



Protection of Children's Rights in the European Social Charter

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Abstract. The article analyzes the guarantees of children's rights in the European Social Charter. The perspective of the considerations was captured by recognizing children as people deserving special care from public authorities (vulnerable group). A dogmatic and linguistic analysis of the provisions of the European Social Charter was carried out and the directions of the jurisprudence of the European Committee of Social Rights were examined. The European Social Charter contains extensive guarantees in the area of children's socio-economic rights. This concerns, in particular, the right to education, social protection, housing and health. The position of the European Committee of Social Rights determines the effectiveness of the guarantees set out in the provisions of the European Social Charter. Thanks to it, it is possible to assess the compliance of national law and practice with the European Social Charter.

Keywords: European Social Charter, children's rights, vulnerable groups, European Committee of Social Rights

JEL Classification: K33, K38.

Citation: Dunaj, K., & Dunaj, P. (2023).

Protection of Children's Rights in the European Social Charter. *Eastern European Journal of Transnational Relations*, 7(3), 43-50.

<https://doi.org/10.15290/ejtr.2023.07.03.03>

Academic Editor(s): Anna Drabarz
& Łucja Kobroń-Gąsiorowska

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INTRODUCTION

The 60th anniversary of the adoption of the European Social Charter prompts us to reflect on the challenges in the field of protection of social rights and the possibilities of ensuring their real protection. The rights of children, immature people who are unable to effectively protect their legal interests, play a significant role. For this reason, children are included in the so-called vulnerable groups, deserving special protection. This article will characterize the catalog of guarantees of children's rights as defined by the provisions of the European Social Charter. The directions of the jurisprudence of the European Committee of Social Rights will also be analyzed. First, however, the author of this study will present the essence of the so-called vulnerable groups, belonging to which result in the

need to provide special care and concern of public authorities in order to fully implement the rights guaranteed by the acts of international human rights law. Children occupy a special place among people belonging to these groups.

1. PROTECTION OF CHILDREN'S RIGHTS AS A VULNERABLE GROUP

In a human rights guarantee system, it is essential to protect the rights of persons belonging to vulnerable groups in order to protect them from abuse and neglect. The efforts of public authorities and non-governmental organizations should aim nowadays primarily to protect persons whose fundamental rights and freedoms are threatened for various reasons, due to the fact that these persons have a less capacity than other members of society to defend their interests. For this reason, they deserve special attention and care from public authorities. The application of special protective measures towards vulnerable groups should be a priority of the state's policy, even if it has limited economic or financial resources necessary to fully meet the accepted guarantees (Dunaj & Ryszka, 2022, p. 319 et seq.).

The reasons why some groups require special attention can be boiled down to the common denominator of discrimination or vulnerability in various spheres of social life. Therefore, in order to ensure effective protection of the rights of persons belonging to vulnerable groups, state intervention is necessary, the essence of which is to ensure the possibility of using specific goods or services (Fasciglione, 2012, p. 5 et seq.). Only under such conditions is it possible to truly and fully protect human rights. Public authorities have a duty to take effective action to counter the situations of abuse and neglect of vulnerable persons and, if they occur, to provide effective assistance (Albertson Fineman, 2017).

The categories of vulnerable groups are not strictly defined by international human rights acts. As part of the legal analysis, it is therefore necessary to establish the reasons why certain categories of people may be classified as vulnerable. There is no doubt, however, that this catalog should include: children, elderly people, homeless people, people with disabilities, undernourished people, prisoners, migrants and refugees, and people in a situation of social exclusion. The criteria justifying the classification of a specific individual to a sensitive group are, in particular, age, sex, health or nationality. The problem of the sensitivity of individual social groups is exacerbated in the event of more than one circumstance justifying the classification as a vulnerable person (e.g. the issue of elderly people living in poverty or in conditions of social exclusion). In such a situation, determining the actual level of protection requires taking into account a number of provisions ensuring respect for human rights.

There is no uniform approach in international law to the problem of protecting particularly vulnerable groups. It is not uncommon to find parallel or successive adoption of instruments on the same topic at the universal and regional level. This is the solution that we encounter in the area of the protection of children's rights. The binding act at the global level is the 1989 UN Convention on the Rights of the Child, while in Europe – the Convention on the Exercise of the Rights of the Child, adopted by the Council of Europe in 1996.

