

The European Social Charter: A Commentary

By

The Academic Network on the European
Social Charter and Social Rights

Volume 3

Part II (Articles 11 to 19)

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Contents

	Foreword	vii
	Preliminary Remarks and Acknowledgments	viii
	Abbreviations	x
	Table of Cases	xi
	Notes on Contributors	xx
11	The Right to Protection of Health	1
	<i>Emmanuel Guematcha</i>	
12	The Right to Social Security	25
	<i>Lyle Barker</i>	
13	The Right to Social and Medical Assistance	46
	<i>Stefano Angeleri</i>	
14	The Right to Benefit from Social Welfare Services	83
	<i>Nikolaos A. Papadopoulos</i>	
15	The Right of Persons with Disabilities to Independence, Social Integration and Participation in the Life of the Community	103
	<i>Felicia Roşioru</i>	
16	The Right of the Family to Social, Legal and Economic Protection	140
	<i>Nilay Arat, Demirhan Burak Çelik, Sedef Koç and Aslı Topukcu</i>	
17	The Right of Children and Young Persons to Social, Legal and Economic Protection	164
	<i>Cinzia Peraro</i>	
18	The Right to Engage in Gainful Occupation in the Territory of Other Parties	197
	<i>Elisabeth David and Sébastien Van Drooghenbroeck</i>	
19	The Right of Migrant Workers and Their Families to Protection and Assistance	219
	<i>Ana Teresa Ribeiro, Milena Rouxinol and Inês Pereira de Sousa</i>	
	Selected Bibliography	251

The Right of the Family to Social, Legal and Economic Protection

Nilay Arat, Demirhan Burak Çelik, Sedef Koç and Aslı Topukcu

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means.



Introduction

Article 16 is one of the “hard core provisions” of the European Social Charter (ESC)¹ and it is also one of the most accepted articles of the Charter, in both the 1961 and 1996 versions, which highlights the overall commitment of state parties to the socio-economic protection of the family.² By describing the family as “a fundamental unit of the society” and by imposing upon the States an obligation to take appropriate measures to protect it, this article reflects an approach similar to that of some basic UN documents such as the Universal Declaration of Human Rights (UDHR, Article 16), the International Covenant on Civil and Political Rights (ICCPR, Article 23), the International Covenant on Economic Social and Cultural Rights (ICESCR, Articles 10 and 11 § 1) and the Charter of Fundamental Rights of the European Union (CFREU, Article

1 European Social Charter (ESC), 1961, Article 20: “1. Each of the Contracting Parties undertakes ... b. to consider itself bound by at least five of the following articles of Part II of this Charter: Article 1, 5, 6, 12, 13, 16 and 19”; ESC (rev), Part III, Article A: “1. Subject to the provisions of Article B below, each of the Parties undertakes ... b. to consider itself bound by at least six of the following nine articles of Part II of this Charter: Article 1, 5, 6, 7, 12, 13, 16, 19 and 20.”

2 The only five States who have not accepted Article 16 of the ESC (rev) are Albania, Andorra, Armenia, Cyprus and Georgia. For the chart of the acceptance of provisions by the States, see: <<https://rm.coe.int/country-by-country-table-of-accepted-provisions/1680630742>>.

33).³ At the same time, in terms of how it provides human rights protection to the family, Article 16 ESC differs from some other international and regional provisions such as Article 12 of the UDHR, Article 17 of the ICCPR, Articles 8 and 12 of the European Convention on Human Rights (ECHR) and Articles 7 and 9 of the CFREU, to the extent that it extends beyond the right to respect for private and family life or the right to marry and start a family.⁴ Article 16 has a

3 UDHR, Article 16: “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered into only with the free and full consent of the intending spouses. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.”; ICCPR, Article 23: “1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state. 2. The right of men and women of marriageable age to marry and to found a family shall be recognized. 3. No marriage shall be entered into without the free and full consent of the intending spouses. 4. States parties to the present covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.”; ICESCR, Article 10: “The States Parties to the present Covenant recognize that: 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses. 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits. 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.”; ICESCR, Article 11 § 1: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”; CFREU, Article 33: “1. The family shall enjoy legal, economic and social protection. 2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child”.

4 UDHR, Article 12: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”; ICCPR, Article 17: “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.”; ECHR, Article 8: “1. Everyone has the right to respect for his private and family life, his home and his

wide scope in order to provide full protection for the family. It envisages that the family will not only be protected by laws but also by economic and social measures such as “social and family benefits, social arrangements, provision of family housing, benefits for the newly married.” It must also be underlined that this is not an exhaustive list as the Article refers to “such means as ... and other appropriate means.”

The first draft of the Article was longer and reflected certain social values widely accepted in the 1950s in Europe. The then Article 1 of the Section B which was entitled “Rights pertaining to the family and to children” read as follows:

Every man shall have a right to found a family.

The family is the foundation of society and as such entitled to the widest measure of protection.

It is based on a marriage freely entered into by the prospective husband and wife.

The unity of the family may not be impaired, save on the basis of respect for the natural, rights of the individuals concerned.

The steps to be taken by the signatory Governments for the protection of the family shall include:

- (a) Payment of a supplementary allowance to the father of the family so that the mother may stay at home;
- (b) Assistance to large families, more particularly by the grant of allowances in proportion to the number of children;

correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”. It is also important to note that in the view of the European Committee of Social Rights, Article 16 also protects a right to personal development and the right to establish and develop relationships with other human beings and the outside world, in parallel with Article 8 of the European Convention on Human Rights. See: ESCR, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, complaint No. 58/2009, decision on the merits of 25 June 2010, § 129; ECHR, Article 12: “Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.”; CFREU, Art 7: “Everyone has the right to respect for his or her private and family life, home and communications.”; CFREU, Art 9: “The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.”

- (c) Special protection accorded to mothers during reasonable periods before and after childbirth; the mother shall have the right to leave with pay for not less than six weeks before and six weeks after childbirth, the right to keep her job and to receive both medical attention for herself and her child and financial assistance during the nursing period.⁵

This approach, however, received negative feedback. For instance, the International Federation of Christian Trade Unions emphasized the importance of family wages but underlined that the head of the family could be either a man or a woman.⁶ In a similar vein, it was proposed by a member of the Consultative Assembly (UK MP Burton) that sub-paragraph (b) of paragraph 5 be deleted as it encouraged women to stay at home.⁷ It should also be noted that the Governments proposed a much more detailed list of measures such as tax relief, rent reduction, establishment of maternity aid institutions for social counselling, legal and medical assistance, general and special child welfare measures.⁸ However, the Working Party, appointed by the Consultative Assembly to draft the Charter, decided to adopt only the first paragraph of the text prepared by the Secretariat, since the majority of the delegations considered that to be the best option to avoid provisions which were overly detailed or which did not come directly within the scope of the Social Charter.⁹ In the end, Article 16 ESC was “formulated in a very generic way which led to a considerable body of case law by the Committee”.¹⁰ It is also worth noting that the States did not consider any revision of this Article in the Revised Charter, though the Appendix to the 1996 Revised Charter clarifies that: “It is understood that the protection afforded in this provision covers single-parent families” as, unlike the 1961 Charter,¹¹ the protection of mothers is covered by the scope of this provision.

