



HUMAN RIGHTS LEGAL AND POLICY ACTION FRAMEWORK

Focusing on Social Inclusion and Poverty Reduction



Ludwig Boltzmann
Institute of Human Rights (BIM)



financed by

Austrian
Development Cooperation

HUMAN RIGHTS LEGAL AND POLICY ACTION FRAMEWORK FOCUSING ON SOCIAL INCLUSION AND POVERTY REDUCTION

Publisher

Ludwig Boltzmann Institute of Human Rights – BIM-FV

**The preparation and the printing of this publication is financially supported by
The Austrian Development Cooperation (ADC)**

Prepared by

Macedonian Helsinki Committee for Human Rights - MHC

Project

Social Inclusion and Human Rights in Macedonia

Ludwig Boltzmann Institute of Human Rights (BIM-FV)

Veljko Vlahovik 1A - 1/4, 1000 Skopje

Phone: +389 (0)2 3216 956

Fax: +389 (0)2 3216 982

BIM-FV Skopje Support Team

Petranka Delova Miladinova – Project Manager

Ninoslav Mladenovik - Human Rights Advisor

Stojan Misev – Human Rights Advisor

Jagoda Iljov – Administrative and Financial Assistant

Cite this as: “Human Rights Legal and Policy Action Framework Focusing on Social Inclusion and Poverty Reduction”,
February 2011

**THE VIEWS EXPRESSED IN THIS PUBLICATION DO NOT NECESSARILY REFLECT THE VIEWS OF
THE LUDWIG BOLTZMANN INSTITUTE OF HUMAN RIGHTS (BIM-FV) AND THE AUSTRIAN DEVELOPMENT
COOPERATION (ADC)**

INSTEAD OF A PREFACE

For at least a decade now, the protection against poverty and social exclusion is social cohesion and social inclusion-related concepts utilised by international and national policy makers, as a guiding principle for social goals and achievements in Europe. What is common for all these concepts is that they place the focus on societal wellbeing and view harmonious and stable social relations as integral to economic and social progress and peaceful co-existence. A major concern in this regard is the extent to which people feel connected to society and demonstrate their loyalty and commitment through a set of values and social goals that are widely shared. All this may be thoroughly perceived only within the human rights-related framework i.e. within the framework of a specific material and institutional context, such as the European public order of human rights protection involving a number of European inter-governmental organisations including the Council of Europe (CoE) and the European Union (EU). In this context, one should also take into consideration the supplementation and the interrelatedness of the 'social and economic rights' related agenda of the abovementioned European organisations with the respective UN's system (e.g. in terms of human rights conventions and the Millennium Development Goals-MDGs) and with other relevant international intergovernmental organisations, including the International Labour Organisation (ILO).

The fight against poverty and social exclusion, in the last several years, has also been highly placed at the agenda of the Republic of Macedonia. Namely, poverty and social exclusion create complex and multi-dimensional problems in the Macedonian state and society, thus its alleviation requires application of series of policies and endeavours by all competent actors in the country. The increased commitment of the Republic of Macedonia in this regard is most clearly reflected by the large number of adopted laws and policy documents in this area, and that guides the efforts of the state in that context. In this regard, one should bear in mind that this is stimulated and/or reinforced by the country's membership in the key international intergovernmental organisations including the UN, the ILO, the CoE, and by adopting conventions and other instruments of these organisations. The position of the country as a candidate country for EU membership provides additional basis for a series of specific national actions in the same context. In addition to the ongoing process of adoption of EU's including the *acquis* from the social area, the ongoing process of the country's preparation of the Joint Inclusion Memorandum (JIM) that is to be concluded with the EU is also important. At this point one should note that Macedonia's ongoing efforts in achieving the EU integration priorities in economic and social field supplement the ones based on its obligations and commitments deriving from its full-member membership in the CoE, the UN (e.g. in terms of the achievement of the MDGs), the ILO and other international organisations. The aforesaid actuality of anti-poverty and social exclusion-related efforts in the Republic of Macedonia have been recently reflected in the 2010 National Strategy for Reducing Poverty and Social Exclusion in the Republic of Macedonia (NSRPSE), which clearly reflects the country's strong commitment for this issue and the related challenges the Macedonian state and society is facing.

Against the above background, and as seen from the perspective of the Ludwig Boltzmann Institute of Human Rights – Research Association (BIM-FV) Project on "Social Inclusion and Human Rights in Macedonia" – this publication is aimed to provide the most relevant information about the CoE and the EU's human rights approach in dealing with anti-poverty and social inclusion-related issues. In doing this, it mainly focuses on economic and social rights. It is designed to provide its practical users with the fundamental information in this area, with a view to enable them to form an appropriate approach and methodology in dealing with the multidimensional subject matter of anti-poverty and social exclusion in the context of the Macedonia's ongoing social agenda. More specifically, it aims to enable its users to perform proper and comprehensive monitoring of Macedonia's current and future action in the above fields. Furthermore, it aims to stimulate and guide them to become proactive when designing and implementing the abovementioned domestic actions, especially in the implementation process of NSRPSE, and most importantly, in the preparation process of conclusion of JIM and especially its implementation.

This publication consists of the three following parts: **Part I**, which elaborates CoE achievements in the above-mentioned fields; **Part II** which elaborates the EU achievements in the same fields, and **Part III** which outlines the current human rights legal framework and policy action documents of the Republic of Macedonia; the later also outlines Macedonia's obligations under the international law in the aforementioned fields.

However, this publication does not replace what has been stated in the previous edition on this topic, published by the abovementioned Project of the BIM-FV, but it rather aims at updating it and/or by supplementing it with the European human rights framework of anti-poverty and social exclusion (as reflected by the CoE and EU's achievements concerned).

TABLE OF CONTENTS

PART ONE: COUNCIL OF EUROPE'S LEGAL AND POLICY FRAMEWORK OF ANTI-POVERTY AND SOCIAL COHESION	7	
1.1	Protecting socio economic rights through the European Convention of Human Rights: Trends and developments in the European Court of Human Rights	7
1.2	Council of Europe's Legal instruments for setting standards in the social field	8
1.2.1	European Social Charter	8
1.2.1.1	Additional Protocol to the European Social Charter	9
1.2.1.2	Protocol amending the European Social Charter	9
1.2.2	European Social Charter (revised)	9
1.2.3	The Additional Protocol providing for a System of Collective Complaints	11
1.3	Council of Europe's Legal instruments on Social Security Policy	11
1.4.	Council of Europe's Policies on other related issues	12
1.4.1	Council of Europe's Housing Policy	12
1.4.2	Council of Europe's Disability Policy	12
1.4.3	Council of Europe's Policy towards Children and Family	12
1.4.4	Council of Europe's Policy towards Roma	13
PART TWO: EU'S LEGAL AND POLICY FRAMEWORK IN ANTI POVERTY AND SOCIAL INCLUSION FIELD	14	
2.	The European Union's Lisbon Treaty's added value in the anti-poverty and social inclusion field	14
2.1	Key European Union's Lisbon Treaty provisions on Employment, Social Policy and Public Health	15
2.1.1	European Union's Legal Basis of Employment Policy	15
2.1.2	European Union's legal Basis of Social Policy	15
2.1.3	European Union's Legal Basis of Public Health Policy	17
2.2	The European Union Charter of Fundamental Rights	17
2.3	The Open Method of Coordination	18
2.3.1	Common objectives of the Open Method of Coordination	19
2.3.2	Related Common Indicators of the Open Method of Coordination	20
2.3.3	National Reports for Social Protection and Social Inclusion	20
2.3.4	Related Joint Reports of the Open Method of Coordination	20
2.3.5	Open Method of Coordination -related Community Action Program	20
2.3.6	Impact Assessment and Reinforcement of the Open Method of Coordination	21
2.4	European Union's Renewed Social Agenda	21
2.5	EUROPE 2020- A European Strategy for Smart, Sustainable and Inclusive Growth	21
2.6	Selective EU Acquis relevant to Anti Poverty and Social Inclusion	21
2.6.1	Protection of employees rights	21
2.6.1.1	European Union's regulations on Health and Safety at Work	22
2.6.2	European Union's Acquis in the Area Social Security	22
2.6.3	European Union's Policy in Public Health-related field	23
2.6.3.1	European Union Member States' Mental Health Policy	23
2.6.4	Patient safety and the prevention of healthcare associated infections	24
2.6.5	European Union Policy Towards Disability – Related Issues	24
2.6.6	EU Policy for the Elderly	24
2.6.7	European Union's Policy on Equality between Men and Women	25
2.6.8	European Union's Policy towards Child Poverty	25
2.6.9	European Union's Policy towards Roma-related issues	26
2.6.10	10 Other forms of social exclusion at the European Union level	26
2.7	The role of the European Court of Justice's Case Law in anti-poverty and social inclusion fields	27
2.8	European Union's Input to the United Nations Millennium Development Goals	28

PART THREE: MACEDONIAN NATIONAL LEGAL AND POLICY ACTION FRAMEWORK OF THE ANTI-POVERTY AND SOCIAL INCLUSION 30

3.1	Overview of selective Constitutional provisions	31
3.2	Macedonian Domestic Legal and Policy Framework in specific anti-poverty and social inclusion - related fields	33
3.2.1	Legislation on Labour and Policy Action Framework	33
3.2.2.	Social Protection Related Legislation and Policy Action Framework	34
3.2.3	Legislation Health Protection and Health Insurance and Policy Action Framework)	35
3.2.4	Legislation on Pensions and Disability Insurance	36
3.2.5	Housing -related legislation and policy action framework	37
3.2.6	Housing Legislation and Policy Action Framework	37
3.2.7	Legislation on Disability and Policy Action Framework	37
3.3	Legislation Child Protection and Policy Action Framework	38
3.4	Legislation on Woman Protection and Policy Action Framework	38
3.5	Other Selective Laws on Anti - Poverty and Social Exclusion	39
3.5.1	Legislation on Anti – Discrimination	39
3.5.2	Provision of Free Legal Aid	39
3.6	Legal and Policy Framework of Protection of Other Vulnerable Categories	39
3.6.1	Foreigners and Refugees	39
3.6.2	Roma Protection	40
3.6.3	Protection to the Elderly	40
3.6.4	Legal Framework on Ethnic Minorities	40
3.7	Regional development`s role in anti poverty and social exclusion	40
3.8	Framework Electronic Communication	42
3.9	Macedonia`s Monitoring Obligations Deriving from the International Human Rights Law	42
3.9.1	Macedonia`s monitoring-related obligations under selective United Nations` legal instruments	42
3.9.2	Macedonia`s monitoring-related obligations under the International Labor Organization`s legal instruments	43
3.9.3	Macedonia`s monitoring-related obligations under the Council of Europe`s European Social Charter	44
3.9.4	Macedonia Obligations Deriving from it`s Candidate Status of European Union Membership	44

Annex 1: List of the International Labor Organization`s legal instruments as ratified by the Republic of Macedonia **46**

Annex 2: Selective List of Council of Europe`s legal instruments and their ratification status by the Republic of Macedonia **50**

Annex 3: List of Macedonia`s Bilateral Agreements in the field of Social Insurance **52**

Bibliography 53

LIST OF ABBREVIATIONS

BIM-FV - Ludwig Boltzmann Institute of Human Rights-Research Association
CRC - Convention on the Rights of the Child
CS-HO - Group of Specialists on Housing Policies for Social Cohesion
CoE – Council of Europe
CESR - Committee on Economic, Social and Cultural Rights
CEDAW – Convention on the Elimination of All Forms of Discrimination against Women
CPT – Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECJ – European Court of Justice
ECHR – European Convention on Human Rights and Fundamental Freedoms
ECrHR – European Court of Human Rights
ECSR - European Committee of Social Rights
(R)ECSS – (Revised) European Code of Social Security
ECRI - European Commission against Racism and Intolerance
EU - European Union
ETS – European Treaty Series
ILO - International Labour Organization
JIM – Joint Inclusion Memorandum
MDGs - Millennium Development Goals
NSRPSE - National Strategy for Reduction of Poverty and Social Exclusion
OMC - Open Method of Coordination

1. COUNCIL OF EUROPE: LEGAL AND POLICY FRAMEWORK OF ANTI-POVERTY AND SOCIAL COHESION

1.1 Protecting Socio-Economic Rights through the European Convention on Human Rights: Trends and Developments in the European Court of Human Rights

In dealing with this complex issue one should first underline, with the exception of the First Protocol (Articles 1 and 2 stipulating the right to property and the right to education), that the ECHR focuses almost entirely on the traditional canon of civil and political rights.

At a glance, it has little to say about the protection of other great freedoms from want and squalor or the promotion of 'social progress and better life standards in extended freedom'.

Nevertheless, since the case *Airey v. Ireland*, the ECtHR recognized that there is an overlap in the ECHR between civil and political rights, on one hand, and socio-economic rights, on the other, a view that it has continued to endorse.

Although mindful of the limits of its legitimate intervention in national resource allocation policy, the European Court of Human Rights (ECtHR) has continued to lay the foundations as a body of socio-economic rights jurisprudence through an incremental interpretation of the traditional canon of civil and political rights and the development of positive state obligations in Articles 2, 3 and 8 and Articles 6 and 14 of the European Convention on Human Rights and Fundamental Freedoms (ECHR).

First Protocol of the European Convention of Human Rights

Article 1

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 2

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.

There are many ECtHR's cases which illustrate the potential to protect economic and social rights (as enshrined in other relevant international legal instruments, including the UN's Convention on the Rights of the Child (CRC)).

It is widely demonstrated that, under Articles 3 and 8 of ECHR, there has been progress towards principled jurisprudence of positive obligations for providing for the basic human needs of vulnerable dependent individuals in a range of contexts, although the limits of the state responsibility remain contested. In this regard, it is worth stressing the recent developments in the Article 14-related jurisprudence, particularly as demonstrated in the case of "*D.H. v. Czech Republic*"; (Application No. 57325/00, 13 November 2007) which is a signal of shift from a narrow formalistic approach to dealing with issues of discrimination.

The first CoE's legal instrument dealing exclusively with social issues is the **European Social Charter (ESC) of 1961, European Treaty Series (ETS) No. 035**. It is the counterpart of the ECHR in

1.2 Council of Europe's Legal Instruments for Setting Standards in the Social Field

1.2.1 European Social Charter (ETS) No. 035

As stipulated in Part II: "The Contracting Parties as provided in Part III, consider themselves bound by the obligations laid down in the following articles:

- **Article 1** on the right to work;
- **Article 2** on the right to just conditions of work;
- **Article 3** on the right to safe and healthy working conditions;
- **Article 4** on the right to a fair remuneration;
- **Article 5** on the right to organize;
- **Article 6** on the right to bargain collectively;
- **Article 7** on the right to protection of children and young persons;
- **Article 8** on the right of employed women to protection;
- **Article 9** on the right to vocational guidance;
- **Article 10** on the right to vocational training;
- **Article 11** on the right to health protection;
- **Article 12** on the right to social security;
- **Article 13** on the right to social and medical assistance;
- **Article 14** on the right to benefit from social welfare services;
- **Article 15** on the right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement;
- **Article 16** on the right of the family to social, legal and economic protection;
- **Article 17** on the right of mothers and children to social and economic protection;
- **Article 18** on the right to engage in a gainful occupation in the territory of other Contracting Parties;
- **Article 19** the right of migrant workers and their families to protection and assistance".

the sphere of economic and social rights. The most relevant parts of the Charter are Part I, II and III.

Part I of the Charter provides

"The Contracting Parties accept as the aim of their policy, to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realized: everyone shall have the opportunity to earn his living in an occupation freely entered upon; all workers have the right to just conditions of work; all workers have the right to safe and healthy working conditions; all workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families; all workers and employers have the right to freedom of association in national or international organizations for the protection of their economic and social interests; all workers and employers have the right to bargain collectively; children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed; employed women, in case of maternity, and other employed women as appropriate, have the right to a special protection in their work; everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests; everyone has the right to appropriate facilities for vocational training; everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable; all workers and their dependents have the right to social security; anyone without adequate resources has the right to social and medical assistance; everyone has the right to benefit from social welfare services; disabled persons have the right to vocational training, rehabilitation and resettlement, whatever the origin and nature of their disability; the family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development; mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection; the nationals of anyone of the Contracting Parties have the right to engage in

any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons; migrant workers who are nationals of a Contracting Party and their families have the right to protection and assistance in the territory of any other Contracting Party".

Part III of the Charter contains **Article 20**, which stipulates (among other things) that: "Each of the Contracting Parties undertakes: to consider Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part; to consider itself bound by at least five of the following articles of Part II of this Charter: Articles 1, 5, 6, 12, 13, 16 and 19; in addition to the articles selected by it in accordance with the preceding sub paragraph, to consider itself bound by such a number of articles or numbered paragraphs of Part II of the Charter as it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than 10 articles or 45 numbered paragraphs....."

Each Contracting Party shall maintain a system of labour inspection appropriate to national conditions".

