;¹⁸ this structural problem affected a number of countries and was at times addressed by the Court through the pilot-judgment procedure;¹⁹
- the failure to execute a final judgment with regard to rehousing in a case where the authorities had promised the applicant to be treated with priority because of indecent and insalubrious conditions, which amounted to a violation of Article 6 ECHR;²⁰ in

14. *Nitecki v. Poland* (No. 65653/01), decision of 21 March 2002.

15. *Aleksanyan v. Russia* (No. 46468/06), judgment of 22 December 2008.

16. *Larioshina v. Russia* (No. 56869/00), decision of 23 April 2002, para. 3. See also the case of *O'Rourke v. the United Kingdom* (No. 39022/97, decision of 26 June 2001), regarding a former prisoner who lived on the street after having been evicted from his temporary accommodation.

17. See, for example, *Orchowski v. Poland* (No. 17885/04), judgment of 22 October 2009, para. 153.

18. See, for example, *Burdov v. Russia* (No. 59498/00), judgment of 7 May 2002, para. 35.

19. *Burdov v. Russia* (No. 2) (No. 33509/04), judgment of 15 January 2009; *Olaru and Others v. Moldova* (Nos. 476/07 et al.), judgment of 28 July 2009; *Ivanov v. Ukraine* (No. 40450/04), judgment of 15 October 2009.

20. *Tchokontio Hapii v. France* (No. 65829/12), judgment of 9 April 2015.

another pilot judgment the Court went further to highlight a gap between, on the one hand, the State's social obligation to provide housing to certain individuals and, on the other hand, the respondent authorities' incapacity to comply with those obligations with reference, most often, to the scarcity of available resources problem;²¹

- the failure to compensate lengthy civil proceedings in a situation where the applicant faced financial difficulties because of the delay, which amounted to a violation of Article 6 ECHR;²²
- the placement of children on account of their parents' financial situation (and not because of psychological disorders, educational inability, violence or sexual abuse), which the Court considered as a violation of Article 8 ECHR;²³
- rent control measures in the context of a housing crisis situation which raised issues under Article 1 of Protocol No. 1 ECHR; these issues were dealt with by the Court in a pilot judgment procedure which was later closed after the introduction of a compensation scheme;²⁴
- the planned eviction of several hundred Roma from established but unlawful settlement without proposals for rehousing, which the Court considered a violation of Article 8 ECHR;²⁵

21. *Gerasimov and Others v. Russia* (Nos. 29920/05 et al.), judgment of 1 July 2014.

22. *Burdov v. Russia* (No. 59498/00), judgment of 7 May 2002.

23. *Walla and Wallova v. the Czech Republic* (No. 23848/04), judgment of 26 October 2006; *R.M.S. v. Spain* (No. 28775/12), judgment of 18 June 2013.

24. *Hutten-Czapska v. Poland* (No. 35014/97), judgment of 19 June 2006; see also the press release by the Court's Registry of 31 March 2011 in that case.

25. *Yordanova and Others v. Bulgaria* (No. 25446/06), judgment of 24 April 2012. See also the case of *Winterstein v. France* (No. 27013/07), judgment of 17 October 2013.

- the search of the home of a journalist who had informed the public about the salaries in the public sector at a time of economic crisis, which the Court considered as not being proportionate under Article 10 ECHR,²⁶
- the qualification by the Court of all social benefits, even where they are non-contributory, to come within the notion of “possessions” under Article 1 of Protocol No. 1 ECHR.²⁷

12. While the above-mentioned cases were not directly related to the economic crisis, the Court had to deal in a number of other cases directly with measures implemented by member States in response to it. Most of these decisions concerned complaints under Article 1 of Protocol No. 1 ECHR. In *Koufaki and ADEDY v. Greece*,²⁸ the Court considered applications lodged after the Greek government had adopted a series of austerity measures, including reductions in the remuneration, benefits, bonuses and retirement pensions of public servants, with a view to reducing public spending and reacting to the economic crisis the country is facing. The Court declared the applications inadmissible as manifestly ill-founded because the measures had been justified by the exceptional crisis, which was unprecedented in the recent history of Greece and called for an immediate reduction in public spending. Reiterating that the legislature had a wide margin of appreciation in implementing social and economic policies, the Court considered that the aims of the measures were in the public interest and in that of the member States of the euro zone, whose obligation was

26. *Nagla v. Latvia* (No. 73469/10), judgment of 16 July 2013.

27. *Stec and Others v. the United Kingdom* (Nos. 65731/01 and 65900/01), decision of 6 July 2005 (Grand Chamber), para. 51.

28. *Koufaki and Adedy v. Greece* (Nos. 57665/12 and 57657/12), decision of 7 May 2013.

to observe budgetary discipline and preserve the stability of the zone.²⁹ With a similar reasoning, the Court declared manifestly ill-founded applications against pension reductions for civil servants concerning holiday and Christmas bonuses in Portugal³⁰ or the temporary reduction in the pensions of judges in Lithuania³¹ which had their origin in austerity measures as a response to the economic crisis. However, complaints were not restricted only to Article 1 of Protocol No. 1 ECHR. In *Adorisio and Others v. the Netherlands*,³² the Court found that certain restrictions of procedural rights in proceedings challenging emergency economic measures adopted in the banking sector (in that case, the expropriation of government-held assets

29. *Ibid.*, para. 31: "The Court reiterates that the States Parties to the Convention enjoy quite a wide margin of appreciation in regulating their social policy. As the decision to enact laws to balance State expenditure and revenue will commonly involve consideration of political, economic and social issues, the Court considers that the national authorities are in principle better placed than the international judge to choose the most appropriate means of achieving this and will respect their judgment unless it is manifestly without reasonable foundation."

30. *Da Conceição Mateus and Santos Januário v. Portugal* (Nos. 62235/12 and 57725/12), decision of 8 October 2013. Note however that the Court also stated that the margin of appreciation has certain limits: "[T]he margin of appreciation enjoyed by States in these particular fields is not unlimited. The Court must be satisfied that a 'fair balance' has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In particular, the Court must ascertain whether by reason of the State interference the person concerned had to bear a disproportionate and excessive burden . . ." (para. 23). Note also the recent decision in *da Silva Carvalho Rico v. Portugal* (No. 13341/14, admissibility decision of 1 September 2015) concerning the reduction of retirement pension following austerity measures: holding that the application was manifestly ill-founded with regard to the complaint under Article 1 of Protocol No. 1, the Court noted in particular the overall public interests at stake in Portugal at a time of financial crisis and the limited and temporary nature of the measures applied to the applicant's pension.