In Europe, the mid-20th century’s “traditional” notion of family consisting of “a white, heterosexual, married couple, with children, all living under the

5 Council of Europe, *European Social Charter Collected (Provisional) Edition of the “Travaux Préparatoires”*, vol. II, Strasbourg, 1955, p. 15 and 16.

6 *Ibid.*, p. 31.

7 *Ibid.*, p. 129.

8 Council of Europe, *European Social Charter Collected (Provisional) Edition of the “Travaux Préparatoires”*, vol. VI, Strasbourg, 1957, p. 34.

9 *Ibid.*, p. 60.

10 Karin Lukas, *The Revised European Social Charter, An Article By Article Commentary*, Cheltenham, Edward Elgar Publishing, 2021, p. 214.

11 ESC, 1961, art 17.

same roof, where the husband is the main breadwinner and the wife primary carer of children and other dependants¹² has changed over years and been replaced by a more “expanded and pluralistic” approach, embracing new concepts such as single parent families, unmarried or same-sex couples, children born out of wedlock and gender equality.¹³ The European Committee of Social Rights (ECSR), the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) have taken into account the social changes affecting the notion of “family” in their case law.¹⁴

As the idea of the “family” is flexible, the ECSR notes that the Charter applies to every family according to the definition of this term under domestic law. It therefore accepts the terminology used in domestic law to determine the concept of the family.¹⁵ When it is not clear, the Committee requests that the

12 Care McGlynn, *Families and the European Union: Law, Politics and Pluralism*, Cambridge, Cambridge University Press, 2006, p. 23.

13 On the evolution of the notion of family in Europe, see: *ibid.*, p. 23–41.

14 For instance, below is a summary of the case law on same-sex couples. After examining the rights of the same-sex couples under the notion of ‘private life’ for a long time, the ECtHR, with *Schalk and Kopf v. Austria* case, has accepted that a same-sex couple living in a stable relationship falls within the notion of family life, as well as private life, in the same way as a heterosexual couple, see: ECtHR, 24 June 2010, *Schalk and Kopf v. Austria*, no. 30141/04, §§ 92–95. In *Vallianatos and others v. Greece* case, the Court stated the currently emerging trend with regard to the introduction of forms of legal recognition of same-sex relationships (ECtHR [GC], 7 November 2013, *Vallianatos and others v. Greece*, nos. 29381/09 and 32684/09, § 91). Recently in *Fedotova and others v. Russia* and *Buhuceanu and others v. Romania* cases, the ECtHR has pointed out that the States have a positive obligation to provide a legal framework allowing same-sex couples to be granted adequate recognition and protection of their relationship. Cf. ECtHR [GC], 17 January 2023, *Fedotova and others*, nos. 40792/10, 30538/14 and 43439/14, §§ 152–190; ECtHR, 23 May 2023, *Buhuceanu and others v. Romania*, nos. 20081/19 and 20 others. The CJEU has also developed a similar case law. In the landmark judgement of *Coman and others* case, the Luxembourg Court ruled that the member States are to recognize same-sex marriages performed in other EU members (CJEU, 5 June 2018, *Coman and others*, C-673/16). In *V.A. v. Stolichna obshtina, rayon ‘Pancharevo’* case, the Court of Justice has determined that same-sex parentage should be legally recognized across all EU member States and that the child should be permitted to exercise, with each of the parents, the right to move and reside freely within the territory of the EU member States (CJEU, 14 December 2021, *V.A. v. Stolichna obshtina, rayon ‘Pancharevo’*, C-490/20). The ECSR also notes and welcomes in its Conclusions the developments regarding the rights of same-sex couples (ECSR, Conclusions XVI-1 (2003), Belgium). It follows the draft acts concerning the issue. The Committee states whether there is a different treatment in law or in practice as well (ESCR, Conclusions XIII-4 (1996), the Netherlands). The Committee states whether there is a different treatment in law or in practice as well (ECSR, Conclusions XVIII-1 (2006), Belgium).

15 ECSR, Conclusions XX-4 (2015), Iceland: “According to the report the Icelandic term fjölskylda which corresponds to the term family may have slightly different connotations

States Parties explain how this concept is defined and to describe the legal situation of family types other than those based on marriage.¹⁶ However, it should also be underlined that there are limits for the States Parties to define the notion of the family: “domestic law must not provide for an unduly restrictive definition ... the scope of Article 16 is, in any case, not restricted to family based on marriage ... In addition, single parent families enjoy the rights provided in Article 16¹⁷”.

Furthermore, to provide the widest protection for the family, the ECSR case law indicates that there are interrelated obligations on the States Parties to implement family-protective policies. In the view of the Committee:

This article, which states the family’s right to economic, legal and social protection, must be seen in conjunction with a number of other provisions in the Charter, such as Articles 14 and 17, that aim rather to give scope to the individual in our highly developed society, than to remedy a need, as Article 13 does. All these provisions are clearly founded on the idea that, since the industrial revolution and the social upheavals it produced, the modern state has had to take on certain new tasks and, in particular, as provided in Article 16, to create the living conditions necessary to give the family its full scope. The traditional affirmation of the family as the fundamental unit of society is maintained in Article 16, which, however, adds the idea that family welfare cannot henceforth be left to individual effort, as in the liberal epoch. Acceptance of these principles led the authors of Article 16 to lay down in it an obligation to implement a true family policy which was intended to operate in those fields where the needs of families become particularly pressing because of the restricted

depending on the items of legislation in which they appear, but generally speaking the term refers to the closest family members, usually the person’s spouse or cohabiting partner and their children, including step-children, adopted children and foster children, or parents, including step-parents, adoptive parents and foster parents, siblings, including step-siblings, adopted siblings and foster siblings and the most immediate relatives”.

16 ECSR, Conclusions 2011, Italy: “According to Article 29 of the Constitution, ‘the Republic recognises the rights of the family as a natural society founded on marriage’. Moreover, Article 30 stipulates that ‘the law ensures such legal and social protection measures as are compatible with the rights of the members of the legitimate family to any children born out of wedlock’. The Committee asks that the next report explain how domestic law defines the ‘family’ concept and describe the legal situation of family types other than those based on marriage, notably in the light of Article 16 of the Charter, such as families with unmarried parents, and single-parent, reconstituted and homoparental families”.

