

THE INTERPRETATION OF THE RIGHT TO HEALTH IN THE EUROPEAN SOCIAL CHARTER: 60 YEARS ON

Dr Claire Lougarre

28 April 2021



THE IMPORTANCE OF THE RIGHT TO HEALTH

- A right widely ratified in human rights treaties (international and regional)
- A right widely translated into national constitutions (over ½ worldwide)
- A right recognised in the Council of Europe: Article 11 ESC + Article 13 ESC
- A right recognised in both ESC 1961 + ESC 1996: 60 years of interpretative challenges & opportunities
- A right at the forefront of the COVID-19 response



ARTICLES 11 AND 13 ESC

- Article 11: comprehensive, widely accepted amongst States parties, Appendix applies
- Article 13: focus on medical assistance for persons without adequate resources, not widely accepted, Appendix applies
- Interpretation: monitoring procedures and statements (ECoSR), cross-fertilization (CoE + UN)

Article 11 – The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co operation with public or private organisations, to take appropriate measures designed inter alia:

- 1 to remove as far as possible the causes of ill health;
- 2 to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
- 3 to prevent as far as possible epidemic, endemic and other diseases.

Article 13 – The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

- 1 to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
- 2 to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
- 3 to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
- 4 to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

INTERPRETATION THROUGH COLLECTIVE COMPLAINTS

- Established by Additional Protocol 1995
- Since: 24 complaints alleging violations of Article 11 or 13 (incl. 4 inadmissible) + 3 pending
- Assertive interpretation through complaints, e.g.:
 - *International Federation of Human Rights Leagues v. France* (2004) *Complaint No. 14/2003*: extension of the scope of Article 13 ESC to undocumented migrants despite Appendix
 - *Marangopoulos Foundation for Human Rights v. Greece* (2006) *Complaint No. 30/2005*: clarification of the obligation to progressively realise Article 11 ESC
 - *European Roma Rights Centre v. Bulgaria* (2019) *Complaint No. 151/2017*: review of Article 11 and Article E ESC combined to advance discussions on systematic/systemic health discrimination



INTERPRETATION THROUGH COLLECTIVE COMPLAINTS

- Opportunities: themes explored
 - Access to healthcare (including health insurance coverage) for vulnerable groups
 - Sexual and reproductive health
 - Impact of social housing on human health
 - Impact of environmental pollution on human health
- Challenges: thematic interpretation of the right to health 'driven' by NGOs and trade unions



THE FUTURE OF COLLECTIVE COMPLAINTS

- Collective dimension: +/- in health
- The right to health, COVID-19 and proportionality:
 - Pending... No. 195/2020 European Roma Rights Centre (ERRC) v. Belgium: proportionality of measures resulting in exposition to Covid-19 (here, seizure of property)
 - Pending... No. 197/2020 Validity v. Finland: proportionality of measures responding to Covid-19 (here, complete isolation/ban on visits for persons with disabilities living in institutions)



INTERPRETATION THROUGH STATE REPORTING

- Established by ESC 1961
- Since: implementation of Articles 11 and 13 reviewed every 4 years (focus on Article 11)
- Comprehensive interpretation
 - Measures to ensure the highest possible standard of health
 - Access to health care
 - Education and awareness raising
 - Counselling and screening
 - Healthy environment
 - Tobacco, alcohol and drugs
 - Immunisation and epidemiological monitoring *



INTERPRETATION THROUGH STATE REPORTING

- Opportunities: development of clear legal standards under each thematic indicator
 - 7 thematic indicators (see previous slides)
 - Qualitative & quantitative indicators under each thematic indicator
 - Performance comparators: with other European countries and with last reporting cycle
 - Follow-up of complaints
- Challenges: static interpretation of the right to health due to set indicators?



THE FUTURE OF STATE REPORTING

- Data collection by States: +/- in health
- The right to health, COVID-19 and resources:
 - Waiting for next reporting cycle on Article 11...
 - ECoSR Statement of interpretation on the right to protection of health in times of pandemic (2020): mobilisation of resources; international assistance and cooperation
 - ECoSR Statement on COVID-19 and social rights (2021): *'In order to cope with and recover from the COVID-19 pandemic, investment in social rights is necessary. States Parties to the European Social Charter must take all measures necessary, including through the redistribution of resources, to combat the virus and to secure the rights of their populations, including those of the most socially vulnerable groups.'*



THANK YOU

&

HAPPY 60TH ANNIVERSARY TO THE
EUROPEAN SOCIAL CHARTER

Dr Claire Lougarre

c.lougarre@soton.ac.uk