

# Protecting the Child from Poverty: The Role of Rights in the Council of Europe



Aoife Nolan



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# Protecting the Child from Poverty: The Role of Rights in the Council of Europe

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# List of Abbreviations

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CAHENF	Ad hoc Committee for the Rights of the Child
COM	Committee of Ministers of the Council of Europe
ECHR	European Convention on Human Rights
ECSR	European Committee of Social Rights
ESC	European Social Charter 1961
EU	European Union
RESC	Revised European Social Charter 1996
UN	United Nations
UNCRC	UN Convention on the Rights of the Child

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# Executive Summary

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**T**here is growing concern about child poverty levels in Europe, as well as the implications of these for children's lived experiences, broader societal well-being, and economic development. There is simultaneously ever wider political, practitioner and advocate recognition that child poverty causes, results from, and constitutes a failure to secure children's rights – and that child rights have a crucial potential role to play in shaping state responses to child poverty in Europe. This is true of children's social, economic, political, cultural and civil rights, all of which are threatened by a life lived in poverty. Responding to these facts, this report centres on the role of child rights in addressing child poverty in the Council of Europe (COE). In focusing on the child poverty-related provisions of the European Social Charter 1961 and the Revised Charter of 1996, the report outlines how those instruments, as interpreted by the European Committee of Social Rights (ECSR), constitute a framework for assessing and critiquing measures taken to combat child poverty.

## **Child Poverty in Europe and Human Rights: An Overview**

Recent years have seen an explosion in concern about child poverty in Europe, with the economic crises that kicked off in 2007-8 resulting in a significant growth in poverty – whether conceptualised in monetary or multidimensional terms – across a wide range of European countries. Children were undoubtedly more vulnerable to experiencing poverty as a result of the crises than other social groups with greater legal, political and economic power. Rather than solely resulting from the economic and labour market turmoil directly caused by the crises, the child poverty increase was also attributable to fiscal austerity measures, including cuts to public spending and tax increases. However, while exacerbated by them, child poverty in COE member states neither originated nor ended with the crises and, consistent with the systemic, structural and long-standing nature of child poverty in Europe, solving the crises has not solved child poverty. Indeed the negative implications of child poverty for child rights has been the subject of heavy criticism by international and regional human rights actors, including the ECSR.

The state of play of child poverty in Europe has not gone unnoticed by key European policy actors, including those operating in the COE and European Union contexts. These actors have also recognised the importance that children's rights should be included in anti-poverty policy efforts, at both the national and the regional levels. The COE's Strategy for the Rights of the Child (2016-21) identifies child poverty as a key challenge for child rights and emphasises the importance of guaranteeing children's social rights as enumerated in the European Social Charter and the UN Convention on the Rights of the Child (UNCRC).



It is thus clear that child poverty is a key issue in Europe and that there is regional commitment to the view that children's rights under the European Social Charter have a role to play in addressing it.

## **The Key Monitoring Mechanisms that Contribute to Identifying Child Rights-related Issues of Poverty and Exclusion and to the Resolution/amelioration Thereof**

There is a range of different mechanisms within the COE human rights system that could potentially play a role with regard to assessing the child rights impacts of child poverty and making clear how states might improve their anti-child poverty performance in a rights-consistent way.

The European Court of Human Rights' work with regard to child poverty has been limited. In contrast, the *European Social Charter 1961 and the Revised European Social Charter 1996 set out a wide range of rights with implications for state efforts to combat child poverty*. These include: Article 30 on the right to protection against poverty and social exclusion; the right to work (Article 1); access to health care (Article 11); the right to social security (Article 12); the right to social and medical assistance (Article 13); the right to benefit from social welfare services (Article 14); the rights of persons with disabilities (Article 15 Revised Charter); the right to social, legal and economic protection of the family (Article 16) as well as of children and young persons (Article 17); the right to housing (Article 31 Revised Charter), and the non-discrimination clause (Article E).

*All 43 COE member states that have ratified the European Social Charter (whether the original or the revised version) have accepted provisions which have implications for those states' approach to child poverty*. These provisions have been the subject of detailed consideration by the ECSR in the context of its collective complaint and reporting procedures.

The ECSR has engaged extensively with children's rights under the Charter, with children generally defined as persons under 18. In doing so, it has drawn as appropriate on the UNCRC and the work of the Committee that monitors the implementation of that treaty. There is, however, no equivalent to the right to freedom from poverty and social exclusion under the UNCRC and the ECSR has developed a COE-specific approach to the issue of child poverty.

In its work, the ECSR has demonstrated its particular concern with regard to ensuring protection of the rights of children in greatest need. This has resulted in it carefully assessing the application of the Appendix to the Revised Charter to particular child poverty-related rights under that treaty in cases involving children in an irregular migration situation. In doing so, it has been careful to make clear that the Appendix should not be read in such a way as to deprive child migrants in an irregular situation of the protection of the most basic rights enshrined in the Charter, or to impair their fundamental rights, such as the right to life or to physical integrity or to human dignity. However, in contrast to its findings in some of its collective complaints case-law with regard to Articles 11, 13, 16, and 17 of the Charter, the ECSR has not held that Article 30 is applicable with regard to migrants in an irregular situation.

That said, *Article 30 remains the most important provision of the treaty when it comes to the ECSR's work on poverty* and it is the key focus of the report and the Committee's work on child poverty.

In addressing Article 30, the ECSR has made clear that its consideration of state practice in terms of that provision *reflects an understanding of both income and multi-dimensional understandings of poverty*. It has done so with regard to both the indicators it uses to assess compliance with Article 30 and the linkages it has made between violations of Article 30 and violations of substantive Charter provisions related to deprivations in specific social rights areas (e.g., shelter/housing and medical assistance).

Article 30 is a complex and wide-ranging article. However, the ECSR has made clear what is required in terms of state party action:

The state must adopt *an overall and coordinated approach*. This should consist of:

- (i) an analytical framework;
- (ii) a set of priorities;
- (iii) measures to prevent and remove obstacles to access to fundamental social rights. The measures taken in this regard must:
  - a. promote and remove obstacles to access to, in particular (but not exclusively), employment, housing, training, education, culture and social and medical assistance;
  - b. strengthen access to social rights, their monitoring and enforcement. Specifically, state measures should improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, and combat psychological and socio-cultural obstacles to accessing rights. Where necessary, such measures should specifically target the most vulnerable groups and regions.
- (iv) monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion;
- (v) adequate resources. These must:
  - a. be allocated to attain the objectives of the strategy; and
  - b. be adequate in terms of quality and quantity to the nature and extent of poverty and social exclusion in the country concerned.

An overall and coordinated approach must link and integrate policies in a consistent way, moving beyond a purely sectoral or target group approach (albeit those measures taken by governments in the context of such an approach would be expected to target specifically the most vulnerable groups). Coordinating mechanisms must exist - including at the level of delivery of assistance and services to those living in or at risk of poverty.

The ECSR has taken into account *a set of indicators* in order to assess in a more precise way the effectiveness of policies, measures and actions undertaken by States Parties within the framework of this overall and co-ordinated approach. These include:

- (i) the level of resources (including any increase in said level) that have been allocated to attain the objectives of the strategy;
- (ii) the at-risk-of-poverty threshold rate; and
- (iii) poverty rates before and after social transfers.

When assessing compliance with the Charter, the ECSR systematically reviews the *poverty-related definitions and measuring methodologies applied at the national level* and the *main data* consequently made available.

In addition to these indicators – and reflecting the multidimensional understanding of poverty employed by the ECSR– *when assessing state conformity with Article 30, the ECSR also takes into consideration the national measures or practices which fall within the scope of other substantive provisions of the Charter.* In doing so, it takes into account findings it has made in the framework of both the reporting and the collective complaint procedures. The ECSR has however emphasised that a conclusion of non-conformity or a decision of violation of one or several of these provisions does not automatically or necessarily lead to a violation of Article 30.

The ECSR has also strongly emphasised the need for states to address social exclusion - understood as involving obstacles to inclusion and citizen participation and caused by a failure to ensure civil and political participation and engagement on the part of vulnerable groups. States must take positive measures to address civil marginality that feeds into social exclusion, not just socio-economic marginality. These measures cannot simply be focused on removing existing legal or practical obstacles; they must include empowerment of socially marginalised groups.

While the ECSR has made extensive reference to provisions that have implications for child poverty, it has made relatively little reference to child poverty specifically in its Article 30 conclusions work. This omission is striking and regrettable given the ongoing problem of child poverty in the COE. It is also surprising given the heavy focus on children within the Charter itself – particularly in Article 17. Nor has the ECSR yet formally engaged with child poverty in the context of Article 17.

### **Addressing Child Poverty in a European Social Charter-compliant Way**

The ECSR's primary concern in terms of compliance with Article 30 is reflected in the structure of its reporting procedure conclusions. These demonstrate that ECSR attention focuses on:

- (i) *'measuring poverty and social exclusion'*

In this context, the ECSR has made clear states should have:

- a. information in terms of the poverty indicators used by the Committee;
- b. appropriate poverty measures/indicators at the national level;
- c. available data on groups at particular risk of poverty;
- d. measures of 'social exclusion' in addition to those for poverty.

- (ii) *'approach to combating poverty and social exclusion'*

In this context, the ECSR has made clear states should have:

- a. taken measures in terms of reducing poverty and social exclusion in specific areas;
  - b. information on the results of those measures (for instance, in the form of quantified indicators of the means deployed, the number of beneficiaries and the results achieved for each of the measures concerned);
  - c. an explicit overall strategic/analytical framework for addressing poverty and social exclusion;
  - d. a co-ordinated overall policy to combat the particular poverty and social exclusion that specific vulnerable groups experience due to their situation requiring specialised treatment and targeted measures to improve their circumstances;
  - e. information on what has been done to integrate the various benefits and services across the policy areas referred to in Article 30;
  - f. information on funding allocated for the reduction of child poverty and social exclusion, including the realisation of targeted goals.
- (iii) *'monitoring and assessment'*
- In this context, the ECSR has made clear states should have:
- a. information on how poverty reduction measures are monitored and evaluated;
  - b. information on the results of such monitoring and evaluation;
  - c. adopted appropriate responses to such monitoring and evaluation results, including changes/adaptations undertaken in consequence;
  - d. civil society (including employers' and workers' representatives, NGOs and private citizens) involved in these processes.

*A child rights-compliant approach to child poverty and social exclusion thus requires not just the taking of measures necessary to address such but also the ability to demonstrate the efficacy (or not) of the measures in question.* It requires states to take appropriate action at all stages of child poverty-oriented policy/law/budget initiatives; that is during planning, enactment, execution/implementation and review. It is crucial to note that the simple taking of child poverty-related measures, and the allocation of resourcing towards them, will not be sufficient in terms of Article 30 if the impact of the measures is limited and/or inadequate.

Identifying best practice in terms of Article 30 is a relatively challenging exercise as the ECSR does not explicitly praise state initiatives for their rights conformity in its conclusions. Rather, it merely notes measures taken in the context of a finding of conformity. It is thus easier to use what the ECSR has criticised in terms of state practice to develop the parameters of a framework for Charter rights-compliant anti-child poverty efforts.

A repeated theme in the ECSR's work on assessing the existence of an adequate overall and coordinated approach to combating poverty and social exclusion is that of *housing*. The ECSR has been critical of *national failures to ensure coordinated housing policies with regard to minorities* such as are necessary in order to prevent and combat the poverty and social exclusion experienced by those groups.

The ECSR has further made a *strong connection between Article 30 violating-segregation and poverty* (including in particular very poor housing/living conditions and vulnerability to eviction) *and civil marginalisation*. Thus, where children in poverty experience social precarity that is linked to their unaddressed social/civil marginalisation and/or the discrimination they face as member of a particular minority group, this will constitute a failure to ensure the child's right to freedom from poverty and social exclusion in terms of Article 30 (frequently together with a violation of Article E RESC). This will include situations in which the state has failed to take targeted positive measures (based on appropriate disaggregated data) to address those causes and effects of poverty and social exclusion experienced by such minority children that differ from those relating to other children.

While the ECSR does not explicitly identify examples of best practice in its work, it is possible to distinguish elements of state practice in addressing poverty that it regards as positive. These include:

- ▶ the permanent (i.e., long-term and ongoing) production of indicators and statistics (e.g. income distribution statistics, statistics on adolescents, homeless people and other vulnerable groups) pertaining to the living conditions of the population and available to decision-makers when preparing the strategic objectives for government;
- ▶ social transfers which have a positive effect in terms of reducing poverty;
- ▶ increases in government spending on social protection as a share of GDP during the reference period in question;
- ▶ in the context of a national action plan on poverty, extensive consultations being held with various civil society organisations, research/advisory institutions, and professional organisations, as well as with municipalities and social partners;
- ▶ where measures adopted have had a demonstrable positive impact on improving access to fundamental social rights;
- ▶ the existence of a national poverty monitoring and evaluation instrument;
- ▶ amendments to the social welfare and security system to target poverty amongst particular groups (e.g., large families and newly-arrived immigrants);
- ▶ effective coordination of anti-poverty and social exclusion measures due to such being taken jointly by all the ministries and services concerned.

The ECSR's detailed 2013 statement of interpretation on Article 30 together with an analysis of ECSR conclusions relating to those states which have been found to be in conformity with Article 30 are key guides for those seeking to identify the parameters of Charter-compliant practice in relation to different aspects of state efforts to combat child poverty.