17 Digest of the Case Law of the European Committee of Social Rights, December 2012, p. 141, based on conclusions of the ECSR.

means they have available to meet them. In the Committee's opinion, a family policy of this sort must take the form of diversified action planned in harmony with and as a supplement to existing arrangements for assistance and social security.¹⁸

I Legal Protection of the Family

Within the scope of legal protection of the family, the European Committee of Social Rights (ECSR) evaluates such "equality of family treatment" issues as (A), equality between families, spouses and parents, (B) family mediation, (C) domestic violence and (D) childrens issues. While assessing the legal situation within the States Parties, the ECSR not only takes into account the States' reports but may also refer to other sources such as reports or resolutions prepared by experts,¹⁹ different state institutions,²⁰ Council of Europe bodies such as the Committee of Ministers,²¹ the Office of Commissioner for Human Rights,²² European Commission against Racism and Intolerance (ECRI)²³ or EU institutions.²⁴

A Equality among Families, Spouses and Parents

One of the obligations that the Social Charter imposes on States Parties is equal treatment among families. In this regard the Committee emphasizes that in accordance with the equal treatment principle, Article 16 ESC requires States parties to ensure the protection of vulnerable families, including Roma, Sinti and Traveller families.²⁵ The States should take measures appropriate to these families' particular circumstances in order to safeguard their rights to housing and preventing them, as vulnerable groups, from becoming homeless.²⁶ Another obligation that Article 16 implies on States is data collection.

18 ECSR, Conclusions I, Statement of Interpretation on Article 16.

19 ECSR, Conclusions XVII-1(2005), Finland.

20 ECSR, Conclusions 2004, Norway or ECSR, Conclusions XVII-1 (2005), Spain.

21 ECSR, Conclusions 2004, Romania.

22 ECSR, Conclusions XVII-1 (2005), Greece.

23 ECSR, Conclusions XVIII-1 (2006), Poland.

24 ECSR, Conclusions 2004, Romania.

25 ECSR, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, complaint No. 58/2009, decision on the merits of 25 June 2010, § 113; ECSR, *European Roma and Travellers Forum (ERTF) v. France*, complaint No. 64/2011, decision on the merits of 24 January 2012, § 143.

26 ECSR, *European Roma Rights Centre (ERRC) v. Italy*, complaint No. 27/2004, decision on the merits of 7 December 2005, § 21.

The Committee recalls that State authorities have a responsibility for collecting data on particular groups which are, or could be, discriminated against.²⁷ It is also important to underline that this collection of detailed information must respect minimum international standards.

It is also important to highlight that the principle of equal treatment implies that nationals of other Parties to the Revised European Social Charter and nationals of the other Contracting Parties to the 1961 European Social Charter, lawfully residing or regularly working in another State Party, are treated equally.²⁸ The Committee emphasises that family members who are in the territory of a Contracting Party in accordance with the right to family reunification guaranteed by Article 19 § 6 must be afforded equal treatment with nationals in all aspects related to the protection of the family.²⁹

Guaranteeing equality between spouses and between parents is another requirement placed upon the States Parties. The Committee recalls that spouses must be equal, particularly in respect of rights and duties within the couple (eg., reciprocal responsibility, ownership, administration and use of property) and children (parental authority, management of children's property). It also states that in cases of family breakdown, Article 16 requires the provision of legal arrangements to settle marital conflicts and, in particular, conflicts relating to children: care and maintenance, custody and access to children.³⁰ The Committee concludes that, if the States do not adopt appropriate measures to guarantee equality between spouses, the situation is not in conformity with Article 16.³¹

B *Family Mediation*

Within the ambit of legal protection, the States are required to establish family mediation services to help settle disputes and ensure that future relations between parents and between they and their children are not unduly damaged.³² The Committee states that to be in conformity with Article 16 ESC, these services must be easily accessible to all families. In particular families must not be deterred from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this

27 ECSR, *European Roma Rights Centre (ERRC) v. Greece*, complaint No. 15/2003, decision on the merits of 08/12/2005, § 27.

28 ECSR, Conclusions XVII-2 (2005), Latvia.

29 ECSR, Conclusions XVI-1 (2002), Statement of interpretation of Articles 12–4 and 16.

30 ECSR, Conclusions 2015, Russian Federation.

31 ECSR, Conclusions XV-1 (2000), Turkey.

32 ECSR, Conclusions 2011, Hungary.

end. Otherwise, the possibility of access for families when needed should be provided.³³ The ECSR asks States Parties whether measures governing mediation are envisaged in practice. In this regard it examines whether they cover the entire country, are free of charge and how effective they are.³⁴

C *Domestic Violence*

The Committee of Social Rights interprets Article 16 as covering the issue of domestic violence.³⁵ According to the ECSR, Article 16 requires that protection for women exists both in law (through appropriate measures and punishment for perpetrators, including restraining orders, fair compensation for the pecuniary and non-pecuniary damage sustained by victims, the possibility for victims – and associations acting on their behalf – to take their cases to court and special arrangements for the examination of victims in court) and in practice (through the collection and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and provide support and rehabilitation to victims). If the States' reports do not contain sufficient information on the situation in practice, the Committee may demand such information, particularly statistics.³⁶ If it determines that the measures taken to solve the problem of domestic violence in practice are inadequate it may conclude that the situation is not in conformity with Article 16.³⁷

The Committee also refers to other Council of Europe norms on this issue such as the Recommendation Rec (2002)5 of the Committee of Ministers of the Council of Europe to member States on the Protection of Women Against Violence, Parliamentary Assembly Recommendation 1681 (2004) on a campaign to combat domestic violence against women in Europe and the Convention on Preventing and Combating Violence against Women and Domestic Violence (İstanbul Convention). It underlines the importance of İstanbul Convention by mentioning that the instruments of the CoM and the Parliamentary Assembly have been superseded by this text as a legally binding document for those states which have ratified it. The ECSR determines in its Conclusions whether a State Party has signed or ratified the İstanbul Convention.³⁸ When assessing the situation in the States which ratified the Convention, the ECSR also refers to the reports of the Council of Europe's Group

33 ECSR, Conclusions XX-4 (2016), Luxembourg.

34 ECSR, Conclusions 2011, Lithuania.

35 ECSR, Conclusions XVII-1 (2005), Belgium.

36 ECSR, Conclusions XIX-4 (2011), Czech Republic.

37 ECSR, Conclusions 2011, Turkey.

38 ECSR, Conclusions 2019, Azerbaijan; ECSR, Conclusions 2019, Estonia.

of Experts on Action against Violence against Women and Domestic Violence (GREVIO), the body responsible for monitoring the implementation.³⁹