31. *Savickas and Others v. Lithuania* (Nos. 66365/09 and 5 other applications), decision of 15 October 2013.

32. *Adorisio and Others v. the Netherlands*, No. 47315/13, decision of 17 March 2015.

in a banking and insurance conglomerate) had not been in violation of Article 6 ECHR, since the Court considered the admittedly short time-limit for lodging an appeal had not prevented the applicants from bringing an effective appeal. Another recent case, although not explicitly referring to the financial crisis, concerned Article 8 ECHR: in *McDonald v. United Kingdom*,³³ which had as a basis the decision by the national authorities not to provide the applicant with night-time care to aid her toileting needs, the Court reiterated the wide margin of appreciation of States in prioritising the allocation of scarce national resources. In finding no violation of Article 8 ECHR (except for a certain time period during which those measures had lacked a legal basis), the Court found that the authorities enjoyed a “wide margin of appreciation afforded to States in issues of general policy, including social, economic and health-care policies”.³⁴

B. European Committee of Social Rights

13. Against this background, it is interesting to note that the European Committee of Social Rights stated in its general introduction to its Conclusions for 2009 that “the severe financial and economic crisis that broke in 2008 and 2009 already had significant implications on social rights, in particular those relating to the thematic group of provisions ‘Health, social security and protection’ of the current reporting cycle.”³⁵ It noted with concern that the increasing level of unemployment is presenting a challenge to social security and social assistance systems, as the number of beneficiaries increase while tax and social security contribution revenues decline.³⁶ The Committee considered that the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter, whether related to health care, social security or social

33. *McDonald v. the United Kingdom*, No. 4241/12, judgment of 20 May 2014.

34. *Ibid.*, para. 54.

35. European Committee of Social Rights, *Conclusions XIX-2* (2009): General introduction, para. 15.

36. *Ibid.*

protection.³⁷ In 2013, the Committee completed its examination of rights relating to health care, social security and social protection, and its conclusions reflected the noted higher proportion of violations than during the previous examination cycle four years earlier.³⁸ The conclusions underlined that austerity measures put increasing pressure on health care systems, challenging Article 11 of the European Social Charter (revised)³⁹ which imposes a range of obligations designed to secure the right to health care.

14. The Committee has further decided several collective complaints concerning austerity measures in Greece, in which it found violations of the European Social Charter. The collective complaint of *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece (No. 1)* concerned austerity legislation allowing, during a probationary period of twelve months, dismissal without notice or compensation of employees with contracts of indefinite duration.⁴⁰ Finding a violation of Article 4 (4) of the Charter, which grants the right of all workers to a reasonable period of notice for termination of employment, the Committee held that, while it may be reasonable as a response to the economic crisis to prompt changes in legislation and practices to restrict certain items of public spending or

37. *Ibid.*

38. European Committee of Social Rights, Activity Report 2013, p. 18. In this context, see also the Secretary-General's report "State of democracy, human rights and rule of law in Europe" (SG(2014)1- Final), p. 40) and his press release of 28 January 2014 ("Secretary General calls for better protection of social rights in times of austerity"): "The Secretary General . . . has urged European governments and international organisations to pay greater attention to social and economic rights when implementing austerity measures".

39. Throughout the text, it is understood that the mentioned alternatives (European Social Charter and revised European Social Charter) apply respectively to member States having ratified the relevant instrument in question.

40. *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece (No. 66/2011)*, decision on the merits of 23 May 2012.

relieve constraints on businesses, these changes should not excessively destabilise the situation of those who enjoy the rights enshrined in the Charter.⁴¹

15. In another collective complaint, the Committee considered austerity legislation with regard to youth unemployment which is considered further below in the present study.⁴² The Committee ruled also in several cases⁴³ on the austerity reform of old-age pensions schemes in Greece after a drastic reduction of most of those pensions, and found a violation of Article 12 (3) of the Charter (obligation to raise progressively the system of social security to a higher level) since the restrictive measures had appeared to have the effect of depriving one segment of the population of a very substantial portion of their means of subsistence.⁴⁴

41. *Ibid.*, para. 17.

42. *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece* (No. 66/2011), decision on the merits of 23 May 2012; see below, para. 24.

43. *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece* (No. 76/2012); *Panhellenic Federation of public service pensioners v. Greece* (No. 77/2012); *Pensioner's Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece* (No. 78/2012); *Panhellenic Federation of pensioners of the public electricity corporation (POS-DEI) v. Greece* (No. 79/2012); and *Pensioner's Union of the Agricultural Bank of Greece (ATE) v. Greece* (No. 80/2012). All decisions on the merits were rendered on 7 December 2012.

44. The Committee considered that the fact that the pension reforms had been undertaken to honour an agreement with the European Commission, the International Monetary Fund and the European Central Bank (the so-called "Troika") did not remove the reforms from the ambit of the Charter.

C. Recent Council of Europe conferences in respect of the economic crisis

16. Another issue of relevance in the present context is that the Committee has pointed to certain differences between EU standards and the European Social Charter (revised).⁴⁵ In his report on “State of democracy, human rights and rule of law in Europe” of April 2014, the Secretary-General of the Council of Europe underlined the urgent need to find pragmatic solutions to settle conflicts between the two sets of standards.⁴⁶ To that end, a high level conference was held by the Council of Europe (in co-operation with the Italian government) in Turin from 17-18 October 2014, bringing together political personalities from the Council of Europe and the European Union in order to hold an exchange of views and find political solutions to meet the challenge of enforcing human rights in times of austerity. The conference started the so-called “Turin process” which aims at *“reinforcing the normative system of the Charter within the Council of Europe and in its relationship with the law of the European Union. The objective is to improve the implementation of fundamental social and economic rights, in parallel to the civil and political rights guaranteed by the European Convention on Human Rights, at the continental level.”*⁴⁷

45. See the collective complaint of *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden* (No. 85/2012), decision on admissibility and the merits of 3 July 2013: in its decision, the Committee found a breach of the right to bargain collectively and the right to strike concerning measures which had been adopted as a result of a decision by the Court of Justice of the European Union.

46. “State of democracy, human rights and rule of law in Europe” (SG(2014)1-Final), p. 41.

47. See the Council of Europe website, “The Turin process for the European Social Charter”, with further information, including a general report of the conference (<http://www.coe.int/en/web/portal/high-level-conference-esc-2014>).