The European Social Charter has been concerned with the protection of the rights of persons belonging to vulnerable groups since its adoption in 1961. The protection of the rights of these people was significantly strengthened in the 1996 revision of the European Social Charter. The new guarantees include protection against poverty and social exclusion (Articles 30 and 31).

The case law of the European Committee of Social Rights, and more generally at the level of international protection, pays particular attention to the problem of children as a vulnerable group. Children, as actors of human rights, deserve a higher level of human rights protection in themselves, as vulnerable and incapable of self-defense. However, there are countless disadvantaged children who should receive special attention from human rights bodies and institutions, for example in times of armed conflict or in the case of the children of refugees or migrants.

2. THE SCOPE OF PROTECTION OF CHILDREN'S RIGHTS IN THE EUROPEAN SOCIAL CHARTER

Moving on to the guarantees for the protection of the rights of the child laid down in the European Social Charter, it is necessary to point out to Article 17 as a rule that plays a fundamental role in this respect. Article 17 ensures, on an equal basis, the right of children and young people to social, legal and economic protection (Lukas, 2021, p. 223-234). The provision applies to all persons under the age of 18, unless, in accordance with the law applicable to the child, the age of majority was achieved earlier, without prejudice to other specific provisions of the Charter. Article 17 covers the following issues: the legal status of the child, children's rights in public care, protection of children against violence, mistreatment and exploitation, children in conflict with the law and the right to assistance.

Based on Article 17 of the European Social Charter, the European Committee of Social Rights formulates a general ban on any form of violence against children. This rule obliges States Parties to the Charter to establish expressly that any form of corporal punishment against children is prohibited under circumstances (ECSR, *World Organisation Against Torture (OMCT) v. Portugal*, complaint No. 34/2006, decision on the merits of 6 December 2006, § 8).

Article 17 also guarantees the right of all children to education. States Parties to the Charter are obliged to take all appropriate and necessary measures to ensure free primary and secondary education for children and young people and to encourage regular school attendance. This does not mean, however, the obligation to provide compulsory education up to the age of 18, but in Poland such an obligation results from Article 70 paragraph 1 of the Constitution of the Republic of Poland.

In the light of Article 17 of the European Social Charter, the States parties are obliged to establish a system of free education and to ensure access to it for all children, respecting the principle of equality (ECSR, *Activity Report 2019*, p. 26). Actions taken by public authorities must not segregate children. In this context, the European Committee of Social Rights criticized the conduct of Slovenia and France towards Roma children (ECSR, *Conclusions 2005, Slovenia*, Article 7 § 1, p. 193; ECSR, *European Roma and Travellers Forum (ERTF) v. France*, complaint No. 119/ 2015, decision on the merits of 5 December 2017, § 69).

The supplement to the guarantee of the right to education under Article 17 are the provisions of Article 7 of the European Social Charter. Persons who are still subject to compulsory education may not be employed in work that would deprive them of full benefit of education. In order not to deprive children of the full benefit of their education, States Parties must provide for a compulsory and uninterrupted period of rest during school holidays. Its duration may not be less than 2 weeks during the summer holidays. National law must set the minimum age for admission to work to be 15 years. National law must set 18 as the minimum age for admission to certain professions when considered unsafe or unhealthy. There must be an appropriate legal framework to identify potentially hazardous work that either lists such forms of work or identifies the types of hazards (physical, chemical, biological) that may arise in the performance of the work.

Article 7 of the European Social Charter establishes an exception in the prohibition of admitting children under 15 to work in the form of the possibility for children to perform light work, i.e. work that does not pose a threat to the health, moral well-being, development or education of children. The State Party may establish a list of tasks that children may perform or determine the types of work that may be considered light work in this context (ECSR, *Conclusions, 2005, Romania*, Article 17 § 1, p. 178). Significant importance should be attached to the position of the European Committee of Social Rights, which recognized that Article 7 The Charter also covers the child's work in the household, i.e. in a situation where the child is not formally entitled to the status of an employee (ECSR, *International Commission of Jurists (ICJ) v. Portugal*, collective complaint No. 1/1998, decision on the merits of 9 September 1999, § 28).