1.2.1.1 Additional Protocol to the European Social Charter (ETS No. 128)

▶ **The Additional Protocol of 1998 (ETS No. 128)** extends the social and economic rights guaranteed by the ESC of 1961 (ETS No. 035) by adding the following rights: *the right for workers to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the ground of sex; the right for workers to be informed and consulted within the undertaking; the right for workers to take part in the determination and improvement of working conditions and the working environment in the undertaking; the right for elderly persons to social protection.*

1.2.1.2 Protocol Amending the European Social Charter (ETS No. 142)

▶ This Protocol was opened for signature in 1991 and will enter into force once it is ratified by all Parties to the ESC (ETS No. 035). Nevertheless, the Committee of Ministers on 11 December 1991 adopted the following decision related to its application: *“The Deputies ...(4). requested the States party to the Charter and the supervisory bodies to envisage the application of certain of the measures provided for in this Protocol before its entry into force, in so far as the text of the Charter will allow”. The Amending Protocol improves considerably the control machinery of the ESC (ETS Nos. 035 and 163 as outlined below).*

1.2.2 European Social Charter (Revised) (ETS No. 163)

▶ **The (Revised) European Social Charter (R)ESC of 1996,** (ETS No. 163) envelopes all the rights guaranteed by the ESC of 1961 (ETS No. 035) in one instrument, as well as its additional Protocol of 1988 (ETS No. 128). It takes account of the evolution which has occurred in Europe since the original ESC was adopted in 1961, and includes a series of new rights (such as the right to protection against poverty and social exclusion, right to housing, right to protection in cases of termination of employment) and made a series of amendments including the reinforcement of principle of non-discrimination, improvement of gender equality in all fields covered by the treaty, better protection of maternity and social protection of mothers, improved social, legal and economic protection of employed children, improved protection of handicapped people. This instrument was drafted in such a way as to be autonomous, but with the same supervisory machinery as the ESC. It is not conflicting with the ESC, but is intended to eventually replace it ¹. In conclusion, in this context, one should also mention **Article C** dealing with the *supervision of the implementation of the undertakings contained in this Charter; it reads that “the implementation of the legal obligations contained in this Charter shall be submitted to the same supervision as the European Social Charter”, as outlined below.*

Supervision of the application of the European Social Charter

Following the ratification of this instrument, states-contracting parties must submit reports to the Council of Europe on how they have applied the Charter. These reports are public and social partners may make observations on them. It is the European Committee of Social Rights (ECSR) which is tasked with assessment whether the states have respected their undertakings. This committee is composed of nine independent and impartial experts. The conclusions of the ECSR are referred to a Governmental Committee, composed of representatives of the states. In this committee the states represented ensure that each one of them takes the necessary measures to bring the situation into conformity with the Charter. In the most serious cases, the Committee of Ministers, the decision-making body of the Council of Europe, makes recommendations to states that they change the legislation, regulations or practice not in conformity with the Charter's obligations.

To conclude, one should particularly take into account Article D (of the RESC) dealing with “collective complaints”.

This Article states: “The provisions of the Additional Protocol to the European Social Charter providing for a system of collective complaints shall apply to the undertakings given in this Charter for the States which have ratified the said Protocol. Any State which is not bound by the Additional Protocol to the European Social Charter providing for a system of collective complaints may when depositing its instrument of ratification, acceptance or approval of this Charter or at

¹. This is regulated by Article B of the Revised Social Charter (ETS No.163), which deals with the links with the European Social Charter (ETS No. 035) and the 1988 additional Protocol (ETS No. 128).

With regards to the above mentioned, what is important is the new established system for Presentation of the Reports on the application of the European Social Charter. According to the new system:

“States are expected to present a report annually for part of the provisions of the Charter (whether it be the 1961 Charter or the 1996 revised Charter), the provisions having been divided into four thematic groups. In this way, each provision of the Charter should be reported on once every four years. The four groups of provisions are composed as follows:

Group 1 Employment, training and equal opportunities	
- Article 1	- Article 18
- Article 9	- Article 20
- Article 10	- Article 24
- Article 15	- Article 25
Group 2 Health, social security and social protection	
- Article 3	- Article 14
- Article 11	- Article 23
- Article 12	- Article 30
- Article 13	
Group 3 Labour rights	
- Article 2	- Article 22
- Article 4	- Article 26
- Article 5	- Article 28
- Article 6	- Article 29
- Article 21	
Group 4 Children, families, migrants	
- Article 7	- Article 19
- Article 8	- Article 27
- Article 16	- Article 31
- Article 17	

The reports should be presented on 31 October of each year. The European Committee of Social Rights publishes its conclusions before the end of the following year. The system entered into force as from 2007. The states having recently ratified the 1961 Social Charter are now not expected to send full reports and there are no longer reports on all the non-hard core provisions for states having recently ratified the 1996 revised Social Charter.

any time thereafter, declare by notification addressed to the Secretary General of the Council of Europe, that it accepts the supervision of its obligations under this Charter following the procedure provided for in the said Protocol”.

1.2.3 The Additional Protocol Providing for a System of Collective Complaints (CETS 158)

The purpose of this Protocol is to improve the efficiency of the supervisory machinery under the abovementioned ESC, by enabling collective complaints for alleged violations of the ESC to be dealt with, in addition to the current procedure for examining government's reports.

The entities entitled to submit collective complaints are: international organizations of employers and trade unions which participate in the work of the Governmental Committee in pursuance of Article 27 paragraph. 2 of the ESC; other international non-governmental organizations with consultative status within the CoE and placed on a special list drawn up for this purpose by the Governmental Committee; national organizations of employers and trade unions from the Contracting Party concerned. In addition, each state contracting-party may, in a declaration to the Secretary General, authorize national non-governmental organizations to lodge complaints against it.

1.3 Council of Europe's Legal Instruments on Social Security Policy

Basic Council of Europe's instruments in this field that set standards:

- **European Code of Social Security and its Protocol**
- **Revised European Code of Social Security.**

These specialized social security instruments are essential component of human rights protection through Council of Europe.

Council of Europe's instruments of coordination, aimed at coordinating the provision of social security:

- The European Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors (people who can enjoy benefits in case of death, like widows and orphans) (ETS No.012), as completed with the Protocol (ETS No. 012A)
- The European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors (ETS No. 013), as completed with the Protocol (ETS No.013A)
- The European Convention on Social and Medical Assistance (ETS No.014, as completed with the Protocol ETS No. 014A)
- The European Convention on Social Security (ETS No.078)
- The Protocol (CETS No. 078A)

The "right to social security" is enshrined in the ESC; states having ratified the (R)ESC and having accepted Article 12, paragraph 2 thereof, are obliged to maintain the social security system at a satisfactory level, at least equal to the one necessary for the ratification of the **European Code of Social Security (ECSS)**.

Therefore, the promotion of the ECSS is seen as one of the core tasks of the CoE in order to secure common values in the field of social cohesion in its member countries.

The ECSS and its Protocol do not call for standardization of the national social security systems; they explain what must be achieved, but leave to every state to determine how it will be achieved. There are nine contingencies (also known as "social risks") from which to choose; they include: *Medical Care, Sickness Benefit, Unemployment Benefit, Old-Age Benefit, Employment Injury Benefit, Family Benefit, Maternity Benefit, Invalidity Benefit, Survivors' Benefit.*

With regards to the **Revised European Code of Social Security (R)ECSS**, it should be emphasised that it reflects some of the developments in the social security philosophy over the twenty-two years between the entry into force of the ECSS and the finalization of the (R)ECSS. Most importantly, as the ECSS, the (R)ECSS isolates nine contingencies allowing each state to select the social risks to which it intends to accede. However, unlike the ECSS, all the contingencies in the (R)ECSS are given equal weight. It provides the flexibility needed to face the challenges of today, such as the ageing of population and increased costs of medical care as well as the challenges of tomorrow, whatever they might be².

² Please note that, to date, the Revised European Security Code has not been ratified by any of the member states of the Council of Europe (June 2010); thus, it has not yet entered into force.

1.4. Council of Europe's Policies on Other Related Issues

1.4.1 Council of Europe's Housing Policy

There is a number of provisions of the ECHR which provide protection of the core elements of the right to adequate housing. In this regard, one should stress (among others) that according to ECtHR's case law, "the purposeful destruction of property might under certain conditions amount to inhuman and degrading treatment". In addition to this, the ECtHR has developed the concept of "positive obligations" extensively within its Article 8 – related jurisprudence, under which a Contracting State must not only restrict its own interferences to what is compatible with Article 8, but may also have a positive obligation to protect the enjoyment of those rights and secure the respect for those rights in its domestic law. Also, protections available under Article 1 of Protocol 1 to the ECHR guaranteeing the peaceful enjoyment of one's possessions have been interpreted to include the protection of housing rights, as well. In parallel to the aforesaid, one should also take into consideration the ECtHR's expanding jurisprudence including the one dealing with the right to housing, according to which, it is a set of rights beyond the mere entitlement to a house: "The right to housing permits the exercise of many other rights – civil and political as well as economic, social and cultural. It is also of central importance to the family".

1.4.2 Council of Europe Disability Policy

There are number of specific CoE's recommendations dealing with this issue, including (among others):

- *The 1992 Landmark Recommendation No. R (92) 6 on A Coherent Policy for People with Disabilities,*
- *The 1995 Charter on the Vocational Assessment of People with Disabilities (Resolution Res AP (95) 3),*
- *The Malaga Ministerial Declaration on People with Disabilities —Progressing Towards Full Participation as Citizens" (May 2003)*
- *The CoE Disability Action Plan 2006-2015.*

1.4.3 Council of Europe Policy towards Children and Family

In addition, the European Revised Social Charter should be mentioned as a major European treaty which protects children's rights. Furthermore, a large number of CoE's recommendations deal with this issue, including (among others) the Parental Responsibilities-related Recommendation No. R (84) 4 and Support of Positive

The housing policy of the Council of Europe is reflected at large in the recent Report on this issue, drafted by its Group of Specialists on Housing Policies for Social Cohesion (CS-HO). As the report states, "it is the Revised European Social Charter which gave a special emphasis to the housing problems of vulnerable social groups, which were reinforced by the CoE's Revised Strategy for Social Cohesion". The purpose of the Report was to contribute to the efforts directed towards improving the access to housing of vulnerable social groups in Europe, which was also illustrated by the Guidelines on Access to Housing for Vulnerable Groups as elaborated by the CS-HO. The Guidelines define the key prerequisites for an effective housing policy for vulnerable groups, while listing a range of potential specific tools for improving housing for vulnerable groups. In this context, one should take into account the increasing role of the ECtHR's case law and the one developed under the abovementioned (Revised)ESC (i.e. ECSR) and the collective complaints mechanism related thereto.

The CoE's key legal text in this field is the Partial Agreement in the Social and Public Health Field, and the the following member-states are contracting parties: Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland and the United Kingdom.

With regards to the Council of Europe Disability Action Plan, it should be noted that it aims to serve as a practical tool to develop and implement viable strategies to bring about full participation of people with disabilities in society and ultimately mainstreaming disability throughout all the policy areas of the member states³. In conclusion, one should also take into consideration the ECtHR's case law and the one of the ECSR both of which also have a crucial role and influence in the development and the promotion of disability-related human rights.

As seen from the perspective that CoE's conventions are a whole system, one should emphasize that there is a large number of CoE's instruments dealing with specific matters related to children,

3. In this regard, one should mention in particular the European Co-ordination Forum for the CoE's Disability Action Plan 2006-2015 (CAHPAH). As seen from this perspective, the abovementioned Partial Agreement (with a limited number of member states) now is being shifted to "a social and human rights-based model" resulting in setting up this long-term intergovernmental co-operation platform on disability for all CoE's member states.

Parenting-related Recommendation Rec (2006) 19. Finally, in this context, one should also mention the CoE Programme “Building a Europe for and with Children” (2006-2009) which led to the adoption of the most relevant reference document, i.e. “Strategy for Building a Europe for and with children 2009-2011” (2008), aimed at supporting the implementation of the CoE’s human rights standards and the international standards as well, including the UN’s Convention on the Rights of the Child.

such as: **The European Convention on the Legal Status of Children born out of Wedlock (ETS No. 085); The European Convention on the Exercise of Children’s Rights (ETS No. 160); The Convention on Contact concerning Children (ETS no. 192); The European Convention on the Adoption of Children (ETS No. 058); The European Convention on the Adoption of Children (Revised), (CETS No. 202), and the European Convention on the Repatriation of Minors (ETS No. 071, which is still not into force).** In addition; of particular importance for this subject area are the provisions from the ECHR, which could be used as a basis for protection of the rights of children and the family. Namely, a number of its provisions are of particular relevance to family and children, such as the right to respect for private and family life, the right to marry and to establish a family, the right of access to courts, the right of parents to ensure the education of their children in conformity with their own convictions. Consequently, there is a large number of ECtHR’s cases concerning family matters.

1.4.4 Council of Europe’s Policy towards Roma

- Recommendation Rec(2005)4 on Improving the Housing Conditions of Roma and Travellers in Europe,
- Recommendation No. R (2000) 4 on the Education of Roma/Gypsy Children in Europe
- Recommendation Rec(2001) 17 on Improving the Economic and Employment Situation of Roma/ Gypsies and Travellers in Europe.

There is no special CoE convention on Roma, but all of the CoE’s key legal instruments mentioned above are of importance to Roma population as well. This includes the ECHR and the related ECtHR’s case law, as well as the (R)ESC and its monitoring mechanism case law. In this context, one should also take into consideration the work of the **CoE’s European Commission Against Racism and Intolerance (ECRI)**, whose monitoring reports include Roma population-related problems in members states⁴.

CONCLUDING NOTE

In addition to the key points outlined in the sub-sections of the first part of this publication, one should also mention the recent so-called **Moscow Declaration “Investing in Social Cohesion-Investing in Stability and Wellbeing of Society”**, adopted in Moscow, 26-27 February, 2009 at the CoE Conference of Ministers responsible for social cohesion. In reaffirming the role of the **human rights-based approach to social cohesion and calling for social and economic policy** measures that provide effective access to rights for everyone, especially for anyone who lives in or is at risk of poverty and social exclusion, this Declaration reaffirms the need of promoting social rights through acknowledging that social security and social protection are the pillars of social cohesion. It promotes the ratification of relevant CoE’s instruments, including the ESC and (R)ESC, the ECSS and its Protocol and the European Convention on Social Security.

Therefore, while analyzing the respective CoE role in all of the above mentioned areas, one should take into consideration all of the other CoE relevant conventions and (consequently) the increasing number of specific convention-related monitoring reports, as well as reports and recommendations adopted by the CoE’s Committee of Ministers, Parliamentary Assembly and the Congress of Local and Regional Authorities⁵.

This also includes the work by other CoE bodies, including the **Commissioner for Human Rights** and the **ECRI**. In conclusion, it goes without saying that the CoE’s input in relation to the respective UN MDGs may be clearly seen in the light of the Warsaw Action Plan, which also includes the bilateral relations between the CoE and other intergovernmental organizations as the UN, the EU and the Organization for Security and Cooperation in Europe (OSCE). To summarise, the very implementation of all of the CoE’s legal and policy action documents by its member states is de facto a direct input in implementing the respective UN MDGs.

4. The ECRI’s work is based on its own General Policy Recommendations, as well as all of the CoE’s legal instrumentarium

5. In this regard, one should take into account all of the other Coe’s relevant legal and other instruments dealing with the issues (among others) of: “health policy, promotion and development”, the transplantation, health policy measures in favour of specific vulnerable groups of society, such as: chronically ill persons, elderly people, marginalized population; prisoners; single parents’ families; inter-cultural dialogue, youth, migrants, all of which are available on the Coe’s web-site. In this regard, one should also take into account the CoE’s case law dealing with “employment and workers protection-related matters”.

EUROPEAN UNION LEGAL AND POLICY FRAMEWORK IN ANTI POVERTY AND SOCIAL INCLUSION FIELD

INTRODUCTION

The concepts of anti-poverty and social inclusion are clearly reflected at EU level. It was at the Lisbon Summit in 2000 when the Member States committed themselves to making progress towards the elimination of poverty in Europe by 2010.

Most importantly, at this Summit, a decision was made that Member States would co-ordinate their policies for combating poverty and social exclusion on the basis of the OMC.

In this regard, one should also add the increasing number of relevant EU legal and policy instruments as adopted by all the respective EU key bodies, as well as, the new input as was most recently provided by the EU Lisbon Treaty.

The EU's commitment in this area is reflected by the official launch (January 2010) of the **European Year Against Poverty and Social Exclusion** under the slogan 'Stop Poverty Now!'.

2. EU's Lisbon Treaty Added Value in the Anti-Poverty and Social Inclusion Field

Before immersing into this complex issue, one should initially take into consideration EU's specific features as a sui generis intergovernmental organization, its organizational structure and the relations with its member states, that are, at the same time, full member states of the CoE as well.

In this light, one should underline that the Lisbon Treaty does not give the EU any fundamental new competence in the field of social affairs, employment and equal opportunities, but it rather consolidates the existing competences. Social policies still in most part lie within the realm of the competences of the States.

But the Treaty of Lisbon has opened up opportunities for a further strategic development of social Europe: First, it is the set of values enshrined in the Lisbon Treaty, where, in addition to those in the previous Treaties (such as freedom, democracy, the rule of law and human rights) the Lisbon Treaty also lists human dignity and equality as values of the Union. It also mentions EU's contribution to peace, security, sustainable development, free and fair trade and solidarity, as well as, the elimination of poverty and the protection of human rights. Second, the aforesaid is complemented with the EU's objectives: the Treaty of Lisbon explicitly puts social objectives and economic objectives at the same level. In line with this approach, a protocol on services of general interest is annexed to the Treaty, which underlines the importance of public services for a socially sustainable EU and reaffirms the responsibility of Member States for their establishment and organization.

The Treaty adds "equality between women and men, solidarity between generations and protection of the rights of the child" to the Union's social objectives; third, and of utmost importance, the Lisbon Treaty recognizes the **EU's Charter of Fundamental Rights** as having the same legal value as the Treaties; fourth, social dialogue is worth mentioning: such dialogue between the representatives of the trade unions and employers' organizations at European level is one of the pillars of the European social model. In this context, one should also add the new horizontal "social" clause, which demands that social requirements are taken into account in EU policies. These requirements are "linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health". The Lisbon Treaty also confirms the role of the social partners and enhances social dialogue. To sum up, the Lisbon Treaty offers a new strategic opportunity for further development and reinforcement of the social dimension at EU level. The EU coordinates and encourages national governments to

combat poverty and social exclusion, reform their social welfare systems by learning from each other and identifying which policies work best by learning from each other and identifying what works best. In this context, the EU member states work together by using a framework for political cooperation called OMC.