17. This process will involve a series of initiatives to implement common priorities identified during the conference, also in cooperation with the European Union and member States. One such initiative was the recent “Conference on the future of the protection of social rights in Europe”, which was held in Brussels and was organised by the Belgian presidency of the Committee of Ministers in cooperation with the Council of Europe on 12-13 February 2015. The “Brussels document on the Protection of Social Rights in Europe” of 13 March 2015, elaborated after the conference by independent experts, States the need to *“better take into account the requirements of social rights in policies implemented in Europe in response to the economic, financial and sovereign debt crises; and to strengthen to this effect the possibilities of legal remedies against violations of social rights”*.⁴⁸

D. The principle of indivisibility of human rights and the question of consistency of the Council of Europe responses

18. The CDDH recognises that the Council of Europe promotes the indivisibility of human rights and that the Court has emphasised that “there is no water-tight division” between social and economic rights and civil and political rights.⁴⁹ It also notes that the recently started “Turin process” aims at strengthening the European Social Charter, including through an increase in ratifications by Council of Europe member States and acceptance of the collective complaints procedure. Moreover, the CDDH recognises that by nature an economic crisis affects social and economic rights to a considerable extent.

48. The document is available on the website of the European Social Charter.

49. See, for example, *Airey v. Ireland* (No. 6289/73), judgment of 9 October 1979, para. 26.

19. The CDDH notes that there appears to be in general a consistent approach with regard to the majority of responses given by various Council of Europe bodies in this area. Where there have been different approaches, as may be seen from the above comparison between decisions of how the Court and the Committee approached cases brought against austerity measures in the aftermath of the economic crisis,⁵⁰ those decisions must also be seen within their different contexts, and there may therefore be specific reasons for the different decisions taken, in particular, in view of the nature and levels of the scrutiny exercised by the bodies concerned. In this context, the CDDH underlines the non-judicial character of the Committee, which is one of the three bodies supervising the States parties' compliance in law and practice with the European Social Charter of 1961 and the European social Charter (revised). It also recalls that not all Council of Europe member States have ratified the 1996 European Social Charter (revised) and the 1995 Additional Protocol providing for a system of collective complaints (ETS No. 158).⁵¹ The CDDH finds that any issue in this area should be settled by the competent bodies concerned without the Committee of Ministers engaging in any specific activity seeking to reconcile the approaches taken so far.

50. See above, paras. 12-15 of the present study.

51. At this stage, 15 out of 47 Council of Europe member States have ratified the 1995 Additional Protocol providing for a system of collective complaints, while 33 member States have ratified the revised European social Charter (ETS No. 163)

IV. The impact of the economic crisis on human rights in specific areas

A. Access to justice and fair trial

20. In times of economic crisis, judicial rights may be impacted upon negatively. In October 2014, the European Commission for the Efficiency of Justice (CEPEJ) concluded in its evaluation report that, while in half of the States evaluated justice seems to have been shielded in budgetary terms from the effects of the crisis, the latter had a clear impact on the development of the budgets in other States, where human resources are often affected.⁵² The case-law of the European Court of Human Rights has played a significant role in this area ever since the milestone case of *Airey v. Ireland*, in which it developed the principle of effective protection of the Convention in respect of legal aid under Article 6 ECHR (right to a fair trial) and in which it famously held that the Convention was not “intended to guarantee rights that are theoretical or illusory but rights that are practical and effective”.⁵³ Concerning the right to have a judgment by a domestic court executed under Article 6 ECHR, the Court held that it was not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt.⁵⁴ Although a delay in the execution of a judgment may be justified in particular circumstances, the Court found that such delay may not be such as to impair the essence of the right protected under Article 6 ECHR, and that applicants could not be prevented from benefiting from the success of the litigation on the ground of alleged financial difficulties experienced by a State. In a pilot judgment, the Court found that “the complexity of the domestic enforcement procedure or of the State budgetary system cannot relieve the State of its obligation under the Convention to guarantee to

52. CEPEJ, Report on “European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice”, p. 479.

53. *Airey v. Ireland* (No. 6289/73), judgment of 9 October 1979, para. 26.

54. *Burdov v. Russia* (No. 59498/00), judgment of 7 May 2002, para. 35.

everyone the right to have a binding and enforceable judicial decision enforced within a reasonable time".⁵⁵ In another case, the Court has applied interim measures for the payment of compensation concerning excessive length of proceedings to avoid severe financial hardship for the applicant whose financial situation was known to the state.⁵⁶ Last year, the Court held in the pilot judgment of *Gerasimov and Others v. Russia*⁵⁷ that the excessive delay of enforcement of domestic judgments concerning housing benefits and utility services were a violation of Articles 6 and 13 ECHR. In that case, the Court noted that there was a gap between, on the one hand, the State's social obligation to provide housing to certain individuals and, on the other hand, the authorities' incapacity to comply with those obligations with reference, most often, to the scarcity of available resources. In that regard, the Court reiterated that under its case-law the Convention did not allow a State authority to cite a lack of funds as an excuse for not honouring a judgment debt within a reasonable time. Finally, it should be noted that, in March 2015, the Court found in the case of *Adorisio and Others v. the Netherlands*,⁵⁸ that certain restrictions of procedural rights in proceedings challenging emergency economic measures adopted in the banking sector had not been in violation of Article 6 ECHR.⁵⁹

55. *Burdov v. Russia (No. 2)* (No. 33509/04), judgment of 15 January 2009, para. 70.

56. *Guidi and Others v. Italy* (No. 32374/96), judgment of 19 December 2002. The application of Rule 39 of the Rules of the Court in this case was reported by F. Tulken in: *Dialogue between Judges – "Implementing the European Convention on Human Rights in times of economic crisis"*, January 2013, p. 22.

57. *Gerasimov and Others v. Russia* (Nos. 29920/05 et al.), judgment of 1 July 2014.

58. *Adorisio and Others v. the Netherlands*, No. 47315/13, decision of 17 March 2015.