Moreover, the States Parties to the European Social Charter undertake actions to ensure special protection against physical and moral threats to which children and young people are exposed, and in particular against threats arising directly or indirectly from their work. It should be emphasized in this context that an effective policy against the sexual abuse of children is of particular importance.

3. HUMAN RIGHTS GUARANTEES IN THE EUROPEAN SOCIAL CHARTER OF PARTICULAR IMPORTANCE FOR CHILDREN

3.1. Protection of the rights of refugee and migrant children

In addition to the provisions of Article 7 and Article 17 the European Social Charter contains a number of human rights guarantees that are particularly relevant to children. First of all, it is necessary to point out the need to ensure effective protection of the rights of children of refugees and migrants, especially those who cross the state border illegally. Children as immature persons cannot be held responsible for their place of residence. The abolition of the state authorities' responsibility for respecting the fundamental rights of illegally residing children is tantamount to a threat to the right to life, health, mental and physical integrity and the preservation of human dignity.

Therefore, the provisions of the European Social Charter should not be interpreted in a way that would expose the children of foreigners illegally residing in a given country to a serious violation of their fundamental rights due to the lack of guarantee of compliance with the social rights enshrined in the Charter. Even more so, state authorities cannot relinquish responsibility for the protection of the rights of unaccompanied children on the pretext of their unregulated legal situation. As the right to refugee status is closely related to the right to life and is crucial for the respect of the human dignity of every person, pursuant to Article 31 sec. 2 of the European Social Charter, States Parties are obliged to provide adequate shelter also to children and adults unlawfully residing in their territory as long as they are under their jurisdiction.

Migrants and refugees are classified as vulnerable groups as people seeking better living conditions, shelter from war or political repression. The Annex to the European Social Charter (Scope of the Social Charter in terms of persons protected) is essential for the protection of the rights of migrants and refugees. The Appendix, paragraph 2, is the only place in the Charter that deals with refugees. According to this provision each State Party must grant to refugees as defined in the Convention relating to the Status of Refugees of 1951 and lawfully staying in its territory, treatment as favorable as possible, and in any case not less favorable than required under the Convention (ECSR, Conclusions 2015, Statement of interpretation: the right of refugees under the Charter). On the other hand, paragraph 3 is devoted to stateless persons: "Each Party will grant to stateless persons as defined in the Convention on the Status of Stateless Persons done in New York on 28 September 1954 and lawfully staying in its territory, treatment as favorable as possible and in any case not less favorable than under the obligations accepted by the Party under the said instrument and under any other existing international instruments applicable to those stateless persons".

In the case of all foreigners, including refugees and stateless persons, the protection of the Charter is granted only to persons legally residing in the territory of the receiving state. In order to take advantage of the rights guaranteed by this provision, a foreigner must be a citizen of one of the Parties to the Charter or regularly work in the territory of the interested Party. As a rule, foreigners who do not have the citizenship of the Charter are excluded from the scope of the Charter. However, the Parties may extend the application of the Charter to persons other than those covered by the Annex. On the basis of the right to social and medical assistance the European Committee of Social Rights stated, seeking to ensure the effectiveness of this law, that Article 13 § 4 of the Charter "extends the scope of the first three paragraphs and covers not only foreigners who are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned, but also those who are simply staying in the territory of another Contracting Party without residing (including refugees within the

meaning of the Geneva Convention of 28 July 1951)" (ECSR, Conclusions 1996, Statement of interpretation of article 13, p. 54-57).

As can be seen from the above, the guarantees of the European Social Charter are limited to migrants or refugees residing legally in the territory of the State Party. However, even those who do not fulfill this condition cannot be deprived of the most basic rights enshrined in the Charter. Their fundamental rights, such as the right to life, physical integrity and human dignity, must not be violated either. In particular, the refusal to exercise the right to medical assistance in the territory of the State Party, even if they stay there illegally, is considered to be contrary to the provisions of the European Social Charter (ECSR, *International Federation of Human Rights Leagues v. France*, complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 30-32).