## Conclusions

There is no 'one-size-fits-all' best practice model for giving effect to Article 30 and/or addressing child poverty in a Charter-consistent way. The efficacy of state efforts in this area will inevitably depend on a wide range of factors including political willingness, the availability of resources (whether financial, technical, organisational or otherwise), and national capacity. The ECSR's approach recognises this; *rather*

*than suggesting that there is one ideal solution when it comes to addressing poverty and social exclusion. The Committee has emphasised the different elements that should form part of state activities in this area. The ECSR has provided extensive guidance but there is certainly scope for greater engagement with COE states in this area, for instance through trainings and state-Committee dialogues.*

*There is also a need for concerted, integrated action at both the domestic level and the regional European one, and there is a crucial role for different COE entities in supporting and advancing this work.*

*The Charter and the parameters outlined by the ECSR with regard to child rights-compliant child poverty measures need to be mainstreamed effectively into the child poverty-oriented planning and activities of COE actors with a role on social policy and social affairs. In this way, the link that is frequently made between child poverty and child rights at a strategy level can be ensured at the implementation stage. In particular, this must include work directed towards increasing understanding and awareness of child rights and child poverty from a European Social Charter perspective on the part of Committees and Sub-committees operating under the auspices of the Parliamentary Assembly.*

*More attention should be paid to social rights in the rollout of the COE's Strategy for the Rights of the Child over the remaining implementation period (2020-2021). It is crucial that the Ad hoc Committee for the Rights of the Child (CAHENF) should advance its activities in this context and build on its existing efforts with regard to the development of work in the area of child budgeting and child impact assessment.*

Similarly, the Children's Rights Division is in a strong position to increase its engagement with child poverty and social rights. There is scope for the Division to work with relevant COE bodies so as to increase the mainstreaming of children's social rights into COE anti-poverty policy efforts generally. This can be built upon existing work in terms of child-friendly services and anti-discrimination, and linked up with activities around Agenda 2030 for Sustainable Development and the COE Action Plan on Protecting Refugee and Migrant Children in Europe.

Finally, the ECSR itself can and should do more. In particular, it must *engage with child poverty as a cross-cutting thematic issue*, different aspects of which need to be borne in mind when it addresses a wide range of Charter provisions. The Committee also needs to *refine further its approach to Article 30*, thereby rendering the scope of the obligations imposed by that provision clearer to those states that are currently bound by it. This will also serve to encourage those states that have not yet accepted Article 30 of its manageability in terms of domestic implementation efforts and the benefits to the efficacy of its child poverty work in terms of framing such. Finally, the *ECSR needs to focus more specifically on child poverty*, ensuring that it receives more than the ad hoc attention that is the case currently both in the context of Article 30 and more broadly.



# Introduction

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**C**hild poverty in the Council of Europe is a major and wide-ranging problem. This is despite growing political, economic and civil society anxiety about the implications of child poverty for broader societal well-being and economic development. In addition to the moral case for eradicating child poverty, which is based on the huge human cost of allowing children to grow up suffering physical and psychological deprivations and unable to participate fully in society, society has a strong interest in eradicating child poverty due to the public costs (financial or otherwise) that result from it.<sup>1</sup> Global concern with child poverty is demonstrated by the way in which efforts to address child disadvantage play a central role in relation to general anti-poverty strategies and efforts to advance human development. This is evidenced by the commitment to reduce by at least half the proportion of children ‘living in poverty in all its dimensions according to national definitions’ in the 2030 Agenda for Sustainable Development, an Agenda which all Council of Europe member states have committed to implementing.<sup>2</sup> Simultaneously, there is ever wider political, practitioner and advocate recognition that child poverty causes, results from, and constitutes a failure to secure children’s rights – and that child rights have a crucial potential role in shaping state responses to child poverty in Europe.

This report centres on the role of child rights in addressing child poverty in the Council of Europe (COE). In doing so, it addresses key standards related to addressing child poverty and social exclusion, with a particular focus on the COE legal instrument that is most closely focused on child poverty: the European Social Charter. It also identifies and discusses the work of COE human rights monitoring mechanisms that contribute to identifying issues of poverty and social exclusion and to the amelioration of such. In doing so, the report pays especial attention to the work of the European Committee of Social Rights. That body’s work, both in terms of its reporting and collective complaints functions, demonstrates the existing and potential role of the Charter as a framework for evaluating, critiquing and reconceptualising the measures (and the assumptions underpinning them) taken by COE states to combat child poverty. The report also highlights measures that positively contribute to the eradication of child poverty in a child rights-compliant way, drawing on COE member state practice.

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1. D. Hirsh, *Estimating the Costs of Child Poverty* Joseph Rowntree Foundation, 2008, 1.
  2. United Nations General Assembly (UNGA), (2015) Transforming our World: The 2030 Agenda for Sustainable Development, A/RES/70/1, 25 September 2015, Target 1.3.



In terms of structure, Chapter 1 provides an overview of child poverty in Europe and the impact on such of the financial and economic crises that began in 2007-8. It goes on to discuss criticisms made of increases in child poverty in Europe from a child rights perspective before exploring the Inter-relationship between child rights and child poverty in the Council of Europe context. In doing so, it notes the growing use of children's rights as an analytical framework for the identification, diagnosis, and development of responses to child poverty by bodies operating in this sphere in Europe.

Chapter 2 addresses the Council of Europe human rights monitoring mechanisms that play a key role with regard to identifying issues of poverty and exclusion and the amelioration of such. It considers the European Convention on Human Rights system before turning to the European Social Charter and explaining why that latter instrument is the most appropriate focus for COE member states' rights-informed anti-poverty efforts. In doing so, the chapter provides an overview to the 1961 and 1996 Charters and the framework of child poverty-relevant obligations they impose, prior to a discussion of the different mechanisms through which the European Committee of Social Rights has engaged with child poverty issues.

The next chapter analyses the European Social Charter from a child poverty perspective. Having set out the position of children as right-holders under the European Social Charter, it assesses in depth the extent to which key provisions operate so as to impose obligations on States Parties to address child poverty. In doing so, analysis focuses in particular on the right to protection from poverty and social exclusion set out in Article 30 of the 1996 Revised Charter. The Chapter makes clear what Article 30 requires States Parties to do, as well as how the Committee assesses the state's compliance with that provision. It finishes with a brief discussion of the poverty-related elements of Charter articles beyond Article 30.

Chapter 4 centres on measures identified in the Committee's reporting and collective complaints work as contributing to the eradication of child poverty and social exclusion. In doing so, it seeks to identify best (or at least good) practice in terms of rights-compliant coordinated approaches, priorities and measures taken by Member States to protect children against poverty and social exclusion.

The report concludes with a series of recommendations directed towards the COE, suggesting how it, and specific entities within it, can contribute to the advancement of child rights-compliant anti-child poverty work across Europe.

# 1. Child Poverty in Europe and Human Rights: An Overview

## 1.1. Background and Context

The last few years have seen an explosion in concern about child poverty in Europe, with the economic crises that kicked off in 2007-8 resulting in a significant growth in poverty – whether conceptualised in monetary or multidimensional terms – across a wide range of European countries.<sup>3</sup> Children were undoubtedly more vulnerable to experiencing poverty as a result of the crises than other social groups with greater legal, political and economic power.<sup>4</sup> A 2014 report by UNICEF found that some 1.6 million more children in the European Union (EU) were living in severe material deprivation in 2012 (11.1 million) than was the case in 2008 (9.5 million) in 30 European countries,<sup>5</sup> with child poverty increasing in 20 out of 31 European states.<sup>6</sup> Three years later, one in three European children were experiencing deprivation in two or more ways with regard to nutrition, clothing, educational resources, leisure activities, social activities, information access, or housing.<sup>7</sup>

Rather than solely resulting from the economic and labour market turmoil directly caused by the crises, the child poverty increase was also attributable to fiscal austerity measures, including cuts to public spending and tax increases.<sup>8</sup> In many instances, such measures were not simply domestic prescriptions to the effects of the crises but rather were required in terms of the bailout programmes initiated for a number of EU member states. These fiscal austerity measures had a particularly severe impact on countries with less comprehensive social protection systems,<sup>9</sup> and had direct, long-term detrimental implications for national efforts to reduce child poverty.

3. Child poverty is typically conceptualised in either monetary or multidimensional terms. Definitions of monetary poverty relate to income or expenditure in relation to absolute or relative standards. Approaching poverty as multidimensional entails the conceptualisation of poverty as a denial of choices and opportunities due to a lack of resources that leads to social exclusion. For more, see A. Nolan & K. Pells, 'Children's Economic and Social Rights and Child Poverty: The State of Play' (2019) 4 *International Journal of Children's Rights* (forthcoming).
4. See, e.g., United Nations Human Rights Council (UNHRC), (2011) Report of the Special Rapporteur on extreme poverty and human rights, UN Doc. A/HRC/17/34, para. 32.
5. UNICEF, Children of the Recession: The impact of the economic crisis on child well-being in rich countries, *Innocenti Report Card 12* (Florence: UNICEF Office of Research, 2014) 3.
6. *Ibid*, 3.
7. UNICEF, *Innocenti Report Card 14: Building the Future: Children and the Sustainable Development Goals in Rich Countries* (Florence: UNICEF Office of Research, 2017); see also B. Cantillon, Y. Chzhen, S. Handa & B. Nolan, *Children of Austerity: Impact of the Great Recession on Child Poverty in Rich Countries* (Oxford: UNICEF/OUP, 2017).
8. See, e.g., UNICEF, 'Children of the Recession' supra n5.
9. For a discussion of the impact of such measures on a number of European (including Council of Europe) states, see Cantillon et al, supra n7.

However, while exacerbated by them, child poverty in the Council of Europe member states neither originated nor came to an end with the crises. The two decades preceding the crises had seen an increase in inequality between the rich and the poor in many European countries accompanied by a rise in levels of child poverty.<sup>10</sup> The last 15 years have seen child poverty increase in countries well beyond the ‘frontline’ of the impact of the crises<sup>11</sup> and the phenomena is an ongoing problem even in states where there has been significant post-crises economic recovery.<sup>12</sup> In short, consistent with the systemic, structural and long-standing nature of child poverty in Europe, solving the crises has not solved child poverty.

The state of play of child poverty in Europe has not gone unnoticed by key European policy actors. In 2014, the Council of Europe Parliamentary Assembly, having noted both that child poverty was ‘creeping back into Europe’ and the deleterious impact of the crises, urged member states to ‘make sure that the aim of ending child poverty is given sufficient political weight and priority, including by dedicating adequate budgetary resources to social protection systems to make them effective, and that clear objectives and targets are set at the national level’.<sup>13</sup> This followed, and explicitly built on, the European Commission’s ground-breaking 2013 recommendation on ‘Investing in Children: Breaking the Cycle of Disadvantage’. That instrument recognised the crises ‘serious impact on children and families, with a rise in the proportion of those living in poverty and social exclusion in a number of countries’.<sup>14</sup>

## 1.2. Exploring the Inter-relationship between Child Rights and Child Poverty in the Council of Europe

The state of play of child poverty in Europe, and its impact on human rights enjoyment, has been the subject of extensive criticism from human rights bodies – both in the context of the Council of Europe and beyond.

The Council of Europe Commissioner for Human Rights, noted in 2018 that

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10. See with regard to income poverty in the context of developed economies, OECD, *Growing Unequal: Income Distribution and Poverty in OECD Countries* (Paris: OECD, 2008), <https://www.oecd.org/els/soc/growingunequalincomedistributionandpovertyinoecdcountries.htm>
  11. See, e.g., the United Kingdom where fiscal austerity measures were adopted from 2010 onwards not in response to an immediate economic crisis but, primarily, in order to tackle the government budget deficit. Child poverty across a range of measures has risen in the UK since the implementation of benefit and tax changes post 2010. For more, see, e.g., research produced by Landman Economics, the Institute for Fiscal Studies, the National Children’s Bureau and the Child Poverty Action Group.
  12. See, e.g., Ireland, where according to 2017 figures, 18.4% of children were at risk of poverty (measured as the proportion of all children aged 17 years or younger that live in households with an equivalised income below the 60 per cent of median income poverty line). The same figures saw the lowest drop in children living in ‘consistent poverty’ since the recession (from 10.9% to 8.8%), defined as those who are ‘experiencing enforced deprivation (two or more types of deprivation from [11 basic deprivation indicators]’). (Source: Central Statistics Office, Survey on Income and Living Conditions 2017 Results (2018), <https://www.cso.ie/en/csolatestnews/presspages/2018/surveyonincomeandlivingconditions2017/>).
  13. PACE, Resolution 1995 (2014), para. 5.1
  14. European Commission Recommendation of 20 February 2013, ‘Investing in children: breaking the cycle of disadvantage’ (2013/112/EU), O J L 59.

'the crisis has had long-lasting negative consequences for children in several ways. Budgetary allocations for childhood and family policies were among the first to be cut. While some of the countries that were hard hit by the crisis seem to be now recovering, only limited measures have been taken to reinvest in such policies. Child poverty does not appear to be decreasing and a large number of children still live in destitute families, are victims of housing evictions and are sometimes obliged to work to help their families make ends meet. The negative impact of budgetary restrictions on juvenile justice, child protection and other key services also continues to be felt. In the longer term, child poverty and other violations of children's rights will have very negative consequences for European societies. It is high time that states take children's rights more seriously and adopt resolute measures to repair the damage caused by the crisis and combat child poverty.'<sup>15</sup>

At the international level, the United Nations (UN) Committee on the Rights of the Child's most recent consideration of Council of Europe members' records in implementing the Convention on the Rights of the Child resulted in 34 out of 47 states being criticised for their failure to take necessary action to ensure children's rights and address child poverty effectively - both in the context of the crises and more broadly.<sup>16</sup> In the Council of Europe context, having examined the 13 Council of Europe states that have chosen to be bound by Article 30 of the European Social Charter on the right to protection against poverty and social exclusion, the European Committee of Social Rights (ECSR/the Committee) found that, 'in general, poverty levels in Europe are unacceptably high and that the measures taken by States to remedy this fundamental problem are insufficient.'<sup>17</sup> In finding that eight states were