59. See above, para. 12 of the present study.

21. In December 2012, the European Union Fundamental Rights Agency (FRA) organised a conference “Justice in austerity – challenges and opportunities for access to justice⁶⁰. The conference aimed at examining existing policies and discussing the strengths and weaknesses of different judicial systems and their financing mechanisms, as well as opportunities to reform them. Throughout the conference, separate working groups discussed topics from e-technologies as a form of raising legal awareness through to ensuring access to a lawyer and legal aid in a time of budget cuts. As a key speaker to the event, the Council of Europe Commissioner for Human Rights suggested that legal aid schemes, public interest litigation and low-threshold complaints bodies should be developed to respond to the needs of those groups which are affected most by the crisis. He also highlighted the difficulties encountered by many member States in relation to the functioning of their judicial systems, such as the above-mentioned problems with excessive length of proceedings and the failure to enforce final judgments.⁶¹

B. Women and the economic crisis/Gender-related issues

22. In 2010, the Parliamentary Assembly adopted Resolution 1719 (2010) and Recommendation 1911 (2010) on “Women and the economic and financial crisis” in which it noted that women were more affected by the economic crisis than men.⁶² Amongst its recommendations made in both instruments, the Parliamentary Assembly called upon member States to make both gender equality and gender balancing a priority and to imple-

60. See the summary of the conference on the website of the Fundamental Rights Agency (<http://fra.europa.eu>).

61. See the Commissioner’s annual activity reports for 2012 (CommDH(2013)5, p. 16).

62. Resolution 1719 (2010) on “Women and the economic and financial crisis”, paras. 1-3. See also the eponymous report of the Committee on Equal Opportunities for Women and Men (Doc. 12195, Rapporteur: Mrs Memecan).

ment the Assembly's recommendations on increasing women's representation in politics through the electoral system and on the wage gap between women and men.⁶³ It also recommended an additional protocol to the European Convention on Human Rights in order to enshrine the right to equality for women and men therein, as well as the necessary exception allowing positive discrimination measures for the under-represented sex.

23. In a reply to Recommendation 1911 (2010) adopted on 8 December 2010, the Committee of Ministers stated that previous gains made towards gender equality should not be lost due to the economic crisis, and that gender balance in leadership and decision-making positions should be promoted by member States. It also pointed to existing non-discrimination legal standards of the Council of Europe (including Protocol No. 12 to the European Convention on Human Rights) as well as to its declaration "Making gender equality a reality" of 12 May 2009 in which the Committee had urged member States to commit themselves fully to bridge the gap between equality in fact and in law.⁶⁴

24. In a human rights comment entitled "Protect women's rights during the crisis" of July 2014, the Commissioner for Human Rights stressed that in most of the European countries affected by the economic crisis, an increasing feminisation of poverty had been observed. Reiterating the concerns raised by both the Parliamentary Assembly and the European Parliament,⁶⁵ he also noted that women in poverty or at risk of poverty were more likely to work in low-paid, precarious and informal jobs,

63. Recommendation 1911 (2010) on "Women and the economic and financial crisis", para. 2.2.

64. In this regard, the Committee of Ministers also referred to the respective Resolution "Bridging the gap between *de jure* and *de facto* equality to achieve real gender equality" and the action plan adopted by the 7th Council of Europe Conference of Ministers responsible for Equality between Women and Men (Baku, 24-25 May 2010).

65. European Parliament, Resolution of 12 March 2013 on the impact of the economic crisis on gender equality and women's rights (2012/2301 (INI)).

including in the field of domestic work, and face the risk of exploitation and trafficking in human beings. As women rely more than men on social benefits, budget cuts in the welfare system had further endangered the enjoyment of social and economic rights by women. Likewise, as women have a higher life expectancy and are more likely to live by themselves than men, they were hit harder by the stagnation of pension rates. Due to budgetary cuts, some women shelters had to close at a time when violence against women was rising in a number of Council of Europe member States. The Commissioner also referred to a report by the European Commission⁶⁶ which used the expression “gender-blindness of public cuts”, and urged that European governments should guarantee women’s equal access to human rights. He concluded that there was a clear need for systematic assessments of the impact of the economic crisis and the recovery measures on gender equality.

25. Taking into account the reply by the Committee of Ministers to the Parliamentary Assembly in 2010, the Assembly’s proposal for an additional protocol to the European Convention on Human Rights in order to enshrine the right to equality for women and men therein, does not appear feasible, also in view of the already existing Protocol No. 12 to the Convention which has established a general non-discrimination clause, as well as Article 20 of the revised social Charter. Nevertheless, the CDDH notes that the importance of the gender-dimension of the economic crisis has been underlined by various Council of Europe bodies as well as the European Union. In this context, it appears noteworthy that the Council of Europe Gender Equality Strategy 2014-2017 includes a specific objective on “Achieving mainstreaming in all policies and measures”.

66. European Commission, “The impact of the economic crisis on women and men and on gender equality policies”, Synthesis report, December 2012.

C. Youth unemployment and children

26. The European Court of Human Rights has rendered numerous judgments that concern the human rights of young persons. Moreover, the European Social Charter (revised) makes explicit reference to young persons to ensure their social, legal and economic protection. From the decisions of the European Committee of Social Rights, the following collective complaint is particularly noteworthy in the present context. In *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece (No. 2)*,⁶⁷ the Committee found that austerity legislation which allowed fixed-term "special apprenticeship contracts" to be concluded between employers and individuals aged 15 to 18 years, without regard for the main safeguards provided for by labour and social security law, was in violation of several provisions of the European Social Charter (revised). The Committee noted that the legislation had established a distinct category of workers who were excluded from the general range of protection offered by the social security system.⁶⁸ The final part of the complaint concerned the introduction of a lower minimum wage for new labour market entrants under the age of 25 years, and the Committee found in this respect a violation of Article 4 (1) (also in light of the non-discrimination clause in the preamble of the 1961 Charter) guaranteeing a fair remuneration, after the Committee had concluded that that minimum wage appeared to have fallen below the poverty level.

67. *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece* (No. 66/2011), decision on the merits of 23 May 2012.

68. *Ibid.*, para. 12. In its submissions, the Greek government had argued that the legislative measures were part of a package adopted in response to the economic crisis and were necessary to tackle the serious problem of youth unemployment. Referring to its general comment on the economic crisis, the Committee held that, irrespective of the crisis, governments were bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries most need the protection.

27. Two years ago, the Parliamentary Assembly adopted Resolution 1885 (2012) and Recommendation 2002 (2012) on “The young generation sacrificed: social, economic and political implications of the financial crisis”.⁶⁹ In those instruments, the Parliamentary Assembly observed that the economic crises threatened the effective exercise of rights by the young generation and, in some countries, forcing it to make painful sacrifices.⁷⁰ It expressed deep concern that a young generation in Europe was disproportionately hit by unemployment and that the risk to produce a “lost generation” in Europe was a tragedy in the making.⁷¹ The Assembly made a number of proposals regarding youth policies, youth employability and skills, social protection, the promotion of active citizenship and social dialogue, and resolved to make regular use of its “state of democracy and human rights” debates and other Council of Europe monitoring mechanisms in order to assess progress made. It also asked the Committee of Ministers to consider the proposal of a draft European framework convention on the rights of young people.⁷² In a reply to Recommendation 2002 (2012) adopted on 14 November 2012, the Committee of Ministers stated that the Council of Europe’s commitment to young people was more essential than ever given the economic and financial crisis, but also reiterated an earlier reply in which it had stated that existing standards, including provi-

69. Both instruments were based on the eponymous report of the Committee on Social Affairs, Health and Sustainable Development (Doc. 12951, Rapporteur: Mr Volontè). See also Parliamentary Assembly Resolution 1828 (2011) on “Reversing the sharp decline in youth employment”, as well as Recommendation 2015 (2013) on “Young people’s access to fundamental rights” in which the Assembly called on the Committee of Ministers “to prepare ... a recommendation on improving young people’s access to fundamental rights (paragraph 3).