The protection of the rights of the children of refugees and emigrants becomes particularly important when combined with other rights guaranteed by the provisions of the European Social Charter. An important manifestation of the protection of the rights of migrants and refugees as a particularly vulnerable group is the right of migrant workers and their families to protection and assistance (Article 19). A special dimension of this policy is the creation of the possibility of reuniting the family of a foreign worker entitled to settle in the territory of the State.

The problem of protection of the rights of migrant and refugee children was revealed in the jurisprudence of the European Committee of Social Rights. The Committee announced a particularly important position in the case of *Defense for Children – International (DCI) v. Belgium* (ECSR, *Defence for Children International (DCI) v. Belgium*, complaint No. 69/2011, decision on the merits of 23 October 2012, § 38). The complaint concerned depriving the children of refugees of social assistance. The European Committee of Social Rights (ECSR) stated that the government of Belgium did not take „the necessary and appropriate measures to guarantee the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the right to life, to psychological and physical integrity and to respect for human dignity” (Jimenda Quesada, 2015, p. 258-259).

The need for effective protection of the rights of the child leads the Committee to depart from the restrictive interpretation of the provisions of the Charter, the adoption of which would result in depriving foreigners staying illegally on the territory of the State Party of guarantees of their fundamental rights. The Committee considered that such an effect would be incompatible with the United Nations Convention on the Rights of the Child, ratified by all member states of the Council of Europe. The Committee therefore interprets the Convention on the Rights of the Child as given by the UN Committee on the Rights of the Child when it rules on an alleged violation of any right granted to children under the Charter (ECSR, *World Organisation against Torture v. Ireland*, complaint No. 18/2003, decision on the merits of 7 December 2004, § 61).

3.2. Protecting children from homelessness

The European Social Charter contains guarantees to protect children from homelessness. They are expressed in ensuring the right to housing and the acceptance by States Parties of obligations in the area of combating homelessness (Strehlow & Amos-Jones, 1999, p. 261-274). According to Article 31 of the Charter to ensure the right to housing the State must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right in question. The right to housing must be considered from a practical, not theoretical, point of view. Therefore, the state must take all necessary measures, also of a financial nature, to achieve the objectives set out in Article 31 of the Charter. The state is obliged to pay particular attention to the influence of the implemented policy on the situation of the persons it concerns. It is particularly important to take into account the situation of the most vulnerable groups, including people and families affected by exclusion and poverty (ECSR, *International Movement ATD Fourth World v. France*, complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58-60; cf. González Pascual, 2016, p. 260-286). Pursuant to article 31 § 1 the State is obliged to promote access to housing of an adequate standard. State authorities are bound to promote access to housing in particular to the groups of vulnerable persons (low-income or unemployed persons, young persons, persons with

disabilities including those with mental health problems etc.) (ECSR, Conclusions 2003, Italy). It is the duty of the State to prevent the homelessness of persons belonging to vulnerable groups. According to article 31 § 2 the State is to prevent and reduce homelessness with a view to its gradual elimination. In particular, the state is obliged to combat and prevent homelessness among children and adolescents. The right to shelter is closely connected to the right to life and is crucial for the respect of every person's human dignity. If all children are vulnerable, growing up in the streets leaves them in a situation of outright helplessness. Children would therefore adversely be affected by a denial of the right to shelter (ECSR, *Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, decision on the merits of 20 October 2009, §§ 41-45).

In connection with the guarantees of preventing homelessness among children adopted by the Charter the Committee's jurisprudence paid particular attention to the situation of the Roma. Particularly noteworthy is the Committee's decision of 7 December 2005 in the case *European Roma Rights Center v. Italy* (complaint No. 27/2004, decision on the merits of 7 December 2005). The Committee noted that measures taken by the state authorities to exercise the right to housing must ensure effective access to social housing – especially towards vulnerable groups. As the Committee stated: "the State Party is committed to the principle of equal treatment for Roma as regards access to social housing, but has failed to provide any information to show that this right of access is effective in practice or that criteria regulating access to social housing is not discriminatory". The Committee recalled on this occasion that Article E prohibited indirect discrimination. Therefore, the practice of indirect discrimination constitutes a violation of Article 31 § 1 and § 3 read in conjunction with Article E. It is contrary to the provisions of the Charter to conduct a housing policy, which leads to the spatial and social segregation of Roma by placing them in apartments on the outskirts of cities, separated from other inhabitants (cf. ECSR, *European Roma Rights Center (ERRC) v. Portugal*, complaint No. 61/2010, decision on the merits of 30 June 2011, § 48).