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15. Council of Europe Commissioner for Human Rights, 'Human Rights in Europe: From Crisis to Renewal?' (Strasbourg: COE, 2018), 32.
  16. CO Albania, CRC/C/ALB/CO/2-4, paras 66-67 (7 December 2012); CO Andorra, CRC/C/AND/CO/2 (3 December 2012) paras 15-16; CO Armenia CRC/C/ARM/CO/3-4, paras 43-44 (8 July 2013); CO Austria, CRC/C/Bel/CO/5-6 (28 February 2019), paras 10, 36-37; CO Bosnia-Herzegovina CRC/C/BIH/CO/2-4 (29 November 2012) paras 60-61; CO Bulgaria CRC/C/BGR/CO/3-5, paras 46-47; CO Denmark, CRC/C/DNK/CO/5 (26 October 2017), paras 34-35; CO Finland CRC/C/FIN/CO/4 (3 August 2011), paras 50-51; CO France CRC/C/FRA/CO/5 (23 February 2016), paras 69-70; CO Georgia CRC/C/GEO/CO/4 (9 March 2017), paras 35-6; CO Germany CRC/C/DEU/CO/3-4 (25 February 2014), paras 64-65; CO Greece CRC/C/GRC/CO/2-3 (13 August 2012) paras 58-59; CO Hungary (14 October 2014) CRC/C/HUN/CO/3-5; CO Ireland CRC/C/IRL/CO/3-4 (1 March 2016) paras 60-61; CO Italy CRC/C/ITA/CO/5-6 (28 February 2019), paras 7 and 30; CO Latvia CRC/C/LVA/CO/3-5 (14 March 2016), paras 54-55; CO Lithuania CRC/C/LTU/CO/3-4 (30 October 2013), paras 43-44; (29 October 2013); CO Moldova CRC/C/MDA/CO/4-5 (20 October 2017), para. 35; CO Montenegro CRC/C/MNE/CO/2-3 (22 June 2018), paras 47-48 [increase]; CRC/C/NLD/CO/4 Netherlands (16 July 2015), paras 48-49; CO North Macedonia CRC/C/MKD/CO/2 (23 June 2010), paras 63-64; CO Norway CRC/C/NOR/CO/5-6 (4 July 2018), para. 28; CO Poland CRC/C/POL/CO/3-4 (30 October 2015), paras 40-41; CO Portugal CRC/C/PRT/CO/3-4, (25 February 2014) paras 39-40, 57-58; CO Romania CRC/C/ROU/CO/5 (13 July 2017), paras 37-38; CO Russian Federation CRC/C/RUS/CO/4-5 (25 February 2014) paras 57-58; CO Serbia CRC/C/SRB/CO/2-3 (7 March 2017), paras 51-52; CO Slovak Republic CRC/C/SVK/CO/3-5 (20 July 2016), paras 42-43; CO Slovenia CRC/C/SVN/CO/3-4 (8 July 2013), paras 58-59; CO Spain CRC/C/ESP/CO/5-6 (5 March 2018), paras 8, 37-38; CO Sweden CRC/C/SWE/CO/5 (6 March 2015), paras 47-48; CO Switzerland CRC/C/CHR/CO/2-4 (26 February 2014), paras 63-64; CO Ukraine CRC/C/UKR/CO/3-4 (21 April 2011), paras 17-18, 64-65; CO United Kingdom CRC/C/GBR/CO/5 (12 July 2016) paras 13, 70-71.
  17. European Committee of Social Rights, 'Press Briefing Elements: Conclusions 2017' (Strasbourg: COE, 2018), 8 <https://rm.coe.int/press-briefing-elements-conclusions-2017n/168077fedf>

not in conformity with the obligations imposed by that provision, the Committee, noted levels of and increases in child poverty.<sup>18</sup>

These criticisms and findings are unsurprising. Child poverty and child rights are strongly coimbricated. Child poverty is a potential cause of child rights violations (i.e. through the impact of child poverty on children's enjoyment of rights)<sup>19</sup> and is a potential outcome of such violations (i.e. through child poverty resulting from a failure to secure children's rights). It is also, in and of itself, a violation of a wide range of children's rights. This latter point is particularly clear in the context of the European Social Charter which, as noted above, expressly includes 'a right to protection against poverty and social exclusion' (Article 30), the right of children to 'social, legal and economic protection' (Article 17), as well as a wide range of other poverty-related social rights such as the right to social security (Article 12), the right of the family to social, legal and economic protection (Article 16) the right to housing (Article 31) and the right to protection of health (Article 11). Ultimately, living in poverty does not simply affect the child's experience and rights enjoyment during childhood but frequently serves to limit the opportunities (life chances) available to her as an adult.<sup>20</sup>

However, poverty does not just have implications for economic and social rights. It also has a significant impact on their civil and political rights, with, for example, the UN Special Rapporteur on Extreme Poverty and Human Rights highlighting that poor children are disproportionately affected by maltreatment and neglect, with poverty serving as a risk factor for child abuse and child marriage.<sup>21</sup> Within the Council of Europe human rights system, there has been concern about the possible impact of child poverty on family rights, with growing worry about the vulnerable financial situation of families resulting in the suspension or deprivation of parental rights, a troubling prospect in terms of both Article 17 of the European Social Charter and Article 8 of the European Convention on Human Rights (ECHR) on the right to respect for private and family life, home and correspondence.<sup>22</sup> Poverty – whether absolute or relative – has clear implications for children's enjoyment of their participation rights in a range of different

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18. See, Italy, Serbia, Turkey, Ukraine (Conclusions 2017).

19. UNICEF has highlighted that '[c]hildren living in poverty face deprivations of many of their rights: survival, health and nutrition, education, participation, and protection from harm, exploitation and discrimination'. (UNICEF, 'The State of the World's Children: Childhood under Threat' (New York: UNICEF, 2005), 15

20. According to the Innocenti Centre, evidence from many countries persistently demonstrates that children who grow up in poverty are more likely to be in poor health, to have learning and behavioural difficulties, to underachieve at school, to become pregnant at too early an age, to have lower skills and aspirations, to be low paid, unemployed, and welfare dependent. (Innocenti Research Centre, *Child Poverty in Perspective – An overview of child well-being in rich countries: A comprehensive assessment of the lives and well-being of children and adolescents in the economically advanced nations* (Florence: UNICEF RESEARCH OFFICE, 2007) 5.

21. United Nations Human Rights Council (UNHRC), (2016) Report of the Special Rapporteur on extreme poverty and human rights, UN Doc. A/72/502 (2017), para 14.

22. See, e.g.: questions directed by the European Committee of Social Rights in the context of its consideration of the application of Article 30 by Lithuania and Georgia (Conclusions 2015); decisions of the European Court of Human Rights including *Soares de Melo v Portugal*, App. No. 72850/14 (judgment of 16 May 2016), esp paras 104-107 *Wallová and Walla v The Czech Republic*, App. No. 23848/04, (judgment of 26 October 2006); PACE Resolution 2049 (2015), Social services in Europe: legislation and practice of the removal of children from their families in Council of Europe member states (22 April 2015).

contexts, including education and cultural and social life. This is recognised in the focus on 'social exclusion' in Article 30 of the European Social Charter, which relates to both protection against poverty (understood as involving situations of social precarity) and protection against social exclusion (understood as involving obstacles to inclusion and citizen participation).<sup>23</sup> Furthermore, the European Committee of Social Rights has made clear that 'the reference to the social rights enshrined in Article 30 should not be understood too narrowly. In fact, the fight against social exclusion is one area where the notion of the indivisibility of fundamental rights takes on a special importance. In this regard, the right to vote, as with other rights relating to civic and citizen participation, constitutes a necessary dimension in social integration and inclusion and is thus covered by article 30'.<sup>24</sup> (For more, see Section 3.2.1.3).

Children are disproportionately represented amongst the poor<sup>25</sup> whether such poverty is defined in absolute or relative terms.<sup>26</sup> Moreover, poverty does not affect children equally. Children who are members of socially vulnerable and marginalised groups (and indeed children living in poverty can be regarded as such a group in and of themselves) are particularly at risk of poverty,<sup>27</sup> which poverty in turn may operate to perpetuate negative stereotypes and discrimination with regard to those groups of children. Within the Council of Europe, poverty and social exclusion pose particular challenges to children with disabilities, children without parental care, children from minorities (including in particular Roma and Traveller children), children on the move or otherwise affected by migration, children deprived of liberty, children in a street situation, and children of imprisoned parents.<sup>28</sup> It is also notable that children themselves have flagged that their age combines with other statuses of discrimination to result in their experiencing double discrimination.<sup>29</sup> Therefore, it is unsurprising that addressing poverty from a child rights perspective in the Council of Europe and more broadly is understood to include the tackling of the causes and manifestations of discrimination.<sup>30</sup>

In terms of practice, the linkage between child poverty and child rights has not just been used as a critical lens for state and supra-national anti-poverty efforts. This is demonstrated in the growing employment of children's rights as an analytical framework for the identification, diagnosis, and development of responses to child

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23. European Committee of Social Rights, Statement of Interpretation on Article 30, Conclusions 2013.

24. *ERRC v France*, Complaint No. 51/2008, decision on the merits of 19 October 2009, para. 99.

25. See, e.g., World Bank, 'Monitoring Global Poverty: The Report of the Commission on Global Poverty' (Washington DC: World Bank, 2017) 112-113.

26. For instance, with regard to relative poverty, the European Commission has previously highlighted that children in the EU face a higher risk of relative poverty than the population as a whole (20% for children aged 0-15 and 21% for those aged 16-24, compared to 16% for adults). (European Commission, 'Towards an EU strategy on the rights of the child', *Communication from the Commission 367 final* Brussels, 2006 at para. 5).

27. See, e.g., the growing practice of the Committee on the Rights of the Child in this area.

28. See, e.g., Council of Europe, 'Strategy for the Rights of the Child (2016-21)' (Strasbourg: COE, 2016).

29. A. Daly, S. Ruxton & M. Shuurman, 'Children's Rights Today: What Do Children Think?: A desktop study on children's views and priorities to inform the next Council of Europe Strategy for the Rights of the Child' (Strasbourg: COE 2015) 30.

30. See, e.g., Council of Europe, 'Strategy for the Rights of the Child', supra n28; see Section 3.2.1.3 below with regard to the European Committee of Social Right's approach on this point.

poverty by globally oriented bodies such as UNICEF<sup>31</sup> as well as those with a more regional focus such as the African Union<sup>32</sup> and the EU.<sup>33</sup>

At the European level, policymakers and other actors within both the COE and the European Union have made the connection between child poverty and child rights. The European Commission has called upon EU member states to '[a]ddress child poverty and social exclusion from a children's rights approach',<sup>34</sup> while a 2018 report on child poverty of the EU Fundamental Rights Agency argued that child poverty 'is not only a matter of policy choices and priorities ... but is also an issue of fundamental rights and legally binding obligations, both for EU member states and EU institutions'.<sup>35</sup> The strong linkage between child poverty and child rights is reflected in Principle 11 of the EU Commission European Pillar of Social Rights which states that '[c]hildren have the right to protection from poverty. Children from disadvantaged backgrounds have the right to specific measures to enhance equal opportunities'.<sup>36</sup> A concern with child rights is also evident in the work of various EU entities around the establishment of an EU Child Guarantee so that every child in poverty can have access to free healthcare, free education, free childcare, decent housing and adequate nutrition, as part of a European integrated plan to combat child poverty.<sup>37</sup> When it comes to the Council of Europe, that entity's Strategy for the Rights of the Child (2016-21) identifies child poverty as key challenge for child rights and emphasises the importance of guaranteeing children's social rights as enumerated in the European Social Charter and the UN Convention on the Rights of the Child.<sup>38</sup>

### 1.3. Conclusion

It is clear that there is strong recognition on the part of COE member states that child poverty is an issue that must be tackled and that children's rights have a role to play in doing so. We will now turn to consider which legal (rather than political) bodies in the COE human rights system have the potential to play an effective role when it comes to addressing child poverty.

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31. See, e.g., UNICEF, *Poverty Reduction Begins with Children* (New York: UNICEF, 2000).

32. See, e.g., 'Africa's Agenda for Children 2040: Fostering an Africa Fit for Children' (adopted by the ACERWC in 2016, approved by African Union Executive Council of Ministers in July 2017).

33. See, e.g., European Commission Recommendation of 20 February 2013, 'Investing in children: breaking the cycle of disadvantage' (2013/112/EU), O J L 59, p.5.

34. *Ibid.*, p.6.

35. EU FRA, 'Combating Child Poverty: An Issue of Fundamental Rights' (Vienna: FRA, 2018)

36. European Pillar of Social Rights, Principle 11.

37. See, e.g., European Parliament resolution of 24 November 2015 on reducing inequalities with a special focus on child poverty (2014/2237(INI)); European Commission, 'Feasibility Study for a Child Guarantee' (Brussels: EU Commission, 2018)

38. Council of Europe, 'Strategy for the Rights of the Child', *supra* n28, 10.



## 2. Key Council of Europe Monitoring Mechanisms from a Child Rights and Child Poverty Perspective

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### 2.1. Assessing COE Monitoring Mechanisms from a Child Rights and Child Poverty Perspective

There is a range of different mechanisms within the Council of Europe human rights system that could potentially play a role with regard to assessing the child rights impacts of child poverty and making clear how states might improve their anti-child poverty performance. Undoubtedly the best-known monitoring body within the COE system to have engaged with child rights is the European Court of Human Rights. However, its work with regard to child poverty has been limited. This is for a number of reasons. First, the Court has a primarily civil and political rights mandate and, while it is possible for child poverty to be considered from the perspective of such rights (see Section 1.2 above), the court is relatively poorly equipped to do so in terms of mandate. For instance, although there is no doubt that there are situations in which child poverty might be held to constitute a violation of the Article 3 ECHR prohibition on inhuman or degrading treatment, this would only be in cases of extreme poverty:<sup>39</sup> it would not capture situations of relative poverty – or indeed many cases of absolute poverty in a Council of Europe context. Similarly, Article 1 Protocol 1’s protection of the right to contributory and non-contributory benefits<sup>40</sup> bodes well when it comes to potentially defending benefits that serve to ameliorate child poverty at the household level. However, this provision only operates to potentially protect existing benefit entitlements in situations where the state has failed to conform with the limitations provided for under the Convention. Like Article 8 - which protects the right to respect for private and family life - Article 1 Protocol 1 has not yet been interpreted as giving rise to a specific level of social security provision for children living in poverty. Meanwhile, Article 8 has not otherwise been held to give

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39. See, e.g., on poverty generally, *MSS v Belgium and Greece*, App. No. 30606/09 (judgment 21 January 2011) and *Budina v Russia*, App. No. 45603/05, (judgment 18 June 2009) (considering, inter alia, whether a situation of extreme material poverty can raise an issue under Article 3). For a discussion of the Court’s approach to Article 3 in the context of poor children (with their families), see, e.g., *VM & Ors v Belgium*, App. No. 60125/11 (judgment 7 July 2015). For an example of a case making a finding of violation of Article 3 due to, inter alia, an unaccompanied minor experiencing living conditions that correspond to extreme poverty, see *Rahimi v Greece*, App. No. 8687/08 (judgment 5 July 2011).