39 ECSR, Conclusions 2019, France: “Insofar as France has signed and ratified the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (which came into force in France on 1 November 2014), the Committee refers to the procedure to assess the conformity of the situation in France which took place in the context of this mechanism. It notes that in November 2019, the Council of Europe’s Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) published its first baseline evaluation report on France. GREVIO noted the measures taken, notably in terms of legislation, in order to strengthen the legal framework for preventing and addressing violence, as well as the considerable increase in terms of resources allocated to combating such violence. Despite these measures, GREVIO has identified a number of areas where improvement is needed (see details in GREVIO report). The Committee asks the next report to provide updated information on domestic violence against women and related convictions, the implementation of the various measures described in the report and their impact on reducing domestic violence against women, also in the light of the abovementioned GREVIO recommendations”; ECSR, Conclusions 2019, Turkey: “Insofar as Turkey has signed and ratified the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (which came into force in Turkey on 1 August 2014), the Committee refers to the assessment procedure which took place in the context of this mechanism. It notes that in October 2018, the Council of Europe’s Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) published its first baseline evaluation report on Turkey. GREVIO experts recognised progress with regard to measures to protect women from violence but pointed out the lack of evidence showing that cases of violence are effectively investigated, prosecuted and sanctioned. The report urged authorities among others to step up measures to identify and remedy gaps in the institutional response to violence against women, in accordance with the duty of due diligence, recognise forced marriage and stalking as separate offences and develop training programmes for law enforcement authorities. The Committee asks the next report to provide comprehensive and updated information on all aspects of domestic violence against women and related convictions, as well as on the use of protection orders, the implementation of the various measures described in the report and their impact on reducing domestic violence against women (including economic violence), also in the light of the abovementioned GREVIO recommendations. In the meantime, in the light of the information available, the Committee considers that it has not been established that women are ensured adequate protection, in law and in practice, against domestic violence”. It should be noted that Turkey has declared its withdrawal from the Istanbul Convention by a Presidential Decision in 2021. For the unconstitutionality of this Decision, see: “Statement from the Association of Research on Constitutional Law (ARCL) on the Presidential Decision on the Istanbul Convention”, available online at <<https://anayasader.org/statement-from-the-association-of-constitutional-research-on-the-presidential-decision-on-the-istanbul-convention>>, accessed 15 May 2023. For an analysis of this withdrawal from the view of international and human rights law, see: Başak Çali and Laurence Helfer, “The Gender of Treaty Withdrawal: Lessons from the Istanbul Convention”, available online at <<https://www.ejiltalk.org/the-gender-of-treaty-withdrawal-lessons-from-the-istanbul-convention>>, accessed 15 May 2023.

D *Child Issues*

The Committee of Social Rights points out that the ECSR treats children as individual rights' holders, since the human dignity inherent in each child fully entitles them to all fundamental rights granted to adults. Moreover, the specific situation of children, which combines vulnerability, limited autonomy and development needs, requires States to grant them specific rights enshrined in different substantive provisions of the Charter such as Article 31 § 2 (on the right to shelter); Articles 8, 11, 7, 19 § 2 (concerning right to health); Articles 9, 10, 15, 17, 19 §§ 11–12 (related to right to education); Articles 16, 27, 19§6 (protection of the family and right to family reunification); Articles 7 § 1, 17 (protection against danger and abuse); Articles 7 § 1 and § 3 (prohibition of child labour under the age of 15); and Article 17 (specific working conditions for children aged between 15 and 18 years old). In the view of the Committee, the European Social Charter is the most significant treaty at the European level for the human rights of children; it complements the European Convention on Human Rights in this area and reflects the United Nations Convention on the Rights of the Child. The ECSR also underscores that, when interpreting the ESC, it considers itself bound by the internationally recognised requirement to apply the principle of “best interests of the child⁴⁰”.

The Committee therefore states that any restrictions or limitations of custodial rights of parents should be based on adequate and reasonable criteria laid down in legislation and should not go beyond what is necessary for the protection and best interests of child and the rehabilitation of the family. In this regard it emphasizes that placement must be an exceptional measure, and is only justified when it is based on the needs of the child, namely if remaining in the family environment represents a danger for the child. Placement should not only be grounded on the financial conditions or material circumstances of the family and should be considered as a temporary solution, during which continuity of the relationship with the family should be maintained.⁴¹

Based upon this comprehensive approach, the Committee also stresses that the States should take relevant measures in law and in practice to guarantee that each child be able to express their views in proceedings concerning them.⁴²

40 ESCR, *Defense for Children International (DCI) v. The Netherlands*, complaint No. 47/2008, decision on the merits of 20/05/2009, §§ 25, 26 and 29.

41 ECSR, Conclusions 2011, Statement of interpretation of Articles 16 and 17–1.

42 ECSR, Conclusions 2004, Slovenia.

II Social and Economic Protection of Family

A *Social Policies and Social Security Issues*

Article 16 ESC requires States to implement a genuine family policy through various means. It is their responsibility to ensure an adequate standard of living for families by establishing a system of family allowances or child benefits. These benefits – which may be subject to income conditions – must constitute an adequate income supplement for a significant number of families.⁴³ Other forms of economic protection, such as birth grants and additional benefits for large families may also contribute to the implementation of this obligation. It is only to the extent that these benefits comprise social security benefits within the meaning of Article 12 (the right to social security) that the Committee deals with them in relation to both Articles 12 and 16.

Article 16 also contains the obligation to provide childcare services, in particular for young children, that are sufficient in number to meet the needs of families, affordable and accessible to all. The services offered must be of good quality (the ratio of children in relation to the number of staff, staff training, appropriate premises). Article 27 of the Revised Charter (the right of workers with family responsibilities to equal opportunities and treatment) is closely linked to Article 16.

1 Childcare Facilities

Where a State Party has accepted Article 27 of the Charter, childcare facilities and arrangements are examined under this provision.⁴⁴ State Parties are required to ensure that childcare facilities are available, affordable and of good quality (eg. coverage with respect to the number of children aged 0–6, ratio of staff to children, staff training, suitable premises and cost of childcare to parents).⁴⁵

43 ECSR, Conclusions 2006, Estonia: “The Committee considers that, to comply with Article 16 of the Revised Charter, child allowance must represent an adequate income supplement representing a significant percentage of the median equivalised income. According to MISSOC, the monthly child allowance is 150 Estonian kroons (EEK; 9.59 €). The report states that in 2004, the amount was increased to 300 EEK (20 €). According to Eurostat statistics for 2003, child allowances in Estonia amount to some 4.6 % of that income. Taking account of other family benefits and tax exemptions, the Committee considers that this amount is sufficient.”