3.3. Protection of disabled children

The guarantees of the right of people with disabilities (especially children) to independence, social integration and participation in the life of the community (Article 15 of the Charter) are also noteworthy (ECSR, *Association internationale Autisme-Europe (AIAE) v. France*, complaint No. 13/2002, decision on the merits of 4 November 2003, § 48). The purpose of this provision is to ensure that persons with disabilities can effectively exercise their right to independence, social integration and participation in community life, regardless of their age and the nature and origin of their disability. In order to achieve this goal, the Parties undertake to take the necessary measures to provide persons with disabilities with guidance, education and vocational training within general programs, if possible or, if this is not possible, through specialized public or private bodies. All persons with disabilities have a right to education and training: primary education, secondary education as well as whichever forms of vocational training, encompassing all types of higher education, including university education (ECSR, Conclusions 2012, Ireland). Securing the right to education for children and other persons with disabilities plays an important role in advancing their citizenship rights and guaranteeing their fundamental rights (ECSR, *Association internationale Autisme-Europe (AIAE) v. France*, complaint No. 13/2002, decision on the merits of 4 November 2003, § 48).

States are obliged to promote access to employment for disabled persons through all measures aimed at encouraging employers to hire and maintain employment of persons with disabilities in the ordinary working environment and to adapt working conditions to the needs of persons with disabilities or, when this is not possible due to disability, by organizing or creating a sheltered employment appropriate to the level of disability. Where necessary, these measures are backed up by the use of specialized placement and support services. In this way the Charter requires Parties to promote an equal and effective access to employment on the open labour market for persons with disabilities (ECSR, Conclusions 2012, Czech Republic).

The Charter also obliges States to support the full social integration of persons with disabilities and their participation in the life of the community, in particular through measures, including technical aids, to overcome barriers to communication and mobility and to facilitate access to transport, housing, cultural activities and leisure.

The right of persons with disabilities to social integration provided for by this provision implies that barriers to communication and mobility be removed in order to enable access to transport (land, rail, sea and air), housing (public, social and private), cultural activities and leisure (social and sporting activities) (ECSR, Conclusions 2005, Norway).

The jurisprudence of the European Committee of Social Rights in relation to the rights of children with disabilities strongly emphasizes the need to ensure the proper implementation of the right to education (ECSR, Conclusions 2005, Bulgaria, Article 17 § 2, p. 232). In this context, the Committee paid particular attention to the problem of access to the education system of children with autism (ECSR, *International Association Autism-Europe v. France*, collective complaint No. 13/2002, decision on the merits of 4 November 2003, § 54).

CONCLUSION

The European Social Charter guarantees a wide range of socio-economic rights, also in relation to children as persons belonging to vulnerable groups who deserve special care and protection from public authorities. These are, in particular, rights related to education, work, social protection, housing and health. The European Committee of Social Rights is responsible for ensuring that States Parties observe their obligations and that the practice of implementing social and economic rights complies with the provisions of the European Social Charter. The position of the Committee is decisive for assessing the compliance of national law and practice with the European Social Charter.

In the practice of implementing the social and economic rights of the child, the principle of the best interests of the child should be of fundamental importance. It is recognized not only by the acts of international human rights law, but also by the Constitution of the Republic of Poland and the laws regulating the legal status of children, including the Family and Guardianship Code. The child's welfare is a particularly important constitutional value. The order to take into account the best interests of the child in state policy constitutes a directive for the legislator so that the content of the enacted law should take into account the best interests of the child as fully as possible. In this way, the provisions of Polish law are in line with the mechanisms for the protection of children's rights established at the international level, an important element of which are the obligations of states as formulated in the provisions of the European Social Charter.

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