40. See *Stec v UK*, Apps Nos 65731/01 & 65900/01 (judgment 6 July 2005).



rise to positive obligations related to living standards for children in situations of poverty, whether alone or in conjunction with Article 14.<sup>41</sup>

In interpreting the ECHR, the Court has historically proven reluctant to engage directly with domestic choices around issues of economic and social policy. Instead, it has preferred to accord states a wide margin of appreciation with regard to such issues, especially in situations involving decision-making entailing the allocation of scarce resources. As it stands, therefore, the ECHR and the work of the Court have played a minor role in relation to addressing child poverty – whether from a child rights perspective or otherwise. Given the constraints of the Court’s mandate, together with its jurisprudential approach to date, there seems little reason to assume that this will change in the near future. It is thus logical to turn to the element of the COE human rights system that has proven more able to engage with such issues: namely, the European Social Charter.

## 2.2. Introducing the European Social Charter System

The European Social Charter 1961 (ESC) was established as the sister instrument to the European Convention on Human Rights. Ratified by 43 out of 47 Council of Europe member states, it has historically been marginalised within the Council of Europe human rights system. Indeed, the European Social Charter only really began to come into its own after a process in the early 1990s aimed at its revitalisation. This resulted in the adoption and coming into force of the Revised European Social Charter 1996 (RESC/Revised Charter) – an instrument that ‘updates’ and expands significantly upon the rights set out in the original Charter.

While the ESC was predominantly a labour rights instrument, the Revised Charter contains a much wider range of social rights. However, like its 1961 counterpart, the Revised Charter (ratified by 34 Council of Europe member states) establishes an ‘à la carte system’ of ratification: in order to be bound by that instrument, the State must accept a minimum number and range of provisions in Part II of the respective Charter but is then free to decide what other provisions of the ESC/RESC it wishes to be bound by.<sup>42</sup> Where a State becomes a State Party to the RESC, it automatically accepts those provisions that correspond to provisions that it had previously accepted when a State Party to the ESC.<sup>43</sup> Terminologically, regardless of which version of the Charter it is bound by, the relevant instrument is described as the ‘European Social Charter’.

41. See, e.g., *Okitaloshima Okonda Osungu v France*; *Selva Lokongo v France*, App. Nos 76860/11 and 51354/13 (judgment of 1 October 2015).

42. Article 20 ESC; Article A RESC.

43. Article B RESC.

## **BOX 1: RIGHTS UNDER THE EUROPEAN SOCIAL CHARTER 1961**

The European Social Charter 1961 sets out the following rights:

- (1) Everyone shall have the opportunity to earn his living in an occupation freely entered upon.
- (2) All workers have the right to just conditions of work.
- (3) All workers have the right to safe and healthy working conditions.
- (4) All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.
- (5) All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.
- (6) All workers and employers have the right to bargain collectively.
- (7) Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.
- (8) Employed women, in case of maternity, and other employed women as appropriate, have the right to a special protection in their work.
- (9) Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.
- (10) Everyone has the right to appropriate facilities for vocational training.
- (11) Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.
- (12) All workers and their dependents have the right to social security.
- (13) Anyone without adequate resources has the right to social and medical assistance.
- (14) Everyone has the right to benefit from social welfare services.
- (15) Disabled persons have the right to vocational training, rehabilitation and resettlement, whatever the origin and nature of their disability.
- (16) The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.
- (17) Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection.
- (18) The nationals of any one of the Contracting Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.
- (19) Migrant workers who are nationals of a Contracting Party and their families have the right to protection and assistance in the territory of any other Contracting Party.

All of these articles contain sub-paragraphs setting out detailed 'undertakings' on the part of states with regard to the 'top-line' rights set out above.

Building on the labour rights foundation of the 1961 Charter, the 1996 RESC introduced a wider range of social rights. These included the right of elderly persons to social protection (Article 23 RESC); a general right to education (Article 17(2)); the right to protection against poverty and social exclusion (Article 30 RESC); the right to housing (Article 31 RESC); a more developed right of people with disabilities to independence, social integration and participation in the life of the community than that found under the 1961 instrument (Article 15 RESC); and a non-discrimination clause (Article E RESC) that is closely based on Article 14 ECHR. It is thus clear that the Revised Charter considerably expands on the scope of the original Charter when it comes to addressing poverty – and child poverty in particular.

The existence of two instruments – the 1961 Charter and the RESC – creates a risk of parallel systems of protection. However, the European Committee of Social Rights has minimised this risk by identifying key areas of overlap between, and developing consistent interpretations of provisions of the ESC/RESC in its work (for instance in its interpretation of Article 16 of the original Charter so as to protect aspects of the right to adequate housing, which is expressly set out as a free-standing right in Article 31 RESC). As we will discuss further below in Chapter 3, the European Committee of Social Rights has addressed the inter-linkage and key areas of overlap in the context of Article 30 and poverty:

‘The Committee emphasizes the very close link between the effectiveness of the right recognized by Article 30 of the Charter and the enjoyment of the rights recognized by other provisions, such as the right to work (Article 1), access to health care (Article 11), social security allowances (Article 12), social and medical assistance (Article 13), the benefit from social welfare services (Article 14), the rights of persons with disabilities (Article 15), the social, legal and economic protection of the family (Article 16) as well as of children and young persons (Article 17), right to equal opportunities and equal treatment in employment and occupation without sex discrimination (Article 20), the rights of the elderly (Article 23) or the right to housing (Article 31), without forgetting the important impact of the non-discrimination clause (Article E), which obviously includes non-discrimination on grounds of poverty.’<sup>44</sup>

This is significant in terms of the potential role of the Charter in terms of challenging poverty, as the 16 states that have not accepted Article 30 are still subject to at least some child poverty-related obligations under the Revised Charter. Indeed, of those 16 states, only four have not accepted Article 17(1), which requires states to ensure that children have ‘the care, the assistance, the education and the training they need’, in particular ‘by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose’. However, two of those four states are party to Article 16 (the right of the family to social, legal and economic protection). Of the two states that have not ratified Articles 30, 16 or 17, only Albania has accepted no element of either Articles 12 (the right to social security), 13 (the right to social and medical assistance) or 14 (the right to benefit from social welfare services) (Albania has, however, accepted the obligations associated with the right to protection of health (Article 11), which has been linked directly to child poverty

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44. European Committee of Social Rights, Statement of Interpretation on Article 30, Conclusions 2013.

by the Committee)<sup>45</sup>. As such, the vast majority of parties to the Revised European Social Charter have accepted a range of child poverty-related rights obligations.

**TABLE 1: TABLE OF ACCEPTANCES OF SELECTED CHILD POVERTY-RELATED PROVISIONS OF THE RESC 1996**

	Art. 11 (1)(2)(3)	Art.12 (1)(2)(3)(4)	Art.13 (1)(2)(3)(4)	Art.14 (1)(2)	Art.16	Art.17 (1)(2)	Art.30	Art. 31 (1)(2)(3)
Albania								
Andorra								(1)(2)
Armenia		(1)(3)	(1)(2)	(2)				
Austria				/				
Azerbaijan								
Belgium								
Bosnia and Herzegovina		(1)(2)	(1)(2)(3)					
Bulgaria		(1)(3)	(1)(2)(3)			(2)		
Cyprus			(2)(3)					
Estonia								
Finland								
France								
Georgia		(1)(3)				(1)		
Greece								
Hungary		(1)						
Ireland								
Italy								
Latvia		(1)(2)						(1)
Lithuania		(1)(3)(4)	(1)(2)(3)					(1)
Malta		(1)(3)(4)						
Republic of Moldova			(1)(2)(3)					
Montenegro								
Netherlands								

45. See, e.g., *DCI v Belgium*, Complaint No. 69/2011, decision on the merits of 23 October 2012, para. 117: 'The Committee considers nonetheless that the lasting incapacity of the reception facilities and the fact that, consequently, a number of the minors in question (particularly those accompanied by their families) have been consistently forced into life on the streets exposes these minors to increased threats to their health and their physical integrity, which are the result in particular of a lack of housing or foster homes. While poverty is not explicitly mentioned here, it is clear that such conditions of life on the street amount to living in poverty.'

	Art. 11 (1)(2)(3)	Art.12 (1)(2)(3)(4)	Art.13 (1)(2)(3)(4)	Art.14 (1)(2)	Art.16	Art.17 (1)(2)	Art.30	Art. 31 (1)(2)(3)
North Macedonia								
Norway								
Portugal								
Romania			(1)(2)(3)					
Russia		(1)						
Serbia								
Slovak Republic			(1)(2)(3)					
Slovenia			(2)(3)					
Sweden		(1)(2)(3)						
Turkey								
Ukraine		(3)(4)						(1)(2)

*\*Where states have only accepted specific provisions of the article in question, those specific paragraphs are stated in the table.*

Moving from the RESC to the Charter of 1961, it is striking that even where states have not ratified the Revised European Social Charter (nine out of 43), they have again chosen to be bound by a framework of poverty-related social rights under the earlier instrument. All nine states have accepted the right of the family to social, legal and economic protection (Article 16), the right of mothers and children to social and economic protection (Article 17), the right to benefit from social welfare services (Article 14) and at least some provisions of the article setting out the right to social and medical assistance (Article 13).

It is important to note that these observations are not intended to suggest that these states have identical or co-extensive obligations to those that are parties to the more comprehensive RESC 1996. Rather, it is to make clear that all 43 COE member states that have ratified the European Social Charter– whether in the context of the 1961 or the 1996 versions of the Charter – have accepted provisions that have implications for those states’ approach to child poverty.

It will be evident from this whistle-stop tour of the contents of the European Social Charter that the Charter provides much more extensive economic and social rights protection than the European Convention on Human Rights. Furthermore, the ESC/ RESC goes beyond the European Union Charter of Fundamental Rights in a number of ways (and EU law more broadly)<sup>46</sup>, including with regard to child poverty<sup>47</sup>. Indeed, the European Committee of Social Rights has previously refused to operate on the basis of a presumption that compliance of domestic law with EU law means that it is

46. For more, see European Committee of Social Rights, ‘The Relationship between European Union law and the European Social Charter: Working Document’ (COE, 2014), <https://rm.coe.int/16806544ec>

47. O. De Schutter, ‘The European Pillar of Social Rights and the Place of the European Social Charter in the EU Legal Order’ (Strasbourg: COE, 2018), 45.

in compliance with the Charter.<sup>48</sup> This would also apply to the context of ESC-based assessments of state action/inaction with regard to child poverty.

## 2.3. Addressing Child Poverty through the Reporting and Collective Complaints Procedures

But how does the European Social Charter system address child poverty in practice? The European Committee of Social Rights, a body of independent experts who are elected for a term of six years each, renewable once, plays the lead role in supervising the compliance of States Parties with both Charters. This is so with regard to child poverty issues and more broadly. The Committee does so in the context of, first, its reporting procedure, and, second, its collective complaints procedure.

### 2.3.1 The Reporting Procedure

The European Committee of Social Rights considers state reports in relation to different provisions of the Charter, adopting conclusions which are published every year (generally in January). These conclusions differ from the outputs of UN treaty-monitoring bodies reporting systems (such as that of the UN Committee on the Rights of the Child) in that they are explicit findings of conformity/non-conformity.

Since the mid-2000s, the provisions of the Charter have been divided into four thematic groups for reporting purposes. States Parties present a report on the provisions relating to one of the four groups on an annual basis. Therefore, each provision of the Charter is reported on every four years. The four groups of provisions are as follows:

**Group 1: *Employment, training and equal opportunities*:** Article 1 – Article 9  
Article 10 - Article 15 - Article 18 - Article 20 - Article 24 - Article 25.<sup>49</sup>

**Group 2: *Health, social security and social protection*:** Article 3 - Article 11 - Article 12 - Article 13 - Article 14 - Article 23 - Article 30.<sup>50</sup>

**Group 3: *Labour rights*:** Article 2 - Article 4 - Article 5 - Article 6 - Article 21 - Article 22 - Article 26 - Article 28 - Article 29.<sup>51</sup>

**Group 4: *Children, families, migrants*:** Article 7 - Article 8 - Article 16 - Article 17 - Article 19 - Article 27 - Article 31.<sup>52</sup>

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48. See, e.g., *Confédération Générale du Travail (CGT) v France*, Complaint No. 55/2009, decision on the merits of 23 June 2010, para. 35, where the Committee stated that: 'The Committee considers that neither the situation of social rights in the European Union legal order nor the process of elaboration of secondary legislation would justify a similar presumption [to the 'Bosphorus Presumption' of the European Court of Human Rights] – even rebuttable – of conformity of legal texts of the European Union with the European Social Charter. [36] Furthermore, the lack of political will of the European Union and its member states to consider at this stage acceding to the European Social Charter at the same time as to the European Convention on Human Rights reinforces the Committee's assessment'.

49. As Articles 20, 24 and 25 do not form part of the 1961 Charter, the countries that have not ratified the 1996 Charter do not report on them.

50. As Articles 23 and 30 do not form part of the 1961 Charter, the countries that have not ratified the 1996 Charter do not report on them.

51. As Articles 21-29 do not form part of the 1961 Charter, the countries that have not ratified the 1996 Charter do not report on them.

52. As Article 31 does not form part of the 1961 Charter, the countries that have not ratified the 1996 Charter do not report on it.

Child poverty-related issues are particularly likely to arise before the Committee in the context of Groups 2 and 4 and these will be the key focus of this chapter and the next. In addition, while labour rights under the Charter undoubtedly have a relationship with child poverty – particularly with regard to poverty experienced by children living in poor households – these are not rights specific to children or exercised by children themselves.<sup>53</sup> As such, they will not be addressed in detail in this report.