44 ECSR, Conclusions 2011, Azerbaijan.

45 ECSR, Conclusions XVII-1 (2004), Turkey: “The report indicates that the General Directorate of Social Services and Child Protection (ŞHÇEK) is responsible for the establishment and the running of childcare, including inspection. Childcare is provided by Crèches and Daily Care Centres (for 0 to 6 years old) and Children’s Club (from 7 to

Families must be granted access to appropriate social services, in particular in times of adversity. State Parties should provide *inter alia* family counselling and psychological guidance advice on childrearing.

In order to ensure that the views of families are taken into account in the formulation of family policy, all civil organisations representing families should be consulted by the relevant authorities.⁴⁶

2 Economic Protection

a *Family Benefits*

State Parties are required to ensure the economic protection of the family by appropriate means. The primary means should be family or child benefits provided as part of social security, available either universally or subject to a means-test.⁴⁷

The Committee emphasised that the drafters of the Charter appeared to intend family allowances to fall within the scope of Article 16 because that article specifically includes “family benefits” as a means of promoting the welfare of the family. Furthermore, it is possible to satisfy the provisions of Article 12 of the Charter by complying with the conditions for the ratification of ILO Convention N° 102, i.e. acceptance of at least three social security branches out of nine. While family benefits constitute one of the nine branches, there is no reason why a State could not comply with Article 12 without providing family benefits. Thus, if a State has accepted Article 16, it has accepted a more specific obligation than that of Article 12, i.e., an obligation to protect the family through various measures, including the provision of family benefits. Therefore, while the existence of a family benefits scheme is (with other benefits) a sufficient but not necessary condition for compliance with Article 12, it is a necessary condition for fulfilling Article 16.

12 years of age). Childcare structures can be public or private. According to the report, there are 12 public crèches and daily care centres run by SHÇEK gathering for about 540 children. 500 additional children attend temporary structures established after the 1999 earthquake. Private registered institutions (1,179) offer their service to some 17,430 children. Childcare is free both in public and private structures for low income families benefiting about 542 children. The Committee observes from other sources that, in 1998, about 4.5% of the children aged 3 to 6 were attending pre-school education, or that in 1999/2000, the enrolment rates were 10% in pre-school education. Taking into consideration that, according to official sources there are about 3.2 million children aged 0–4 years, the Committee finds the situation not to be in conformity with the Charter because of the manifestly inadequate provision of childcare places.”

46 ECSR, Conclusions 2006, Statement of Interpretation on Article 16.

47 ECSR, Conclusions 2006, Statement of Interpretation on Article 16.

Thus, it is clear that the authors of the Charter envisaged that family allowances should form part of the family policy provided for under Article 16. Nevertheless, family allowances are a “social security” benefit and as such can be viewed within the context of Council of Europe instruments (specifically the 1953 Interim Agreements and the 1964 European Code of Social Security) which allow for a qualifying residence period of up to six months to be imposed in respect of non-contributory (family) allowances in order to prevent abuse.⁴⁸

b *Family Benefits of a Sufficient Amount*

The Committee considers that, in order to comply with Article 16, family benefits must constitute an adequate income supplement, which is the case when it represents a significant percentage of the median equivalised income.⁴⁹ The level of benefit should be adjusted as necessary to keep pace with inflation. Other forms of economic protection, such as birth grants, additional payments to large families or tax relief in respect of children, are also applicable to the implementation of this provision.

According to the Committee, social vulnerability, which is linked to not being in a position to fulfill parental responsibilities, often goes hand in hand with increased economic hardship.⁵⁰ The measure of suspending for a period of one year and possibly terminating family allowances in cases of truancy (interruption due to the lack of school attendance for 3 successive months or for 6 months in one school year), would increase the economic and social vulnerability of the children concerned. Consequently, such measures are not in principle proportionate to the aim pursued and constitute an undue restriction on the right of families to social, legal and economic protection.⁵¹

48 ECSR, Conclusions XI-1 (1989), Denmark.

49 ECSR, Conclusions XX-4, Poland. “Median equivalised income (Eurostat): the income of a household is established by summing all monetary income received from any source by each member of the household. In order to reflect differences in household size and composition, this total is divided by the number of ‘equivalent adults’ using a standard scale (the so-called modified OECD equivalence scale). The resulting figure is attributed to each member of the household.” (ECSR, Conclusions 2006, Statement of Interpretation on Article 16; ECSR, Conclusions 2006, Estonia).

50 ECSR, *European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France*, complaint No. 82/2012, decision on admissibility and the merits of 19 March 2013, § 41.

51 ECSR, *Equal Rights Trust v. Bulgaria*, complaint No. 121/2016, decision on the merits.

3 Vulnerable Families

State Parties are required to ensure the protection of vulnerable families, single-parent families and Roma families, in accordance with the principle of equality of treatment.

The Committee examines the means used by States to ensure the social, legal and economic protection of the various types of families in the population, especially single parent families, with a particular emphasis on vulnerable families, including Roma. States can choose such means freely, with the provision that they must not jeopardise the effective protection of Roma families.⁵² For the situation to be compatible with the treaty, State Parties must (...) pay close attention to the impact of the policies adopted on each category of persons concerned, particularly the most vulnerable.⁵³

4 Equal Treatment

State Parties must ensure equal treatment of foreign nationals of other State Parties who are lawfully resident or regularly working in their territory with respect to family benefits. However, by analogy with Article 12 § 4 and based on the Appendix, Article 16 precludes the application of length of residence requirements as far as contributory benefits are concerned, but States may apply a length of residence requirement as regards noncontributory benefits on condition that the length is not excessive.⁵⁴

The proportionality of such length of residence requirements is examined on a case-by-case basis having regard to the nature and purpose of the benefit: a period of 6 months is reasonable and therefore in conformity with Article 16.⁵⁵ On the other hand, periods of 1 year, and *a fortiori*, 3–5 years are manifestly excessive and therefore in violation of Article 16.⁵⁶ The question as to whether the residency of a child in the territory is required before child benefits will be paid is examined exclusively under Article 12 § 4.⁵⁷

The Committee recalls that Article E also prohibits all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps

52 ECSR, Conclusions 2006, Statement of Interpretation on Article 16.

53 ECSR, *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, complaint No. 39/2006, decision on the merits of 5 December 2007, § 54.