70. Resolution 1885 (2012) “The young generation sacrificed: social, economic and political implications of the financial crisis”, para. 1.

71. *Ibid.*, para. 2.

72. Recommendation 2002 (2012) “The young generation sacrificed: social, economic and political implications of the financial crisis”, para. 3.2.

sions in the European Social Charter (revised) tailored to the situation of young people, should rather be implemented than a new framework convention being created.

28. In March 2014, the Commissioner for Human Rights published one of his regular human rights comments on “Youth human rights at risk during the crisis”.⁷³ Recalling that young people have been one of the groups hardest hit by the economic crisis in Europe, he suggested that a rights-based approach should replace the current neglect of young people in discussions about the crisis. He proposed that measures tackling youth and long-term unemployment should be given priority in labour policies, and any temptation to lower labour standards and social protection when employing young people should be resisted, while schemes to work as an intern or an apprentice should not be abused in this respect.⁷⁴

29. In this respect, the particular effects that the economic crisis has on children may also be noted. This issue has for example been addressed by the Parliamentary Assembly in Resolution 1995 (2014) and Recommendation 2044 (2014) on “Ending child poverty in Europe”. Moreover, on 26 May 2015, the Committee of Experts on the Council of Europe Strategy for the Rights of the Child (2016-2021) issued their second draft on that strategy. The document addresses issues such as inequality and exclusion due to the economic crisis, while putting particular emphasis on the respect of children’s social rights.

73. Commissioner for Human Rights, Human Rights Comment, “Youth human rights at risk during the crisis”, 6 March 2014.

74. The Commissioner also stated that, although existing human rights instruments apply to young persons (without necessarily making explicit reference to them), it had to be ensured that being young does not become an obstacle to the full exercise of human rights during the crisis and that young people can participate in national decision making. Ombudspersons, equality bodies and human rights commissions should also reach out to young persons, so that their concerns and complaints can be addressed.

D. Prison overcrowding

30. While the issue of prison overcrowding already had been a pressing problem in several European States before the economic crisis⁷⁵, the latter has however aggravated this problem in some countries, for example through staff cutting or lack of resources for further accommodation. While recognising that prisons generally require the mobilisation of significant financial resources, the Court not only held that, in order to avoid the problem of overcrowding, States would have to abandon its strict penal policy to reduce the number of incarcerated persons or put in place a system of alternative means of punishment.⁷⁶ In this regard the Court's general reasoning should be noted that, subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 ECHR, provided that such means are compatible with the conclusions set out in the Court's judgment.⁷⁷ The Court has also adopted pilot judgments which ordered respondent States to take specific general measures to combat poor conditions of detention, and which significantly influenced their policy and law

75. In a number of cases (*Poltoratski v. Ukraine* (No. 38812/97), judgment of 29 April 2003, para. 148; *Nazarenko v. Ukraine* (No. 39483/98), judgment of 29 April 2003, para. 144; *Mamedova v. Russia* (No. 7064/05), judgment of 1 June 2006, para. 63; *Orchowski v. Poland* (No. 17885/04), judgment of 22 October 2009, para. 153), the European Court of Human Rights held that lack of resources cannot in principle justify prison conditions which are so poor as to reach the threshold of treatment contrary to Article 3 ECHR. This is the case irrespective of whether a country encountered serious socio-economic problems in the course of its systemic transition (*Poltoratski v. Ukraine*, para. 148). Having regard to that judgment, the Court may probably come to the same conclusion if a state were to argue that in times of economic crisis it lacked sufficient budgetary resources to guarantee proper prison conditions.

76. *Orchowski v. Poland*, para. 153.

77. *Scozzari and Giunta v. Italy* [GC], Nos. 39221/98 and 41963/98, para. 249, ECHR 2000-VIII; *Broniowski v. Poland*, No. 31443/96, judgment of 22 June 2004, para. 192.

making in the area.⁷⁸ In the recent case of *Muršić v. Croatia* of March 2015, the Court reaffirmed the general principles on the question of prison overcrowding and clarified the Court's related case-law.⁷⁹

31. In the same manner, the Committee for the Prevention of Torture (CPT) had to face the structural problem of prison overcrowding as a result of the economic crisis. At a visit to Spain in 2011, the CPT's delegation had been informed that the crisis had had an impact on the budget for the prison system.⁸⁰ The CPT took the view that, regardless of the economic context, the building of additional accommodation was unlikely, in itself, to provide a lasting solution to the challenge of prison overcrowding.⁸¹ Instead, it suggested that the promotion of policies to limit and modulate the number of persons being sent to prison could be an important element in maintaining the prison population at a manageable level.

E. The protection of migrant workers and asylum seekers

32. The economic crisis has complicated the immigration situation in Europe, which has been recognised by several organs of the Council of Europe, notably the European Court of Human Rights and the Parliamentary Assembly. In the case of *Hirsi Jamaa and Others v. Italy*, concerning African immigrants seeking to reach Europe by vessel who were transferred on Italian military ships back to Libya, the Court found that the return had violated Article 3 of the Convention in view of the deteriorating situation in

78. See, for example, *Ananyev and Others v. Russia* (Nos. 42525/07 et al.), judgment of 10 January 2012, and *Torregiani and Others v. Italy*, Nos. 43517/09 et al., judgment of 8 January 2013; as well as the Factsheet "Pilot judgments" produced by the Court's Registry (available from the Court's website).

79. *Muršić v. Croatia* (No. 7334/13), judgment of 12 March 2015.