The follow-up to the conclusions of the European Committee of Social Rights is ensured by the Committee of Ministers of the Council of Europe (COM) (the same body that monitors implementation of decisions of the European Court of Human Rights).<sup>54</sup> The COM intervenes in the last stage of the reporting procedure. Its work is prepared by the Governmental Committee of the European Social Charter and European Code of Social Security.<sup>55</sup> Having regard to the proposals made by the Governmental Committee, the COM adopts a Resolution by a majority of two-thirds of those voting. The resolution closes each supervision cycle and may contain individual recommendations to the States Parties concerned asking them to change the situation in law and/or in practice. In practice, such resolutions are very generally phrased<sup>56</sup> and individual recommendations have become very rare, with only one with direct relevance to a state's record on child poverty ever being made.<sup>57</sup>

Crucially, it is the role of the European Committee of Social Rights, rather than the Committee Ministers, to determine whether the situation has been brought into compliance with the Charter following its finding of non-conformity. This determination is generally carried out in the context of the reporting procedure, although it would also be possible for it to be done in the context of collective complaints procedure, to which we will turn now.

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53. The Committee has made a connection between a failure to conform with Article 30 and a previous finding that the wages of young workers (workers under 18) were in non-conformity with Article 7(5). (Conclusions 2011: Slovak Republic), This provision will not, however, be addressed in this report.

54. Much of this paragraph is taken from the Committee's [website](#).

55. This latter body is made up of representatives of the States party to the Charter and assisted by observers representing European trade unions and employers' organisations.

56. The Committee of Ministers often merely 'considers' the state reports and the ECSR's Conclusions. For example, in its most recent resolution following the 2017 European Committee of Social Rights Conclusions on Health, Social Security and Social Protection under the 1961 Charter, the COM recommended 'that governments take account, in an appropriate manner, of all the various observations made in the Conclusions XXI-2 (2017) of the European Committee of Social Rights and in the report of the Governmental Committee'. (CM/ResChS(2019)2, Resolution on the implementation of the European Social Charter during the period 2012-2015 (Conclusions XXI-2 (2017), provisions related to the thematic group "Health, social security and social protection" (Adopted by the Committee of Ministers on 6 March 2019 at the 1339th meeting of the Ministers' Deputies)). The same wording was used in relation to the Conclusions adopted in relation to the same thematic group under the 1996 Revised Charter.

57. Recommendation [RecChS\(98\)4](#) on the application of the European Social Charter by Turkey during the period 1993-1994 - 13th supervision cycle - part IV (considering that under Article 16 (the right of the family to social, legal and economic protection) the proportion of families in receipt of family allowance is small ... [recommending that] the Government of Turkey take account, in an appropriate manner, of the negative conclusion of the Committee of Independent Experts and requests that it provide information in its next report on the measures it has taken to this effect.')

### 2.3.2. The Collective Complaints Procedure

The Committee also serves as a quasi-judicial body in considering collective complaints alleging unsatisfactory application of the Charter by States. The collective complaints procedure was established through the coming into force of the 1995 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.

In order to bring a collective complaint on a specific issue, the State Party in question will need to have accepted to be bound by both the relevant ESC/RESC provision on which the complaint is based, as well as the Additional Protocol on collective complaints. This can be done either by the state ratifying the Additional Protocol or making a Declaration in terms of Article D(2) of the Revised Charter. At the time of writing, there are 15 States Parties to the Additional Protocol.

In terms of the collective complaint process itself, the European Committee of Social Rights makes decisions about the admissibility and on the merits of a complaint. These are not binding judgments in the sense that the rulings of the European Court of Human Rights or domestic courts are. Rather, their status resembles that of the outputs of UN treaty bodies in the context of those bodies' complaints mechanisms: there is an assumption that states will implement such findings in good faith in line with their commitment to give effect to their treaty obligations.

The Council of Europe Committee of Ministers plays a role in monitoring the application of the decisions of the ECSR. This can – and often does – include the adoption of a resolution following an ECSR decision. According to Article 9 of the 1995 Protocol, the Committee of Ministers shall adopt a recommendation if the ECSR has found that the Charter has not been applied in a satisfactory manner. However, almost without exception the Committee of Ministers has simply adopted a resolution taking note of any specific measures announced by the Government and inviting it to provide information in its next report on the measures taken to bring the situation into conformity. As with the reporting procedure, it is, in the final analysis, the European Committee of Social Rights, rather than the Committee of Ministers, that carries out follow-up on its decision and only that body can determine whether the situation has been brought into compliance with the Charter following a finding of non-conformity.

So far, out of its 131 processed complaints, the European Committee of Social Rights has addressed Article 30 in 14 decisions on the merits.<sup>58</sup> Of these, 13 involved children – whether as a specific group of right-holders or as members of a broader group or community of right-holders. In eight of these, the Committee found violations of Article 30 either alone and/or with Article E (non-discrimination). In none of these instances did the Committee of Ministers recommend that the state take specific measures to address the child poverty-related issues identified by the Committee in its findings.

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58. Article 30 was also raised in *Defence for Children International (DCI) v the Netherlands*, Complaint No. 47/2008, decision on the merits of 20 October 2009. However, the Committee found at merits stage that 'violation of rights other than that to housing for children unlawfully present in the Netherlands are presented as subsidiary and are not sufficiently developed' (para. 39). It therefore considered the complaint from the perspective of Articles 17 and 31 of the Revised Charter only.



## 2.4. Conclusion

This chapter has explained why the European Social Charter is the most appropriate treaty in terms of considering child poverty as a human rights issue from a Council of Europe perspective. It has provided an outline of the 1961 and 1996 Charters, as well as a discussion of the different mechanisms through which the European Committee of Social Rights has engaged with child poverty issues. We now turn to consider in greater detail how the Committee has addressed child poverty in its work: what have been the key provisions that body has focused on? What have been its primary areas of concern? What have been the key shortcomings that it has identified in terms of state performance in this context?

# 3. Child Poverty and the European Social Charter

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## 3.1. Children as Right-holders under the Charter

Both the 1961 and 1996 Charters set out protections specific to children, albeit that the Revised Charter sets out a more holistic and wide-ranging provision in Article 17 than is the case under Article 17 of the original Charter. With regard to Article 17 - and indeed children's rights more broadly under the Charter (bar specific provisions under Article 7 regarding age limits for the purposes of employment) - a child is generally understood to be person under the age of 18 years.<sup>59</sup>

The Committee has not developed its work on children's rights in isolation from the work of other human rights bodies in this area. In particular, the Committee has made frequent reference to the UN Convention on the Rights of the Child (UNCRC) in its treatment of child-rights related issues under the Charter, including poverty. It has done so on the basis that '[t]he United Nations Convention on the Rights of the Child is one of the most ratified treaties world-wide and it has been ratified by all member states of the Council of Europe. It is therefore entirely justified that the Committee should have regard to the United Nations Convention on the Rights of the Child as it is interpreted by the UN Committee on the Rights of the Child ... when ruling on the alleged violation of any right of the child which is established by the Charter.'<sup>60</sup> Thus, the Committee draws not only on the wording of the UNCRC itself but also on the authoritative interpretations of the obligations imposed by the Convention in the form of General Comments.<sup>61</sup> Crucially, the Committee has stated repeatedly that when it comes to ruling on situations where the interpretation of the Charter concerns the rights of a child, it considers itself bound by the internationally recognised requirement to apply the best interests of the child principle, including in the context of allegations in relation to child poverty.<sup>62</sup>

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59. With regard to Article 17 of the Revised Charter, the Appendix states explicitly that 'It is understood that this provision covers all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier, without prejudice to the other specific provisions provided by the Charter, particularly Article 7.'

60. *DCI v the Netherlands*, op. cit., para. 28.

61. The Committee has not yet made reference to any of the case-law of the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure but it may well do so in future.

62. See, e.g., *DCI v the Netherlands*, op. cit., para. 29; *DCI v Belgium*, op. cit., para. 32.

That is not to say that the Committee unquestioningly follows the approach of the UN Committee. This is unsurprising, given that, first, the two bodies have different mandates (there is, for example, no right to protection against poverty and social exclusion under the UNCRC) and, second, they operate in different spheres (a global and a regional one, respectively), which necessarily affects their approach to particular issues. For instance, the Committee has been more specific in terms of its understanding of issues such as the definition of poverty for the purposes of the Council of Europe-specific Charter than the UN Committee has been in the context of the globally applicable UNCRC, including drawing on data from the statistical office of the European Union (Eurostat) when assessing poverty rates.<sup>63</sup>

## **BOX 2 CHILDREN UNDER THE EUROPEAN SOCIAL CHARTER**

The Committee has made clear why it is crucial to consider children as a specific group of right-holders under the European Social Charter. According to the Committee:

‘The Charter firstly treats children as individual rights’ holders since human dignity inherent in each child fully entitles her/him to all fundamental rights granted to adults. Additionally, the specific situation of children, which combines vulnerability, limited autonomy and potential adulthood, requires States to grant them specific rights, such as those enshrined in the following provisions of the Charter:

- ▶ right to shelter Article 31§2),
- ▶ right to health (Articles 8, 11, 7, 19§2),
- ▶ right to education (Articles 9, 10, 15, 17, 19§§11-12),
- ▶ protection of the family and right to family reunion (Articles 16, 27, 19§6),
- ▶ protection against danger and abuse (Articles 7§1, 17),
- ▶ prohibition of child labour under the age of 15 (Article 7§1 and §3),
- ▶ specific working conditions between 15 and 18 (Article 7)!
- ▶ *Defence for Children International (DCI) v the Netherlands*, Complaint No. 47/2008, decision on the merits of 20 October 2009, para. 25

One of the areas in which the Committee has demonstrated its particular concern with regard to ensuring protection of children’s rights has been in its interpretation and application of the Appendix to the Revised Charter. This provides that: ‘Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19.’

This could be taken to mean that many of the provisions of the Revised Charter that are of particular importance when it comes to addressing child poverty do not apply

63. See Section 3.2.1 below. In contrast, the UN Committee has not specified a particular measure or definition of poverty for the purposes of the UNCRC.

to those children who are in an irregular situation from a migration perspective. In practice, however, the Committee has been prepared to hold that:

‘the appendix should not be read in such a way as to deprive migrants in an irregular situation of the protection of the most basic rights enshrined in the Charter, or to impair their fundamental rights, such as the right to life or to physical integrity or to human dignity.’<sup>64</sup>

According to the Committee, the application of Charter rights to migrants in an irregular situation is justified ‘solely where excluding them from the protection afforded by the Charter would have seriously detrimental consequences for their fundamental rights, and would consequently place the foreigners in question in an unacceptable situation regarding the enjoyment of these rights, as compared with the situation of nationals or foreigners in a regular situation.’<sup>65</sup> With regard to children specifically, the Committee has noted that a strict interpretation of the Appendix, which would deprive foreign minors unlawfully present in a country of the guarantee of their fundamental rights, would not be in harmony with the UNCRC.<sup>66</sup>

This element of the Committee’s jurisprudence is extremely important given that, as noted in Section 1.2, poverty and social exclusion within the COE pose particular challenges to migrant children. The Committee’s approach to the Appendix means that it is able to engage with state failures to secure Charter rights that are ‘connected to the right to life itself and [go] to the very dignity of the human being.’<sup>67</sup> This is consistent with the Committee’s view that, given the Charter must be interpreted so as to give life and meaning to fundamental social rights, restrictions on rights are to be read restrictively.<sup>68</sup> That is, restrictions must be ‘understood ‘in such a manner as to preserve intact the essence of the right in question and to achieve the overall purpose of the Charter.’<sup>69</sup> When it comes to children in an irregular migration situation, a State Party cannot be considered not to be bound to comply with a particular obligation where this would mean ‘not guaranteeing their fundamental rights and exposing the children and young persons in question to serious impairments of their rights to life, health and psychological and physical integrity.’<sup>70</sup>

Importantly from a child poverty perspective, the Committee has so far refused to find that Article 30 is applicable with regard to migrants in an irregular situation.<sup>71</sup> This has been on the basis that, while the Committee has acknowledged that living in poverty and suffering social exclusion obviously undermine human dignity, ‘the overall and co-ordinated approach provided for in Article 30 involves the adoption of positive measures entailing economic, social and cultural promotion which are required of States Parties under a series of Charter provisions, most of which cannot

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64. *European Federation of National Organisations working with the Homeless (FEANTSA) v the Netherlands*, Complaint No. 86/2012, decision on the merits of 2 July 2014, para. 58.

65. *Ibid.*

66. *DCI v Belgium*, op.cit., para. 31.

67. *International Federation of Human Rights Leagues (FIDH) v France*, Complaint No. 14/2003, decision on the merits 3 November 2004, para. 30.

68. *Ibid.* para. 29.

69. *Ibid.* para. 29.

70. *DCI v Belgium*, op. cit., para. 85, as well as very similar language at paras 38, 97, 102 and 121.

71. See, e.g., *FEANTSA v the Netherlands*, op.cit., para. 211; *DCI v Belgium*, op.cit., (2012) paras 143-146.

be regarded as being applicable to persons who are not mentioned in paragraph 1 of the Appendix, such as unlawfully present foreign minors.<sup>72</sup> According to the Committee, this is because ‘these are not provisions whose fundamental purpose is closely related to the requirement to secure the most fundamental human rights and to safeguard the persons covered by the provisions in question from serious threats to the enjoyment of those rights.’<sup>73</sup> Rather than having a ‘one size fits all’ approach, the Committee’s case-law suggests that the question of which rights will be deemed necessary to secure ‘the most fundamental human rights’ will vary depending on the situation in question.

However, the Committee has held that a considerable number of child poverty-related provisions of the Charter may be applied to migrants – including children – in an irregular situation, including aspects of the right to protection of health (Article 11),<sup>74</sup> the right to special protection against physical and moral dangers to which children and young persons are exposed (Article 7(10)),<sup>75</sup> the right to shelter in terms of the right to housing (Article 31(2)),<sup>76</sup> the right to medical assistance (Article 13),<sup>77</sup> the right of families to decent housing and particularly the right not to be deprived of shelter in terms of Article 16,<sup>78</sup> and the child’s right to social, legal and economic protection guaranteed by Article 17.<sup>79</sup>

### 3.2. Identifying Charter Obligations of States Parties to Address Child Poverty

The rest of this chapter will focus on those elements of the Charter that set the parameters for state action with regard to addressing child poverty. What follows is an analysis founded on the relevant Charter provisions in light of the Committee’s work in terms of its reporting procedure and its collective complaints case-law, including its statements of interpretation based on its findings in both of those contexts.