2.1 Key Lisbon Treaty Provisions on Employment, Social Policy and Public Health

2.1.1 European Union`s Legal Basis for Employment Policy

This issue is covered by Title IX on Employment, in the Treaty on Functioning of the European Union (TFEU), which contains the following relevant articles and which provides the legal basis for the action of both, the EU itself and its member-states in this field:

***Article 145** stipulates that *“Member States and the Union shall, in accordance with this title, work towards developing a coordinated strategy for employment and particularly for promoting skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in Article 3 of the Treaty on European Union”*;

***Article 146**, according to which: *“Member States, through their employment policies, shall contribute to the achievement of objectives referred to in Article 145 in a way consistent with the broad guidelines of the economic policies of the Member States and of the Union adopted pursuant to Article 121(2). Member States, having regard to national practices related to the responsibilities of management and labour, shall regard promoting employment as a matter of common concern and shall coordinate their action in this respect within the Council, in accordance with the provisions of Article 148”*;

***Article 147** stipulating that *“the Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Union policies and activities”*;

***Article 148**, stating that *“the European Council shall each year consider the employment situation in the Union and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission. On the basis of the conclusions of the European Council, the Council, on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee referred to in Article 150, shall each year draw up guidelines which the Member States shall take into account in their employment policies. These guidelines shall be consistent with the broad guidelines adopted pursuant to Article 121(2)”*.

***Article 149**, according to which, *“the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, may adopt incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects. Those measures do not include harmonization of the laws and regulations of the Member States”*.

2.1.2 European Union`s Legal Basis for Social Policy

This issue is covered in Chapter X of the Lisbon Treaty, which incorporates the following articles providing the legal basis for the action of both, the Union and its member states in this field:

Article 151, which reads as follows: *“The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 21 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonization while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion. To this end the Union and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the*

competitiveness of the Union economy. They believe that such a development will ensue not only from the functioning of the internal market, which will favor the harmonization of social systems, but also from the procedures provided for in the Treaties and from the approximation of provisions laid down by law, regulation or administrative action"⁶.

***Article 152** by which "the Union recognizes and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy". As further stipulated by this Article: "the Tripartite Social Summit for Growth and Employment shall contribute to social dialogue";

***Article 153**, which enables the Union to support and complement the activities of member-states in the following fields: (a) improvement in particular of the working environment to protect workers' health and safety; (b) working conditions; (c) social security and social protection of workers; (d) protection of workers where their employment contract is terminated; (e) the information and consultation of workers; (f) representation and collective defense of the interests of workers and employers including co-determination, subject to paragraph 5 of this article; (g) conditions of employment for third-country nationals legally residing in Union territory; (h) the integration of persons excluded from the labour market, without prejudice to Article 166; (i) equality between men and women with regard to labour market opportunities and treatment at work; (j) the combating of social exclusion; (k) the modernization of social protection systems without prejudice to point (c);

***Article 154**, which stipulates "the Commission's task of promoting the consultation of management and labour at Union level and undertaking any relevant measure to facilitate their dialogue by ensuring balanced support for the parties";

***Article 155**, which stipulates (among others) most importantly that: "Should management and labour so desire, the dialogue between them at Union level may lead to contractual relations, including agreements";

*** Article 156**, which states that "with a view to achieving the objectives of Article 151 and without prejudice to the other provisions of the Treaties, the Commission shall encourage cooperation between the member states and facilitate the coordination of their action in all social policy fields under this Chapter, particularly in matters relating to: employment; labour law and working conditions; basic and advanced vocational training; social security; prevention of occupational accidents and diseases; occupational hygiene; the right of association and collective bargaining between employers and workers";

*** Article 157**, which stipulate that "each Member State shall ensure that principle of equal pay for male and female workers for equal work of equal value is applied. It further states (in paragraph 2 thereof) that "the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work of work of equal value";

*** Article 158**, according to which, "member States shall endeavour to maintain the existing equivalence between paid holiday schemes";

*** Article 159**, which entitles the Commission to draw up a report each year on progress in achieving the objectives of Article 151, including the demographic situation in the Union;

*** Article 160**, which entitles the Council, acting by a simple majority after consulting the European Parliament, to establish a Social Protection Committee with advisory status to promote cooperation on social protection policies between Member States and with the Commission.

NOTE

It is only in the context of the aforementioned articles, that the role and the involvement of the **social partners** at the European level could be perceived as organized around three different types of activities:

tripartite consultation, consultation of the social partners, which covers the activities of the consultative committees and the official consultations in the spirit of the Article 153 of the TFEU and the **European Social Dialogue**, which is the name given to the bipartite work of the social partners, (in the context of the official consultations of the Commission based on the abovementioned Articles 153 and 154 of the TFEU.

6. In aforesaid context, please note that the Community Charter of the Fundamental Social Rights of Workers was adopted on 9 December 1989 by a declaration of all Member States, with the exception of the United Kingdom. It has de facto established the major principles on which the European labor law model is based and shaped the development of the present European social model.

As to the tripartite consultation, one should note that there is the so-called Tripartite Social Summit made up of representatives from the incumbent Council Presidency, the next two Presidencies, the Commission and the social partners. The areas covered by tripartite consultation include macroeconomic dialogue, employment, social protection, education and training.

With regards to the European Social Dialogue, one should note that it is a fundamental element in the European social model, encompassing discussions, negotiations and joint actions undertaken by the European social partners⁷. In this regard, one should mention that the criteria for the representativeness from the organizations are set out in the Commission's **Communication Concerning the Application of the Agreement on Social Policy' (COM (93) 600**⁸.

The European social dialogue may be inter-sectoral and sectoral. The inter-sectoral covers the whole economy and the labour market and its purpose is to promote dialogue between trade unions and employers' organizations in key areas of employment and social affairs.

The social partners have produced a number of notable inter-sectoral (so called framework) agreements, which were either transposed via directives or via autonomous route.

The European sectoral social dialogue is an instrument of the EU social policy and industrial relations at sectoral level. It consists of negotiations between the European trade unions and employers organizations of a specific sector of the economy. Sectoral social dialogue committees can launch joint actions, adopt guidelines and conclude agreements, contributing directly to shaping the EU labour legislation and policies.

All the abovementioned is of relevance for understanding the European Works Councils, which are created in order to provide workers' representatives in European states, working in big multinational companies, and a direct line of communication with the top management⁹. In conclusion, one should mention the notion of corporate social responsibility (CSR), which is described in the Commission Communication (from 22 March 2006) on Implementing the Partnership for Growth and Jobs: Making Europe a pole of excellence on corporate social responsibility.

2.1.3 European Union's Legal Basis for Public Health Policy

The key provisions on this issue are found in Chapter XIV (Public Health) of the TFEU, which include, most importantly, Article 168 designed to ensure human health protection component in the definition and the implementation of all the Union policies and activities.

As this Article provides: *"the Union action, which shall complement national policies, shall be directed towards improving public health, preventing physical and mental illness and diseases, and obviating sources of danger to physical and mental health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education, and monitoring, early warning of and combating serious cross-border threats to health"*.

2.2 The European Union Charter of Fundamental Rights

Unlike the CoE's ECHR, the EU's Charter proclaims not only conventional rights and liberties, but also many specific social rights. Namely, the rights this Charter provides are the following:

- Article 1 on Human dignity;
- Article 2 on Right to life;
- Article 3 on Right to the integrity of the person;
- Article 4 on Prohibition of torture and inhuman or degrading treatment or punishment;
- Article 5 on Prohibition of slavery and forced labour;

7. In aforesaid context, one should underline that 'social partners' is a term generally used in Europe to refer to representatives of management and labor, i.e. employers' organizations and trade unions.

8. Please note that the Commission regularly publishes a 'list of European social partner organizations' which, in the Commission's view, comply with these criteria.

9. The original legal basis for these councils was provided for by the Directive (94/45/EC) of 22 September 1994, which was revised by the EU's Council and Parliament's Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

- Article 6 on Right to liberty and security;
- Article 7 on Respect for private and family life;
- Article 8 on Protection of personal data;
- Article 9 on Right to marry and right to found a family;
- Article 10 on Freedom of thought, conscience and religion;
- Article 11 on Freedom of expression and information;
- Article 12 on Freedom of assembly and of association;
- Article 13 on Freedom of the arts and sciences;
- Article 14 on Right to education;
- Article 15 on Freedom to choose an occupation and right to engage in work;
- Article 16 on Freedom to conduct a business;
- Article 17 on Right to property;
- Article 18 on Right to asylum,
- Article 19 on Protection in the event of removal, expulsion or extradition;
- Article 20 on Equality before the law;
- Article 21 on Non-discrimination;
- Article 22 on Cultural, religious and linguistic diversity;
- Article 23 on Equality between men and women;
- Article 24 on the rights of the child;
- Article 25 on the rights of the elderly;
- Article 26 on Integration of persons with disabilities;
- Article 27 on Workers' right to information and consultation within the undertaking;
- Article 28 on Right of collective bargaining and action;
- Article 29 on Right of access to placement services;
- Article 30 on Protection in the event of unjustified dismissal;
- Article 31 on Fair and just working conditions;
- Article 32 on Prohibition of child labour and protection of young people at work;
- Article 33 on Family and professional life;
- Article 34 on Social security and social assistance;
- Article 35 on Health care;
- Article 36 on Access to services of general economic interest;
- Article 37 on Environmental protection;
- Article 38 on Consumer protection.

These rights are complemented with the rights in Chapter V (entitled as “Citizens` rights”) and Chapter VI (entitled “Justice”). In this context, one should stress the specific relevance of Article 51 of the Charter, which stipulates that “the provisions of the Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law”. This article further states that “the Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties”. Thus, unlike the CoE’s ECHR, one should underline that this EU’s Charter is not directly applicable and it does not offer direct judicial protection to individuals. That is why it should not be confused with the judiciary system based on the ECHR, but it is a complementary and sui generis instrument to be seen within the EU-broader legal context only. This becomes clearer by stressing that there is presently no special EU court deciding exclusively on human rights protection, but it is only the European Court of Justice as the highest court in the European Union on matters of EU law. In this sense, one should take into account the role of the European Union Agency for Fundamental Rights (FRA), which is an advisory body of the European Union¹⁰.

2.3 The Open Method of Coordination

The OMC is a recent and intergovernmental tool of governance in the EU, based on the voluntary cooperation of its member states.

It provides a framework of political coordination without recourse to “hard law”, like regulations or directives. In this process the member states agree to a cycle of actions in support of the commonly agreed objectives.

10. In this context, one should also note the one of the biggest and most complex challenge within the broader European judiciary human right protection system: the EU’ accession to the CoE’s ECHR-based system, which opens a series of issues, which must be separately and comprehensively dealt with.

The cyclical process includes the following 5 key elements: i) agreeing on EU-level common objectives; ii) developing common indicators to measure progress towards objectives and comparability, tailored to the needs of the member states and sectors involved, as means of comparing best practices; iii) developing National Reports on Strategies for Social Protection and Social Inclusion, which translate these objectives into policies at national level; iv) a Community Action Programme, underpinning and reinforcing the process; and v) evaluating progress and outcomes through European reports (i.e. Joint Reports by the Council and the Commission).

In other words, in general, the OMC functions in stages: firstly, the Council of Ministers agrees on policy goals; member states, then, guidelines are translated into national and regional policies, and thirdly, specific benchmarks and indicators to measure best practice are agreed upon. Finally, results are monitored and evaluated.

2.3.1 Common objectives of the Open Method of Coordination

There is a comprehensive list in Annex 1 to the Commission's Communication (2008) on "A Renewed Commitment to Social Europe: Reinforcing the Open Method of Coordination for Social Protection and Social Inclusion".

As stated in this instrument, the overarching objectives of the OMC for social protection and social inclusion are to promote: (a) social cohesion, equality between men and women and equal opportunities for all through adequate, accessible, financially sustainable, adaptable and efficient social protection systems and social inclusion policies; (b) effective and mutual interaction between the Lisbon objectives of greater economic growth, more and better jobs and greater social cohesion, and with the EU's Sustainable Development Strategy, and (c) good governance, transparency and the involvement of stakeholders in the design, implementation and monitoring of policy.

In addition, the above Communication stipulates specific objectives which are to be applied to different strands of work, and accompanied by recommending specific measures related thereto. The objectives include: a decisive impact on the eradication of poverty and social exclusion; adequate and sustainable pensions and accessible, high-quality and sustainable healthcare and long-term care. This also includes the objective of "active social inclusion of all", which is to be achieved by promoting participation in the labour market and by fighting poverty and exclusion among the most marginalized people and groups.

Defining common objectives in terms of social protection and social inclusion encompasses definition of common indicators for comparing best practices and for measuring progress towards these common objectives.

Like the common objectives, the common overarching indicators are presented comprehensively in Annex 2 to the abovementioned Commission's Communication on "A Renewed Commitment to Social Europe: Reinforcing the Open method of Coordination for Social Protection and Social Inclusion" (2008). Based on this instrument, OMC-related common indicators are the following: at-risk-of-poverty rate (total, children and elderly) + illustrative threshold value – EU; relative median poverty risk gap – EU, persistent at-risk-of poverty rate; inequality of income distribution (S80/S20) – EU; healthy life expectancy – NAT; early school leavers – EU, people living in jobless households – EU; projected total public social expenditures – NAT (pensions, health care, long-term care, education and unemployment transfers); median relative income of elderly people – EU; aggregate replacement ratio – EU, self reported unmet need for medical care – NAT + Care utilization – NAT; at-risk-of-poverty rate anchored at a fixed moment in time – EU; employment rate of older workers – EU; in-work poverty risk – EU (individuals who are classified as employed and who are at risk of poverty); activity rate – EU (share of employed and unemployed people in total population of working age 15-64); regional disparities – coefficient of variation of employment rates – NAT, and total health expenditure per capita – NAT.

As such, the abovementioned common indicators are not common policies. The broad methodological framework consists of a list of primary and secondary indicators for an overarching portfolio. The three strands (Social Inclusion, Pension, Health and Long-Term Care) include: primary indicators which are a reduced set of lead indicators covering all essential dimensions of the defined objectives; secondary indicators aimed at supporting these lead indicators by providing a greater insight into the nature of the problem. These indicators are used for the overall **National Reports on Strategies for Social Protection and Social Inclusion** and the specific National Reports on the different strands (**Social Inclusion, Pension, Health and Long-Term Care**) as well as for the joint report presented by the European Commission and the Council.

2.3.2 Related Common Indicators of the Open Method of Coordination

Defining common objectives in terms of social protection and social inclusion encompasses definition of common indicators for comparing best practices and for measuring progress towards these common objectives.

Like the common objectives, the common overarching indicators are presented comprehensively in Annex 2 to the abovementioned Commission's Communication on "A Renewed Commitment to Social Europe: Reinforcing the Open method of Coordination for Social Protection and Social Inclusion" (2008). Based on this instrument, OMC-related common indicators are the following: at-risk-of-poverty rate (total, children and elderly) + illustrative threshold value – EU; relative median poverty risk gap – EU, persistent at-risk-of-poverty rate; inequality of income distribution (S80/S20) – EU; healthy life expectancy – NAT; early school leavers – EU, people living in jobless households – EU; projected total public social expenditures – NAT (pensions, health care, long-term care, education and unemployment transfers); median relative income of elderly people – EU; aggregate replacement ratio – EU, self reported unmet need for medical care – NAT + Care utilization – NAT; at-risk-of-poverty rate anchored at a fixed moment in time – EU; employment rate of older workers – EU; in-work poverty risk – EU (individuals who are classified as employed and who are at risk of poverty); activity rate – EU (share of employed and unemployed people in total population of working age 15-64); regional disparities – coefficient of variation of employment rates – NAT, and total health expenditure per capita – NAT.

As such, the abovementioned common indicators are not common policies. The broad methodological framework consists of a list of primary and secondary indicators for an overarching portfolio. The three strands (Social Inclusion, Pension, Health and Long-Term Care) include: primary indicators which are a reduced set of lead indicators covering all essential dimensions of the defined objectives; secondary indicators aimed at supporting these lead indicators by providing a greater insight into the nature of the problem. These indicators are used for the overall National Reports on Strategies for Social Protection and Social Inclusion and the specific National Reports on the different strands (Social Inclusion, Pension, Health and Long-Term Care) as well as for the joint report presented by the European Commission and the Council¹¹.

2.3.3 National Reports for Social Protection and Social Inclusion

Drafting national reports for social protection and social inclusion is one of the key stages of the abovementioned OMC-cycle of activities, in line with the previously described common objectives and by using the above-indicated commonly agreed indicators. Thus, following the streamlining of the OMC on Social Protection and Social Inclusion, Member States are expected to translate the common objectives into their national plans for each of the three areas of Social Inclusion, Pensions and Health and Long-Term Care. These plans, which cover a period of two years, are submitted to the Commission in the form of a National Report on Strategies for Social Protection and Social Inclusion. As from the very beginning, in drafting their plans the member states are formally guided by a model format prepared by the Commission. In this regard, one should make reference to the Guidance Note for Preparing National Strategy Report on Social Protection and Social Inclusion (2008-2010), the background and the aims which are clearly illustrated in the introduction of the Note. Member states are invited to use the common framework outlined therein for support and guidance in order to strengthen the effectiveness of the OMC as a vehicle for exchange and mutual learning¹².