80. Committee for the Prevention of Torture, Report on the country visit to Spain in 2011 (CPT/Inf (2013) 6), para. 117.

81. *Ibid.*

that country at the time.⁸² The Court was however conscious of the pressure put on member States by the ever increasing influx of migrants, a particularly complex situation in the maritime environment:

“The economic crisis and recent social and political changes have had a particular impact on certain regions of Africa and the Middle East, throwing up new challenges for European States in terms of immigration control.”⁸³

33. The Parliamentary Assembly’s work in previous years on the subject should also be mentioned in this respect.⁸⁴ “The impact of the global economic crisis on migration” was the subject of Resolution 1718 (2010) and Recommendation 1910 (2010) adopted in 2010. The Assembly noted that, with unemployment soaring in Europe, migrant workers were among the first to lose their jobs because of their concentration in those sectors affected the most, and expressed concern about the revision of immigrant policies which may result in fewer rights and less protection for migrants.⁸⁵ It also observed that the overall impact of the economic crisis in terms of migration flows was still difficult to measure. Considering that the Council of Europe was well-positioned to contribute by its own standards and expertise to the global debate on how to best relieve the impact of the current economic crisis on migrants, it made several recommendations to member States, for example the accession and implementation of the rele-

82. See also the case of *M.S.S. v. Belgium and Greece* (No. 30696/09), judgment of 21 January 2011 (Grand Chamber), concerning the EU asylum policy under the “Dublin II Regulation”.

83. *Hirsi Jamaa and Others v. Italy* (No. 27765/09), judgment of 23 February 2012 (Grand Chamber), para. 176.

84. For the Parliamentary Assembly’s specific work on migrants from North Africa, see the summary “Migrants and refugees arriving from North Africa – PACE’s response” on the website of the Assembly (<http://assembly.coe.int>).

85. Resolution 1718 (2010) on “The impact of the global economic crisis on migration in Europe”. See also the eponymous report of the Committee on Migration, Refugees and Population (Doc. 12217, Rapporteur : Mr Font de Mora).

vant Council of Europe conventions ensuring the protection of migrant workers and to further develop measures to promote and protect the human rights of particularly vulnerable migrants.⁸⁶ Recommendation 1910 (2010) should be read in conjunction with Recommendation 1917 (2010) on “Migrants and refugees: a continuing challenge for the Council of Europe”.

34. In a reply to both recommendations adopted in January 2011, the Committee of Ministers agreed that the Council of Europe should take a human rights approach and stressed the importance of promoting the implementation of the existing standards and policies in this field. The Committee of Ministers had previously sought the opinion of the CDDH which had concurred with the Assembly that migration is an important phenomenon that shapes today’s Europe and deserved the Council of Europe’s attention. It considered that enhancing the impact of existing relevant Council of Europe legal instruments, whether “hard” or “soft” law, was of crucial importance, and agreed with the Assembly that there was a need to sign, ratify and implement Council of Europe conventions affecting migrants, asylum seekers, refugees and displaced persons.⁸⁷

35. Given the above assessment by various Council of Europe bodies, the CDDH finds that the protection of migrants and asylum seekers in times of economic crisis should be regarded as an important element in the present context, hereby recalling that the situation of migrants has been included in its future terms of reference for the biennium 2016-2017. Any future activity of the Committee of Ministers could address issues raised in the Court’s case-law described above, and take into account proposals made by the Parliamentary Assembly in its respective resolutions and recommendations. Moreover, the present issue should be seen in conjunc-

86. Recommendation 1910 (2010) on “The impact of the global economic crisis on migration in Europe”, paras. 3.2 and 3.4.

87. Comment made at the 70th meeting (15-18 June 2010; document CDDH(2010)010E).

tion with the problem of “scapegoating” of migrants and asylum seekers in times of economic crisis, which will be considered in the following paragraphs.

F. Repercussions of the economic crisis on social cohesion

36. The problem of the economic crisis and the phenomenon of “scapegoating” have been addressed by the European Commission against Racism and Intolerance (ECRI) in previous years.⁸⁸ In its most recent annual report which was published in July 2014, the Commission commented on the effects of the economic crisis in Council of Europe member States as follows:

“Recession is now in its fifth year in some countries. As noted above, a worrying consequence has been the rise of nationalist populist parties rooted in profound hostility to ethnic, religious and cultural diversity. But the crisis has also hardened mainstream forces. There have been persistent attempts to place the blame for job losses on immigrants. Non-nationals have been accused of abusing social and welfare services. Politicians across the entire spectrum propagated hostility bordering on hate speech against citizens of some EU countries in anticipation of large scale immigration following the lifting of labour market restrictions in 2014; inflammatory statements have been made about the infiltration of criminal gangs and waves of illegal activities. Aggressive campaigns have been organised to push migrants in an irregular situation to leave without considering the wider

88. In this respect, note also Parliamentary Assembly Resolution 1889(2012) “The portrayal of migrants and refugees during election campaigns”.

*implications of such action. ECRI considers that more needs to be done to project a positive image of a diverse society and to explain better its advantages.*⁸⁹

37. In previous annual reports, ECRI had already deplored that diminished economic opportunities and welfare cuts push some vulnerable groups into poverty, which would breed negative feelings on both sides of the social divide.⁹⁰ It also called for the careful monitoring of the direct and indirect effects of the economic crisis on historical minorities and migrants, and underlined the importance of the collection of data, broken down by citizenship, national or ethnic origin, language and religion, in order to be able to measure trends in the fight against racially motivated crime and racial discrimination.⁹¹ In its country reports, ECRI has also addressed with concern certain legislation which States have resorted to in times of economic crisis, such as a legislative requirement to dismiss foreign workers first when making staff cuts⁹² or the introduction of a scheme whereby employers are given incentives to replace their third- country workers with domestic workers or other EU nationals.⁹³

38. The CDDH considers that the Committee of Ministers could address the above issue and thereby touch upon related problems, such as attacks on human rights defenders defending migrants. In his human rights comment “Restrictions on defenders of migrants’ rights should stop” of December 2012, the Commissioner for Human Rights deplored that “defamation, threats, verbal and physical attacks, administrative sanctions and judicial harassment are used to deter human rights defenders from working with migrants and from combating the rising xenophobia and racism in Europe”. As examples, he cited attacks by right-wing extremist parties and

89. Annual Report of ECRI’s Activities 2013 (CRI(2014)32), p. 8.

90. Annual Report of ECRI’s Activities 2011 (CRI(2012)23), p. 7.

91. Annual Report of ECRI’s Activities 2010 (CRI(2011)36), p. 8.

92. ECRI report on Austria of 15 December 2009 (CRI(2010)2), p. 24.

93. ECRI report on Cyprus of 23 March 2011 (CRI(2011)20), p. 22.

movements which have become increasingly popular in some European States in the aftermath of the economic crisis. The Commissioner urged that the awareness of the human rights dimension of migration should be increased, and that more needed to be done at the European level to address the difficulties that human rights defenders working in the area of migration and anti-discrimination face in member States. Conscious of the current migration crisis, the CDDH contemplates that it could constitute a powerful signal to take a common position to social cohesion issues that arise by the Committee of Ministers representing all 47 governments of the Council of Europe member States, being conscious at the same time that the EU Agency for Fundamental Rights (FRA) is conducting surveys in this field and that any duplication in this respect should be avoided.