72. *DCI v Belgium*, op. cit., para. 145.

73. Ibid.

74. See, e.g., *FIDH v France; DCI v Belgium (2012)*, paras 143-147.

75. See, e.g., *DCI v Belgium (2012)*

76. *DCI v the Netherlands*, op. cit., paras 41-45.

77. See, e.g., *DCI v Belgium (2012)*

78. *DCI v Belgium*, op.cit., , paras 133-136

79. See, e.g., *DCI v the Netherlands*, op.cit.. The Committee has not so far considered Article 17(2) on the right to education to apply to children in an irregular migration situation.

## BOX 3 THE RIGHT TO PROTECTION AGAINST POVERTY AND SOCIAL EXCLUSION

### Article 30 – The right to protection against poverty and social exclusion

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
- b. to review these measures with a view to their adaptation if necessary.

### 3.2.1. Article 30: The Right to Protection against Poverty and Social Exclusion

#### 3.2.1.1. Defining and Measuring Poverty and Social Exclusion for the Purposes of Article 30

Historically, conceptualisations and measures of poverty have frequently related to income or expenditure in relation to absolute or relative standards. Absolute or extreme poverty is usually defined and measured as households living below a poverty line, such as the World Bank's threshold of living on less than \$ 1.90 dollars a day.<sup>80</sup> In contrast, definitions of relative poverty acknowledge that living costs differ by context and that the circumstances of the individual must be judged in relation to others within the same society.<sup>81</sup> Again, relative poverty is typically measured in monetary terms, as it is argued income largely determines the extent to which an individual can participate in, or is excluded from, society.<sup>82</sup>

However, reliance on income-based definitions and measures of poverty is problematic from a children's rights perspective. This is due to the facts that (i) children are often invisible when poverty is defined and measured in monetary terms, obscured by a focus on the family or household; (2) household-based income poverty measures assume an equal sharing of resources within the household, yet these may be allocated differently; (3) while there have been attempts to disaggregate poverty data by age, these are only relatively recent and at first were not always consistent with the CRC in terms of that instrument's definition of a child;<sup>83</sup> (4) while income is

80. See, e.g., World Bank, *Poverty and Shared Prosperity 2018: Piecing Together the Poverty Puzzle* (Washington, DC: World Bank, 2018).

81. See, e.g., J. Bradshaw, Y. Chzhen, C. de Neubourg, G. Main, B. Martorano, & L. Menchini, 'Relative Income Poverty among Children in Rich Countries', Innocenti Working Paper 2012-01 (UNICEF Innocenti Research Centre, Florence: UNICEF, 2012). [www.unicef-irc.org/publications/pdf/iwp\\_2012\\_01.pdf](http://www.unicef-irc.org/publications/pdf/iwp_2012_01.pdf).

82. This paragraph and the next is adapted from work done by Kirrily Pells in the context of A. Nolan & K. Pells, 'Children's Economic and Social Rights and Child Poverty' (2019) 27 4 *International Journal of Children's Rights* (forthcoming).

83. See, e.g., P. Olinto, K. Beegle, C. Sobrado, & H. Uematsu, *The State of the Poor: Where are the poor, where is extreme poverty harder to end, and what is the current profile of the world's poor?* (Washington, DC: World Bank, 2013).

undoubtedly crucial, it may not be the key factor determining poverty in all societies; there are other material deprivations that might affect children more directly than monetary poverty, such as access to water, health services, schools and transport. There has therefore been the development of an approach to conceptualisation and measurement so as to approach poverty as multidimensional, in which multiple deprivations are linked<sup>84</sup> This entails linking multiple deprivations (e.g. nutrition, food, education, health) with the human rights framework so as to include within the definition of poverty aspects such as exclusion from participation in everyday life and activities normal for the surrounding society (for instance, holding or attending ceremonies for rites of passage or attending activity clubs).<sup>85</sup> Here, poverty is conceptualised as a denial of choices and opportunities due to a lack of resources that leads to social exclusion. It has been argued that a multidimensional approach aligns more closely with both a child-focused and a more holistic, rights-based approach by recognising the multiple and interconnected domains of people's lives that are affected by poverty.<sup>86</sup>

Positively, the Committee has made clear that its consideration of state practice in terms of Article 30 reflects an understanding of both income and multi-dimensional understandings of poverty.<sup>87</sup> From an income perspective, the main indicator used to measure poverty is the relative poverty rate, taken to correspond to the percentage of people living under the at-risk-of-poverty threshold, which is set at 60% of the equivalised median income. Furthermore, statistics on the poverty rate before and after social transfers (in line with Eurostat data and methodology) are also used as a comparative value to assess national situations. (It should be noted that the Committee's purpose with this latter measure is not to compare States with each other, but to situate the situation in the individual States (for example, in relation to a European average). As such, the poverty rate becomes an indicator of whether anti-poverty measures/policies in a given State are adequate).

However, the Committee has been clear that these measures are 'without prejudice to the use of other suitable parameters that are taken into account by national anti-poverty strategies or plans (e.g. indicators relating to the fight against the 'feminization' of poverty, the multidimensional phenomena of poverty and social exclusion, the extent of 'inherited' poverty, etc.)'.<sup>88</sup>

In terms of multidimensional aspects of poverty, the linkage made by the Committee between violations of Article 30 and violations of substantive Charter provisions related to deprivations in specific social rights areas (e.g., shelter/housing and medical assistance) make clear that the Committee is conscious that poverty is not simply a matter of income. According to the Committee, poverty defined as "involving

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84. See, e.g., P. Townsend, (ed.), *Building Decent Societies. Rethinking the Role of Social Security in Development* (Geneva: ILO, Palgrave Macmillan, 2009).

85. See, e.g., the reference in the Introduction to Sustainable Development Goal 1's reference to 'poverty in all its forms'.

86. S. Pemberton, D., Gordon, & S. Nandy, 'Child rights, child survival and child poverty: the debate', in A. Minujin & S. Nandy (eds), *Global Child Poverty and Well-Being: Measurement, Concepts, Policy and Action* (Bristol: Policy Press, 2012) 19.

87. See, e.g., the Committee description of 'the multidimensional poverty and exclusion phenomena' in its Conclusions 2005, Norway, Article 30 and Conclusions 2007, Belgium, Article 30.

88. European Committee of Social Rights, Statement of Interpretation on Article 30, Conclusions 2013.

situations of social precarity’ entails focusing on poverty as involving ‘deprivation due to a lack of resources.’ Such deprivation can arise, amongst other things, from ‘the failure of States Parties to fulfil “the obligation to ensure that all individuals have the right of access to health care and that the health system must be accessible to the entire population”; to provide a minimum income to persons in need or to adopt a co-ordinated approach to promoting effective access to housing for persons who live or risk living in a situation of social exclusion.’<sup>89</sup> Poverty, as conceptualised by the Committee, is about far more than simply access to financial resources, albeit that, as made clear above, the Committee is conscious that income will often be the mediator undermining access to other rights.

A multidimensional understanding of poverty is further reinforced by the Committee’s approach to social exclusion under Article 30. In this context, the Committee has made clear that, under Article 30, ‘States have the positive obligation to encourage citizen participation in order to overcome obstacles deriving from the lack of representation of Roma and Sinti in the general culture, media or the different levels of government, so that these groups perceive that there are real incentives or opportunities for engagement to counter the lack of representation.’<sup>90</sup> Thus, Article 30 encompasses wide-ranging understandings of deprivation well beyond income.

### **3.2.1.2. What Does Article 30 Require States Parties to Do?**

Article 30 is a complex and wide-ranging article. As such, for the purposes of clarity, this section is a distillation of what the Committee has made clear is required in terms of state party action:<sup>91</sup>

The state must adopt *an overall and coordinated approach*. This should consist of:

- (vi) an analytical framework;
- (vii) a set of priorities;
- (viii) measures to prevent and remove obstacles to access to fundamental social rights. The measures taken in this regard must:
  - a. promote and remove obstacles to access to, in particular (but not exclusively), employment, housing, training, education, culture and social and medical assistance;
  - b. strengthen access to social rights,<sup>92</sup> their monitoring and enforcement. Specifically, state measures should improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, and combat psychological and socio-cultural

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89. Ibid, with references omitted.

90. *Centre on Housing Rights & Evictions (COHRE) v Italy*, Complaint No. 58/2009, decision on the merits of 25 June 2010, para. 107.

91. In particular, it draws on *International Movement ATD Fourth World v France*, Complaint 33/2006, decision on the merits 4 February 2008, paras 164-168; Conclusions 2003, Statement of Interpretation on Article 30, all countries; Statement of interpretation on Article 30, Conclusions 2005; Statement of Interpretation on Article 30, Conclusions 2013.

92. It should be noted that access to fundamental social rights is assessed by taking into consideration the effectiveness of policies, measures and actions undertaken (Conclusions 2005, Norway).



obstacles to accessing rights. Where necessary, such measures should specifically target the most vulnerable groups and regions;

- (ix) monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion;
- (x) adequate resources. These must:
  - a. be allocated to attain the objectives of the strategy;
  - b. be adequate in terms of quality and quantity to the nature and extent of poverty and social exclusion in the country concerned.

An overall and coordinated approach must link and integrate policies in a consistent way, moving beyond a purely sectoral or target group approach (albeit those measures taken by governments in the context of such an approach would be expected to target specifically the most vulnerable groups).<sup>93</sup> Coordinating mechanisms must exist - including at the level of delivery of assistance and services to those living in or at risk of poverty.<sup>94</sup>

The Committee has taken into account a set of indicators in order to assess in a more precise way the effectiveness of policies, measures and actions undertaken by States Parties within the framework of this overall and co-ordinated approach.<sup>95</sup> These include:

- (iv) the level of resources (including any increase in said level) that have been allocated to attain the objectives of the strategy;
- (v) the at-risk-of-poverty threshold rate<sup>96</sup>; and
- (vi) poverty rates before and after social transfers.

In addition to these indicators – and reflecting the multidimensional understanding of poverty employed by the Committee – when assessing state conformity with Article 30, the Committee also takes into consideration the national measures or practices which fall within the scope of other substantive provisions of the Charter. In doing so, it takes into account findings it has made in the framework of both the reporting and the collective complaint procedures. As highlighted in Section 2.2 (and discussed further below), for the purposes of child poverty, this would – and has – include a consideration of the Committee’s findings in relation to access to health care (Article 11), social security allowances (Article 12), social and medical assistance (Article 13), the benefit from social welfare services (Article 14), the rights of persons with disabilities (Article 15), the right to social, legal and economic protection of the family (Article 16) as well as of children and young persons (Article 17), the right to housing (Article 31), and the non-discrimination clause (Article E).

While the Committee has emphasised that a conclusion of non-conformity or a decision of violation of one or several of these provisions does *not* automatically

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93. FIDH v Belgium, Complaint No. 62/2010, decision on the merits, 21 March 2012, para. 203.

94. See, e.g., Conclusions 2017, Andorra.

95. Statement of Interpretation on Article 30, Conclusions 2013.

96. As stated above, this corresponds to the percentage of people living under the poverty threshold, which is set at 60% of the equivalised median income.

or necessarily lead to a violation of Article 30,<sup>97</sup> such a conclusion or decision may, depending on the circumstances, be *relevant* in assessing conformity with Article 30. Indeed, when looking at the cases in which the Committee has found a violation of Article 30, it is notable that the Committee has never made a finding that Article 30 has been violated in a complaint in which it has found no other violation. Furthermore, in most of the cases (six out of nine) in which states have been found to have violated Article 30 (whether alone or read together with Article E on non-discrimination), the Committee's analysis in the context of that article has included a reference back to an earlier finding of a violation of another Charter right. The Committee has paid particular attention to the connection between Article 30 and the question of housing in its collective complaints,<sup>98</sup> reflective of its view that 'housing is a critical policy area in fighting poverty and social exclusion'.<sup>99</sup>

When assessing compliance with the Charter, the Committee *systematically reviews the poverty-related definitions and measuring methodologies applied at the national level and the main data consequently made available*.<sup>100</sup> As made clear above, this includes those definitions and measures employed in anti-poverty that are not directly premised on income.

The Committee has stated that assessments concerning Article 30 must be based on a 'human rights approach' (and in the case of child poverty, presumably a children's rights approach). In doing so, the Committee states that this approach is affirmed in the UN Guiding Principles on extreme poverty and human rights adopted by the United Nations Human Rights Council on 27 September 2012).<sup>101</sup> The Committee has drawn on the Principles when looking at state action in the context of child poverty and Article 30. This has included quoting the Principles' statements on child rights approvingly – statements that make clear that children's rights must be accorded priority in situations of child poverty, that states must take immediate action to combat childhood poverty, and that states must respect and promote the rights of children living in poverty, including by strengthening and allocating the necessary resources to child protection strategies and programmes, with a particular focus on marginalised children.<sup>102</sup> Interestingly, the Committee has not explicitly cited the Guiding Principles statement that 'States must promote children's right to have their voices heard in decision-making processes relevant to their lives'. However, given Article 30's focus on social exclusion – which encompasses an understanding of a need on the part of states to ensure civic/citizen participation<sup>103</sup> - and the centrality

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97. See, e.g., *EUROCEF v France*, Complaint No. 82/2012, decision on the merits of 19 March 2013, para. 59; *FIDH v Ireland* (2017), para.165.

98. See *ibid.* In *European Roma Rights Centre (ERRC) v Portugal*, Complaint No. 61/2010, decision on the merits 30 June 2011, the Committee did not make explicit reference to its findings of state violation of Articles 31(1) and 16 in the same complaint but its discussion of Article 30 focused heavily on housing.

99. *FIDH v Belgium*, *op. cit.*, para. 200.

100. *International Movement ATD Fourth World v France*, Complaint No. 33/2006, decision on the merits 4 February 2008, para. 168.