2.3.4 Related Joint Reports of the Open Method of Coordination

Another key feature of the Open Method of Coordination (OMC) is the joint analysis and assessment by the European Commission and the Council of the national reports on strategies for social protection and social inclusion submitted by the Member States. In other words, the Joint Reports *assess the progress made in the implementation of the OMC, sets key priorities and identifies good practice and innovative approaches of common interest to the Member States*. The ongoing situation of the OMC-related developments is illustrated in the latest Joint Reports on Social Protection and Social Inclusion of 2009 and 2010.

2.3.5 OMC-related Community Action Program

Member states co-operation in combating poverty and social exclusion is presently supported through the new so-called PROGRESS Program 2007-2013, the overall aim of which is to support financially the implementation of the EU's objectives in employment, social affairs and equal opportunities, as set out in the Social Agenda.

11. In aforesaid context, please note that there is so-called Indicators' Sub-Group (ISG) of the Social Protection Committee (SPC), which is responsible for the formulation and definition of indicators to be used for monitoring countries' progress towards the commonly agreed OMC objectives. In this regard, please in particular see the ISG Activity Report 2009, as published in January 2010, which contains, among others, list of new indicators in the field of social inclusion.

12. Please note that the three-year cycle started in early 2008 with the preparation of the abovementioned Guidance Note, and will finish in February 2011 with the adoption of a Joint Report.

2.3.6 Impact Assessment and Reinforcement of the Open Method of Coordination

These issues are closely interrelated, and in this regard, one should make a reference to the Commission Working Document accompanying the Commission's Communication "A Renewed Commitment to Social Europe: Reinforcing the Open Method of Coordination for Social Protection and Social Inclusion, Impact Assessment", which states that: "The overall assessment of the results of the Social OMC by the different actors involved in the process has been largely positive.

The method has supported mutual learning, promoted wider involvement of stakeholders, increased awareness of the multi-dimensional nature of exclusion and poverty; However, outcome indicators clearly point to insufficient delivery on the common social objectives and, on the basis of consultation of various stakeholders and experts, one has to conclude that there are weaknesses in the Social OMC". In this light, the document specifies a number of institutional and policy developments, all of which justify the need of significant strengthening of the Social OMC. In this regard, and of great importance is that the document identifies three respective policy options. In conclusion, one should make a reference to the abovementioned Commission Communication "A Renewed Commitment to Social Europe: Reinforcing the Open Method of Coordination for Social Protection and Social Inclusion", which lists a number of areas where the method can be improved, reinforced or further developed.

2.4 European Union Renewed Social Agenda

It is only against the above background, that one could understand and locate the EU Renewed Social Agenda, which is formally incorporated in the Commission Communication on Renewed Social Agenda: Opportunities, Access and Solidarity in 21st century Europe (2008). The renewed social agenda is built around opportunities, access and solidarity perceived as three interrelated goals of equal importance. In this regard, the communication stipulates next actions to be undertaken in relation to the following key areas, where the EU action has already demonstrated clear added value and full respect for the principles of subsidiarity and proportionality: children and youth; investing in people, more and better jobs, new skills; mobility; longer and healthier lives; combating poverty and social exclusion; fighting discrimination. The Communication also addresses the OMC, Social Dialogue etc.

2.5 EUROPE 2020- A European Strategy for Smart Sustainable and Inclusive Growth

This is one of the most recent and important developments of direct relevance to all of the issues mentioned in the previous sub-sections of the publication. The strategy is originally based on the Commission Communication "EUROPE 2020-A Strategy for Smart, Sustainable and Inclusive Growth", which was later (17 June 2010) formally adopted by the European Council: "The new strategy for jobs and smart, sustainable and inclusive growth constitutes a coherent framework for the Union to mobilize all of its instruments and policies and for the Member States to take enhanced coordinated action". In this regard, one should underline that the European Council confirmed the five EU headline targets (as attached to the aforementioned document) which constitute shared objectives guiding the action of the Member States and the EU with regards to promoting employment, improving the conditions for innovation, research and development, climate change and energy objectives, improving education levels and promoting social inclusion particularly through poverty reduction.

The guidelines continue to be the basis for any country-specific recommendations which the Council may address to a member states. In this context, one should particularly take into account the **EU flagship initiative "European Platform Against Poverty"** which is linked with the EU flagship initiative **"An Agenda for New Skills and Jobs"**.

2.6 Selective EU Acquis Relevant to Anti- Poverty and Social Inclusion

2.6.1 Protection of Employees' Rights

With regards to the EU legally binding instruments for the member-states in this field, and in addition to the provisions of the abovementioned EU Charter of Fundamental Rights, one should take into consideration the following EU instruments, in addition to others:

- the Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies;
- the Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, as well as **the Proposal for a Directive of the European**

Parliament and of the Council on the protection of employees in the event of the insolvency of their employer [COM(2006) 657]);

- the Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses¹³;
- the Council Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship;
- the Directive 96/71/EC of the European Parliament and of the Council of concerning the posting of workers in the framework of the provision of services¹⁴;
- the Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women;
- the Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation;
- Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003, concerning certain aspects of the organization of working time;
- Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC;
- Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time working concluded by UNICE, CEEP and the ETUC; Council Directive 99/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP;
- Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work;
- Framework agreement on telework, which is of particular importance because it is the first European agreement put in place by the social partners themselves.

2.6.1.1 European Union Regulations on Health and Safety at Work

EU regulations about health and safety at work include the Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, which applies to all sectors of activity, both public and private, with the exception of certain specific activities in the public and civil protection services. It is completed by a series of other EU instruments dealing with the same issue, which are mentioned in detail in the Directive 2007/30/EC of the European Parliament and of the Council of 20 June 2007 amending the abovementioned Directive (as well as the previous ones, i.e. its individual Directives and Council Directives 83/477/EEC, 91/383/EEC, 92/29/EEC and 94/33/EC) with the aim to simplify and rationalise the reports on practical implementation, with deadline for transposition in the Member States by 31.12.2012. In this sense, one should also take into consideration the Commission's Communication, from 21 February 2007, entitled 'Improving Quality and Productivity at Work: Community Strategy 2007-2012 on Health and Safety at Work'.

NOTE

One should also take into account that an overview of the EU member states' recent policies and practice in the field of Social Integration and Labour Market Inclusion are included in the Joint Report on Social Protection and Social Inclusion including the one of 2008 and 2009. In this regard, it is also worth mentioning the Second European Quality of Life Survey Family Life and Work (2009), which offers a overarching view of the diverse social realities in the 27 EU Member States, Norway and the candidate countries of Croatia, the Republic of Macedonia and Turkey.

2.6.2 European Union's Acquis in the Area Social Security

When dealing with this complex issue, one should first refer to the Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community".

This Regulation is accompanied by the implementing **Regulation (EEC) No 574/72**, which covers the practical implementation thereof. As seen from this perspective, one should note that the above Regulation is completed by the

13. Please also see Commission's Communication on Reassessing the regulatory social framework for more and better seafaring jobs in the EU [COM (2007) 591] and its Report on Council Directive 2001/23/EC .

14. Please also see the Commission's Communication on Posting of workers in the framework of the provision of services: maximizing its benefits and potential while guaranteeing the protection of workers [COM(2007) 304], its Communication – "Guidance on the posting of workers in the framework of the provision of services" [COM(2006) 159] and the one on the implementation of Directive 96/71/EC in the Member States [COM(2003) 458].

Regulation (EC) No 592/2008 of the European Parliament and of the Council of 17 June 2008 amending Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community.

Here, one should also mention that the EU provisions on social security coordination are constantly up-dated and extended and follow the social and judicial developments.

As seen from current perspective, the regulations of importance in this view are the Regulation (EC) No. 883/2004 as amended by Regulation No. 988/2009 and implementing Regulation No. 987/2009, or 'modernized EU social security coordination'. In other words, they simplify and enhance EU law, improving the rights of the persons concerned: with the 'modernized EU social security coordination', the focus of these rules has shifted from facilitating the mobility of workers to enforcing the rights of all citizens, whether they work or not.

The aforementioned new legislative package is in force as from 1 May 2010.

Against this background, one should underline that the EU provisions on social security coordination do not replace national social security systems with a single European one; they ensure that the application of the different national legislations does not adversely affect persons exercising their right to move and to stay within member states. In this context, and as to the nationals of non-EU countries, one should note that on 01st June 2003, the Regulation 859/2003 extended EU social security coordination rules to nationals of non-EU countries ("third countries") legally residing in the U and in a cross-border situation. In this regard, one should take into consideration that Regulations 1408/71 and 574/72 continue to apply until the Council of Ministers reaches an agreement on the extension of the new regulations.

2.6.3 European Union's Policy in Public Health-related field

The area of health is essentially a responsibility of the Member States. The role of the EU, as laid down in the European treaties, is to undertake measures to supplement the work of the member states, while providing European added value, particularly with regards to major health threats, issues that have a cross-border or international impact and questions related with free movement of goods, services and people and reducing health inequalities. In this context, one should mention the European Commission's new Health Strategy, 'Together for Health: A Strategic Approach for the EU 2008-2013', which aims to provide, for the first time, an overarching strategic framework of core issues in health, as well as, health in all policies and global health issues¹⁵.

In addition, in this regard, one should take into account the most recent EU Council Conclusions on "*Equity and Health in All Policies: Solidarity in Health*"¹⁶, setting out a framework for action by the Commission and the member states.

NOTE

In the above context, one should take into account the overview of the EU's Member States' Recent Health Care Policies and Practice and health-related inequalities found in the *Joint Reports on Social Protection and Social Inclusion including the one of 2008 and 2009*.

2.6.3.1 European Union Member State's Mental Health Policy

With regards to the mental health policy at EU level, it should be noted that many EU countries have developed strategies for implementation of new policies, such as the improvement of the access to social services and de-institutionalization processes to move from big psychiatric hospitals to smaller and more personalized and appropriate structures to address the specific needs.

However, mental health aspects are partially reflected in most of the National Strategic Reports on Social Protection and Social Inclusion 2008-2010, or not at all. Most countries mention health policies and social inclusion and protection in general, but only indicate very few direct links to mental health and often do not give any direct reference to mental

15. In this context, one should mention that there is Community's health information system providing a key mechanism underpinning the development of health policy. Please see the Strategy on European Community Health Indicators (ECHI), as available at: http://ec.europa.eu/health/ph_information/dissemination/echi/echi_en.htm

16. Doc. 9947/10, of June 2010

health aspects. Mental health is indirectly affected through the overall socio-political measures. In all, the financing of mental health-related policies and projects is insufficient in most of the countries. National strategic reports on social protection and social inclusion lack mental health promotion and prevention programs.

One general obstacle to tackle mental health problems, often, is the lack of available data for analysing the situation and this makes it difficult to define concrete targets¹⁷.

2.6.4 Patient Safety and the Prevention of Healthcare Associated Infections

This complex issue is covered by Council Recommendation 2009/C 151/01 of 9 June 2009 on patient safety, including the prevention and control of healthcare associated infections. One should also add the issue of cross-border healthcare-related patients' rights, which is regulated by the Directive of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare (2009), as well as the Health Insurance Card (EEC) No 1408/71.

2.6.5 European Union Policy Towards Disability-Related Issues

The EU's approach to disabilities is based on Articles 2, 10 and 19 of the Treaty on the Functioning of the EU and the EU's Charter of Fundamental Rights, which reaffirms the right of non-discrimination and the principle of integration of persons with disabilities (Art. 26).

In terms of the EU's key policy action-documents in this regard, one should mention the "European Action Plan on Equal Opportunities for People with Disabilities (2004-2010), which was aimed to set out a sustainable and operational approach to disability issues in enlarged Europe, that is, to implement fully the Directive on equal treatment in employment and occupation. In this regard, one should refer to Directive 89/654/EC concerning **minimum safety and health requirements for the workplace**, as well as the EU's specific actions related to the **parking card for people with disabilities** (Council Recommendation 98/376/EC of 4 June 1998)¹⁸.

From a recent perspective, the EU Council Resolution on "New European Disability Framework (2010) should be mentioned, the Regulation No 1107/2006/EC concerning the rights of disabled persons and persons with reduced mobility when travelling by air and the Regulation No 1371/2007/EC on rail passengers' rights and obligations, which address the needs of persons with reduced mobility, including communication and information technologies. To conclude, one should also note that the OMC-related Joint Reports also cover disability related matters¹⁹.

2.6.6 EU Policy for the Elderly

The increased relevance of this issue is clearly reflected in Article 25 of the EU Charter of Fundamental Rights dealing with the rights of the elderly. This issue is also a special subject of the Commission Communication of 29 April 2009 – dealing with the impact of an ageing population in the EU (2009 Ageing Report).

In addition, these issues are particularly concerned with the pension systems in the EU, which is of crucial relevance. Namely, this is one of the greatest challenges of Europe today: ensuring adequate and financially viable pension systems for its ageing population while the number of people of working age sharply declines and the number of pensioners rapidly rises.

In the aforesaid context, we should mention the latest EPC-SPC Joint Report on Pensions (2010), which outlines in a detailed way the present European framework in support of national pension reform; it also includes the OMC and the Laeken objectives.

All of the actual issues in the field of pension reforms are illustrated in the Commission's Green Paper "Towards Adequate, Sustainable and Safe European Pension Systems" (June 2010), which is based on the abovementioned OMC-related Joint Reports.

17. In above context, one should note that positive findings and good practice in above field, may be found in the document "Mental Health in the National Strategic Reports on Social Protection and Social Inclusion 2008-2010", as available on: www.mhe-sme.org

18. In addition, one should also recall on the Commission's action in the field of competition policy with the adoption, in November 2002, of a Regulation on State aid for employment, allowing the Member States (among others) to finance up to 60% of annual wage costs and social security contributions when companies recruit disabled workers.

19. In the above context, please note that positive findings and good practice-related examples in mental health-related field may be found at: www.mhe-sme.org

This Green Paper describes the further specific policy action to be undertaken by the EU and its member states on a number of fronts, including: addressing adequacy gaps; closing sustainability gaps, extending working lives, notably through increases in pensionable and effective retirement ages; removing obstacles to mobility within and between member states; and strengthening safety in pensions.

In this context, one should also make a reference to the set of specific conclusions on “Sustainable Social Security Systems for Adequate Pensions Achieving Adequate Pensions and Social Inclusion Objectives” (2010), which elaborate the specific issue of minimum pensions, or minimum income provisions, as well as the Council conclusions on “Active Ageing”.

In conclusion, one should also mention the Green Paper on Urban Mobility (2007) as was the Commission’s Action Plan on Urban Mobility in 2009 and the “i2010 Initiative Action Plan on Information and Communication Technologies and Ageing”.

NOTE

In this context, it should be noted that a detailed overview of the EU Member States’ recent policies related to the elderly could be found in the Joint Report on Social Protection and Social Inclusion of 2009 and 2010.

In addition, and for the purposes of getting the whole picture of the most recent and ongoing practices in the EU member states, one should take into consideration the specific projects funded by the EU²⁰.

2.6.7 European Union’s Policy on Equality between Men and Women

It is widely recognized that the EU has already made a significant progress in achieving gender equality, owing to its equal-treatment legislation, gender mainstreaming, specific measures for the advancement of women, action programs, social dialogue and dialogue with the civil society.

In this light, and in addition to the specific EU’s instruments mentioned in the previous sub-sections of this publication, we should stress that the fundamental legal framework of this issue is incorporated in the EU Charter of Fundamental Rights, namely, in Article 20 on Equality before the law, Article 21 on Non-discrimination and Article 23 on Equality between men and women. In this context, one should add the Roadmap for equality between women and men (2006-2010), which outlines specific priority areas, and for each area identifying key objectives and actions which should facilitate their implementation.

The Roadmap should be seen in close relation with other EU instruments including the abovementioned Communication ‘A renewed social agenda: Opportunities, access and solidarity in 21st century Europe’ and in addition to the Communication on “Non-discrimination and Equal Opportunities: A Renewed Commitment”, as well as the European Pact for Gender Equality, all of which make a specific reference to the three well known EU directives in this field, which have been adopted to give effect to Article 13 of the Treaty of the European Commission: Council Directives 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation and 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

In conclusion, we should mention the Commission’s annual report on equality between women and men, which analyses the evolution of key indicators in the area of equality, including in a detailed statistical annex. This is clearly illustrated in its Communication on “Mid-term Progress Report on the Roadmap for Equality between Women and Men (2006-2010)”.

2.6.8 European Union’s Policy towards Child Poverty

The EU’s commitment to implementing children’s policies has been strengthened in recent years with the introduction of a range of measures addressing child protection, poverty and social exclusion, and age-based discrimination.

An important step in this direction was taken by the European Commission in 2006 with its Communication ‘Towards a Strategy on the Rights of the Child’ which represents a coherent, considered approach to the development, application, monitoring and review of EU law and policies affecting children. This strategy is based on the series of specific objectives including launching an Action Plan on Children in Development Cooperation, setting up a European Forum for the Rights of the Child, etc.

20. For more information on the most recent projects in above field, please see at “Ageing Well in Europe: Instruments and Tools available to Local and Regional Actors, October 2009.

In addition to the Communication, one should add that in the 2006-2008 **National Reports on Strategies for Social Protection and Social Inclusion**, the EU member states` governments have also pledged to develop a strategic, integrated and long-term approach to preventing and addressing poverty and social exclusion among children; this was complemented (in January 2008) with the Report on "Child Poverty and Wellbeing" as approved by the EU Social Protection Committee.

The EU's *Fundamental Rights Agency's Report (of 2009)*²¹ contains specific indicators measuring the protection and promotion of child's rights. It constitutes an initial toolkit to evaluate the impact of EU law and policies on children's status and experience across various fields. The indicators presented in the Report aim also to highlight the existing gaps both in current EU provision and available data.