54 ECSR, Conclusions XIV-1 (1998), Sweden.

55 ECSR, Conclusions XIV-1 (1998), Sweden.

56 ECSR, Conclusions XVIII-1 (2006), Denmark.

57 ECSR, Conclusion XVI-1 (2002), Statement of Interpretation on Article 16.

to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all.⁵⁸ Applying different measures must not lead to give rise to a disproportionate impact on specific group.⁵⁹

B *Housing*

1 General Remarks

The right to housing is regulated in Article 31 of the Revised European Social Charter of 1996 which determines the measures required to promote access to housing of an adequate standard, preventing and reducing homelessness with a view to its gradual elimination and making the price of housing accessible to those without adequate resources. Additionally, the scope and measures concerning the right to housing had been elaborated under the decisions and conclusions of the ECSR also with regards to Article 16 of the Social Charter prior to the revised charter coming into existence. Thus, Article 16 remains the sole legal protection on housing rights for the States that have not ratified the Revised Charter or have not accepted Article 31 in the Revised Charter.

In these cases, the ECSR referred to other international instruments and decisions in order to extend its jurisprudence to housing cases and clarify its scope.⁶⁰

2 Housing in Respect of Family Protection

While monitoring and creating standards for the right to housing in respect of family protection, the ECSR focused its attention on particularly vulnerable people. The next section of this chapter discusses the personal scope of this jurisprudence, while the following will shed the light on the scope of this right.

a *Personal Scope*

According to the Article 31 § 1 of the Social Charter everyone has the right to suitable housing as a means of ensuring an adequate standard of living. In examining the ECSR decisions and conclusions on the subjects of the right to housing, we find that there is a distinctive group of individuals which is

58 ECSR, *Autism-Europe v. France*, complaint No. 13/2002, decision on the merits of 4 November 2003, § 52.

59 ECSR, Decision on the merits, *Equal Rights Trust v. Bulgaria*, complaint No. 121/2016.

60 ECSR, Conclusions XIII-3(1995), Turkey: “In this regard, the Committee also took note of the observations of the Turkish Government in relation to the questions posed in the previous conclusion as regards the evacuation and destruction of villages in south east Turkey. The Committee also took note of the report of the European Commission of Human Rights in a case brought before the European Court of Human Rights in December 1995 (Application No. 21893/93, Akdivar and Others v. Turkey)”.

addressed, such as elderly and disabled people, vulnerable families, newly married couples, young couples, families with children, single parent families, Roma Families, homeless people and persons rendered homeless.

Elderly and Disabled People: The ECSR evaluated elderly and disabled people as a particular group of individuals in terms of economic help and public sector housing. In one of its conclusions –in the report on United Kingdom– the ECSR found that the state continues to undertake its obligations under Article 16 through its sustained efforts as regards public sector housing for elderly and disabled people.⁶¹ In this respect no further decisions or conclusions of the ECSR could be found, however, it is significant to note the jurisprudence and documents of other international human rights instruments. On this point, the ICESCR in its General Comment No. 4 mentions accessibility as a component of the right to adequate housing and further defines disadvantaged groups as the elderly, children, physically disabled, terminally ill, HIV-positive individuals, persons with persistent medical problems, mentally ill people, victims of natural disasters, people living in disaster-prone areas among those who must be accorded full and sustainable access to adequate housing.⁶² In this sense, in the *Marzari v. Italy* case, which concerned a disabled individual, the ECtHR primarily stated that Article 8 does not guarantee that the state authorities must resolve housing problems of an individual, however, the refusal of the state to provide assistance to an individual suffering disease might cause in some circumstances – depending upon the impact on the private life – an issue under the Article 8 respect for private life of the ECHR.⁶³ Considering that the ECHR does not provide economic and social rights, the ECtHR placed special emphasis on the link between a protected right (right to private life) and a social right (right to housing).

61 ECSR, Conclusions VIII (1984), United Kingdom.

62 CESCR, General Comment No. 4 (1991), The right to adequate housing (Article 11(1) of the Covenant), 13 December 2001, E/1992/23, § 8(e).

63 ECtHR, dec., 2 December 2014, *Strzelecka v. Poland*, no. 14217/10, § 49: “The Court must first examine whether the applicant’s rights under Article 8 were violated on account of the decision of the authorities to evict him despite his medical condition. It further has to examine whether the applicant’s rights were violated on account of the authorities’ alleged failure to provide him with adequate accommodation. The Court considers that, although Article 8 does not guarantee the right to have one’s housing problem solved by the authorities, a refusal of the authorities to provide assistance in this respect to an individual suffering from a severe disease might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such refusal on the private life of the individual (ECtHR, *Marzari v. Italy*, App. No. 36448/97, Admissibility Decision, 04.05.1999).”

Vulnerable Families: The ECSR reiterates that the essential protection concerning the right to housing for vulnerable families is housing and rental allowances and their supplements.⁶⁴ The ECSR examined whether concrete steps have been taken in order to improve the living conditions of vulnerable families.⁶⁵ In addition to the concrete steps and statistics showing the position of the state, the ECSR also considered and relied upon non-state-oriented evidence/information in order to examine the issue. By doing so, the ECSR has sought to follow-up for possible negative effects measures taken by States.⁶⁶

In this regard, the ICESCR in its General Comment No. 4 cites affordability as a component of the right to adequate housing particularly in respect to housing related costs depending on income levels, protection against unreasonable rent levels or rent increases and ensuring the ability to obtain housing supplies.⁶⁷

Family Composition: Under the conclusions of the ECSR the composition of the family in terms of young couples (with/without children),⁶⁸ newly married couples⁶⁹ (as especially stated in Article 16 of the Social Charter), families with children⁷⁰ and single parent families⁷¹ have been evaluated. The ECSR in its Conclusion on a Croatian Report on 2003–2004 collectively examines

64 ECSR, Conclusions VIII (1984), United Kingdom; Conclusions XX-4 (2015), Iceland; Conclusions XX-4 (2015), Czech Republic.

65 ECSR, Conclusions 2017, Hungary: “The Committee takes note of the efforts made by Hungary; However nothing in the report allows it to assess the impact of those strategies on the situation of the persons concerned, in particular, the number of social housing units built, rehabilitated or renovated, the number of vulnerable families moved into an adequate housing and, measures undertaken to accompany families in finding adequate housing”.

66 ECSR, Conclusions XX-4 (2015), Denmark: “Pursuant to the Danish Act on Social Housing, social housing is open to the entire population with a special focus on vulnerable groups with low income. (...) The report indicates that there are approximately 600,000 social housing units representing 22% of the total number of dwellings. In 2013, 83,000 households with children with low income had 42% of the rent covered by housing benefit. (...) The Committee notes from the comments submitted by Danish Institute for Human Rights’ (DIHR) that the policies for improving living conditions in the challenged social housing neighbourhoods have the inverse effect of preventing vulnerable tenants from moving into these neighbourhoods. The Committee therefore asks the next report to indicate what steps are being taken to remedy this situation”.