101. Statement of Interpretation on Article 30, Conclusions 2013.

102. Guiding Principles, paras 33, 34 cited in *DCI v Belgium*, *op.cit.*, para. 81.

103. For more, see Section 3.2.1.3 below.

of the child's right to be heard in terms of international child rights law,<sup>104</sup> a future statement of the Committee emphasising the importance of ensuring child participation in terms of states anti-child poverty efforts is easy to envisage.

### 3.2.1.3. Giving 'Social Inclusion' Meaning

As noted earlier, the Committee has emphasised that Article 30 requires states to address social exclusion - understood as involving obstacles to inclusion and citizen participation<sup>105</sup> and caused by a failure to ensure civil and political participation and engagement on the part of vulnerable groups. In doing so it has made clear that 'the right to vote, as with other rights relating to civic and citizen participation, constitutes a necessary dimension in social integration and inclusion and is thus covered by article 30'.<sup>106</sup> The Committee has made it clear that states must take positive measures to that socially marginalised groups (e.g., Roma, Sinti, Travellers and others) are able to enjoy the right to vote and 'other rights related to civic and citizen participation'.<sup>107</sup> With regard to the former right, it has been critical of the discriminatory impact on Travellers of (i) the requirement of a lengthy qualification period of attachment to a municipality to be entitled to vote;<sup>108</sup> and (ii) a very low quota limit in terms of the number of holders of circulation documents without a fixed domicile or residence that may attach themselves to a municipality for the purposes of voting.<sup>109</sup>

The Committee has also highlighted the importance of states facilitating access to identification documents that are fundamental to obtaining residency and citizenship in order to exercise civil and political participation.<sup>110</sup> This is part of a broader positive obligation on the part of states to encourage citizen participation in order to overcome obstacles deriving from the lack of representation of minorities 'in the general culture, media or the different levels of government'.<sup>111</sup>

In short, to comply with Article 30, States must take positive measures to address civil marginality that feeds into social exclusion – not just socio-economic marginality. Furthermore, these measures cannot simply be focused on removing existing legal or practical obstacles; they must include empowerment of social marginalised groups.

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104. See Article 12 CRC; UN Committee on the Rights of the Child, 'General Comment No. 5 on general measures of implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para. 6)', UN Doc. CRC/GC/2003/527 (2003), para. 12; UN Committee on the Rights of the Child, 'General Comment No. 12 on the right of the child to be heard, UN Doc. CRC/C/GC/12 (2009).

105. Statement of Interpretation on Article 30, Conclusions 2013.

106. *ERRC v France*, op.cit., para. 99.

107. Ibid.

108. *ERRC v France*, op.cit.; *ERTF v France*, op. cit.

109. *ERRC v France*, op. cit; *ERTF v France*, op. cit.

110. *COHRE v Italy*, op. cit., paras 103 and 108.

111. Ibid para. 107

### 3.2.2. Poverty-related Elements of Charter Articles beyond Article 30

This report has already flagged the strong linkage between Article 30 and other provisions of the Charter. A focus on these other substantive articles is important in terms of understanding what the Committee considers to be key in terms of states ensuring ‘access to fundamental social rights’ for the purposes of Article 30. They are, however, also important because of the child poverty-related obligations that they impose on states that are not bound by Article 30.

A full analysis of these provisions goes beyond the scope of this report. Therefore, what follows is a list of elements of those provisions that the Committee has identified in its conclusions as having implications for its Article 30 evaluation of states’ anti-poverty efforts. The relevant provisions (and the shortcomings identified by the Committee in terms of their implementation) should thus be understood to have implications for state efforts to address child poverty even where a state has not chosen to be bound by Article 30 specifically.

**TABLE 2: CONCLUSIONS WITH RELEVANCE TO THE COMMITTEE’S ARTICLE 30 ASSESSMENT**

Article 1(1)	<p>‘employment policy efforts have not been adequate in combating unemployment and promoting job creation’ (Conclusions 2017, Italy)</p> <p>‘it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation’ (Conclusions 2017, Serbia)</p> <p>‘it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation’ (Conclusions 2017, Ukraine)</p>
Article 7(5)	<p>‘the minimum wage of young workers is not fair and that the apprentices’ allowances are not appropriate’ (Conclusions 2017, Andorra)</p> <p>‘young workers’ wages are not fair’ (Conclusions 2017, Slovak Republic; Ukraine)</p>
Article 10(4)	<p>‘it has not been established that special measures for the retraining and reintegration of the long-term unemployed have been effectively provided or promoted’ (Conclusions 2017, Serbia)</p> <p>‘it has not been established that special measures for the retraining and reintegration of the long-term unemployed have been effectively provided or promoted’ (Conclusions 2017, Slovak Republic)</p> <p>‘it has not been established that special measures for the retraining and reintegration of the long-term unemployed have been effectively provided or promoted’ (Conclusions 2017, Turkey)</p>

Article 12(1)	<p>‘the minimum level of sickness benefits and occupational injury and occupational disease benefits is manifestly inadequate’ (Conclusions 2017, Andorra)</p> <p>‘the minimum level of several social security benefits (sickness, unemployment, old age and invalidity pensions) are manifestly inadequate’ (Conclusions 2017, Estonia)</p> <p>‘the minimum level of several social security benefits (sickness, old age, unemployment and maternity) is inadequate’ (Conclusions 2017, Finland)</p> <p>‘the minimum level of invalidity pensions is inadequate’ (Conclusions 2017, France)</p> <p>‘the minimum levels of unemployment benefits, of old age pension and of disability pension is manifestly inadequate’ (Conclusions 2017, Latvia)</p> <p>‘the minimum level of several social security benefits (sickness, work injury and diseases, unemployment) is inadequate’ (Conclusions 2017, Ireland)</p> <p>‘the minimum level of sickness benefit is manifestly inadequate’ (Conclusions 2017, Portugal)</p> <p>‘the duration of payment of unemployment benefits for people who have been ensured up to five years is too short’ (Conclusions 2017, Serbia)</p> <p>‘the minimum level of unemployment benefit and of sickness benefit is inadequate’ (Conclusions 2017, Slovak Republic)</p> <p>‘it has not been established that the existing social security schemes cover a significant percentage of the population’ (Conclusions 2017, Turkey)</p>
Article 12(3)	<p>‘the restrictive evolution of the social security system during the reference period, and the maintenance of certain restrictions even after the economic situation had improved’ (Conclusions 2017, Ireland)</p>
Article 12(4)	<p>‘equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties and that the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties’ (Conclusions 2017, France)</p>
Article 13(1)	<p>‘the amount of social assistance, consisting of basic assistance and any additional benefits that may apply is not adequate and that the granting of social assistance to nationals of other States Parties is subject to a length of residence requirement of four years’ (Conclusions 2017, Finland)</p> <p>‘the amount of social assistance, consisting of basic assistance and any additional benefits that may apply is not adequate and that non-EU nationals are subject to a length of residence requirement of five years to be eligible for RSA’ (Conclusions 2017, France)</p> <p>‘the level of social assistance is not adequate’ (Conclusions 2017, Italy)</p> <p>‘the level of social assistance is manifestly inadequate’ (Conclusions 2017, Portugal)</p> <p>‘the level of social assistance paid to a single person without resources is not adequate’ (Conclusions 2017, Serbia; Ireland; Latvia; Slovak Republic; Turkey; Estonia)</p>
Article 13(3)	<p>‘it is not established that everyone may receive by the competent services such advice and personal help as may be required to prevent, to remove or to alleviate personal or family want’ (Conclusions 2017, Slovak Republic)</p>

Article 14(1)	'it has not been established that the number of social services staff is adequate and has the necessary qualification to match user's needs' (Conclusions 2017, Turkey)
Article 15(1)	'the right of persons with disabilities to mainstream education is not effectively guaranteed' (Conclusions 2017, Ukraine)
Article 15(2)	'persons with disabilities are not guaranteed effective access to the open labour market and that it has not been established that the legal obligation to provide reasonable accommodation is respected' (Conclusions 2017, Serbia)  'it has not been established that persons with disabilities are guaranteed effective protection against discrimination in employment and that the legal obligation to provide reasonable accommodation is respected' (Conclusions 2017, Turkey)  'mainstreaming in employment is not effectively guaranteed in respect of persons with disabilities' (Conclusions 2017, Ukraine)
Article 16	'family benefits are not of an adequate level for a significant number of families' (Conclusions 2017, Latvia; Estonia)  'equal treatment of nationals of other States Parties regarding the payment of family benefits is not ensured' (Conclusions 2015) (Conclusions 2017, Serbia)  'the right to housing of Roma families is not effectively guaranteed and that the level of child benefits does not constitute an adequate income supplement' (Conclusions 2017, Slovak Republic)  'there is no general system of family benefits' (Conclusions 2017, Turkey)  'it has not been established that equal treatment of nationals of other States Parties and stateless persons with regard to family benefits is guaranteed' (Conclusions 2017, Ukraine)
Article 23	'the level of contributory and non-contributory old-age pensions is manifestly inadequate' (Conclusions 2017, Italy)  'the level of the minimum pension is manifestly inadequate' (Conclusions 2017, Ukraine)
Article 31(2)	'it has not been established that there is adequate legal protection for persons threatened with eviction and that the law prohibits eviction from emergency accommodation/shelters' (Conclusions 2017, Andorra)  'there are no effective measures to reduce and prevent homelessness ... it has not been established that adequate eviction procedures exist and it has not been established that the right to shelter is guaranteed' (Conclusions 2017, Turkey)  'it has not been established that the right to shelter is guaranteed' (Conclusions 2017, Ukraine)
Article 31(3)	'in the field of housing, the gap between needs and results is particularly wide' (Conclusions 2017, France)  'it has not been established that there are remedies with respect to excessive waiting periods for the allocation of social housing ... and that the majority of qualified households receive housing benefits in practice' (Conclusions 2017, Turkey)

While the Committee has made extensive reference to provisions that have implications for child poverty, it has made relatively little reference to child poverty specifically in its Article 30 conclusions work.<sup>112</sup> This omission is striking given the ongoing problem of child poverty in the Council of Europe. It is also surprising given the heavy focus on children within the Revised Charter itself, particularly in Article 17. The Committee interprets that provision so as to address poverty-related issues indirectly through its engagement with the position of children in public care (including the adequacy of the care those children receive), as well as the right of children, including children in an irregular situation and non-accompanied minors to care and assistance.<sup>113</sup>

However, the Committee has not yet formally engaged with child poverty in the context of Article 17 other than to make clear that the financial conditions or material circumstances of the family should not be the sole reason for the placement of a child outside family care.<sup>114</sup> This is despite that provision's emphasis on 'economic protection' – an issue that on an ordinary reading would seem strongly linked with the issue of child poverty: the prevalence of child poverty in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of state efforts to ensure the right of children to social, legal and economic protection. Given that the obligation of states to take all appropriate and necessary measures to ensure that children have the assistance they need is strongly connected to measures directed towards the amelioration and eradication of child poverty and social exclusion, it would be appropriate for the Committee to take child poverty levels into account when considering the state's obligations in terms of Article 17 of the Charter in future.

### 3.3. Conclusion

This chapter has analysed the European Social Charter from a child poverty perspective. In doing so, it has focused in particular on the scope and content of the right to protection from poverty and social exclusion set out in Article 30 of the 1996 Revised Charter. Having made clear what Article 30 envisages in broad terms we will now turn to focus on identifying best (or at least good) practice rights-compliant coordinated approaches, priorities and measures taken by the member states to protect children from poverty and social exclusion.

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112. For examples of Committee references, see Conclusions 2017, Article 30, Slovenia, Turkey, Ukraine, France, Italy and Serbia. See also Conclusions 2007, Italy; Conclusions 2013, Serbia and France

113. See Conclusions 2015, Article 17, all countries.

114. See note 23 above.

# 4. Addressing Child Poverty in a European Social Charter-compliant Way

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## 4.1. Approaching Child Poverty Work in a Child-rights Compliant Way: Guidance from Article 30

Building on the discussion in the previous chapter, the report will now turn to measures flagged in the Committee's conclusions and collective complaints decisions as contributing to the eradication of child poverty and social exclusion. The primary focus will be on Article 30 and the Committee's interpretation of that provision. In doing so, the chapter seeks to achieve one of the aims of this report: to identify measures that would best contribute to the eradication of child poverty in a child Charter rights-compliant way, drawing on COE member state experience.

### 4.1.1. Using the Committee's Article 30 Practice as a Roadmap for Anti-poverty Efforts

Section 3.2.1.2 provides a distillation of what the Committee will look for in terms of state party action for the purposes of Article 30. However, we will now turn to this in greater depth to identify the priorities for states outlined by the Committee.

The Committee's primary concern in terms of compliance with Article 30 is reflected in the structure of its reporting procedure conclusions. These demonstrate that Committee attention focuses on:<sup>115</sup>

(i) *'measuring poverty and social exclusion'*

In this context, the Committee has made clear states should have:

- a. information in terms of the poverty indicators discussed in Section 3.2.1.2;
- b. appropriate poverty measures/indicators at the national level;
- c. available data on groups at particular risk of poverty;
- d. measures of 'social exclusion' in addition to those for poverty;<sup>116</sup>

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115. What follows is drawn from an analysis of the Committee's Conclusions on Article 30 from 2017, 2013, 2009, 2007, 2005 and 2003.

116. For more on the definition of social exclusion, see Section 3.2.1.3.



(ii) *'approach to combating poverty and social exclusion'*

In this context, the Committee has made clear states should have:

- a. taken measures taken in terms of reducing poverty and social exclusion in specific areas (for more see Section 3.2.1.2);
- b. information on the results of those measures (for instance, in the form of quantified indicators of the means deployed, the number of beneficiaries and the results achieved for each of the measures concerned);
- c. an explicit overall strategic/analytical framework for addressing poverty and social exclusion;
- d. a co-ordinated overall policy to combat the particular poverty and social exclusion that specific vulnerable groups experience due to their situation requiring specialised treatment and targeted measures to improve their circumstances;
- e. information on what has been done to integrate the various benefits and services across the policy areas referred to in Article 30;
- f. information on funding allocated for the reduction of child poverty and social exclusion, including the realisation of targeted goals.