In this context, one should also take into consideration the following documents: the Council's "EU Guidelines for the Promotion and Protection of the Rights of the Child" (of 2007), as well as the Commission Staff Working Document Accompanying the Communication from the Commission - Towards an EU Strategy on the Rights of the Child - Impact assessment of 2006, which explicitly refers to the need to formulate a set of indicators to review the impact of EU legal and policy activity on children²².

NOTE

In this context, one should take into account that the recent EU member states` policies and practices as to both the families with children and the child poverty are covered by the latest OMC-related Joint Reports²³.

2.6.9 European Union`s Policy towards Roma-Related Issues

The EU's policy on Roma-related issues is reflected in a number of documents including the conclusions of the European Council of December 2007 and June 2008, the conclusions of the General Affairs Council of December 2008, and the resolution of the European Parliament of March 2009 on the social situation of Roma and their improved access to the labour market in the EU.

Also, it is important to note in this regards the Commission`s Staff Working Document accompanying the abovementioned Communication on "Non-discrimination and Equal Opportunities: A Renewed Commitment" dealing with the issue of the Community Instruments and Policies for Roma Inclusion (2008).

The above is also complemented with the European Platform for Roma Inclusion, which is aimed at stimulating cooperation and sharing experience on successful Roma inclusion policies and practices.

In this regard, one should recall that at its first meeting in Prague, on 24th April 2009 a set of 10 Common Basic Principles to effectively address the inclusion of Roma was identified. These Common Principles aim at guiding the EU institutions and Member States, candidate and potential candidate countries when they design and implement new policies or activities in that context.

2.6.10 Other Forms of Social Exclusion at European Union level

In addition to the already mentioned forms of social exclusion, it is also important to mention other forms of social exclusion at EU level as exclusion due to homelessness, migrants-related exclusion and financial exclusion.

As to the homelessness, we should make reference to the most recent OMC Joint Report (2010) which states (among other things) that: "2009 was the focus year on homelessness and housing exclusion within the social OMC. Work in this context revealed that the shortage of adequate housing is a long-standing problem in most European countries".

As to the social exclusion related to migrants, it is widely recognized that the European cooperation on these issues has faced many difficulties since the EU Amsterdam Treaty. A special problem in this context is the actual situation of the illegal migrants without documents in the EU and their access to social and economic rights.

As seen from a more recent perspective, one should mention the Green Paper on an EU Approach to Managing Economic

20. "Developing indicators for protection, respect and promotion of the rights of the child in the European Union, March 2009, as available at: www.fra.europa.eu

22. In this context, please note that the European Commission has launched (in June 2010) a public consultation on a new EU children's rights strategy, with a view to improving and find new potential actions for the re-launch of the 2006 strategy for the period 2011-2014.

23. For information on examples of good practice in fighting child poverty, please see: <http://www.againstchildpoverty.com/employment/education/health/housing-casestudies.php>

Migration (2004) and the so-called Hague Programme (setting the agenda for immigration and asylum policies for the period 2005-2010).

The later also includes the Commission's "Policy Plan on Legal Migration" introducing a list of actions and legislative initiatives that it intended to adopt by the end of 2009 with respect to the "coherent development of EU legal migration policy"; the European Pact on Immigration and Asylum (2008), which is not legally binding document, the EU Directive on "Blue Card for Highly Qualified Immigrants"(2009) and the so-called EU "Return Directive" (2008)²⁴.

In addition, this complex subject matter is also covered by many other EU legislative and policy documents, such as: **Council Directives: 2003/86/EC on the right to family reunification;** 2003/109/EC on a long-term resident status for third country nationals who have legally resided for five years on the territory of a Member State; 2004/114 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, 2005/71 for the facilitation of the admission of researchers into the EU. The most recent input in this regard was by the so-called *Stockholm Programme (2009)* which provides a framework for EU action on the questions of citizenship, justice, security, asylum and immigration for the next five years (2010-2014)²⁵.

In terms of the current situation with migrants in the EU, we should take into consideration the analysis conducted in June 2010 by "Caritas Europe"²⁶, and the OMC-related Joint Report 2009 which contains similar findings and conclusions, as well as the European Economic and Social Committee (EESC)'s conclusion on Work and Poverty (of 2009)²⁷.

In conclusion, with regards to the issue of "financial exclusion", one should note that the first comprehensive picture of the nature and extent of financial exclusion in Europe was provided by the recent study "Mutual Learning on Financial Inclusion" (2008). This issue is also covered by the most recent OMC Joint Report, which in this regard stresses that "addressing financial exclusion is vital in any strategy against poverty, and the crisis brings the issue even more to the fore."²⁸ The Report also mentions the issue of education disadvantages.

NOTE

In relation to the sub-sections of this part of the publication, one should mention that it is the concept of "active inclusion" which provides a clear picture of these issues. This is illustrated in the abovementioned OMC-related Joint Report 2009²⁹.

2.7 The Role of the European Court of Justice's Case Law in Anti-Poverty and Social Inclusion Fields

The relevance of this issue is based on, and derives from the respective mission of the European Court of Justice (ECJ) as the highest court in the EU in relation to the EU law-related matters.

Namely, since the establishment of the ECJ in 1952, its mission has been to ensure that "the law is observed in the interpretation and application of the Treaties". As part of this mission, the ECJ: reviews the legality of the acts of the EU's institutions, ensures that the Member States comply with obligations under the Treaties, and interprets EU law at the request of the national courts and tribunals.

The later is clear when all of the relevant Lisbon Treaty's provisions are taken into account, including Article 258 (ex Article 226) of the Treaty on the Functioning of the EU, according to which, "the Court of Justice may determine whether a Member State has fulfilled its obligations under Community law". Such action may be brought by the Commission – as this is in most cases – or by another Member State, although the cases of the latter kind remain extremely rare. If the Court

24. Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals, as published in the Official Journal (L 348 of 24.12.2008). The transposition deadline for the Member States is 24.10.2010.

25. In this context, one should also recall that, when one looks at the ratification status of the key most important international conventions in the above field, one sees that the EU member states are not doing well: none of the EU member states have ratified (for example) the UN Migrant Workers Convention; as far as the ILO conventions are concerned, the results are only slightly better.

26. "Poverty in Europe: Invisible borders - a barrier to inclusion, Caritas Europe, Poverty Papers 2010. This paper is part of the Zero Poverty campaign; www.zeropoverty.org

27. EESC, Opinion on Work and Poverty: Towards the necessary holistic approach, SOC/336, 30 September 2009.

28. For information on the most recent EU member states' best practice in this field please see at: <http://www.fininc.eu/knowledge-and-data/best-practices,en,48,96,2.html>

29. For more information on the abovementioned forms of social exclusion at the EU level, please also see the Second European Quality of Life Survey Family Life and Work, (as published in 2010).

finds that an obligation has not been fulfilled, the Member State concerned must remove the breach without delay.

If, after proceedings are initiated by the Commission, the ECJ finds that the Member State concerned has not complied with its judgment, it may, upon request of the Commission, impose on the member state a fixed or a periodic financial penalty.

Just for purposes of a brief illustration of the aforesaid, it suffices to mention that the Commission, on 14 May 2009, brought Poland in front of the ECJ for non-transposition of EU rules prohibiting gender discrimination in access to and supply of goods and services (Directive 2004/113/EC).

In this context, one should underline that many of the socio-economic rights incorporated into the EU's Charter of Fundamental Rights have already been recognised by the ECJ even before the Charter has become an integral part of the EU Lisbon Treaty.

Thus, the ECJ was de facto the first EU body to emphasize the need for protection of human rights of the individual and has set standards for protection and it is itself in large responsible for the inclusion of socio-economic rights in the Community's agenda; the ECJ formed through its case law a "theory of social rights", which defines the limits of European economic integration much more than the EC legislation in force would do. The ECJ has ruled on a number of cases, for example, concerning the social policy arrangements of the Member States of the EU in relation to free movement, etc.

2.8 European Union`s Input to the UN MDGs

EU's strong commitment towards the MDGs was most recently reaffirmed by the Council's Conclusions (of 14th June 2010) on the Millennium Development Goals in relation to the forthcoming UN High Level Plenary Meeting on the MDGs.

In this regard, one should underline that it was the Commission's Communication "A Twelve-Point EU Action Plan in Support of the Millennium Development Goals, which has provided essential guidance for the aforesaid EU position. This Action Plan, as adopted by the Council in June 2010, describes the year 2010 as a key year for action and accountability while illustrating the very EU Action to speed up progress on the MDGs.

MACEDONIAN NATIONAL LEGAL AND POLICY ACTION FRAMEWORK IN ANTI POVERTY AND SOCIAL INCLUSION

INTRODUCTION

As stressed in the introduction of this publication, the fight against poverty and social exclusion is placed high on the agenda of the Republic of Macedonia, especially in the last several years. In terms of the legal basis for national action in the above fields, one should underline that the key provisions are in the Constitution, as well as in a great number of laws dealing with specific issues in the relevant fields and accompanied by an increasing number of programs and other strategic policy documents.

All of them aim at covering and guiding the state's efforts in this regard. The process in this direction is further stimulated and /or reinforced by the membership of the Republic of Macedonia in key international intergovernmental organizations including the UN, the ILO, CoE and the aspiration for the EU. In relation to the UN broader system, one should underline that the Republic of Macedonia has ratified the majority of the key UN Human Rights Treaties, however there is still a number of relevant legal instruments to be still ratified. Similar situation exists in relation to country's membership in the ILO. With regards to CoE, one should underline that it has also ratified a great number of legal instruments of this organization dealing with specific subject matters, while it has still not ratified the (R)ESC. At the same time, it is the capacity of a candidate country for EU membership that has already provided additional and complementary basis for a series of specific national actions in the above context, including the ongoing process of the country's preparation of the Joint Social Inclusion Memorandum to be signed with the EU. Here one should stress the complementarity of Macedonia's ongoing efforts in achieving economic and social EU integration priorities, and the ones based on its obligations under its full membership in both the CoE (in terms of implementing the CoE's conventions) and the UN system (in terms of the UN human rights standards and the achievement of the MDGs). We should also mention country's membership in other organizations including the ILO, UNICEF, UNESCO, WHO, etc. This is also due to the inter-relatedness of the very legal instruments of those organizations, as well as, the close relationships between these organizations. The aforesaid actuality of the anti-poverty and social exclusion-related efforts in the Republic of Macedonia are reflected in the present National Strategy for Reducing Poverty and Social Exclusion in the Republic of Macedonia (14.10.2010), which clearly reflects country's strong commitment in the above regard as well as the challenges of the Macedonian state and society.

In this light, the third part of this publication provides an overview of the most relevant articles of the Macedonian Constitution, followed by a short overview of the domestic legislative and policy-action framework related to anti-poverty and social exclusion. It also contains a short overview of this country's obligations derived from its status of contracting party to the key international legal instruments adopted by the UN, ILO, CoE and the EU.

3.1. OVERVIEW OF SELECTIVE CONSTITUTIONAL PROVISIONS

- **Article 1** : The Republic of Macedonia is a sovereign, independent, democratic and social state;
- **Article 8**: The fundamental values of the constitutional order of the Republic of Macedonia are: basic freedoms and rights of the individual and citizen recognized in international law and laid down in the Constitution; free expression of national identity; rule of law; division of state powers into legislative, executive and judicial; legal protection of property; freedom of the market and entrepreneurship; humanism, social justice and solidarity; local self-government; proper urban and rural planning to promote a congenial human environment, as well as ecological protection and development; and respect for the generally accepted norms of international law. Anything that is not prohibited by the Constitution or by law is permitted in the Republic of Macedonia;
- **Article 9**: Citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status. All citizens are equal before the Constitution and the law;
- **Article 30**: The right to ownership of property and the right of inheritance are guaranteed. Ownership of property creates rights and duties and should serve the wellbeing of both the individual and the community. No person may be deprived of his/her property or of the rights deriving from it, except in cases concerning the public interest determined by law. If property is expropriated or restricted, rightful compensation not lower than its market value is guaranteed;
- **Article 31**: Foreign subjects in the Republic of Macedonia may acquire the right of ownership of property under conditions determined by law;
- **Article 32**: Everyone has the right to work, to free choice of employment, protection at work and material assistance during temporary unemployment. Every job is open to all under equal conditions. Every employee has a right to appropriate remuneration. Every employee has the right to be paid daily, weekly and annual leave. Employees cannot waive this right. The exercise of the rights of employees and their positions are regulated by law and collective agreements;
- **Article 33**: Everyone is obliged to pay tax and other public contributions, as well as to share in the discharge of public expenditure in a manner determined by law;
- **Article 34**: Citizens have a right to social security and social insurance, determined by law and collective agreements;
- **Article 35**: The Republic provides for the social protection and social security of citizens in accordance with the principle of social justice. The Republic guarantees the right of assistance to citizens who are infirm or unfit for work. The Republic provides special protection for handicapped persons, as well as conditions for their involvement in the life of the society;
- **Article 36**: The Republic guarantees particular social security rights to veterans of the Anti-Fascist War and of all Macedonian national liberation wars, to war invalids to, to those expelled and imprisoned for the ideas of the separate identity of the Macedonian people and of Macedonian statehood, as well as to members of their families without means of material and social subsistence. The particular rights are regulated by law;
- **Article 37**: In order to exercise their economic and social rights, citizens have the right to establish trade unions. Trade unions can constitute confederations and become members of international trade union organizations. The law may restrict the conditions for the exercise of the right to trade union organization in the armed forces, the police and administrative bodies;
- **Article 38**: The right to strike is guaranteed. The law may restrict the conditions for the exercise of the right to strike in the armed forces, the police and administrative bodies;
- **Article 39**: Every citizen is guaranteed the right to health care. Citizens have the right and duty to protect and promote their own health and the health of others;
- **Article 40**: The Republic provides particular care and protection for the family. The legal relations in

- marriage, the family and cohabitation are regulated by law. Parents have the right and duty to provide for the nurturing and education of their children. Children are responsible for the care of their old and inform parents. The Republic provides particular protection for parentless children and children without parental care;
- **Article 41:** It is a human right freely to decide on the reproduction of children. The Republic conducts a humane population policy in order to provide balanced economic and social development;
 - **Article 42:** The Republic particularly protects mothers, children and minors. A person under 15 years of age cannot be employed. Minors and mothers have the right to particular protection at work. Minors may not be employed in work, which is detrimental to their health or morality;
 - **Article 43:** Everyone has the right to a healthy environment to live in. Everyone is obliged to promote and protect the environment. The Republic provides conditions for the exercise of the right of citizens to a healthy environment;
 - **Article 44:** Everyone has a right to education. Education is accessible to everyone under equal conditions. Primary and secondary education is compulsory and free;
 - **Article 45:** Citizens have a right to establish private schools at all levels of education, with the exception of primary education, under conditions determined by law.
 - **Article 46:** The autonomy of universities is guaranteed. The conditions of establishment, performance and termination of the activities of a university are regulated by law.
 - **Article 47:** The freedom of scholarly, artistic and other forms of creative work is guaranteed. Rights deriving from scholarly, artistic or other intellectual creative work are guaranteed. The Republic stimulates, assists and protects the development of scholarship, the arts and culture. The Republic stimulates and assists scientific and technological development. The Republic stimulates and assists technical education and sport.
 - **Article 55:** The freedom of the market and entrepreneurship is guaranteed. The Republic ensures an equal legal position to all parties in the market. The Republic takes measures against monopolistic positions and monopolistic conduct on the market. The freedom of the market and entrepreneurship can be restricted by law only for reasons of the defence of the Republic, protection of the natural and living environment or public health.
 - **Article 57:** The Republic of Macedonia stimulates economic progress and provides for a more balanced spatial and regional development, as well as for the more rapid development of economically underdeveloped regions.
 - **Article 58:** Ownership and labour form the basis for management and sharing in decision-making. Participation in management and decision-making in public institutions and services is regulated by law, on the principles of expertise and competence.

3.2 Macedonian Domestic Legal and Policy Framework in Specific Anti-Poverty and Social Inclusion-Related Fields

3.2.1 Legislation on Labour and Policy Action Framework

The special protection provided with **the Law on Labour Relations** is as follows:

- the protection of the workers due to pregnancy and parenting;
- prohibition of performance of work during pregnancy and after delivery of birth;
- special protection during pregnancy; “the right to paid leave due to pregnancy, delivery and parenting”;
- the right of the female worker to return to work from leave due to pregnancy, delivery and parenting;
- the right of using paternity leave or leave for the guardian of the child;
- the right of a shortened working hours for parent of a child with development-related problems and special educational needs;
- protection of workers under the age of 18 years protection of people with disability with the right to a professional rehabilitation
- special protection of older workers
- peaceful resolution of individual and collective labour disputes
- issues related to trade unions and associations of employers,
- employees’ right to freely establish a trade union and become members under conditions stipulated by statute or rulebook of the trade union,
- collective agreements
- the rights and obligations during strike
- the right of trade unions and their associations to a strike for the purposes of protecting economic and social rights of their members

Other Labour-related laws:

- Law on Safety and Health at Work
- Law on Labour Inspection
- Law on Employment and Insurance in the Case of Unemployment
- Law on Peaceful Resolution of Labour Disputes
- Law on Voluntary Work
- Law on Agencies for Temporary Employment
- Law on Employment of Foreigners
- Law on Employment of Disabled Persons
- Social Protection Law

The **Law on Labour Relations** regulates labour relations between employees and employers established on the basis of an employment contract.

This Law regulates all the relevant aspects of labour relations of the employees in state bodies, the units of local self-government, institutions, public companies, funds, bureaus, organisations and other legal and natural entities which employ workers, unless otherwise stipulated by other law; it regulates in detail all the specific duties and rights of both the employers and the employees when concluding and are under employment contract and in particular the ones in relation to the performance of the work. The Law is also the main legal basis for the establishment of the “Social Economic Council”.

