Report form - European Social Charter report 2020 – Health and Social Protection

Article 11 – The right to protection of health

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

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

Introductory comments from the European Committee on Social Rights (see also the Annex - Statement of interpretation on the right to protection of health in times of pandemic)

Part I – 11. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.

The right to protection of health under Article 11 of the Charter complements Articles 2 and 3 of the European Convention on Human Rights; those provisions of international human rights law are closely linked. Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

Life expectancy (as well as causes of death and infant and maternal mortality) in a community —and life expectancy inequality as might be the case for a sub-group within a community— is a broad indicator for the enjoyment of the right to protection of health and for the delivery by the competent authorities of the measures that enable people to enjoy the highest possible standard of health attainable. There is ample evidence of factors that contribute to or that undermine the health of people.

It is well known that members of certain groups enjoy poorer health and have shorter life expectancy, especially the poor, homeless, jobless or other underprivileged communities and also underprivileged ethnicities. Life expectancy varies from country to country and, in some cases, it varies considerably from one part of the country to another or from one part of the same city to another; reports suggest that the difference in life expectancy can amount to years or even to one decade or more. Life expectancy goes hand in hand with a range of health issues. Children's rights and education are also determinants of future health and life expectancy, as is the family environment (housing, poverty or exclusion, exposure to domestic violence, child abuse or neglect).
Insalubrious work or living environments also affect health adversely as does air, water or other forms of environmental pollution, including proximity to active or decommissioned (but not properly isolated or decontaminated) industrial sites with contaminant or toxic emissions, leakages or outflows, including slow releases or

transfers to the neighbouring environment. It is for example a broadly accepted truism that prison is bad for people's health (staff and inmates alike).

As regards health care, it should be available, accessible, acceptable and of sufficient quality (the WHO "3AQ" framework), and informed consent is not only a formal requirement, but it goes to the heart of patient autonomy, self-determination, bodily integrity and well-being. A human rights approach to health requires reliance on science, excluding ideology or dogmatism. In particular, pseudoscience is a source of risk and, almost invariably, amounts to denial of informed consent; homeopathy in particular can be a drain on public resources or misguide individuals to pointless personal expenditure.

Mental health is an integral part of the right to health. The transition from former large-scale institutions to community-based mental health care was—and, in certain cases, remains—fully justified and desirable. However, reportedly, it was often poorly implemented or insufficient resources were allocated to it. As a result, some persons in need of mental health care were neglected, drifting towards unemployment and poverty, homelessness or petty crime, and ultimately towards prison. Prison administration complain about such cohorts that, in their view, do not belong in the prison system and prison health care services advance that sometimes these inmates represent a high proportion of the prison population.

Under this provision, States Parties must demonstrate their ability to cope with infectious diseases, such as arrangements for reporting and notifying diseases and by taking all the necessary emergency measures in case of epidemics. The latter would include adequate implementation of the measures applied in the COVID-19 crisis: measures to limit the spread of virus in the population (testing and tracing, physical distancing and self-isolation, provision of surgical masks, disinfectant, etc.) and measures to treat the ill (sufficient number of hospital beds, including intensive care units and equipment and rapid deployment of sufficient numbers of medical personnel while ensuring that their working conditions are healthy and safe – the latter issue was addressed under Article 3 above). It goes without saying that measures taken in respect of epidemics or pandemics must respect the exigencies of human rights law.

The pandemic did not only place a huge demand on health care services but also revealed in many cases chronic public health underfunding and insufficient capacity to respond to ordinary, let alone extraordinary, needs.

States must operate widely accessible immunisation programmes. They must maintain high coverage rates not only to reduce the incidence of these diseases, but also to neutralise the reservoir of virus and thus achieve the goals set by WHO to eradicate a range of infectious diseases. Vaccine research should be promoted, adequately funded and efficiently coordinated across public and private actors.

Access to health care must be ensured to everyone without discrimination. Groups at particularly high risk such as older persons, the homeless or those poorly housed, the poor and destitute, those living in institutions must be adequately protected by the measures put in place. This implies that health equity as defined by the WHO should be the goal: absence of avoidable, unfair or remediable differences among