(iii) *'monitoring and assessment'*

In this context, the Committee has made clear states should have:

- a. information on how poverty reduction measures are monitored and evaluated;
- b. information on the results of such monitoring and evaluation;
- c. made appropriate responses to such monitoring and evaluation results, including changes/adaptations undertaken in consequence;
- d. civil society (including employers' and workers' representatives, NGOs and private citizens) involved in these processes.

A child rights-compliant approach to child poverty and social exclusion thus requires not just the taking of measures necessary to address such but also the ability to demonstrate the efficacy (or not) of the measures in question. It requires states to take appropriate action at all stages of child poverty-oriented policy/law/budget initiatives; that is, during planning, enactment, execution/implementation and review. It is crucial to note that the simple taking of child poverty-related measures, and the allocation of resourcing towards them, will not be sufficient in terms of Article 30 if the impact of the measures is limited and/or inadequate.<sup>117</sup>

## 4.2. Using Bad Practice to Identify Best Practice

Identifying best practice in terms of Article 30 is a relatively challenging exercise as the Committee, unlike other (for example, United Nations) human rights treaty monitoring bodies, does not praise specific state initiatives for their rights conformity in its conclusions. Rather it merely notes measures taken in the context of a finding

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<sup>117</sup>. See, e.g., *FEANTSA v the Netherlands*, op. cit., paras 226-228.

of conformity. It is thus easier to use what the Committee has criticised in terms of state practice to develop the parameters of a framework for Charter rights-compliant anti-child poverty efforts.

The most common ground upon which the Committee has based findings of non-conformity with Article 30 is the lack of an adequate overall and coordinated approach to combating poverty. As will be clear from Section 3.2.1, there are multiple ways in which the Committee could arrive at this conclusion and it is very much an 'overall' assessment. Child poverty-related issues flagged by the Committee in finding violations of Article 30 on this ground include:

- ▶ high and rising poverty rates (including child poverty rates);<sup>118</sup>
- ▶ a failure to allocate the budgetary resources necessary to tackle poverty and exclusion (including those of children) in light of the national situation<sup>119</sup> - i.e. to ensure that allocations match the increase in poverty rates; and
- ▶ a lack of coordination mechanisms for anti-poverty measures such as strategies, policies or services (including with regard to child poverty) outlined by states in their reports, including at delivery level (i.e. with regard to ensuring coordination in relation to the individual beneficiaries of assistance and services).<sup>120</sup>

In a reporting procedure context, such findings have sometimes occurred through the Committee's consideration of facts that gave rise to successful collective complaints against the states in question<sup>121</sup> or in the context of information received by the Committee's during its follow-up work.<sup>122</sup> Indeed, more broadly, the Committee has made clear that state failure to respond to its findings of non-conformity with Article 30 (whether alone or read together with Article E) in the context of a collective complaint will result in a finding of non-conformity in the context of its reporting procedure also.<sup>123</sup> This has included a number of cases in which the rights of children experiencing poverty and social exclusion were at issue.<sup>124</sup>

As noted in Section 3.2.1.2, a repeated theme in the Committee's work on assessing the existence of an adequate overall and coordinated approach to combating poverty and social exclusion is that of housing. The Committee has been critical of national failures to ensure coordinated housing policies with regard to minorities such as are necessary in order to prevent and combat the poverty and social exclusion experienced by those groups. For example, the Committee has found that 'the inability and unwillingness of central authorities to correctly oversee/coordinate the implementation of housing programmes at the local level taking into consideration the specific situation of Roma, for instance by taking action against those municipalities where housing projects have led to the isolation or segregation of

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118. See, e.g., Conclusions, 2017, Italy, Serbia and Ukraine.

119. Conclusions, 2017, Italy.

120. Conclusions 2017, Serbia.

121. See, e.g., Conclusions 2013, Belgium with regard to *FIDH v Belgium* (2012), op. cit.

122. See, e.g., Conclusions 2017, Belgium with regard to *FIDH v Belgium* (2012), op. cit.

123. See, e.g., Conclusions 2013, France with regard to *ATD v France*, op. cit.; *ERRC v France* op.

cit.; and *MDM v France*, op. cit.; Conclusions 2013, Italy with regard to *COHRE v Italy*, op. cit.

124. See collective complaints listed in notes 122-124.

Roma, demonstrates the lack of an “overall and coordinated approach” in this area, amounting to a violation of Article E taken in conjunction with Article 30.<sup>125</sup>

The Committee has further made a strong connection between Article 30 violating segregation and poverty (including in particular very poor housing/living conditions and vulnerability to eviction) and civil marginalisation.<sup>126</sup> It is thus clear that where children in poverty experience social precarity that is linked to their unaddressed social/civil marginalisation and/or the discrimination they face as member of a particular minority group, this will constitute a failure to ensure the *child's* right to freedom from poverty and social exclusion in terms of Article 30 (frequently together with a violation of Article E RESC). This will include situations in which a state has failed to take targeted positive measures (based on appropriate disaggregated data) to address the causes and effects of poverty and social exclusion experienced by social minority children that differ from those relating to other children.

### **4.3. Using Good Practice as the Basis for Developing Best Practice**

While the Committee does not explicitly identify examples of best (or even good) practice in its work, it is possible to identify elements of state records in addressing poverty that it regards as positive. These include:

- ▶ the permanent (i.e., long-term and ongoing) production of indicators and statistics (e.g. income distribution statistics, statistics on adolescents, homeless people and other vulnerable groups) pertaining to the living conditions of the population and available to decision-makers when preparing the strategic objectives for government;<sup>127</sup>
- ▶ social transfers which have a positive effect in terms of reducing poverty;<sup>128</sup>
- ▶ increases in government spending on social protection as a share of GDP during the reference period;<sup>129</sup>
- ▶ in the context of a national action plan on poverty, extensive consultations being held with various civil society organisations, research/advisory institutions, and professional organisations, as well as with municipalities and social partners;<sup>130</sup>
- ▶ where measures adopted have had a demonstrable positive impact on improving access to fundamental social rights;<sup>131</sup>
- ▶ the existence of a national poverty monitoring and evaluation instrument;<sup>132</sup>

125. *ERRC v Portugal*, op. cit., para. 71.

126. *COHRE v Italy*, op. cit., para. 103.

127. Conclusions 2017, Finland and Ukraine.

128. Conclusions 2017, Finland and Ireland.

129. Conclusions 2017, Finland.

130. Conclusions 2017, Netherlands.

131. See, e.g., Conclusions 2005, Slovenia.

132. See, e.g., Conclusions 2017, Portugal.

- ▶ amendments to the social welfare and security system to target poverty amongst particular groups (e.g., large families and newly-arrived immigrants);<sup>133</sup>
- ▶ coordination of anti-poverty and social exclusion measures due to such being taken jointly by all the ministries and services concerned.<sup>134</sup>

The Committee's comments are specific to national situations and it is careful to avoid direct comparison of national situations, both with regard to child poverty and Article 30 more broadly. This also makes identifying 'best' (and sometimes even 'good' practice) challenging. That said, the Committee has already provided detailed statements of interpretation on Article 30 (for more see chapter 3). These, together with an analysis of Committee conclusions relating to those states which have been found to be in conformity with Article 30, are key guides for those seeking best practice in relation to different aspects of combating child poverty.

#### **4.4. Conclusion**

There is no 'one-size-fits-all' best practice model for giving effect to Article 30. The efficacy of state efforts in this area will inevitably depend on a wide range of factors including political willingness, the availability of resources (whether financial, technical, organisational or otherwise), and national capacity. The Committee's approach recognises this; rather than suggesting that there is one ideal solution when it comes to addressing poverty and social exclusion, it has emphasised the different elements that should form part of state activities in this area. The Committee has provided extensive guidance but there is certainly scope for greater engagement with states in this area. Article 30-focused trainings for national decision-makers and state-Committee dialogues beyond the reporting and collective complaints procedures would usefully and importantly contribute to a 'demystification' of what can appear a complex, wide-ranging and very general provision.

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133. Conclusions 2017, Sweden.

134. Ibid.



# 5. Conclusion: The Role of the COE in Advancing Child Rights-compliant Anti-Poverty Practice

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**T**his report has focused on child poverty and child rights within the Council of Europe. It has presented the European Social Charter, as interpreted by the European Committee of Social Rights, as the key framework to be used by COE member states in a child rights-compliant way. However, ending child poverty requires concerted, integrated action at both the domestic and the regional levels, and there is a crucial role for the Council of Europe in supporting and advancing this work.

There is clearly an awareness on the part of a wide range of COE bodies of the need for this, as well as a stated willingness to do so. The report spoke earlier in positive terms about the Council of Europe's Strategy for the Rights of the Child's identification of child poverty as a key challenge for children's rights in the Council of Europe. It is of course very positive in terms of the Council of Europe's approach to this issue that the Strategy promised that the COE would 'promote the European Social Charter as a key set of minimum standards safeguarding the rights of families and children, which is particularly relevant in times of economic austerity'.<sup>135</sup>

However, there is much greater scope for the European Social Charter to be treated as a roadmap for activities aimed at combating child poverty within the COE than is the case at the moment. Currently, mention is frequently made of the Charter in COE Committee of Minister Recommendations that relate directly to child poverty but there remains very limited engagement with the Charter in the context of implementing those Recommendations.<sup>136</sup>

The Charter and the parameters outlined by the Committee with regard to child rights-compliant child poverty measures need to be mainstreamed effectively into the child poverty-oriented planning and activities of Council of Europe actors with a role on social policy and social affairs. In particular this must include work directed towards increasing understanding and awareness of the implications of the Charter for addressing child poverty on the part of entities under the auspices of the Parliamentary Assembly: for instance, through increasing awareness and capacity on the Committee on Social Affairs, Health and Sustainable Development (and the

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135. Council of Europe, 'Strategy for the Rights of the Child' supra n28, 10.

136. See, e.g., Recommendation CM/Rec(2011)12 of the Committee of Ministers on children's rights and social services friendly to children and families; Guidelines on child-friendly health care (21 September 2011); and Recommendation Rec(2006)19 of the Committee of Ministers to member states on policy to support positive parenting; Recommendation CM/Rec(2013)2 of the Committee of Ministers to member states on ensuring full inclusion of children and young persons with disabilities into society.

Sub-Committees on Social Affairs, Children and the European Social Charter), the Committee on Equality and Non-discrimination and the Committee on Legal Affairs and Human Rights.

The first substantive element of the First Report on the implementation of the Strategy states that:

‘The effective enjoyment of social rights provides the basis for ensuring the respect of a child’s human dignity. The European Social Charter (revised) provides clear benchmarks in protecting the social rights of children and their families. Its ratification and effective implementation as well as the wider acceptance of the collective complaints procedure would therefore be an important step in erasing child poverty and with it, many other violations of children’s rights.’

It is thus clear that more attention should be paid to social rights in the rollout of the Strategy over the remaining implementation period (2020-2021). It is positive that the first implementation report’s recommendation that the 2018-2019 terms of reference of the Ad hoc Committee for the Rights of the Child (CAHENF) should provide for the development of work in the area of child budgeting and child impact assessment was accepted.<sup>137</sup> Both rights budgeting and child rights impact assessment are regarded as vital to the development of a child rights-compliant approach to policy and budget-related decision-making.<sup>138</sup> At this point, CAHENF’s work on these tools has mainly been explorative in the context of exchanges held between member states, and poverty-related aspects of the Strategy have not yet been addressed in depth.<sup>139</sup> It is crucial that it engages more effectively with the question of child poverty and child rights both within the lifetime of the current Strategy and beyond.

Similarly, the Children’s Rights Division is in a strong position to increase its engagement with child poverty and social rights. There is scope for the Division to work with relevant COE bodies so as to increase the mainstreaming of children’s social rights into COE anti-poverty policy efforts generally. This can be built upon existing work in terms of child-friendly services and anti-discrimination, and linked up with activities around Agenda 2030 for Sustainable Development and the COE Action Plan on Protecting Refugee and Migrant Children in Europe.<sup>140</sup>

Finally, the Committee itself can and should do more. It must engage with child poverty as a cross-cutting thematic issue, different aspects of which need to be borne in mind when it addresses a wide range of Charter provisions. It needs to refine further its approach to Article 30, thereby rendering the scope of the obligations imposed by that provision clearer to those states that are currently bound by it. This will also serve to encourage those states that have not yet accepted Article 30 of its

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137. Terms of Reference of the Ad (2018-2019), Excerpt from CM(2017)131-addfinal (24 November 2017).

138. See, e.g., UN Committee on the Rights of the Child, ‘General Comment No. 19 on public budgeting for the realization of children’s rights (art. 4)’, UN Doc. CRC/C/GC/19 (2016); UN Office of the High Commissioner Human Rights (OHCHR), ‘Towards Better Investment in The Rights of the Child’, UN Doc. A/HRC/28/33 (2014).

139. This conclusion is based on the minutes of CAHENF meetings that are available on that body’s website.

140. Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe, adopted at 127th Session of the Committee of Ministers (Nicosia, 19 May 2017).

manageability in terms of domestic implementation efforts and the benefits to the efficacy of its child in terms of framing such. The Committee also needs to focus more specifically on *child* poverty. Given that child poverty is recognised as a particularly serious, ongoing problem in Europe - and that children are acknowledged to be an especially socially, economically, politically and legally marginalised group – child poverty merits more than the ad hoc attention it currently receives in the Committee’s conclusions, both in the context of Article 30 and more broadly.

There is enormous scope for child poverty work that is conceptualised and implemented in line with child rights. Council of Europe member states and entities have the framework they need and there is ample guidance available from the Committee as to what states should (and should not) do. There is no excuse for postponing the integration of child rights under the European Social Charter into national efforts directed towards the amelioration of child poverty and social exclusion. Indeed, the ongoing failure to do so constitutes a violation of children’s rights in and of itself.



The European Social Charter, adopted in 1961 and revised in 1996, is the counterpart of the European Convention on Human Rights in the field of economic and social rights. It guarantees a broad range of human rights related to employment, housing, health, education, social protection and welfare.

No other legal instrument at pan-European level provides such an extensive and complete protection of social rights as that provided by the Charter.

The Charter is therefore seen as the Social Constitution of Europe and represents an essential component of the continent's human rights architecture.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.



European  
Social  
Charter

Charte  
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