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Health and social protection of undocumented workers or those in an irregular situation

Reply to Recommendation[1]: Recommendation 2255 (2023)
Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly Recommendation 2255 (2023) on "Health and social protection of undocumented workers or those in an irregular situation". It has forwarded it to relevant bodies for information and possible comments.[2]

2. It recalls that the Heads of State and Government of the Council of Europe in the Reykjavík Declaration, noting that social justice is crucial for democratic stability and security, reaffirmed their full commitment to the protection and implementation of social rights as guaranteed by the European Social Charter system. The Committee of Ministers therefore welcomes the Assembly's sustained commitment to the strengthening and implementation of social rights in Europe.

3. The Committee of Ministers would underline that the extensive work carried out by its Ad hoc Working Party on improving the European Social Charter system (GT-CHARTE), to which the Assembly refers, resulted in a number of decisions relating to operational measures to modernise and improve the reporting procedure under the Charter and the follow-up to monitoring. Regarding several other issues discussed during this work, there was a strong consensus on the need to reinforce implementation of the Charter, including these operational measures, before engaging in treaty amendments or any other major overhaul of the Council of Europe social rights system.

4. In this context, the Committee notes the Assembly's suggestions in paragraph 2 of the Recommendation, "*to remove the restriction on the personal scope of application of the European Social Charter*" ("the Charter") and expand the reach of existing rights under the Charter to all persons *de facto* living within the jurisdiction of the States Parties and to "*add new provisions to the Charter on enhanced protection of workers in non-standard forms of employment*". It informs the Assembly that these issues were duly examined by the GT-CHARTE. Regarding the first, the Committee acknowledges that whilst the restriction on the personal scope set out in the Charter's Appendix is regarded by some as inconsistent with the nature of the Charter as a human rights treaty, there is no consensus on the need to reconsider this restriction. Similarly, with regard to the second proposal, whilst the Committee of Ministers does not consider it opportune to develop the Charter's substantive content, it does not exclude the possibility, in the future, to examine how best to take account of emerging new realities in the labour market as regards the protection of workers engaged in atypical forms of work.

1. Adopted at the 1484th meeting of the Ministers' Deputies (13 December 2023).
2. European Committee of Social Rights (ECSR), the Governmental Committee of the European Social Charter and the European Code of Social Security (GC), the Steering Committee for Human Rights (CDDH), the Bureau of the European Committee on Legal Co-operation (CDCJ), the Steering Committee for Human Rights in the fields of Biomedicine and Health (CDBIO) and the Special Representative of the Secretary General on Migration and Refugees (SRSG Migration and Refugees)

5. More generally, the Committee refers to its decisions of 15 March 2023 where it "invited the organs of the Charter, in particular the European Committee of Social Rights, to apply, where possible, the existing Charter provisions to new or evolving situations and, in case gaps which cannot be filled within this framework of existing provisions are identified, invited the Governmental Committee (GC) to consider ways of filling such gaps, through the possible elaboration of soft law instruments (Committee of Ministers' guidelines, recommendations or declarations) or other means, so as to promote a common approach among member States in respect of the issues in question".

6. Matters which were not endorsed by the GT-CHARTE for further discussion at the present time, have been listed as longer-term substantive and procedural issues relating to the Charter, on which the Committee of Ministers may resume discussions in the future.[3] The possible organisation of a high-level conference on the Charter, as envisaged in the Reykjavík Declaration, may be an opportunity to reflect on whether – and if so when – such matters could be further developed.

7. Regarding paragraph 3 of the Assembly's recommendation, the Committee invites member States that have not yet done so, to sign and ratify the (revised) Charter and its protocols and accept further, or all, of the provisions.

8. The Committee takes note of the other points advanced in paragraphs 4 and 5 of the recommendation and invites the relevant authorities of member States to give them due consideration. Finally, it thanks the Assembly for its support to the ongoing national efforts and institutional mobilisation to strengthen socio-economic rights across Europe and encourages it to continue its efforts to promote social rights in the follow-up to the Reykjavík Summit.

3. The final report of the GT-CHARTE: "Improving the European Social Charter system: longer term substantive and procedural issues – Report" (CM(2022)196-final).