67 CESCR, General Comment No. 4 (1991), *cit.*, § 8(c).

68 ECSR, Conclusions 2006, Lithuania; ECSR, Conclusions XVIII-1 (2006), Croatia.

69 ECSR, Conclusions IX-2 (1986), Spain.

70 ECSR, Conclusions 2006, Lithuania; ECSR, Conclusions XVIII-1 (2006), Croatia; ECSR, Conclusions XX-4 (2015), Denmark.

71 ECSR, Conclusions 2006, Lithuania.

the issue of housing in terms of family and states that “Article 16 is concerned with maintaining family ties” and includes “household (s) composed of parents, including lone parents, with children, and young couples likely to have children”.⁷² In understanding the concept of family with regard to the right to adequate housing, it is significant to take into account General Comment No. 4 of the ICESCR. Therefore, the emphasis on the concept of family must be taken in a broad sense and any form of discrimination must be eliminated for purposes of the enjoyment of right to adequate housing.⁷³

Persons Rendered Homeless: The ICESCR seeks multiple procedural and material remedies for persons rendered homeless by state action. In that sense, in its Conclusion on Turkish Reports of 1990–1991 and 1992–1993 the ECSR evaluated the situation of the state vacating or merging villages in the south-eastern part of Turkey to secure law and order, or to protect its inhabitants, and asks whether the authorities had taken measures to re-house or provide any compensation to persons who had been rendered homeless.⁷⁴ In examining the situation in Turkey, the ECSR – by referring to the ECHR case of *Akdivar and others v. Turkey*⁷⁵ – concluded that the state had failed to re-house or to provide adequate financial support and compensation for the villagers deprived of their right to adequate housing.⁷⁶

Roma Families: The concept of housing in respect of family life could be considered under the issue of “cultural identity”; this issue has been dealt with in respect to Roma Families.⁷⁷ The ECSR places special emphasis on Roma Families in regard to two main issues, one being economic and other being about discrimination. In its conclusions the ECSR addresses the issue of removing barriers faced by Roma families in their attempts to access adequate housing by advancing efforts dealing with the disadvantages faced these families.⁷⁸ In addition, the ECSR underlines the equality principle and further states that Roma Families should enjoy rights equal to those of nationals in

72 ECSR, Conclusions XVIII-1 (2006), Croatia.

73 CESCR, General Comment No. 4 (1991), *cit.*, § 6.

74 ECSR, Conclusions XIII-1 (1993), Turkey.

75 ECmHR, 19 October 1994, *Akdivar and others v. Turkey*, no. 21893/93. See also: ECtHR [GC], 16 June 2015, *Chiragov and others v. Armenia*, no. 13216/05, Judgment; ECtHR, *Sargsyan v. Azerbaijan*, 16 June 2015, no. 40167/06.

76 ECSR, Conclusions XIII-3 (1993), Turkey.

77 Roma families issue under the right to housing has been elaborated by the ECtHR under the scope of the article 8 of the Convention. See: Bernadette Rainey, Elizabeth Wicks and Clare Ovey, *Jacobs, White & Ovey: The European Convention on Human Rights*, Sixth Ed., Oxford, Oxford University Press, 2014, p.383–386.

78 ECSR, Conclusions XX-4 (2015), United Kingdom.

terms of accessing social housing.⁷⁹ In addition, on the issue of discrimination against Roma Families, the ECSR refers to conclusions of the European Commission against Racism and Intolerance and points out the increase in socially excluded localities in the case of Roma Families.⁸⁰

b *Material Scope*

The ECSR addresses the scope of the right to housing as it relates to adequate housing standards as an element of family protection. In its conclusions the ECSR states that the State Parties must ensure adequate standards of housing depending on the size, the composition and the needs of the family as well as essential services, such as heating and electricity.⁸¹ Moreover, the ECSR stresses that the scope of the right to housing in terms of family protection extends to including both enjoyment of security of tenure in order to guarantee “the meaningful enjoyment of family life in a stable environment” and protection from unlawful eviction.⁸²

Additionally, other international instruments also interpret the concept of the right to housing in a broad sense. One example would be General Comment No.4 of the ICESCR which under Article 7 states that right to housing guarantees the right to live somewhere in security, peace and dignity. Under the same General Comment ICESCR defines the concept of adequacy under Article 8 where it determines the meaning of adequacy through such factors as social, economic, cultural, climatic, ecological and other factors including legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.

As to the legal security of tenure, the ICESCR underlines the function of this concept as a guarantee of legal protection against forced eviction, harassment and other threats. At the same time in the conclusions and decisions of the ECSR, the issue of eviction⁸³ receives the weightiest attention in terms of discussing the availability of alternative housing/accommodation as a substantial safeguard. The ECSR notes that alternative housing/accommodation

79 ECSR, Conclusions XX-4 (2015), Denmark.

80 ECSR, Conclusions XX-4 (2015), Czech Republic.

81 ECSR, Conclusions 2017, Hungary.

82 ECSR, *European Roma Rights Centre v. Greece*, Collective complaint No: 15/2003, decision on the merits of 8 December 2004, § 24.

83 ECSR, *European Federation of National Organisations working with the Homeless (FEANTSA) v. France*, cit., § 86: “Eviction may be defined as the deprivation of housing which a person occupied on account of insolvency or wrongful occupation.”

has to be provided in the case of eviction.⁸⁴ The ICESCR accords broad attention to the concept of eviction, regarding it as the last resort while all feasible alternatives are to be considered through prior consultation with all affected persons.⁸⁵ Regarding the standards for eviction, the ICESCR establishes the criteria in relation to other human rights and states that individuals facing forced eviction should not be rendered homeless or vulnerable to the violation of other human rights. Accordingly, States must take all appropriate measures to the maximum of their available resources to ensure adequate alternative housing.⁸⁶ The ICESCR stresses the significance of the protection of the family unit when dealing with eviction, especially when the persons being evicted are responsible for the care and education of the dependent children.⁸⁷

c *Procedural Safeguards*

The ECSR places special emphasis on the procedural issues in order to guarantee lawful implementation of any eviction. The ECSR points out that the effective protection of the right to adequate housing must be implemented through adequate procedural safeguards.⁸⁸ ECSR sets the standards for eviction to be in compliance with the Social Charter as: “an obligation to consult the parties affected in order to find alternative solutions to eviction”, “an obligation to fix a reasonable notice period before eviction”, “accessibility to legal remedies”, “accessibility to legal aid” and “compensation in case of illegal eviction⁸⁹”.