In this sense, and with regards to the abovementioned *collective agreements*, one should take into consideration that there is a *general collective agreement for the private sector*. There is such agreement for the public sector also, which refers to the authorities of state power and other state organs, the bodies of the units of local self-government, the institutions, public companies, bureaus, agencies, funds and other legal entities performing an activity of public interest³⁰. Both types of general collective agreements apply directly and are obligatory for the employees and the employers in both sectors.

These agreements regulate the rights and the obligations of both parties, and may also contain rules regulating labour contracts, contents and termination as well as other issues related to the labour relations³¹.

In addition, the *Economic Social Council* of the Republic of Macedonia was established through an agreement between the Government and representative trade unions and representative employees’ associations from the territory of the Republic of Macedonia. Its purpose is to determine and achieve harmonised activities for protection and promotion of economic and social rights, that is, the interests of the workers and the employers, striving towards harmonized economic development and social policies, stimulating social dialogue and concluding and implementing collective agreements and their harmonisation with the measures of the economic, development and social policies”.

30. As concluded between the Government of the Republic of Macedonia and the Confederation of Free Syndicates, on the 16th January 2005, “Official Gazette of the Republic of Macedonia”, No. 62/05)

31. In addition, there are presently 17 collective branch-like agreements defining the most important issues concerning the labour relations.

3.2.2 Social Protection Related Legislation and Policy Action Framework

The key legal text in the area of social protection is the Social Protection Law³². **The Law on Safety and Health at Work**, closely related with the aforementioned law, determines the measures of safety and health at work, employer's obligations and employees' rights and obligations in the area of safety and health at work, as well as the preventive measures in this area.

The Social Protection Law:

Defines the social protection as a system of measures, activities and policies aimed at preventing and overcoming basic social risks the citizens face during his/her lifetime, decreasing poverty and the social exclusion and reinforcing citizens' capacity for their own protection.

In this regard, it defines (for example) the notion of social risk which includes:

- health-related risks,
- age-related risks,
- single parent family-related risks,
- employment related risks,
- poverty-related risks and
- risks of other type of a social exclusion.

It defines in detail the users of social protection who (in addition to the Macedonian citizens) also include foreigners, asylum seekers, recognized refugees and persons under subsidiary protection, under the conditions and in ways determined by law.

In this light, in a word, the law defines also the other relevant concept related to the social protection, while it regulates in detail the institutional protection rights such as:

- right to social service for the users of social protection;
- right to assistance for an individual;
- assistance for family;
- right to home care and assistance for both an individual and the family;
- right to daily and temporary accommodation as an assistance for an individual and family;
- accommodation in a foster family;
- accommodation in a small group house, and independent living with a support;

It also stipulates the rights to financial assistance, as social protection, including:

- social financial assistance;
- permanent financial assistance;
- financial assistance for a person, who, up to 18 years of age, had a status of a child without parents and parental care;
- financial assistance for mothers who have delivered fourth child;
- financial compensation for an assistance and care by other person;
- Ad-hoc financial assistance;
- compensation of salary for shortened working time because of a care of child with intellectual or physical impediments in the development;
- financial assistance for social housing

In conclusion, one should note that the above legislative framework is completed by a series of specific policy documents, including:

- The National Strategy for Employment -2010,
- The National Action Plan for Employment 2009-2010 and
- The Operative Plan for Active Policies of Employment for year 2009 and 2010.

These documents are directly linked with the Programme for Approximation of the National Legislation with that of EU (Revised, 2009) and the National Strategy for Reduction of Poverty and Social Exclusion in the Republic of Macedonia.

The key legal text in the social protection area is the **Social Protection Law**, which regulates the system and the organization of social protection, social protection- rights, the funding and the procedures for providing social protection rights.

32. As published in the "Official Gazette of the Republic of Macedonia", No. 79/2009.

In the above context, in terms of the key strategic policy documents in this field, one should also mention:

- National Program for Achieving Social Protection for the Year 2010³³ and
- National Strategy for De-Institutionalization in the System of Social Protection in the Republic of Macedonia (2008-2018) as completed with an Operative Plan for its implementation.

3.2.3 Legislation Health Protection and Health Insurance- and Policy Action Framework Laws dealing with health protection and health insurance:

- Law on Health Insurance
- Law on Health Protection
- Law on Pension and Disability Insurance
- Law on Mandatory Fully Funded Pension Insurance
- Law on Equal Opportunities of Women and Man
- Law on Protection of Patients` Rights
- Law on Health Registry
- Law on Protection against Smoking,
- Law on Safety in Blood Provision
- Law on Medicines and Medical Helping Devices
- Law on Food Safety and of the Products being in contact with the food
- Law on Precursors

The above legal framework is completed by a series of policy-action documents including:

- the Program for Full Health Insurance and Health Protection of the Citizens, who had no health insurance in 2010 in the Republic of Macedonia,
- the Health Strategy of the Republic of Macedonia to t year 2020,
- National Strategy for Improving Mental Health in the Republic of Macedonia 2005-2012
- Program for Health Protection of the Persons with Mental Disabilities in the Republic of Macedonia for year 2010
- Program for Active Health Protection of the Mothers and the Children in 2010
- The National Strategy for Adolescents` Health 2008-2015
- Strategy for Control of Tuberculosis 2008-2012

In addition to the constitutional provisions mentioned above, the key legal texts in this area are the **Law on Health Insurance** and the **Law on Health Protection**.

The Law on Health Insurance regulates the health insurance of the citizens, the rights and duties deriving from health insurance, as well as the way of providing health insurance. The health insurance is established as obligatory and voluntary.

With regards to the obligatory insurance, the Law defines how persons and members of their family are insured, while specifying the basic health specific rights in both, primary health protection and the special-consultative (tertiary) health protection. Further, it defines health services not covered by the obligatory health insurance while stipulating rights to specific financial compensations, such as compensation of salary during temporary absence of work because of disease and injury, as well as during the leave from work for pregnancy, delivery of birth and motherhood, etc. The law also defines in detail all the relevant aspects of the voluntary health insurance.

With regards to the Law on Health Protection, one should take into account that it is closely related with the abovementioned law, and in this light, one should emphasise that the latest changes of this Law provided health protection with full package of health services to all citizens of the Republic of Macedonia. More specifically, the Government, makes budget allocations in the Health Insurance Fund, and provides insurance for all those categories of persons who have not been insured so far on any basis.

The Health Care Protection Act was amended in March 2004 in order to allow privatization of some health care sectors such as, dentistry and the pharmacy sector and ultimately, following an amendment in 2005, the primary health care. In this regard, one should also mention that as a result of the changes of this Law (from 2009), the existing health protection institutions have been transformed into a Public Health Institute of the Republic of Macedonia.

33. The Program is available on the web-site of the Ministry of Labor and Social Policy, www.mtsp.gov.mk

- Program on Health for All and Permanent Medical Education of Certain Groups of Population and certain Diseases of Citizens who have no health insurance for the year 2009 in the Republic of Macedonia
- Program for Early Detection, Diagnosing and Treating of Breast Cancer
- The Strategy for Prevention of Oral Diseases with Children of 0-14 years of the Republic of Macedonia
- Program for Health Protection of Persons with Diseases of Dependences

Other policy action documents:

- The Action Plan for Food and Nutrition (2009-2014)
- Strategy for Medicines (2010)
- Strategy for Decreasing the Harmful Consequences of Abusing Alcohol in the Republic of Macedonia
- National Development Plan of the Republic of Macedonia (2008-2013)
- National Strategy on HIV/AIDS 2007-2011
- National Action Plan for Gender Equality 2007-2012
- Operative Plan(s) for its implementation for the years covering the period 2008, 2009 and 2010
- National Strategy for Demographic Development of Republic of Macedonia 2008-2015

3.2.4 Legislation on Pensions and Disability Insurance

The rights deriving from the pension and disability insurance are the following:

- right to age-related pension
- right to disability pension
- right to re-allocation to other adequate working post
- right to adequate employment
- right to re-qualification or higher qualification and
- right to adequate financial compensations
- right to family pension
- right to monthly compensation for physical damage, and
- right to minimal pension

In addition to the constitutional provisions mentioned above, the key legal text in this field is the **Law on Pensions and Disability Insurance**. This law regulates the obligatory pension insurance of the workers under working contract and the natural persons performing activity, the bases of the capital funded pension insurance, as well as the special conditions how certain categories of insured persons receive the right to pension and enjoy disability insurance.

In relation to the pension related to age, it should be noted that the basic criteria for establishing the conditions for this right are the age and the existence of minimum pension period, namely: 64 years for men and 62 years for women and at least 15 years of working period.

*With the Law on Voluntary Capital Pension Insurance*³⁴ any person older than 18 may become a member of the voluntary insurance. The aforesaid legal framework is completed with the Law on Obligatory Capital Pension Fund³⁵ which regulates the establishment, the operation and the closure of pension companies and pension funds, defines asset management

34. As published in the "Official Gazette of the Republic of Macedonia", No. 7/08.

35. As published in the "Official Gazette of the Republic of Macedonia", Nos. 11/06 and 50 of 13.04.2010.

3.2.5 Gender Related legislation and Policy Action Framework

The Law on Equal Opportunities of Women and Man, regulates the basic and special measures for establishing equal opportunities for women and men, the competences, the tasks and duties of the responsible actors for ensuring equal opportunities, the procedure for determining a non-equal treatment of women and men, and the related issues in that context.

3.2.6 Housing Legislation and Policy Action framework

The key objective of the **National Strategy for Housing-2007-2012** is to achieve long-term, standardized and harmonized development of housing, according to modern standards for a quality life, and to this aim, it stipulates specific priorities and aims. It deals, among other thing,) with the issue of social housing and the housing of the vulnerable groups (children without parents or without parental care, users of social and permanent financial assistance, persons affected by natural disasters, disabled persons and persons who need assistance and care by other persons, the socially endangered persons belonging to the Roma community, lone parents with minor children) and in this regard, it indicates (most importantly) adoption of special law on social housing.

3.2.7 Legislation on Disability-and Policy Action Framework

In terms of policy action-related framework in this context, one should mention:

- the National Strategy for Equalisation of the Disabled Persons Rights 2010-2018 (Revised),
- the National Strategy for Employment -2010,
- the National Action Plan for Employment 2009-2010,
- the Operative Plan for Active Policies of Employment for the year 2009 and 2010,
- The Strategy for Reduction of Poverty and Social Exclusion.
- the National Program for Developing the Education in the Republic of Macedonia

rules and provides for a supervisory and regulatory system with regards to all entities involved in the administration of the mandatory private pension scheme.

In addition to the constitutional provisions, as well as to the specific employment, health and education laws as well as laws from other areas (as outlined in previous sub-sections of this part of this publication), the key legal text on this issue is the Law on Equal Opportunities for Women and Man.

It is aimed at promoting the principle of establishing equal opportunities for women and men in the political, economic, social and education areas, as well as in all other fields of social life.

The key legal text in this area is the Law on Housing, which, in the context of its main objectives in this subject area envisages also the possibility for renting state-owned apartments to socially-endangered and homeless persons in accordance with the Law on Social Protection.

This Law has provided de facto a legal basis for adoption of the *National Strategy for Housing-2007-2012* and the Operative Plan related thereto.

The adoption of this special law is one of the key targets of the *Operative Plan for Implementation* of the Housing Strategy. The aforementioned documents are also closely linked with other strategic documents such as the *National Strategy for Reduction of Poverty and Social Exclusion* containing a number of relevant up-to-date statistical data and specific indicators in this field, while stipulating specific measures and recommendations.

In addition to the constitutional principles and rights, the laws mentioned above, and the laws on labour relations, safety and health at work, social protection, health protection, patients rights, housing-related issue, as well as the ones mentioned in next sub-sections on the children protection, within the legal framework on disability matters other specific laws should be mentioned:

1. *The Law on Employment of Disabled Persons*, defining the special conditions for employment of people with disabilities and their work, while defining specific measures for improvement of the conditions for employment and work of persons with a disabilities;
2. *The Law on Pensions and Disability Insurance*
3. *The Law on Sign Language*. This law recognizes the sign language as a natural means of communication between deaf persons and other natural and legal persons. The above also includes the issue of education of children with special educational needs, which is regulated with the *Law on Primary Education, Law on Secondary Education, Law on Higher Education, Law on Adults` Education and the Law on Pupils` and Students` Standard*.

3.3. Legislation Child Protection and Policy Action Framework

Laws related to Child Protection:

- Law on Children` Protection
- Law on Family
- Social Protection Law
- Law on Primary Education
- Law on Secondary Education
- Law for Juvenile Justice

The aforementioned legal framework is completed by a number of specific policy action documents including:

- National Program for Developing the Children` Protection for year 2010
- Program for Dealing with issues of Socially Excluded Persons
- Program for Active Health Protection of Mothers and Children in the Republic of Macedonia in 2009;
- Strategy for Demographic Development of the Republic of Macedonia 2008-2015
- National Program for Developing the Education in Republic of Macedonia 2005-2015
- Multidisciplinary Protocol for Dealing with Street Children in the Republic of Macedonia

3.4 Legislation on Women Protection and Policy Action Framework

Law on Family:

- protects the motherhood,
- the performance of the parental right,
- concluding a marriage,
- the rights and duties of marital partners;
- In particular covers the issue of domestic violence.

Other documents:

- National Strategy for Protection against Domestic Violence 2008-2011
- Uniform Protocol on Action in the case of domestic violence

In addition to the constitutional provisions mentioned above, as well as the abovementioned specific laws including the *Law on Labour Relations and the Social Protection Law*, the key legal act dealing exclusively with child protection is the **Law on Child Protection**.

This law regulates the system, organization and the way of ensuring child protection. Children`s protection rights defined in this law are: child allowance, special supplement, assistance for an equipment for newborn infant and participation.

In addition, this Law envisages other forms of child protection including care and upbringing of children of pre-school age, wellbeing and recreation of children, etc.

It is complemented with the **Law on Family** which stipulates that *‘the Republic of Macedonia provides for a special protection for the family, ,the children, the minor children, the children without parents and the children without parental care’; ‘The Republic shall create and ensure scientific, economic and social conditions for planning the family and for the free and responsible parenting; in achieving their right to free and responsible parenting, the parents are obliged to ensure optimal conditions for healthy growing and development of their child in both the family and the society.*

In this line the Law also regulates relevant issues to equal rights and duties of parents towards their children, the relations of parents and children and their rights and duties in that context etc.

In addition to the specific constitutional provisions and some documents mentioned in this publication (the labour relations, social and health protection, and gender equality), the issue of women protection is also covered by the Law on Family.

The legislative framework is completed by the specific policy documents mentioned above (mentioned in the previous sub-sections of this publication, as well as the ones mentioned below).

3.5 Other Selective Laws on Anti-Poverty and Social Exclusion

3.5.1 Legislation on Anti-Discrimination

Law on Protection Against Discrimination:

"The protection against, and prohibition of discrimination concerns all natural and legal persons in the process of achieving the rights and the freedoms as guaranteed by the Constitution and the laws in the Republic of Macedonia";

This Law should be applied by all state authorities, units of local self-government, legal persons with public legal powers and natural persons in the fields of labour relations, education, science and sport, social safety including the field of social protection, pension and invalid insurances, health insurance and health protection, judiciary and administration, housing, access to goods and services, membership and acting in trade unions, etc.

3.5.2 Provision of Free Legal Aid

Law on Free Legal Aid:

The right to free legal aid is provided to Macedonian citizens with permanent residence in the Republic of Macedonia, namely, the persons using social assistance, the users of the right of handicap-related benefit who do not receive other income on the basis of earnings or property-related income, the users of minimal pension who living in a household with two or more persons being maintained by them, and the families or single parent with one or more minor children who enjoy the right to a child allowance, also persons with a recognized right of asylum, internally displaced persons, foreigners, etc, in accordance with this Law and related international agreements.

3.6 Legal and Policy Framework of Protection of Other Vulnerable Categories

3.6.1 Foreigners and Refugees

Legal and Policy Framework of Protection of Foreigners and Refugees:

- Law on Foreigners
- Law on Employment and Work of Foreigners
- Law on Asylum and Temporary Protection

The aforementioned broader legislative framework is completed with the **Strategy for**

In addition to the constitutional provisions and the abovementioned laws, in this regard, we should note that the **Law on Prevention and Protection Against Discrimination**, has strengthened the anti-discrimination legislation.

This Law is aimed at preventing and protecting against discrimination, and guarantee rights by the Constitution of the Republic of Macedonia, the laws and the ratified international agreements.

In order to achieve its aim, the Law envisages establishment of a Commission, and it regulates the very procedure of prevention and protection against discrimination before this commission. And last, it regulates court protection.

This is one of the most important tools in combating social exclusion, and in this regard, the key legal text is the **Law on Free Legal Aid**³⁶. It regulates the right to free legal aid, the procedure for establishing that right, the users, the conditions and the ways of establishing this right, the providers of such aid, and other related aspects.

The right to free legal aid is provided for persons, who, due to their material and financial situation, are not able to enjoy the rights guaranteed by the Constitution and the laws, and their own livelihood and the livelihood of their family members with whom they live together in a joint household is endangered.

In this context, one should also add the **Law on Ombudsman**³⁷, which defines all aspects of Ombudsman as a body which protects constitutional and other rights of citizens when their rights are violated.