V. The role of national human rights structures in times of economic crisis

39. The important and mitigating role of national human rights structures (NHRs) in times of crisis and austerity has been highlighted by the Commissioner for Human Rights with a human rights comment in May 2012.⁹⁴ The Commissioner stressed in particular that independent commissions, general or specialised ombudspersons, equality bodies, police complaint mechanisms and similar institutions were particularly important to the most vulnerable groups, such as children, older persons, people with disabilities, Roma migrants, asylum seekers and refugees. He also drew

94. Commissioner for Human Rights, Human Rights Comment, "National Human Rights Structures can help mitigate the effects of austerity measures", 31 May 2012.

attention to the problem of budget and staff cuts to NHRs and the closure of their regional offices in some Council of Europe member States in the aftermath of the economic crisis.⁹⁵

40. The importance of national human rights structures in times of economic crisis was also highlighted by two conferences which the European Network of National Human Rights Institutions (ENNHRI) organised in June 2013 in Brussels and Berlin on “Austerity and Human Rights in Europe”.⁹⁶ The conferences aimed to consider the potential outcomes of austerity measures in Greece, Spain and Portugal, but also to discuss how ENNHRI’s members might cooperate in elaborating appropriate human rights analysis of those policy measures and make recommendations on future action.

41. Given that all Council of Europe member States have reaffirmed the need to co-operate with national human rights institutions in the Brighton Declaration in 2012⁹⁷ as well as in the Brussels Declaration in 2015,⁹⁸ the CDDH stresses that this is even more important during an economic crisis. It

95. In order to mitigate this situation, the Commissioner recommended that governments, particularly in countries undergoing serious austerity measures, involve NHRs at all stages of the budget process to allow them to provide expert advice on the groups that need the most protection, on the impact of various policy measures and on the general human rights consequences of the crisis.

96. German Institute for Human Rights/European Network of National Human Rights Institutions, “Austerity and Human Rights in Europe”, Perspectives and Viewpoints from conferences in Brussels and Berlin, 12 and 13 June 2013.

97. High-Level Conference on the Future of the European Court of Human Rights, Brighton Declaration, 19-20 April 2012, para. 4.

98. High-Level Conference on the Implementation of the European Convention on Human Rights, our shared responsibility, Brussels Declaration, 26-27 March 2015. Paragraph B2a of the Brussels Declaration calls upon the States Parties to “increase their efforts to submit, within the stipulated deadlines, comprehensive action plans and reports, [...] which contribute also to enhanced dialogue with other stakeholders, such as the Court, national parliaments or National Human Rights Institutions.”

should also be noted that the Commissioner for Human Rights in the above-mentioned human rights comment explicitly highlighted positive measures undertaken in this regard by individual member States such as Portugal, Spain and the United Kingdom. Amongst those measures were the establishing of specialised hotlines for vulnerable groups, or the publication of studies and analysis devoted to specific aspects of the economic crisis, including recommendations which were subsequently implemented by governments. The CDDH considers it an added value if such practices would be shared amongst Council of Europe member States.

VI. The elaboration of criteria for the imposition of austerity measures

42. The fact that the European Court of Human Rights grants a wide margin of appreciation to States when introducing austerity measures does not necessarily mean that the Council of Europe could not recommend certain guidelines which States should take into account when adopting such measures, in particular by avoiding that certain measures disproportionately affect human rights. In this respect, the Committee of Ministers could draw on a number of general principles which are used by the Court when applying and interpreting the Convention. Examples of relevance are “public interest”, “necessity”, “proportionality”, “effectiveness” or “discriminatory measures” (for example, with regard to public cuts which particularly affect women, young persons, children or disabled persons). In this respect, some inspiration could also be taken from other international forums, such as the United Nations. In its report pursuant to General Assembly resolution 48/141 entitled “Austerity measures and economic,

social and cultural rights”, the United Nations Office of the High Commissioner for Human Rights (OHCHR) identified certain compliance criteria for the imposition of austerity measures.⁹⁹

43. In this context, the CDDH refers to Parliamentary Assembly Recommendation 2065(2015) on “European institutions and human rights in Europe”, in which the Assembly calls on the Committee of Ministers to “undertake, in co-operation with the Council of Europe’s Commissioner for Human Rights, an expert study to prepare a catalogue of ‘criteria for the imposition of austerity measures’, in compliance with requirements of the European Social Charter (revised) (ETS No. 163), as determined by the European Committee of Social Rights” (paragraph 2). In the eponymous report by the Assembly’s Committee on Legal Affairs and Human Rights of February 2015, it was suggested that the Council of Europe takes inspiration to that effect from the above-mentioned criteria established by the OHCHR.¹⁰⁰ The preparation of this feasibility study constitutes a reply to the proposal of the Parliamentary Assembly.

99. United Nations Office of the High Commissioner for Human Rights, “Austerity measures and economic, social and cultural rights”, p. 12. According to this document, States should fulfil the following criteria when adopting austerity measures in order to ensure compliance with their human rights obligations: the existence of a compelling state interest; the necessity, reasonableness, temporariness and proportionality of the austerity measures; the exhaustion of alternative and less restrictive measures; the non-discriminatory nature of the proposed measures; the protection of a minimum core content of the rights; and the genuine participation of affected groups and individuals in decision-making processes.

100. Parliamentary Assembly Committee on Legal Affairs and Human Rights, “European institutions and human rights in Europe”, Doc. 13714 (Rapporteur: Mr Michael McNamara), para. 73.

VII. Final considerations

A. Should the Committee of Ministers refrain from pursuing any activities related to the economic crisis?

44. When discussing the economic crisis and its impact on human rights at its 81st meeting in June 2014, the CDDH considered that, with regard to the outcome of the present study, “any option should be left open for the time being, including the possibility that no further activity be carried out, depending on whether any gaps could be identified that would sufficiently justify the proposal of any activity by the CDDH.”¹⁰¹ During the discussion, several arguments were put forward for recommending to the Committee of Ministers to refrain from any future action on the impact of the economic crisis on human rights. Some delegations emphasised that the already-existing standards were sufficient. They argued that it was rather their lack of implementation that deserved attention. It was also stated that many of the problems currently linked to the economic crisis and to austerity measures, including poverty, were not created but merely exacerbated by the crisis. Given that other Council of Europe organs and bodies, notably the Parliamentary Assembly, had already approached the topic from numerous angles, some delegations also argued that there was no added-value for the Committee of Ministers to engage in further activities.