84 ECSR, *European Roma Rights Centre v. Greece*, Collective complaint No. 15/2003, decision on the merits of 8 december 2004, § 50.

85 CESCR, General Comment No. 7 (1997), The right to adequate housing (Article 11(1) of the Covenant), Forced evictions, 20 May 1997, E/1998/22, § 13.

86 *Ibid.*, § 16. See also: CCPR, 3 January 2017, “*I Elpida*” – *The Cultural Association of Greek Gypsies from Halandri and Suburbs, and Stylianos Kalamiotis v. Greece*, Communication No. 2242–2013, §12.2.

87 CESCR, 21 July 2017, *Mohamed Ben Djazia and Naouel Bellili v. Spain*, Communication No.5/2015, § 15.4: “Human rights are indivisible and interdependent. Accordingly, State obligations with regard to the right to housing should be interpreted together with all other human rights obligations and, in particular, in the context of eviction, with the obligation to provide the family with the widest possible protection (Article 10 (1) of the Covenant). The obligation of States parties to provide, to the maximum of their available resources, alternative accommodation for evicted persons who need it includes the protection of the family unit, especially when the persons are responsible for the care and education of dependent children”.

88 ECSR, Conclusions XX-4 (2015), Netherlands Curaçao.

89 ECSR, Conclusions XX-4 (2015), Denmark; ECSR, Conclusions XX-4 (2015), Netherlands Aruba; ECSR, Conclusions XX-4 (2015), Netherlands Curaçao; ECSR, Conclusions 2017, Romania.

Reasonable notice period before eviction: Parties are required to give notice prior to eviction taking place. Such notice must be an official one ordered by a court.⁹⁰ The ECSR finds that a reasonable notice period should be no shorter than two months and has to rely on a court bailiff.⁹¹ Further, as to the timing of the eviction, it is stated that the winter period and nighttime are not acceptable times for the eviction of those who have legal status in respect to the property.⁹²

Accessibility to legal remedy and legal aid: An important component of a procedural safeguard against unlawful eviction is access to affordable and impartial judicial or other remedies,⁹³ including access to legal aid.⁹⁴ As to the legal aid, the affected persons may be granted a legal representative before the courts under legal proceedings, including pro bono assignment of an attorney.⁹⁵

Compensation in the case of illegal eviction: Compensation for illegal evictions shall be provided.⁹⁶

d *Interim Measures*

In order to “avoid irreparable injury or harm to the persons concerned” as provided in Rule 36 § 1 of the Rules of Procedure of the ECSR, the Committee may adopt interim measures. For instance in *European Roma Rights Centre (ERRC) v. Belgium*, the ECSR, indicated to the Government to adopt all possible measures “to guarantee that persons whose caravans have been seized are not rendered homeless or forced to live in unacceptable living conditions” and “to ensure that all affected persons have due access to water, sanitation, electricity,

90 CCPR, 30 August 2017, *Petr Gatilov v. Russian Federation*, Communication No.2171/2012, § 9.2.

91 ECSR, *European Federation of National Organisations working with the Homeless (FEANTSA) v. France, cit.*, § 87. The ECSR states that 30 days notice period for tenants and 5 days for occupiers before eviction are too short and does not meet the standards of the Charter. See: ECSR, Conclusions 2017, Romania.

92 ECSR, Conclusions 2017, Romania; ECSR, *European Federation of National Organisations working with the Homeless (FEANTSA) v. France, cit.*, § 87.

93 ECSR, Conclusions XX-4 (2015), Netherlands Curaçao.

94 ECSR, Conclusions XX-4 (2015) Czech Republic. See also CESCR, General Comment No. 7 (1997): The right to adequate housing (Article 11(1) of the Covenant): Forced evictions, *cit.*, § 13.

95 ECSR, Conclusions XX-4 (2015), Czech Republic.

96 ECSR, *European Federation of National Organisations working with the Homeless (FEANTSA) v. France, cit.*, § 86. See also: General Comment No. 7 (1997): The right to adequate housing (Article 11(1) of the Covenant): Forced evictions, *cit.*, § 13.

necessary medical and social assistance as well as to legal aid, in particular taking into account the needs of the vulnerable groups concerned (including children, persons with disabilities and elderly persons)⁹⁷. Likewise, in *Defence for Children International (DCI), European Federation of National Organisations working with the Homeless (FEANTSA), Magistrats Européens pour la Démocratie et les Libertés (MEDEL), Confederación Sindical de Comisiones Obreras and International Movement ATD Fourth World v. Spain* the Committee invited the Government to adopt immediate measures “to ensure that all affected persons have access to electricity and heating, in particular taking into account the needs of the vulnerable groups concerned (including children, persons with disabilities, persons with medical conditions, persons with foreign origin, older persons and Roma)” and “to offer appropriate alternative accommodation to the affected persons where it is not possible, to safely ensure access to electricity and heating.”⁹⁸

Concluding Remarks

Article 16 ESC, offering a wide legal and socioeconomic protection of the family, allowed the ECSR to extend the Charter’s protection of family members to situations covered by other specific articles of the Charter which may not have been ratified by states. The importance of Article 16 on this point is more visible for instance, as to the right to housing, considering that only fifteen States (out of thirty-five) have agreed to be bound by Article 31, whereas the total number of States that have accepted Article 16 is thirty-seven (seven parties to the ESC and thirty parties to the revised ESC). For those who have not ratified the revised Charter or have not accepted Article 31, Article 16 remains as the sole legal protection of housing rights.

It is also worth highlighting that the ECSR has taken into consideration the social changes within the European states over the years and has not accepted or limited the scope of its caselaw to the ‘classical notion of the family’. This has

97 ECSR, *European Roma Rights Centre (ERRC) v. Belgium*, complaint No. 185/2019, decision on admissibility and immediate measures of 14 May 2020.

98 ECSR, *Defence for Children International (DCI), European Federation of National Organisations working with the Homeless (FEANTSA), Magistrats Européens pour la Démocratie et les Libertés (MEDEL), Confederación Sindical de Comisiones Obreras and International Movement ATD Fourth World v. Spain*, complaint No. 206/2022, decision on admissibility and immediate measures of 19 October 2022.

granted the ECSR the opportunity to construe Article 16 as a pivotal provision safeguarding the rights of diverse family structures, including single-parent families, same-sex families, and offering protection to unmarried couples or to children born out of wedlock, thus making of the Social Charter ‘a living instrument’ around family issues and rights.