In addition to the constitutional provisions, as well as the specific laws mentioned in the previous sub-sections of this publication, the legal framework on foreigners includes the **Law on Foreigners**³⁸, which is the key legal text in this regard. This law defines all of the specific rights of foreigners in relation to their entrance and residence in the country under different types of visa-regime; it regulates all issues related to foreigners including the foreigner's temporary permit for employment, work and self-employment, temporary residence for purposes of attending

36. As published in the "Official Gazette of the Republic of Macedonia", No. 161, of 20.12.2009.

37. As published in the "Official Gazette of the Republic of Macedonia", No.60/2003.

38. As published in the "Official Gazette of the Republic of Macedonia", No. 35/2006, and it has entered into force on 01.01.2008.

Integration of Refugees and Foreigners in the Republic of Macedonia 2008-2015, which is the most comprehensive policy action strategic document in this field.

3.6.2 Roma Protection

Legal and Policy Framework for Protection of Roma:

There is no specific law dealing exclusively with Roma issues, however the legislative framework mentioned above, regulates this issue to certain extent.

All of the aforesaid documents are closely linked with the strategic documents which take into account the specific situation of Roma population as well.

3.6.3 Protection to the Elderly

Legal and Policy Framework for Protection of the Elderly:

The most important laws dealing with protection of elderly persons are the **Law on Social Protection** and the **Law on Pension and Disability Insurance**, which are closely linked with the laws including the Law on Health Protection, Family Law, Labour Relations, Housing, and likely.

This also includes the **Law on Adults Education (2008)**.

school or studies, specialization, vocational education or practical training exchange schemes, scientific research, medical treatment, family reunification, permanent residence permit and the likely. In addition, this law is complemented by the **Law on Employment and Work of Foreigners**³⁹, which regulates both, the conditions and the procedure on how foreigners may be employed and work in the Republic of Macedonia, unless stipulated otherwise by international agreement.

With regards to refugees, one should mention the **Law on Asylum and Temporary Protection**⁴⁰, which regulates in detail all relevant rights and duties of recognized refugees and other related categories⁴¹.

There is a series of specific strategies and action plans deriving from the Roma Decade, including:

- Roma Strategy in the Republic of Macedonia,
- National Action Plan for Education (completed by Operative Plan for Education),
- National Action Plan for Health (completed by Operative Plan for Health),
- National Action Plan for Employment (completed with Operative Plan for Employment),
- National Action Plan for Housing (completed with Operative Plan for Housing),
- Action Plan for Roma Women (accompanied by Logical Framework for the Roma Women and Operative Plan for the year 2010),
- "Revision of the National Action Plans from the Decade of Roma Inclusion 2005-2010"
- Strategy for the Roma in R. of Macedonia 2009-2011,
- Operative Plan for Active Programs and Measures for Employment for year 2010⁴².

As in the previous section, there is no specific national law dealing exclusively with the issue of the elderly. Thus, in addition to the abovementioned constitutional provisions, one should take into consideration all of the specific laws as outlined in the previous sub-sections of this publication.

The aforesaid legislative framework is completed with the recent adoption of the **National Strategy for Elderly People 2010-2012**, in June 2010, which is the country's basic policy document identifying priority areas, with a view to reinforce the quality

39. As published in the "Official Gazette of the Republic of Macedonia", No. 70/2007/

40. As published in the "Official Gazette of the Republic of Macedonia", No. 19/2009,49/2003 and 66/2007.

41. Please also note that the above legislative framework is completed by other specific domestic laws including the Law on Citizenship, the Law on Public Gatherings, the Law on Associations of Citizens and Foundations, the Law on Ownership and other property-related rights, and the Law on Children Protection.

42. Please note that the actual status quo situation of the Roma population in the country is provided for (among others) by the Macedonia's Decade Watch team' Report on the Decade of Roma Inclusion (2010).

3.6.4 Legal Framework on Ethnic Minorities

Legal and Policy Framework of Protection of Ethnic Minorities:

- the Law on the Use of Languages used by at least 20% of the citizens of the Republic of Macedonia and in the units of local self-government;
- the Law on the Committee for Inter-Community Relations;
- the Law promoting and protecting the rights of persons belonging to communities which represent less than 20% of the population in the Republic of Macedonia ,
- Law on Civil Servants

3.7 Regional Development's Role in Anti Poverty and Social Exclusion

Legal regulation:

- Law on Harmonized Regional Development
- National Strategy for Regional Development of the Republic of Macedonia
- Strategy for Reduction of Poverty and Social Exclusion

of life for the elderly. The Strategy defines specific measures aimed at improving elderly persons' social protection system, developing and strengthening health protection for elderly persons, integrating old people in the social life and on the labour market. Consequently, this document is also closely linked with all of the abovementioned national policy documents.

In addition to the abovementioned constitutional provisions, one should, first of all, recall that it is the Ohrid Framework Agreement which provides a crucial guarantee of the rights of the non-majority communities in the Republic of Macedonia.

In terms of policy documents in this context, one should take into account the *Strategy for Equitable Representation of Ethnic Communities in the Public Sector*⁴³ and the *Strategy for Development of Broadcasting Activity in the Republic of Macedonia for the period 2007-2012 and the Action Plan for its Implementation*.

In conclusion, one should stress that it is the Council of Europe's Framework Convention for Protection of National Minorities, which is also an integral part of the national legislation in this field, and which provides one of most important inputs for further progress in this field in the country⁴⁴.

It is widely recognized that regional development is one of the crucial aspects of any anti-poverty and social exclusion policy. In this light, in the Republic of Macedonia, it is the **Law on Harmonized Regional Development**⁴⁵, which is the key legal text in this field. This Law regulates the aims, the principles and the holders of the policy for stimulating harmonized regional development, the planning of regional development of the Republic of Macedonia, as well as all other relevant issues in that context⁴⁶.

This Law has also been a legal basis for the adoption of the National Strategy for Regional Development of the Republic of Macedonia⁴⁷, which represents the key policy action-oriented document in that context. This Strategy is also closely linked with all of the abovementioned strategic documents including the *Strategy for Reduction of Poverty and Social Exclusion*, which contains a special part dealing with rural communities and housing.

43. In this context, please note that it is the Law on Civil Servants, which establishes an obligation on public bodies to comply with their annual recruitment targets for non-majority communities.

44. Please see the CoE's Committee of Ministers' Resolution on Macedonia (containing specific recommendations for Macedonia) as adopted after the second monitoring round under this Convention in the country). In this regard, please also see the Third Report of the Government of the Republic of Macedonia as drafted under this Convention, as prepared in line with the aforesaid Committee of Minister's directions and recommendations, 11 March 2010, Ministry of Foreign Affairs, www.mfa.gov

45. As published in the "Official Gazette of the Republic of Macedonia", No. 63/2007.

46. Please note that, for the purposes of achieving the very Law's key objective, there is a special Council for Harmonized Regional Development of the Republic of Macedonia.

47. As published in the "Official Gazette of the Republic of Macedonia", No. 119 of 30.09.2009.

3.8 Framework Electronic Communication

Legal regulation:

- Law on the Electronic Communications

Policy documents in the same field:

- National Strategy for e-Government 2010-2012
- Government Program (2006-2010)
- National Information Society Policy document,
- National Strategy & Action Plan for Information Society Development
- National Strategy for the Development of Electronic Communications with Information Technologies (NSDECIT)

NOTE

With regards to this sub-section, one should also take into consideration other specific vulnerable categories of persons such as: internal displaced persons, homeless persons, unemployed persons because of bankruptcy of companies, the exclusion by education and transport etc, all of which should be seen in the broader context of the specific issues covered in the Section 3 of this publication. These issues are also outlined and/or indicated in the abovementioned national strategic documents including the Strategy for Reduction of Poverty and Social Exclusion.

3.9. Macedonia's Monitoring Obligations Deriving from the International Human Rights Law

3.9.1 Macedonia's monitoring related obligations under selective United Nations' legal instruments

The Committee on the Rights of the Child (CRC Committee) recommends the state to ratify the core UN human rights treaties and their protocols to which it is not yet a party, namely, the Convention on the Rights of Persons with Disabilities and its Optional Protocol, the International Convention for the Protection of All Persons from Enforced Disappearance, which the Republic of Macedonia has signed, as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The later also includes the CoE's European Charter for Regional or Minority Languages.

One should note that the Republic of Macedonia is still not a contracting party (has not ratified) the Convention on the Protection of the Rights of All

The basic legal text in this area is the **Law on Electronic Communication**⁴⁸, which regulates both, the conditions and the way of performing activities in the field of electronic communications, including the access to communication.

It defines the conditions for meeting the needs for communication services, protection of the interests of the users of those services, and stimulating the economy development of the country.

The Law is the legal basis for establishment of the Agency for Electronic Communications.

In relation to the UN system, one should recall that the Republic of Macedonia is a signatory to the following UN human rights instruments.

International Covenant on Economic, Social and Cultural Rights⁴⁹: In relation to this UN's instrument, and like any state, the Republic of Macedonia is obliged to submit regular report to the Committee on Economic, Social and Cultural Rights (CESCR) on the implementation of rights.

Other document is the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** and the *Optional Protocol* towards CEDAW⁵⁰, whose implementation is monitored by the Committee on the Elimination of Discrimination against Women (CEDAW Committee). In this regard, the latest CEDAW Committee's Report on Macedonia was delivered in 2006. Other UN's relevant instruments as

48. As published in the "Official Gazette of the Republic of Macedonia", No.83/2010, 98/20008, 14/2007 and 13/2005. Please note that the below-mentioned documents can be found on: www.mio.gov.mk

49. It was ratified by the Republic of Macedonia on 18.01.1994.

50. The Republic of Macedonia ratified the CEDAW on 18 January, 1994; it ratified the Optional Protocol towards the same Convention on 17.10.2003; it made no reservation to these treaties. UN Doc. CEDAW/C/MKD/CO/3, §11. <http://daccess-dds-ny.un.org/doc>

Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities. In conclusion, in the context of Macedonia's membership in the UN, one should particularly take into consideration the country's commitment towards the implementation of the respective UN MDGs. In this regard, and as indicated above, the country's efforts are nothing else but implementation of the abovementioned (and the other UN's) legal instruments as well as the ones as adopted under its membership in other international organizations (as stressed above).

3.9.2 Macedonia's Monitoring Obligations deriving from the International Labour Organization's Legal Instruments

adopted/ratified by the Republic of Macedonia are also closely related to the aforesaid UN's convention. The later includes the UN Convention against Transnational Organized Crime and its Protocol for Prevention and Suppression and Sanctioning

Trafficking in Human Beings, in particular in Women and Children, the UN Convention on Torture, the UN Convention on Elimination of Racial Discrimination, etc.

Regarding the **UN Convention on the Rights of the Child (CRC)**⁵¹ and its two optional protocols to the Convention, on *involvement of children in armed conflict*⁵² and on *sale of children, child prostitution and child pornography*⁵³; the implementation of these instruments by their contracting parties are monitored by the Committee on the Rights of the Child (CRC) which examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations". The Committee considered Macedonia's second periodic report on 27 May 2010⁵⁴ and adopted its *concluding observations*⁵⁵ which contained a long and detailed list of remarks and specific concerns in the field of child protection in the country, as well as specific recommendations related thereto.

In relation to the ILO, it should be mentioned that the Republic of Macedonia has ratified a great number of ILO's legal instruments. In this regard, however, one should take into consideration the following short commentaries made by the ILO's Committee of Experts on the Application of Conventions and Recommendations in relation to the Republic of Macedonia: Namely, its Report (2010) states the following: "Serious failure to submit. The Committee notes with regret that the Government has not sent the information concerning the submission to the competent authorities of instruments adopted by the Conference at the 12 sessions held between 1996 and 2007 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions). The Committee urges the Government to take steps without delay to submit the pending instruments to the competent authorities". These concerns are also reflected and closely related in the context of Macedonia's obligations under the CoE's conventions, and in particular ESC, as indicated in the next sub-section⁵⁶.

51. As ratified by the Republic of Macedonia on 02.12.1993.

52. As ratified by the Republic of Macedonia on 12.01.2004.

53. As ratified by the Republic of Macedonia on 17.10.2003

54. As ratified by the Republic of Macedonia on 17.10.2003

55. CRC/C/MKD/CO/2

56. For the purposes of obtaining a better picture of the ILO's added value in the fields as covered by this publication, please also see the Annex 1 (as attached to this publication) reproducing a List of selective ILO's legal instruments as ratified by the Republic of Macedonia.

3.9.3 Macedonia's Monitoring- Obligations Deriving from CoE's European Social Charter

Unlike the (R)ESC, the Republic of Macedonia is a signatory party to this, very important, CoE's legal instrument. The latest monitoring report of the ECSR in relation to Macedonia, is concerned with the implementation of the ESC's articles from the thematic group "Health, Social Security and Social Protection, that is, Article 3 on safe and healthy working conditions, Article 11 on the right to protection of health, Article 12 on the right to social security, Article 13 on the right to social and medical assistance, Article 14 on the right of benefit from social welfare services and Article 4 of the Additional Protocol relating the right of elderly persons to social protection".

In this light, the European Committee of Social Charter Conclusions relating Macedonia reports on 11 situations and contains 3 cases of conformity (Articles 11&1, 13&2 and 13&3), 2 cases of non-conformity (Articles 12&1 and 13&1)⁵⁷.

In this context, one should note that the Committee examines the conformity of the situation in the light of a number of CoE's specific recommendations (as mentioned in the Committee's conclusions), as well as reports as adopted under the relevant CoE's conventions, such as the one of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment, established under the CoE The Convention deals with this subject matter. In conclusion, one should note that the next Macedonian National Report will deal with provisions of articles from the third thematic group (i.e. "Labour Rights").

3.9.4 Macedonia's Obligations Deriving from its Candidate Status for European Union Membership

In this regard, first, it should be pointed out that, under the framework of the enlargement process and accession, any candidate or potential candidate country should commit itself to transposing the *Community's acquis* in any relevant field; including the ones related to anti-poverty and social inclusion. In the case of the Republic of Macedonia, one should recall that the EU provided guidance to the Macedonian authorities on reform priorities through the Accession Partnership of February 2008. This instrument identifies eight key priorities for progress in the accession process by the country and the progress on these reform priorities is encouraged and monitored through the bodies set up under the Stabilization and Association Agreement (SAA). Based on the aforesaid Accession Partnership, the Macedonian Government has adopted the abovementioned **National Program for Adoption** of the Acquis and in this regard, we should take into consideration its part related to Chapter 2 ("Free Movement of Workers") and Chapter 19 ("Social Policy and Employment"). Specifically, it is about the key domestic policy document guiding the harmonization process of the Macedonian legislation with the one of the EU in the fields of labour, employment, social inclusion, social protection, social dialogue, safety and health at work, anti-discrimination and equal treatment of women and men.

In addition to this short background, one should specify that unlike the adoption of international legal instruments of the abovementioned intergovernmental organizations (e.g. the UN, the ILO, the CoE, etc.), the adoption of the aforesaid EU's *acquis* is not done by adopting a special national law for ratification of the *acquis* but the *acquis* is incorporated in the individual national regulations dealing with the relevant subject matter. The European Commission assesses the abovementioned key priorities as benchmarks in its so-called *progress reports*, which describe the relations between the Republic of Macedonia and the EU while analyzing the situation in the Republic of Macedonia in terms of the political and economic criteria for membership, and review the country's capacity to assume the obligations of membership, that is, EU's law and policies concerned. This progress is measured on the basis of decisions taken, legislation adopted and measures implemented. In this regard, one should take into consideration the latest Macedonia's EU Progress Report (2009), especially the one contained in its part dealing with "economic and social rights", "minority rights, cultural rights and protection of minorities", justice and home affairs, and the likes.

57. The ESC was ratified by the Republic of Macedonia on 31th March 2005.

58. Committee's Conclusions XIX-2 (2009), of January 2010, are published at: www.coe.int/socialcharter

CONCLUSION

In relation to the all the above mentioned in this sub-section,, one should stress that the country has still not ratified both the (R)ESC and the Protocol on Collective Complaint. It has only ratified the original ESC, and once the Republic of Macedonia ratifies the (R)ESC, there will be a new series of obligations to be met at national level, and which will have to be incorporated and /or taken into consideration accordingly while up-dating and/or adopting new strategic documents in the relevant fields. In any case, the ratification and implementation of the (R)ESC will require more comprehensive approach towards full implementation of all of CoE's legal instruments as ratified by the country, which is in line with the CoE's Warsaw Action Plan. Therefore, while dealing with this issue, one should also take into consideration all of the monitoring reports concerning Macedonia under the specific legal CoE's instruments; this includes not only the ECHR, but also the Framework Convention on National Minorities, CPT, the children-related legislation, data protection, etc⁵⁹. The later includes the ECtHR's case law, as well, the one as developed under the monitoring mechanism of the ESC and (R) ESC. In addition, there are still a number of CoE's legal instruments which are neither signed nor ratified by the country. Their subject matter is of relevance for the anti-poverty and social exclusion-related challenges. Seen from the broader perspective of Macedonia's full membership in the CoE, one should also take into account the work undertaken by all of the key Coe's bodies, such as the ECRI, whose latest report is dealing with Macedonia (June 2010) and it contains a series of specific recommendations for action on specific issues mentioned in this publication.

The abovementioned is directly linked with Macedonia's obligations deriving from the membership in the UN system, which is reflected in the actual process of implementing the respective UN MDGs⁶⁰ and the abovementioned UN's human rights standards concerned.

With regards to the current Macedonia's status of a candidate country for EU membership, and more specifically the ongoing process of the country's preparation for the *Joint Social Inclusion Memorandum* that is to be concluded with the respective EU, we should note that once this Memorandum is adopted, it will be absolutely necessary that the country has a far more comprehensive approach towards further adoption and implementation of the respective EU's acquits in social and human rights fields (as indicated in the second part of this publication). The later will have to be accompanied by the respective ECJ's case law in the relevant fields. Certainly, at this point, we should bear in mind that the country's EU-integration process is, and will be, closely linked with the country's obligations under its full membership in the UN (e.g. in terms of implementation the relevant UN legal instruments and the MDG's), ILO and other relevant intergovernmental organizations such as UNESCO, UNICEF, WHO, etc), as well as other European organizations such as the CoE, OSCE, etc.