45. While the above arguments have a point, they may not be sufficient to prevent the Committee of Ministers from engaging in any future activity on the impact of the economic crisis on human rights. Firstly, the CDDH has already in the past elaborated for the Committee of Ministers numerous recommendations which were less intended to create new standards than seeking to facilitate the implementation of already existing ones. This concerned awareness-raising of the Convention (e.g. Recommendation

101. CDDH(2014)R81, para. 19.

(2002)¹³ on the publication and dissemination in the member States of the text of the European Convention on Human Rights), procedural aspects of Convention rights (e.g. Recommendation (2010)³ on the case-law of the European Court of Human Rights on effective remedies for excessive length of proceedings) or substantive aspects of Convention rights (e.g. Recommendation (2014)² on the promotion of human rights of older persons). Secondly, the fact that the economic crisis has merely aggravated certain human rights problems may not be a sufficiently decisive argument to obviate any further activity by the Committee of Ministers on this subject. While it is true that certain issues addressed throughout this study, such as delayed execution of domestic judgments, prison overcrowding or xenophobic prejudices, have existed prior to and independently of the economic crisis, the latter has given these issues a previously unexperienced and coincidental dimension which may justify to address the particular human rights impact of the crisis. Thirdly, the fact that other Council of Europe organs or bodies have already dealt in one form or another with the economic crisis should not serve as a convincing argument for inactivity by the Committee of Ministers. This could otherwise lead to the distorted logic that, the more the relevance of a topic has been demonstrated by Council of Europe activities outside the Committee of Ministers, the less feasible it would be for the Committee of Ministers to engage in any new activity on it. Moreover, it needs to be recalled that, according to Article 13 of the Statute of the Council of Europe, the Committee of Ministers “is the organ that acts on behalf of the Council of Europe”, including by standard-setting through the conclusion of conventions (Article 15a.) or non-binding recommendations (Article 15b.).

B. In which areas should the Committee of Ministers consider any future activity?

46. Although the Council of Europe as an intergovernmental organisation with a main emphasis on human rights does certainly not have a sufficient wide mandate to tackle the economic root causes of poverty, the present study has sufficiently demonstrated that the challenges which the

economic crisis has been, and still is, posing on the human rights protection system in Europe are of a kind which deserves further activities by the Committee of Ministers, as the main decision-making organ of the Council of Europe. The CDDH therefore reaffirms its position it took two years earlier, when it first suggested to the Committee of Ministers to look into the subject, that there is added-value in carrying out certain work in this area. In pursuing this matter, that work should nonetheless concentrate on those areas where there exists a direct link with the rights enshrined in the European Convention on Human Rights. While the ongoing "Turin process" aims at reinforcing the normative system of the European Social Charter and its monitoring system, the CDDH considers that the Committee of Ministers should pursue a more targeted examination of the impact of certain issues identified in this study which are of greatest relevance in the light of the Convention. The issues, which have a direct link with the functioning of the Convention, are for example: general principles related to imposing of limitations, the scope of the margin of appreciation, the process of balancing of rights or positive obligations under the Convention, in particular with regard to health; access to justice and fair trial issues, in particular the execution of domestic judgments; prison overcrowding; specific problems of migration in times of economic crisis; as well as certain criteria for crisis-related domestic legislation which find their basis in the Convention. Other issues identified by the study, which mainly (but not exclusively) relate to social and economic rights, namely youth unemployment or female poverty, could however also be addressed. While keeping in mind that the economic crisis specifically affects certain vulnerable or marginalised groups, any future work should also address interesting issues which are not limited to specific groups but are of interest to the population in general. Moreover, the CDDH sees some added value in taking certain positions which Council of Europe bodies (such as the European Court of Human Rights, the Committee for the Prevention of Torture or the European Commission against Racism and Intolerance) have taken in connection with the economic crisis, and reiterating them through a non-binding instrument of the Committee of Ministers as a common position of all 47 member States of the Council of Europe. Finally, the CDDH considers that

there are measures taken by Council of Europe member States at the national level in response to the economic crisis which may deserve to be collected and disseminated in a guide of good practices.

VIII. Conclusions

47. Introducing new measures, amending existing legislation or revisiting the implementation or interpretation of existing legislation, in the framework of an overall policy goal of economic recovery and restoration of sound public finances may put the human rights system under serious stress, whether in relation to the general public or to specific vulnerable groups. The present study highlighted a number of relevant areas falling within the ambit of Council of Europe standards, including the European Convention on Human Rights. The above considerations lead the CDDH to conclude that there may be added value for further work to be pursued with regard to the impact of the economic crisis on human rights in Europe, while underlining the need to avoid overlap with work of other experts groups, such as, for example, the Drafting Group on Human Rights and Business (CDDH-CORP), the Gender Equality Commission (GEC), the European Committee on Crime Problems (CDPC), the European Committee on Legal Cooperation (CDCJ) as well as the Committee of experts on administrative detention of migrants (CJ-DAM), the European Steering Committee for Youth (CDEJ), the European Social Cohesion Platform (PECS), the Ad hoc committee of experts on the Rights of Persons with Disabilities (CAHDPH) and the Ad hoc committee of experts on Roma and Traveller issues (CAHROM).

48. Should the Committee of Ministers consider that a new non-binding instrument is needed which would give national authorities guidance for the better implementation of already existing Council of Europe standards, and at the same time propose solutions with regard to the above-mentioned issues, it may envisage that such an instrument could take the form of either a recommendation or guidelines. It could be further

complemented by other measures, such as a declaration of principle by the Committee of Ministers (as practised with regard to the issue of business and human rights), a compilation of already-existing standards, or a guide of good practices.

49. Alternatively, the Committee of Ministers could decide to focus the follow-up work of the CDDH firstly on the preparation of a compilation of standards and general principles identified in the Court's jurisprudence in the areas indicated in the present study. Such a compilation would increase the accessibility and awareness of the Court's case-law among the national authorities and other bodies of the Council of Europe. It could be accompanied by a compilation of good practices. On this basis, the Committee of Ministers may decide in the future whether there is a need for further follow-up, including possible preparation of a new non-binding instrument as mentioned in paragraph 48.

50. With the submission of the present study, the CDDH considers having fulfilled this part of its terms of reference. It stands ready to carry out any additional tasks the Committee of Ministers may decide to entrust it within the light of the conclusions of the present study.

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