59. In this regard, please see the List of selective CoE's legal instruments and their ratification status by the Republic of Macedonia, as reproduced in Annex 2 as attached to this publication. Please also see the full list of CoE conventions as available on www.coe.int/treaties.

60. Please see the two Macedonia's Progress Reports to Implementation of the UN MDGs, as available on www.undp.org.mk. Both reports illustrate in detail the actual situation regarding the issues as covered by this publication, such as Roma, women protection, children, etc.

ANNEX 1

LIST OF THE ILO'S LEGAL INSTRUMENTS AS RATIFIED BY THE REPUBLIC OF MACEDONIA⁶¹

Convention	Ratification date	Status
C2 Unemployment Convention, 1919	17.11.1991	ratified
C3 Maternity Protection Convention, 1919	17.11.1991	ratified
C8 Unemployment Indemnity (Shipwreck) Convention, 1920	17.11.1991	ratified
C9 Placing of Seamen Convention, 1920	17.11.1991	ratified
C11 Right of Association (Agriculture) Convention, 1921	17.11.1991	ratified
C12 Workmen's Compensation (Agriculture) Convention, 1921	17.11.1991	ratified
C13 White Lead (Painting) Convention, 1921	17.11.1991	ratified
C14 Weekly Rest (Industry) Convention, 1921	17.11.1991	ratified
C16 Medical Examination of Young Persons (Sea) Convention, 1921	17.11.1991	ratified
C17 Workmen's Compensation (Accidents) Convention, 1925	17.11.1991	ratified
C18 Workmen's Compensation (Occupational Diseases) Convention, 1925	17.11.1991	ratified
C19 Equality of Treatment (Accident Compensation) Convention, 1925	17.11.1991	ratified
C22 Seamen's Articles of Agreement Convention, 1926	17.11.1991	ratified
C23 Repatriation of Seamen Convention, 1926	17.11.1991	ratified
C24 Sickness Insurance (Industry) Convention, 1927	17.11.1991	ratified
C25 Sickness Insurance (Agriculture) Convention, 1927	17.11.1991	ratified
C27 Marking of Weight (Packages Transported by Vessels) Convention, 1929	17.11.1991	ratified

Source: ILOLEX-17.08.2010

Convention	Ratification date	Status
C29 Forced Labour Convention, 1930	17.11.1991	ratified
C32 Protection against Accidents (Dockers) Convention (Revised), 1932	17.11.1991	ratified
C45 Underground Work (Women) Convention, 1935	17.11.1991	ratified
C48 Maintenance of Migrants' Pension Rights Convention, 1935	17.11.1991	ratified
C53 Officers' Competency Certificates Convention, 1936	17.11.1991	ratified
C56 Sickness Insurance (Sea) Convention, 1936	17.11.1991	ratified
C69 Certification of Ships' Cooks Convention 1946	17.11.1991	ratified
C73 Medical Examination (Seafarers) Convention, 1946	17.11.1991	ratified
C74 Certification of Able Seamen Convention, 1946	17.11.1991	ratified
C80 Final Articles Revision Convention, 1946	17.11.1991	ratified
C81 Labour Inspection Convention, 1947	17.11.1991	ratified
C87 Freedom of Association and Protection of the Right to Organize Convention, 1948	17.11.1991	ratified
C88 Employment Service Convention, 1948	17.11.1991	ratified
C89 Night Work (Women) Convention (Revised), 1948	17.11.1991	ratified
C90 Night Work of Young Persons (Industry) Convention (Revised), 1948	17.11.1991	ratified
C91 Paid Vacations (Seafarers) Convention (Revised), 1949	17.11.1991	ratified
C92 Accommodation of Crews Convention (Revised), 1949	17.11.1991	ratified
C97 Migration for Employment Convention (Revised), 1949	17.11.1991	ratified
C98 Right to Organize and Collective Bargaining Convention, 1949	17.11.1991	ratified
C100 Equal Remuneration Convention, 1951	17.11.1991	ratified
C102 Social Security (Minimum Standards) Convention, 1952	17.11.1991	ratified

Convention	Ratification date	Status
C103 Maternity Protection Convention (Revised), 1952	17.11.1991	ratified
C105 Abolition of Forced Labour Convention, 1957	15.07.2003	ratified
C106 Weekly Rest (Commerce and Offices) Convention, 1957	17.11.1991	ratified
C109 Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958	17.11.1991	ratified
C111 Discrimination (Employment and Occupation) Convention, 1958	17.11.1991	ratified
C113 Medical Examination (Fishermen) Convention, 1959	17.11.1991	ratified
C114 Fishermen's Articles of Agreement Convention, 1959	17.11.1991	ratified
C116 Final Articles Revision Convention, 1961	17.11.1991	ratified
C119 Guarding of Machinery Convention, 1963	17.11.1991	ratified
C121 Employment Injury Benefits Convention, 1964	17.11.1991	ratified
C122 Employment Policy Convention, 1964	17.11.1991	ratified
C126 Accommodation of Crews (Fishermen) Convention, 1966	17.11.1991	ratified
C129 Labour Inspection (Agriculture) Convention, 1969	17.11.1991	ratified
C131 Minimum Wage Fixing Convention, 1970	17.11.1991	ratified
C132 Holidays with Pay Convention (Revised), 1970	17.11.1991	ratified
C135 Workers' Representatives Convention, 1971	17.11.1991	ratified
C136 Benzene Convention, 1971	17.11.1991	ratified
C138 Minimum Age Convention, 1973	17.11.1991	ratified
C139 Occupational Cancer Convention, 1974	17.11.1991	ratified
C140 Paid Educational Leave Convention, 1974	17.11.1991	ratified
C142 Human Resources Development Convention, 1975	17.11.1991	ratified

Convention	Ratification date	Status
C143 Migrant Workers (Supplementary Provisions) Convention, 1975	17.11.1991	ratified
C144 Tripartite Consultation (International Labour Standards) Convention, 1976	08.12.2005	ratified
C148 Working Environment (Air Pollution, Noise and Vibration) Convention, 1977	17.11.1991	ratified
C155 Occupational Safety and Health Convention, 1981	17.11.1991	ratified
C156 Workers with Family Responsibilities Convention, 1981	17.11.1991	ratified
C158 Termination of Employment Convention, 1982	17.11.1991	ratified
C159 Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983	17.11.1991	ratified
C161 Occupational Health Services Convention, 1985	17.11.1991	ratified
C162 Asbestos Convention, 1986	17.11.1991	ratified
C182 Worst Forms of Child Labour Convention, 1999	30.5.2002	ratified

ANNEX 2

SELECTIVE LIST OF OTHER COUNCIL OF EUROPE'S LEGAL INSTRUMENTS AND THEIR RATIFICATION STATUS BY THE REPUBLIC OF MACEDONIA

- * **Framework Convention for the Protection of National Minorities**: (ETS No. 157) . The Republic of Macedonia has ratified this convention on 1/2/1998;
- * **European Convention on the Exercise of Children's Rights** (ETS No. 160). The Republic of Macedonia has ratified this convention on 1/5/2003;
- * **European Convention on the Legal Status of Migrant Workers** (ETS No. 093). The Republic of Macedonia has not signed this convention;
- * **European Convention on Establishment** (ETS No. 019). The Republic of Macedonia is still not a contracting party to this instrument;
- * **European Convention on the Social Protection of Farmers** (1974). This legal instrument is still not ratified by the Republic of Macedonia as well;
- * **European Cultural Convention** (ETS No. 018). The Republic of Macedonia has ratified it on 24/11/1995;
- * **European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe** (ETS No. 025). The Republic of Macedonia is still not a contracting party to this instrument;
- * **Agreement on the Temporary Importation, free of duty, of Medical, Surgical and Laboratory Equipment for use on free loan in Hospitals and other Medical Institutions for purposes of Diagnosis or Treatment** (ETS No. 033). The Republic of Macedonia is still not a contracting party to this instrument;
- * **European Agreement on the Exchanges of Blood-Grouping Reagents** (ETS No. 039). The Republic of Macedonia is still not a contracting party to this instrument;
- * **Convention on the Elaboration of a European Pharmacopoeia** (ETS No. 050). The Republic of Macedonia has ratified it on 1/7/1994;
- * **European Convention on the Adoption of Children** (ETS no. 058). The Republic of Macedonia has ratified it on 16/4/2003;
- * **European Convention on the Legal Status of Children born out of Wedlock** (ETS no. 085). The Republic of Macedonia has ratified it on 1/3/2003;
- * **European Agreement on Transfer of Responsibility for Refugees** (ETS No. 107). The Republic of Macedonia is still not a contracting party to this instrument;
- * **Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data** (ETS No. 108). The Republic of Macedonia has ratified this convention on 1/7/2006;
- * **European Convention on the Legal Status of Children born out of Wedlock** (ETS no. 085). The Republic of Macedonia has ratified this convention on 1/3/2003;
/3/2003
- * **European Convention on the Exercise of Children's Rights** (ETS No. 160); The Republic of Macedonia has ratified this convention on 1/5/2003;
- * **Convention on Contact concerning Children** (ETS no. 192); The Republic of Macedonia is still not a contracting party to this instrument;
- * **European Convention on the Adoption of Children (Revised)**, (CETS no. 202); The Republic of Macedonia is still not a contracting party to this instrument;
- * **European Convention on the repatriation of minors** (ETS No. 071, still not into force);
- * **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment** (ETS No. 126). The Convention has been amended by the provisions contained in its Protocols No. 1 (ETS No. 151) and No. 2 (ETS No. 152). The Republic of Macedonia has ratified it on 1/10/1997;
- * **Convention on the Participation of Foreigners in Public Life at Local Level** (ETS No. 144). The Republic of Macedonia is still no contracting party to this instrument;
- * **European Charter for Regional or Minority Languages** (ETS No. 148). The Republic of Macedonia has only signed this Charter on 25/7/1996;

- ***European Convention on Nationality** (ETS No. 166). The Republic of Macedonia has ratified this convention on 1/10/2003;
- ***Criminal Law Convention on Corruption** (ETS No. 173). The Republic of Macedonia has ratified this convention on 1/7/2002;
- ***Civil Law Convention on Corruption** (ETS No. 174). The Republic of Macedonia has ratified this convention on 1/11/2003;
- ***Convention on Cybercrime** (ETS No. 185). The Republic of Macedonia has ratified this convention on 1/1/2005. This also includes the protocols related thereto;
- ***Convention on Contact concerning Children** (ETS no. 192). The Republic of Macedonia is still no contracting party to this instrument;
- ***Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse** (CETS No. 201). The Republic of Macedonia has only signed this convention on 25/10/2007;
- ***Convention on Action against Trafficking in Human Beings** (CETS no. 197). The Republic of Macedonia has ratified this convention on 25.05.2009 and entered into force on 01.09.2009⁶².

62. For more information on the above and other CoE's conventions, as well as on the monitoring reports on those instruments related to the Republic of Macedonia, please see at: <http://conventions.coe.int/Treaty>

ANNEX 3

LIST OF MACEDONIA`S BILATERAL AGREEMENTS IN THE FIELD OF SOCIAL INSURANCE⁶³

COUNTRY	Published in the "Official Gazette of the Republic of Macedonia"	Entered into force
Austria	No.28/97	1.4.1998
Croatia	No.34/97	1.11.1997
Turkey	No.7/99	1.7.2000
Slovenia	No.13/99	1.4.2001
Switzerland	No.44/2000	1.1.2001
Kingdom of Denmark	No.37/2000	/
Federal Republic of Yugoslavia	No.13/02	1.4.2002
Bulgaria	No.31/03	1.8.2003
Federal Republic of Germany	No.70/03	1.1.2005
Bosnia and HErcegovina	No.82/05	1.4.2006
Czech Republic	No.20/06	1/1.2007
Netherlands	No.20/06	1.4.2007
Romania	No.59/06	13.3.2008
Polland	No.27/07	1.7.2007
Luxemburg	No.47/07	1.4.2009
Belgium	No.74/07	1.6.2009
Canada	No.19/2010	ratified
Australia	No.19/2010	ratified

The above list is completed with the few agreements undertaken by the Republic of Macedonia by way of succession⁶⁴.

63. Source: Ministry of Labor and Social Policy, www.mtsp.gov.mk

64. The list of these agreements is available on the web-site of the Ministry of Labor and Social Policy, www.mtsp.gov.mk

BIBLIOGRAPHY

I. As to the first part of the publication, devoted to the Council of Europe, the selected bibliography includes:

- The Statute of the Organization, relevant conventions, recommendations and policy documents, as well as the Human Rights Court's case law, all of which are available at: www.coe.int
- Official and research documentation in social and human rights field as available at: www.coe.int
- "Courts and the Enforcement of Economic Social and Cultural Rights: Comparative Experiences of Justifiability", Geneva: ICJ 2008

II. As the second part of the publication, devoted to the European Union, the selected bibliography includes:

- EU treaties, relevant legal and policy documents, as available at: <http://eur-lex.europa.eu>
- Official reports and other publications in social field, as available at: www.ec.europa.eu/social
- European Court of Justice's case law, as available at: www.curia.europa.eu
- "Mental Health in the National Strategic Reports on Social Protection and Social Inclusion 2008-2010", Analysis of the national reports by MHE members, available at: www.mhe-sme.org
- "Ageing Well in Europe: Instruments and Tools available to Local and Regional Actors, October 2009",
- "Developing indicators for the protection, respect and promotion of the rights of the child in the European Union, March 2009, as available at: www.fra.europa.eu
- European Financial Inclusion Network –EFIN, www.fininc.eu
- European Anti Poverty Network, www.eapn.org
- Euro-found website, www.eurofound.europa.eu
- Undocumented Migrants Rights to Health and Education in Europe: Protection Needs vs. Immigration Control", Eve Geddie, Platform for International Cooperation on Undocumented Migrants (PICUM), as published in the European Social Watch Report 2009
- EU Policy on Labour Migration: Implications for Migrants' Rights", Nicola Flamigni and Rene Plaetevoet, as published in the European Social Watch Report 2009
- Eurochild, www.eurochild.org
- "Research Note no. 1 on Housing and Social Inclusion", by Erhan Özdemir and Terry Ward, November 2009, as produced for the European Commission by the Network on Income Distribution and Living Conditions of the European Observatory on the Social Situation and Demography
- 2010 Report of ENAR's Ad Hoc Expert Group on promoting equality in employment, as available at: www.enar-eu.org
- 2009 The social and employment dimensions of the EU's Lisbon Strategy for growth and jobs, Mary-Ann Kate, Migration Policy Group
- Migration and Diversity: A Rights-Based Approach to Migration, December 2009
- "Poverty in Europe: Invisible borders -a barrier to inclusion, Caritas Europe, Poverty Papers 2010, www.zeropoverty.org

III. As to the third part of publication, devoted to Republic of Macedonia, the selected bibliography includes:

- Macedonian Constitution and specific laws, as available at: www.sluzbenvesnik.org.mk (Official Gazette of the Republic of Macedonia's web-site)
- National Strategies and Action Plans, as well as other documentation in the labour and social fields, as available at: www.mtsp.gov.mk
- National Programs and other strategic documents related to Macedonia and EU relation, as available at: www.sei.gov.mk

- National programs and other documents in health field, as available at: www.moh.gov.mk
- National Strategy for Housing and other documents under the competence of the Ministry of Transport and Communications, as available at: www.mtc.gov.mk
- "On the Towards the EU: Civil Society's Contribution in Creating the Policy for Social Inclusion in the Republic of Macedonia", as available at: www.mtsp.gov.mk
- "Child Poverty Report" as published by UNICEF-Office Skopje
- Macedonia's Progress Reports to Implementation of the UN MDGs, as available at: www.undp.org.mk
- Roma Decade-related reports, as available at: http://www.romadecade.org/mk_decade_watch_2008_2010
- International Labour Organization and Council of Europe (2006) Country Review of the Employment Policy of the Republic of Macedonia, as available at: www.ilo.org
- World Bank (2007) Poverty Assessment Paper for the Republic of Macedonia
- Monitoring Reports from different CoE's conventions, as available at: www.coe.int
- EU Progress Reports on Macedonia, as available at: www.sei.gov.mk
- Monitoring reports under different UN's conventions, as available at: <http://daccess-dds-ny.un.org/doc>

CIP - Каталогизација во публикација
Национална и универзитетска библиотека "Св. Климент Охридски",
Скопје

364.662:341.24(4-672ЕУ)

314.662:341.24(4-672ЕУ)

364.662:340.13(497.7)

316.614:340.13(497.7)

HUMAN rights legal and policy action framework focusing on social
inclusion and poverty reduction. - Skopje : Institute of Human Rights
"Ludwig Boltzmann" – BIM FV Skopje 2011. - 63 стр. ; 21 см

Публикацијата е во рамките на проектот: "Social Inclusion and Human
Rights in Macedonia". - Фусноти кон текстот. - Содржи и: Annex 1-2

ISBN 978-608-65251-6-3

- а) Сиромаштија - Искоренување - Правна регулатива - Европска унија
 - б) Социјална инклузија - Правна регулатива - Европска унија
 - в) Сиромаштија - Искоренување - Законодавство - Македонија
 - г) Социјална инклузија - Законодавство - Македонија
- COBISS.MK-ID 88376842



HUMAN RIGHTS
LEGAL AND POLICY
ACTION FRAMEWORK

Focusing on Social Inclusion and Poverty Reduction

